

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

**WRIT PETITION Nos.11826 OF 1993, 25593 OF 1995, 22635
OF 2004 AND 3287 OF 2007**

W.P.No.11826 of 1993

Between:

The Annavarappadu Hut Peoples' Association, Ongole,
Rep. by its President

.... Petitioner

and

The Government of A.P. rep. by its Secretary, Revenue Department
& Ors.

.... Respondents

DATE OF JUDGMENT PRONOUNCED: 04.01.2018.

SUBMITTED FOR APPROVAL:

**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE MS. JUSTICE J.UMA DEVI**

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? -----
2. Whether the copies of judgment may be marked to Law Reports/Journals -Yes-
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? - Yes-

RAMESH RANGANATHAN, ACJ

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AND
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.... Respondents

! Counsel for Petitioners: Sri S. Ramachandra Rao, learned Senior
Counsel, Sri M.R.K. Chowdary,
learned Senior Counsel, and Sri P.
Sri Raghuram, learned Senior
Counsel, Sri M.Subba Reddy,
Sri V.V.N. Narayana Rao, Sri K.R.
Prabhakar, Learned Counsel.

^ Counsel for respondents: Sri M.L. Ali, learned Standing Counsel
for the respondent-Railways;
Learned Government Pleader for
Revenue (Assignments), Sri
K.Lakshman, Asst. Solicitor
General, Sri R.S.Murthy, Addl.
CGSC, Sri P.Bhaskar, Sri
P.Phalguna Rao, Learned Counsel.

< GIST:

> HEAD NOTE:

? Citations:

1. AIR 1979 SC 621
2. AIR 1992 SC 1075
3. AIR 1986 SC 806
4. AIR 1983 SC 848
5. AIR 1987 SC 2414
6. AIR 1971 SC 1021
7. AIR 1968 SC 718
8. (1904) I.L.R. 29 Bom. 580 = LR 28 IA 211
9. AIR 1986 SC 872
10. (2003) 1 SCC 341
11. (1989) 2 SCC 116
12. (1987) 2 SCC 720

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COMMON ORDER : (per Hon'ble the Acting Chief Justice Ramesh Ranganathan)

W.P. No.11826 of 1993 is filed by Annavarapupadu Hut Peoples Association ('HPA' for short) seeking a writ of certiorari to quash G.O.Ms. No.224 dated 15.03.1993 holding that the members of the petitioner society were entitled for allotment of the lands in their occupation. W.P. No.22593 of 1995 is also filed by HPA seeking a writ of certiorari to quash the judgment and decree passed in A.S. No.72 of 1992 dated 28.09.1995 on the file of the Additional District Judge, Ongole.

W.P. No.3287 of 2007 is filed by the Rajiv Gandhi Railway Co-op. House Building Society seeking a mandamus to declare the action of the respondents, in not delivering possession of the abandoned railway land of an extent of Ac.4.57 cts in Sy. No.63, 68, 69 and 70 of Mamidipalem village, Ongole Mandal as arbitrary and illegal. W.P. No.24069 of 2008 is also filed by the Rajiv Gandhi Railway Co-op. House Building Society seeking a mandamus, to declare the inaction on the part of the respondents in protecting the land, in an extent of Ac.4.54 cts situated in Sy. No.4, 17, 18, 45, 46 and 47 of AHPA village, Ongole Mandal, Prakasham District, which has been sought to be allotted to the petitioners though G.O.Ms. No.224 dated 15.03.1993, as arbitrary and illegal. By an interlocutory order passed on 05.11.2008, the respondents were directed to maintain *status quo*.

G.O.Ms. No.224 dated 15.03.1993 was issued by the Government of Andhra Pradesh allotting an extent of Ac.29.51 cts of Railway land to the Ongole Taluq Non-Gazetted Co-operative House Building Society Limited, and an extent of Ac.11.00 cts to the Rajiv Gandhi Railway Employees Co-operative House Building Society Limited, Ongole, on confirmation from the South Central Railways for the market value fixed by the District Collector, Prakasam. The District Collector was directed to collect the market value of the land, at the specified rate, from the two house building societies in advance, pay the same to the General Manager, South Central Railways, Secunderabad; and take possession of the subject land from the South Central Railway, and then allot the same to the Society expeditiously.

G.O.Ms. No.224 records that the General Manager, South Central Railway, Secunderabad had, by his letter dated 12.02.1992, requested the State Government to inform whether they were willing to take over railway land of an extent of Ac.40.51, along the siding of the Ongole railway yard at Ongole, Prakasam District; the matter was referred to the District Collector, Prakasam and the Commissioner of land revenue for their remarks/recommendations; the District Collector had submitted his proposal, vide letter dated 21.06.1992, for transfer of 40 acres of railway land in AHNP village of Ongole Mandal for grant of house sites for an extent of Ac.34.69 cts in favour of the Ongole Taluq Non-Gazetted Officers, and an extent of Ac.5.82 cts in favour of the Railway Employees at Ongole on payment of market value in advance; the Commissioner of Land Revenue had, vide letter dated 04.07.1992, endorsed the proposal of the District Collector;

aggrieved by the proposal of the District Collector, the Rajiv Gandhi Employees Society had filed W.P. No.9847 of 1992 before the High Court which was disposed of with a direction to the District Collector to allot land to the petitioners in proportion to the strength of the members, of both the petitioner as also the respondent society, after conducting a meticulous enquiry regarding the genuineness of the members; the Ongole Taluq Non-Gazetted Officers' Co-operative House Building Society, and the Rajiv Gandhi Employees Society, had entered into a compromise, and had filed the same vide letter dated 11.02.1993, pursuant to the order of the High Court in W.P. No.9847 of 1992 dated 30.09.1992; and, in view of the compromise entered into by both the Societies, the District Collector had finally submitted revised proposals in his letter dated 13.02.1993 for allotment of the subject land as house sites on payment of the market value of Rs.80,000/- per acre, to be paid in advance by both the societies in respect of the subject land. The State Government directed the District Collector to collect the market value of the subject land at the rates specified in the said G.O. from the two house building societies in advance, pay the same to the General Manager, South Central Railway, take possession of the subject land from the South Central Railway, and allot the same to the said societies. Questioning the validity of G.O.Ms. No.224 dated 15.03.1993, the HPA filed W.P.No.11826 of 1993 claiming allotment of land, to the members of their association, which were in their occupation.

In its order in W.P. No.11826 of 1993 dated 20.02.1993, a Division bench of this Court observed that an extent of Ac.42.00 cts of land was originally allotted to the State Government for the

railways; the railways found that this extent of Ac.42.51 cts was a quarry area, and they only required Ac.1.50 cts; the Railways informed the State Government that Ac.40.51 cts was not required by them, and they were prepared to surrender the same to the State Government; since the land was not being properly secured, a large number of encroachments had come up; two co-operative Housing Societies had requested for allotment of land as house sites; the High Court had, by order in W.P. No.9874 of 1992 dated 30.09.1992, directed the State Government to consider allotment of house sites to the two co-operative societies; consequently the impugned G.O. was passed; in the meanwhile the Railways tried to get the land vacated of encroachments; this led to an order being passed by the Appellate authority under the Public Premises (Eviction) Act, 1971; the parties to that appeal consisted of 158 persons who claimed that some of them had constructed pucca houses in the land, and they should be given the right to purchase the property at the market value, in the same manner in which the offer was given to the railway employees; the fact that they were in possession by encroaching the land was evident; if the intention of the State Government was to distribute plots, to the Co-operative societies as house sites, on payment of market value, there was no reason why a similar offer should not be made to those who were already in possession, and whose claim was that they had already built pucca houses on the land; and the State Government should consider the applications of these persons who were in occupation, for allotment of sites, on payment of market value in the same manner in which the offer was made to the Co-operative societies; and it would be unreasonable to evict them from the premises.

While directing that the eviction order of the Appellate Authority be kept in abeyance, the respondents were directed to consider the claim of HPA for allotment of house sites on payment of market value in the manner in which the request of the Employees societies was being considered. W.P. No.25593 of 1995 filed by the HPA, against the order of the District Judge, Ongole in A.S. No.78 of 1992 dated 28.09.1995, was dismissed as infructuous by order dated 20.09.1995.

On a petition being filed by the General Manager, South Central Railway, in Rev.WPMP Nos.11240 and 33271 of 1997 in W.P. No.11826 of 1993, a Division bench of this Court, by its order dated 21.03.2005, observed that both the earlier orders passed by the Division bench in W.P. No.11826 of 1993 and W.P. No.25593 of 1995 did not examine the merits of the order of eviction passed by the Estate Officer which was upheld by the District Judge; no finding had been recorded by this Court as to whether the order of eviction was valid or not; this was a mistake apparent on the face of the record, which necessitated examination; and, therefore, Review Applications were allowed and the orders passed in W.P. No.11826 of 1993 and W.P. No.25593 of 1993 were recalled, and both the Writ Petitions were placed for final hearing before the appropriate bench along with W.P. No.9472 of 2004, 9479 and 22635 of 2004. The Division bench permitted parties to file pleadings with regards subsequent events, and directed all the Writ Petitions to be listed together.

As the earlier order of the Division bench in W.P. No.11826 of 1993 dated 20.02.1997 has been recalled, we are now required not only to examine the validity of G.O.Ms. No.224 dated

15.03.1993 which is under challenge in W.P. No.11826 of 1993, but also to examine the claims of HPA for allotment of house sites with respect to the plots which they had encroached upon; and whether the South Central Railway can be directed by a writ of mandamus to allot the subject land to the HPA or the Ongole Taluq Non-gazetted Officers Co-operative house building society or the Railway Employees Cooperative House Building Society, Ongole; and, if so, the rate at which the Railways should be directed to alienate the land in favour of the Government of A.P. to enable the latter, in turn, to allot them as house sites to both the Societies and the HPA.

Heard Sri S. Ramachandra Rao, learned Senior Counsel appearing on behalf of the petitioners in W.P. No.3287 of 2007 and W.P.No.24069 of 2008; Sri M.R.K. Chowdary, learned Senior Counsel appearing on behalf of the petitioners in W.P.No.11826 of 1993 and W.P. No.25593 of 1995, and Sri P. Sri Raghuram, learned Senior Counsel appearing on behalf of the petitioners in W.P. No.22635 of 2004. Sri M.L. Ali, learned Standing Counsel, put forth his submissions on behalf of the respondent-Railways and the learned Government Pleader for Revenue (Assignments) put forth his submission on behalf of the State of Andhra Pradesh.

While drawing our attention to the correspondence between the Railways and the State Government on the one hand, and the State Government Officials and the petitioner-Associations on the other, it is contended on behalf of the petitioners that, having agreed to relinquish Ac.41-50 acres of Railway land at Ongole, at Rs.2,59,674/- per acre, it was not open to the Railways thereafter to turn around and contend that the said amount is meagre; on

the basis of the assurances given by the Chief General Manager and the Chief General Engineer, South Central Railway, the petitioner-Associations had made payment, receipt of which was acknowledged by the Railways; after having received the entire sale consideration, it is not open to the Railways to now contend that a higher price should be paid; the doctrine of promissory estoppel is attracted, and the petitioners are entitled to be allotted plots in accordance with the amounts already paid by them; on the basis of the assurance of the Railways and the State Government, the petitioners had altered their position, and had paid the sale consideration at the market value determined by the State Government; having accepted the sale consideration, it is not open to the Railways to resile from their promise, and demand higher amounts; and a Writ of Mandamus should, therefore, be issued by this Court directing the respondent-Railways to hand over the subject land to the State Government, and for the State Government, in turn, to hand it over to the petitioner-Associations which would, in turn, allot plots to the members of their respective associations, who had paid the amounts, as directed by the State Government, to the Railway authorities.

Sri P. Sri Raghuram, learned Senior Counsel appearing on behalf of NGGOs Association, would further submit that, though the members of the association he represented had already paid the entire sale consideration, they were willing to pay even the higher market value as determined by the District Judge, Prakasam, in the report submitted by him pursuant to the order passed by the Division Bench in Review WPMP No.11240 of 1997 dated 16.8.2004.

On the other hand Sri M.L. Ali, learned Standing Counsel for the respondent-Railways, would submit that, while the Railways had agreed in principle to alienate the subject land of Ac.40.51 cents to the State Government, it was made clear that the said alienation would be at the market value prevailing on the date of transfer; even the very low rate of Rs.2,59,674/- per acre, determined on the basis of the report of the Mandal Revenue Officer dated 24.01.2003, was not paid for more than a year thereafter till February, 2004; the competent authority, to alienate Railway land, is the Railway Board which had directed that the subject land should be alienated only at the market value prevailing on the date of transfer; the several letters, referred to by the petitioners, would itself show that there was no correspondence between the petitioners and the Railways; it is clear therefrom that the Railways were only corresponding with the State Government, and not with the petitioner associations; any assurance given by the State Government to the petitioners cannot be construed as a promise made by the Railways to the petitioners; no assurance was given to the petitioners by the Railways that the subject land would be alienated in their favour at a particular price; the Railways were obligated, by the Indian Railway Code, to ensure that they secure the market price prevailing on the date of transfer; and the petitioners cannot seek a Mandamus that the subject land should be alienated in the year 2017 at the market price prevailing in the year 2003, as that would fall foul of the Railway Code, and the directions issued by the Railway Board.

Learned Government Pleader for Revenue would submit that, while the Railways claim that an extent of Ac.40-51 cents belongs

to it, it is evident from the revenue records that an extent of Ac.5.82 cents is classified as hill poramboke; and it is only an extent of Ac.36.19 cents of land which belongs to them.

As Learned Senior Counsel appearing on behalf of the petitioners have extensively referred to the correspondence between Railways officials and officials of the Government of Andhra Pradesh, in support of their contention that the railways cannot resile from their promise to alienate the subject land in favour of the petitioner associations, more so as they had received the entire sale consideration from its members, it is useful to refer to the exchange of letters, between these officials, *albeit* in brief.

The District Collector, Prakasam, by his letter dated 02.01.1991, informed the Divisional Railway Manager, South Central Railways that the Ongole Taluk N.G.G.Os., House Building Society ("NGGO Society" for short), vide their letter dated 22.11.1990, had requested that house site pattas be granted on payment of market value, in the land covered by the Railway track; the Mandal Revenue Officer had reported that the subject land was classified as railway poramboke in the village accounts; the Railway department was not utilizing the land for the last 15 years; these lands were lying vacant except a small portion which was encroached by way of houses in Sy.No.18 of Annavarappadu Village; these lands were fit for habitation; the Mandal Revenue Officer had recommended grant of house site pattas to the NGGO Society on payment of market value, subject to obtaining the consent of the railway authorities; the State Government, under G.O.Ms. No.634 dated 02.07.1990, had agreed to consider sale or lease of its lands, to various categories of government employees,

on payment of cost or lease amount if suitable land is available; and as per BSO 23(ii), when the Central Government no longer required any land which was in their possession, the State, in which it was situated, could be given the option of assuming possession of the whole or any portion thereof. The District Collector requested the Divisional Railway Manager to offer his opinion regarding transfer of the land in favour of the State Government on payment of the market value so as to enable him to issue house site pattas to the NGGO Society.

The Senior Divisional Engineer, South Central Railway informed the District Collector, by his letter dated 06.02.1991, that one of the proposals was to use the land partly or fully for the Railway Employees House Building Societies ("Railway Societies" for short); as per the extant instructions, such surplus land would be handed over only to the State Government, if no other Central Government department was in need thereof; and if the land was given possession to the State Government, the latter had to arrange for payment of compensation at the prevailing market value. The District Collector was requested to furnish the prevailing market value of the said land, and to help the Railway Administration in evicting encroachments over the subject land so that, if the land was proposed to be transferred finally, there would be no difficulty in giving vacant possession thereof.

The District Collector, Prakasam, vide his letter dated 11.12.1991, informed the Divisional Railway Manager that the Mandal Revenue Officer, to whom the matter was referred to, had reported that the market value, of the surrounding lands, ranged from Rs.1,84,000/- to Rs.3,04,900/- per acre; the sales, which

occurred in the vicinity of the land, did not represent the true market value; Rs.2,00,000/- to Rs.2,25,000/- was required for reclamation of the lands; and the Mandal Revenue Officer and the Revenue Divisional Officer, Ongole had recommended the market value of the proposed lands at Rs.80,000/- per acre.

The General Manager, South Central Railway informed the Secretary, Revenue Department, Government of A.P., vide letter dated 12.02.1992, that an extent of 1.50 Acres near Ongole Station yard, was required for railway use; since the balance land of Ac.40.51 area was far away from the Railway Station, and it was no longer required by the Railways, it was proposed to dispose of this land to the State Government on the following terms and conditions i.e. (1) the complete area of the land of Ac.40.51 should be taken over by the State Government; (2) the market value of the land should be the value at the time of handing over the land; (3) the State Government may consider allotment of a portion of the land to the Railway Societies on payment of the market value of the land, since, as per the extant orders of the Railway Board, railway land was not being given to the Railway Societies; the request of railway employees, for allotment of a portion of the railway land to the Railway Societies, may be considered by the State Government, after taking the land from the railways; and the land would be handed over to the State Government, after dismantling the track and collecting all the materials, and affording credit to the Railway's account. The State Government was requested to advise whether they were willing to take over railway land at Ongole on these conditions. Reminders were sent by the General Manager, South Central Railway to the Secretary, Revenue Department,

Government of Andhra Pradesh on 08.07.1992, 05.08.1992 and 11.09.1992. By his letter dated 16.12.1999, the General Manager, South Central Railway requested the Secretary to the Government, Revenue Department to convey the consent of the State Government, for the proposal afresh, for taking further action to relinquish railway land in favour of the State Government. A reminder, to that effect, was against sent on 21.01.2000.

In the joint report dated 12.09.1994/26.09.1994, the Mandal Revenue Officer informed that they had arrived at the present net market value of the subject land at Rs.1,49,355/- per acre. The General Manager, South Central Railway informed the District Collector, by his letter dated 08.08.1995, that the rate of Rs.80,000/- per acre, as advised by the State Government, was very low; the market value of the land was obtained from the Sub-Registrar taking into account the reclamation charges per acre; and the value was arrived at Rs.1,77,493/-, excluding solatium at 30% and contingency charges at 3%. While referring to the letter of the District Collector dated 25.03.1995, wherein it was stated that the associations had accepted the market value at Rs.1,49,355/- per acre, the General Manager requested the District Collector to confirm whether the rate of Rs.1,77,493/- per acre, and other charges, was acceptable to the State Government to deal further in the matter for obtaining the competent authority's sanction.

The District Collector, Prakasam informed both the Societies, by his letter dated 21.08.1995, that the General Manager, South Central Railway had fixed the market value at Rs.2,36,065/- per acre (market value of Rs.1,77,493/- + solatium at 30%

Rs.53,247=90 + contingency charges at 3% i.e Rs.5,324/-). The societies were requested to file their acceptance letters to pay the market value of the land, as proposed by the General Manager, at the Collector's office within a week so that the report could be sent to the General Manager, South Central Railway.

By his letter dated 05.09.1995, the District Collector informed the General Manager, South Central Railway that the market value has already been fixed by the Government, and the Sub-Registrar was not the authority to fix the market value; it was upto the railways and the purchasers to negotiate higher or lower rates; and he was enclosing the acceptance letters received from the associations for taking further action.

The General Manager, South Central Railway informed the Executive Director, Land Management, Railway Board, vide letter dated 06.09.1995, that it was decided to dispose of an extent of Ac.40.50 cents in terms of the provisions laid down by the Engineering Code, keeping the remaining Ac.1.50 cents for the future needs of the Railways; the State Government had advised that they were prepared to take over the land at Rs.80,000/- per acre; since the rate offered by the State Government was very low, the Divisional Railway Manager was asked to collect the market value by causing local enquiry; they had assessed the rate per acre at Rs.1,19,750/- (i.e., Rs.2,96,710/- per acre less Rs.1,76,960/- towards reclamation charges); based on the rates given by the District Registrar of Assurance, Ongole and the Sub-Registrar, Ongole, the weighted average rate per acre worked out to Rs.3,54,453/-, and after deducting the cost of reclamation of Rs.1,76,960/-, the net value of the land per acre came to

Rs.1,77,493/- which was higher than the rate quoted by the Collector or assessed by the Division; the remarks of the Financial Advisor and the Chief Accounts Officer of the Railways was that Rs.1,77,493/- was reasonable, taking into consideration the problems of encroachment; the land should be relinquished to the State Government which, in turn, would allot the same to the Societies; and the Board's approval was being sought in terms of the Board's letter dated 24.04.1992, as the value exceeded Rs.5 lakhs. The Railway Board was requested to approve the proposal for relinquishment of surplus railway land admeasuring Acs.40.51 cents at Rs.1,77,493/- per acre, plus the usual codal charges and contingencies, to the State Government. Again by proceedings dated 25.06.1996, the General Manager, South Central Railway requested the Executive Director, Land Management, Railway Board to communicate its approval, for relinquishing the land, to the State Government.

The Additional Secretary to the State Government, by his letter dated 04.06.1998, forwarded a copy of the representation dated 27.05.1998 received from the President, NGGO Society to the Collector requesting him to send his report in the matter immediately so that the Government would hand over the land to the NGGO Society.

The District Collector informed the Secretary to the Government, Revenue Department, vide his letter dated 16.08.1998, that, as there were unauthorized encroachments by way of houses, the railway authorities had initiated eviction proceedings under the provision of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 against about 360

encroachers; aggrieved thereby, the encroachers had filed C.R.P and had preferred an appeal in A.S.No.78 of 1992, which was dismissed by the Additional District Judge, Ongole, by his order dated 28.09.1995; aggrieved thereby, the Annavarappadu Hut People's Association, Ongole ("HPA" for short) had filed W.P.No.11826 of 1993 and, by order dated 20.02.1997, the High Court had directed that the eviction order be kept in abeyance; the respondents were directed to consider the claim of the HPA for allotment of house sites on payment of market value in the same manner in which the Railway Societies were being considered; aggrieved thereby, the NGGO Society had preferred a review petition stating that the encroachers were spread all over the land, and the encroachers should be re-located at one place to enable the associations, as well as the Government, to make better use of the land; the HPA had also informed that they were willing to pay the market value, and they should also be allotted the respective extents in their occupation; while the total number of encroachments as on 30.02.1995 were 295, the President of the HPA had represented that 700 families had encroached upon the sites since 30 years; and he proposed to hold a joint meeting, with the associations, on receipt of a report along with a sketch from the Mandal Revenue Officer.

A copy of representation received from the NGGO Association was forwarded by the Secretary to the Government to the District Collector, Prakasam, by his letter dated 02.09.1998, requesting him to convene a joint meeting and take action. Accordingly, a joint meeting was convened in the Chambers of the Joint Collector on 25.06.1999 wherein all the four associations informed the Joint

Collector that they were willing to pay the market value for the railway land. They also agreed that payment would be made at their own risk, and subject to acceptance of the Railway Board. They informed that payment would be made by way of demand drafts drawn in favour of the Divisional Manager, South Central Railway, Secunderabad, and the demand drafts would be handed over to the Mandal Revenue Officer, Ongole for transmission to the Railway Authorities through the District Collector, Ongole. The AEN, South Central Railway had informed that, on receipt of the land value, he would submit proposals to the General Manager, South Central Railway for acceptance of the market value received from the four associations, and from other encroachers.

The Mandal Revenue Officer issued demand notice dated 27.10.1999 to the Railway Societies informing him that Rs.10,71,738=68 should be deposited by way of demand draft on 10.11.1999 with the S.B.I. Ongole in favour of the Mandal Revenue Officer; an extent of Ac.4.54 cents would be handed over to the Societies; and, in case the Societies failed to pay the said amount within the stipulated time, the said land would not be handed over to them.

By his letter dated 04.11.1999, the General Manager, South Central Railway informed the Revenue Secretary, Government of Andhra Pradesh that proposals were sent to the Railway Board for their approval of the proposed relinquishment of surplus railway land measuring Ac.40.51 cents to the State Government; the Railway Board desired that consent of the State Government should be obtained, and sent afresh, for the disposal of surplus Railway land admeasuring Ac.40.51 cents to the State Government

as per codal provisions, and the extant instructions, for their consideration. He requested that the consent of the Government of Andhra Pradesh should be sent for taking further action.

The General Manager, South Central Railway informed the Divisional Railway Manager, Vijayawada, by his letter dated 27.04.2000, that the subject matter was under correspondence with the Railway Board, and the Government of Andhra Pradesh, for obtaining Board's sanction for the proposed relinquishment of Railway land; and an advise be sent to the District Collector, Prakasam to avoid criticism from the Railway Board. He also informed that, unless fresh proposals were initiated by the State Government, this issue could not be finalised. Again, vide letter dated 27.06.2000, the General Manager, South Central Railway requested the Revenue Secretary, Government of A.P., to arrange to send the consent letter of the State Government to the proposed relinquishment of the subject Railway land in favour of the State Government. Reminders were sent on 03.03.2001 and 13.03.2001.

The Deputy Director, Land Management, Railway Board, New Delhi, by his letter dated 14.03.2001, informed the General Manager, South Central Railway, Secunderabad that approval of the Ministry of Railways was being conveyed for relinquishment of railway land measuring Ac.40.51 cents to the Government of Andhra Pradesh; the transfer of land should be made subject to fulfilment of the following conditions: (i) possession of the land should be transferred only after receipt of the market value of the land prevailing at the time of actual transfer of land; and (ii) other charges, such as easement and maintenance charges etc, to be

levied in addition as per Rules should be collected in advance; and this was issued in concurrence with the Finance Directorate of the Ministry of Railways.

By his letter dated 14.02.2002 the District Collector, Prakasam informed the General Manager, South Central Railway that a meeting was held in the chambers of the Joint Collector on 25.06.1999 at 11.00 A.M; the four associations had agreed that the payment which they make would be at their own risk, and subject to acceptance of the Railway Board. The District Collector requested the General Manager to consider the proposal regarding payment of market value of Rs.2,36,067/- per acre as suggested by the General Manager himself on 08.08.1995, and for the proposal to be accepted.

By letter dated 13.05.2002 the Divisional Railway Manager (Works), South Central Railway informed the District Collector, Prakasam that, by their earlier letter dated 22.03.2002, he had requested to arrange to issue the present day market value certificate in respect of Railway quarry lands at Ongole covered by certain Survey Nos in Mamidipalem and Annavarappadu villages, but their reply was awaited. The District Collector was informed that, as the Competent Authority of Railways had decided to relinquish the said railway land on payment of the present market value, the valuation certificate, in and around the said railway lands, was required. The District Collector was requested to issue the valuation certificate so that the long pending issue could be settled at the earliest.

By his letter dated 16.10.2002 the General Manager, South Central Railway informed the District Collector, Prakasam District

that approval of the Railway Board was obtained for transfer of Ac.40.51 cents to the State Government on payment of current market value at the time of actual transfer of land, along with other codal and miscellaneous charges; the District Collector had been requested to advise the current market value of land which was yet to be received; as per the land plans available with their office, an extent of Ac.5.82 cents in Survey No.63 at Mamidipalem village belonged to the South Central Railway; and the Government of Andhra Pradesh may take over the complete land of Ac.40.51 cents duly arranging payment of the market value of the land at the time of actual transfer as approved by the Railway Board.

The District Collector, Prakasam by his dated 25.01.2003, while referring to the letter of the General Manager, South Central Railway dated 28.02.2002, informed the General Manager, South Central Railway that the matter was referred to the Mandal Revenue Officer, and he had submitted a report on 24.01.2003 recommending the market value of Rs.2,59,674/- per acre; he had also informed that the Railway Societies had paid a total amount of Rs.10,71,769/- by way of demand drafts and the NGGO Society had paid Rs.21,45,838/-; and the HPA had paid Rs.31,73,574/- as against Rs.49,71,524.40 ps. leaving a balance of Rs.17,97,906.00; and the amount was deposited with the Central Bank, Ongole in the name of the Mandal Revenue Officer. The District Collector recommended the revised market value of the land at Rs.2,59,674/- per acre, and requested the Railway authorities to accept the said proposal.

The FA & CAO, South Central Railway, Secunderabad informed the Chief General Manager, South Central Railway, by

his letter dated 10.04.2003, that their office had agreed for the relinquishment of railway land admeasuring Ac.40.51 cents at Ongole at the market value of Rs.2,59,674/- per acre, as advised by the District Collector; it was advised that, at the time of actual transfer of land, the Senior Divisional Engineer may be asked to ascertain the prevailing market value from the revenue authorities, and then enter into the transfer deed; and the further conditions put-forth by the railway board, vide their letter dated 14.03.2001, may be strictly followed.

By his letter dated 09.07.2003, the Chief General Engineer, South Central Railways informed the District Collector, Prakasam that it had been decided to relinquish 40.51 acres of Railway land at the rate of Rs.2,59,674/- per acre amounting to Rs.1,05,19,394/-; and, in addition, easement and maintenance charges, if any, may have to be paid before transfer of land. He requested that the amount be remitted with the Financial Adviser and Chief Accounts Officer, South Central Railway, Secunderabad; and, after remittance of the full amount to the Railways, the other procedure for handing over of the land would be followed.

By his letter dated 26.08.2003, the Chief General Engineer informed the District Collector that the amount, as indicated earlier, be remitted to the FA & CAO, South Central Railway, Secunderabad, before transfer of the land; and, after remittance of the full amount to the Railways, the other procedure of handing over of land shall be followed.

The District Collector informed the Chief General Manager, South Central Railway, by his letter dated 15.12.2003, that the Mandal Revenue Officer had reported that the NGGO Society and

the Railway Societies had paid the full amount of Rs.35,39,406/- for the total extent of Ac.13.63 cents (Ac.9.09 cents to NGGOs Society and Ac.4.54 cents to the Railway Society); the HPA had paid a major portion of the amount, and a small balance was still due; the demand drafts, submitted by the said two associations, was being forwarded; and the balance amount would be paid soon after collection of the amount from the HPA.

While acknowledging receipt of four demand drafts, the Chief General Engineer, South Central Railway informed the District Collector, by his letter dated 02.01.2004, that the demand drafts for Rs.35,39,409/- could not be realized till the entire payment, amounting to Rs.1,05,09,394./- together with easement and maintenance charges, if any, was fully paid to the Railways. The District Collector, Prakasam was informed that till such time the entire payment was made, the four demand drafts would be kept in the safe custody of the office. The District Collector, Prakasam was requested to arrange for payment of the balance amount from the HPA to enable relinquishment of Railway land at the earliest. He was also informed that, if the balance amount was not paid by 28.02.2004, the four demand drafts would be returned to him.

By his letter dated 08.01.2004, the District Collector, Prakasam directed the Mandal Revenue Officer, Ongole to arrange for payment of the balance amount from the HPA towards the market value of railway land, and remit the same to the Financial Adviser and Chief Accounts Officer, South Central Railway, Secunderabad by the end of February, 2004; any deviation to those instructions would be seriously viewed; and the matter be treated as urgent.

The Chief General Manager, South Central Railway informed the District Collector, Ongole, by his letter dated 06.02.2004, that the demand drafts for Rs.35,39,409/- were kept in safe custody till the entire payment was made to the Railways; if the entire amount was not paid within six months from the date the total amount was advised for payment i.e., vide office letter dated 27.08.2003, fresh market value would be taken, and the amount due for payment would be revised and advised. The District Collector was requested to arrange for payment of the balance amount immediately to settle the long pending issue.

By his letter dated 25.02.2004, the District Collector informed the Chief General Manager, South Central Railway that, from out of 40.51 acres, only an extent of Ac.36.19 cents belonged to the Railway Department in Mamidipalem and Annavarappadu Villages; and the remaining extent of Ac.5.82 cents in Survey No.63-1 of Mamidipalem village was classified as Mungamur Konda as per the Revenue records, and belonged to the Revenue Department of the Government of Andhra Pradesh. He requested the Chief General Manager, South Central Railway to delete this land admeasuring Ac.5.82 cents from the land belonging to the Railway Department. He also enclosed a copy of the report of the Mandal Revenue Officer dated 25.02.2004, along with three demand drafts for Rs.54,68,685/-.

The District Collector, Prakasam was informed by the Chief Engineer, South Central Railway, Secunderabad, vide his letter dated 26.02.2004, that the entire extent of Ac.40.51 cents belonged to the Railways; and the same would be relinquished only on payment of the entire amount of Rs.1,05,19,394/-. The District

Collector, Prakasam was advised to make the balance payment without further delay, otherwise fresh market value would be taken, and the amount due for payment would be revised. A similar letter was addressed to the Revenue Divisional Officer, Ongole, vide letter dated 23.03.2004.

By his letter dated 13.04.2004, the Chief General Manager, South Central Railway, while acknowledging receipt of one demand draft dated 12.04.2004 for Rs.15,11,303/-, also stated that the seven demand drafts sent earlier for Rs.35,39,406/- and Rs.54,65,685/- had been sent to the Chief Cashier/SC Railway, Secunderabad for realisation; and on realisation of the entire amount of Rs.1,05,19,394/-, further action would be taken for relinquishment of the said land.

By his letter, dated 24.05.2004, the Divisional Railway Manager, South Central Railway informed the Chief General Manager that the State Government had paid Rs.1,05,19,394/- for relinquishment of railway land of Ac.40.51 at Ongole; in their letter, dated 05.03.2004, they had mentioned that the present market value was in the range of Rs.79,20,000/- to Rs.95,04,000/- per acre; this meant that the total value of the land, to be relinquished at Ongole, was in the range of Rs.32,08,38,200/- to Rs.38,50,07,040/-; and this fact may be taken into account while taking any decision on the relinquishment of Railway Land to the State Government.

By his letter dated 08.05.2004, the District Collector informed the Chief General Manager, South Central Railway that the latter had, by his letter dated 13.04.2004, informed that demand drafts for Rs.1,05,19,394/- had been received, and further

action would be taken to relinquish the land on realization of the demand drafts; at that stage, the Divisional Railway Manager, South Central Railway had informed that an extent of Ac.4.50 cents originally forming part of the land proposed to be spared by Railways to the State Government, was proposed to be retained by the Railways for laying a new road for granite lorry traffic to avoid plying of vehicles through the busy residential areas of Ongole; the entire amount of Rs.1,05,19,394/- was paid to the Railways; and further action should be taken to hand over the railway land at Ongole to the associations immediately as per the orders issued in the Chief General Manager's proceedings dated 09.07.2003.

The Senior Divisional Engineer, South Central Railway, Vijayawada informed the General Manager, South Central Railway, vide proceedings dated 02.06.2004, that they had made an independent enquiry, and had obtained the current market value; and as per the certificate issued by the District Registrar, Ongole, the market value prevailing ranged between Rs.79,86,000/- and Rs.95,83,200/- per acre obtained as on 01.10.2003, whereas the District Collector had recommended at Rs.1,95,244/- per acre.

The Chief General Engineer, South Central Railway, requested the Divisional Railway Manager, South Central Railway, Vijayawada, by his letter dated 22.07.2004, to ascertain the present market value from the Collector, and other appropriate State Government authorities; and take further action accordingly. The Senior Divisional Engineer, in turn, requested the District Collector, Prakasam, by his letter dated 12.08.2004, to furnish the present market value of the land in Mamidipalem and Annavarappadu Villages in Ongole.

The General Manager, South Central Railway sought review of the order passed in W.P.No.11826 of 1993 dated 20.02.1997. The Division Bench of this Court, by its order in Review WPMP No.11240 of 1997 dated 16.08.2004, appointed the District Judge, Prakasam to conduct an enquiry, and report the rates which the subject lands would fetch in the market as on date, if they were put to sale without any encumbrances and after removal of encroachments. The report was directed to be submitted within four weeks. The District Judge, Prakasam District, submitted his report to the Registrar (Judicial) stating that the total value of the entire extend of land in Annavarappadu and Mamidipalem villages was Rs.24,93,40,580/- as per the prevailing market value according to his enquiries with local persons.

The General Manager, South Central Railway, by his letter dated 07.09.2004, informed a Member of Parliament that the representation of the dwellers associations had been examined; as per the railway board's instructions, relinquishment of Railway land admeasuring Ac.40.51 cents to the Government would be subject to realization of full market value of land prevailing at the time of actual transfer of land, together with other charges such as easement and maintenance charges; accordingly, the prevailing market value of the land had been sought from the District Collector and District Magistrate, Ongole for which the land rates were yet to be received; on receipt of the market value from the Collector, and on payment of the difference if any, the land would be handed over to the District Collector.

By his letter dated 11.11.2004 the Additional Divisional Railway Manager, South Central Railway, Vijayawada informed the

District Collector that he was called upon to hold a joint meeting with the District Collector to discuss: (i) arrangement for conducting joint survey to demarcate Railway land admeasuring Ac.40.51 acres at Ongole Railway quarry siding; (ii) progress of the enquiry ordered by the District Collector, Prakasam vide letter dated 03.08.2004, to enquire into allegations of encroachments; (iii) arrangement of police protection for eviction of 60 numbers of unauthorised encroachments which took place subsequent to the prohibition orders issued by the High Court; (iv) efforts of the District Administration to protect further encroachments; and (v) whether allotment of plots to NGGOs Association and Rajiv Gandhi Association had been made legally by the District Administration. He sought a convenient date for a meeting to be held.

An additional affidavit was filed before this Court, on behalf of the General Manager, South Central Railway, stating that the total value arrived for Ac.40.51 cents was between Rs.52,76,68,456/- and Rs.55,44,97,662/-.

The exchange of letters, as referred to hereinabove, would show that the correspondence was mainly between railway officials and officials of the Government of A.P. on the one hand, and between the Government of A.P. and the petitioner associations on the other. It is also evident that no letter was addressed by the railway officials directly to the petitioners' associations. Even in the absence of any promise being made directly by the Railways to the petitioners' associations, can it be said that the Railways had made a promise to the petitioners' association, and are disabled from resiling therefrom on application of the doctrine of "promissory estoppel"?

Before examining this question, it is necessary to understand the scope of this doctrine, variously called 'promissory estoppel', 'equitable estoppel', 'quasi estoppel' and 'new estoppel'. This doctrine of promissory estoppel is a principle evolved by equity to avoid injustice, and is neither in the realm of contract nor in the realm of estoppel. The basis of this doctrine is the interposition of equity. (**M/s.Motilal Padampat Sugar Mills Co. Ltd. v. The State of U.P.**¹). This doctrine, well established in administrative law, represents a principle evolved by equity to avoid injustice. (**Amrit Banaspati Co. Ltd. v. State of Punjab**²; **Union of India v. Godfrey Philips India Ltd.**³). The true principle of promissory estoppel is that, where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made, and it is in fact so acted upon by the other party, the promise would be binding on the party making it; and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not. (**The Gujarat State Financial Corporation v. M/s.Lotus Hotels Pvt. Ltd.**⁴; **M/s.Motilal Padampat Sugar Mills Co. Ltd.**¹). This doctrine has evolved to prevent injustice where a promise is made by a person knowing that it would be acted on by the person to whom it is

¹ AIR 1979 SC 621

² AIR 1992 SC 1075

³ AIR 1986 SC 806

⁴ AIR 1983 SC 848

made, and in fact it is so acted on, and it is inequitable to allow the party making the promise to go back upon it. (**M/s.Motilal Padampat Sugar Mills Co. Ltd.**¹).

In order to invoke the doctrine of promissory estoppel, it is not necessary for the promisee to show that he suffered detriment as a result of acting in reliance on the promise. If, by detriment, injustice is caused to the promisee which could result if the promisor were to recede from his promise, then detriment would certainly come in as a necessary ingredient. The detriment in such a case is not some prejudice suffered by the promisee by acting on the promise, but the prejudice which would be caused to the promisee, if the promisor were allowed to go back on the promise. (**M/s.Motilal Padampat Sugar Mills Co. Ltd.**¹). The concept of detriment is whether it appears unjust, unreasonable or inequitable that the promisor should be allowed to resile from his assurance or representation, having regard to what the promisee has done or refrained from doing in reliance on the assurance or representation. (**Delhi Cloth and General Mills Ltd. v. Union of India**⁵). It is not necessary, in order to attract the applicability of the doctrine of promissory estoppel, that the promisee, acting in reliance of the promise, should suffer any detriment. What is necessary is only that the promisee should have altered his position relying on the promise. (**M/s.Motilal Padampat Sugar Mills Co. Ltd.**¹).

In order to invoke the doctrine of promissory estoppel it is enough to show that the promisee has, acting in reliance of the promise, altered his position and it is not necessary for him to

⁵ AIR 1987 SC 2414

further show that he has acted to his detriment. (**M/s.Motilal Padampat Sugar Mills Co. Ltd.**¹). Alteration of position only means that he (the promisee) must have been led to act differently from what he would otherwise have done. All that is required is that one should have acted on the belief induced by the other party. The gist of the equity lies in the fact that one party has, by his conduct, led the other to alter his position. (**M/s.Motilal Padampat Sugar Mills Co. Ltd.**¹). The party, asserting estoppel, must have relied upon the representation made to him. He should have changed or altered the position by relying on the assurance or the representation. The alteration of position by the party is the only indispensable requirement of the doctrine, and it is unnecessary to prove further any damage, detriment or prejudice to the party asserting estoppel. The entire doctrine is reliance based and nothing more. (**Delhi Cloth and General Mills Ltd.**⁵).

This doctrine of promissory estoppel is applicable to the Central Government including the Railways. The Government is not exempt from the equity arising out of the acts done by citizens to their prejudice, relying upon the representations as to its future conduct made by the Government. (**Century Spinning and Manufacturing Co Ltd. v. The Ulhasnagar Municipal Council**⁶; **Union of India. v. Indo-Afghan Agencies**⁷). The Crown cannot escape by saying that estoppel does not bind it, for that doctrine has long been exploded. Nor can the Crown escape by praying, in aid, the doctrine of executive necessity, that is, the doctrine that the Crown cannot bind itself so as to fetter its future executive

⁶ AIR 1971 SC 1021

⁷ AIR 1968 SC 718

action. (**Century Spinning and Manufacturing Co Ltd.**⁶; **IndoAfghan Agencies Ltd.**⁷).

The doctrine of promissory estoppel is applicable against the Government in the exercise of its governmental, public or executive functions, and the doctrine of executive necessity or freedom of future executive action cannot be invoked to defeat the applicability of the doctrine of promissory estoppel. (**Godfrey Philips India Ltd.**³). No distinction can be made between exercise of a sovereign or governmental function, and a trading or business activity of the Government, so far as the doctrine of promissory estoppel is concerned. Whatever be the nature of the function which the Government is discharging, it is subject to the rule of promissory estoppel and, if the essential ingredients of this rule are satisfied, the Government can be compelled to carry out the promise made by it. (**M/s.Motilal Padampat Sugar Mills Co. Ltd.**¹).

A public body is not exempt from liability to carry out its obligation arising out of representations made by it relying upon which a citizen has altered his position to his prejudice. (**Century Spinning and Manufacturing Co Ltd.**⁶). Public bodies are as much bound as private individuals to carry out representations of facts and promises made by them, relying on which other persons have altered their position to their prejudice. The obligation arising against an individual out of his representation, amounting to a promise, may be enforced ex contractu by a person who acts upon the promise. (**Century Spinning and Manufacturing Co Ltd.**⁶). An instrumentality of the State cannot commit breach of a solemn under-taking on which other side has acted, and then contend that

the party suffering by the breach of contract may sue for damages but cannot compel specific performance of the contract. **(M/s.Lotus Hotels Pvt. Ltd.⁴).**

Law of Promissory Estoppel furnishes a cause of action to a citizen, enforceable in a court of law against the government if it, or its officials, in the course of their authority, had extended any promise which created, or was capable of creating legal relationship, and it was acted upon, by the promisee irrespective of any prejudice. **(Amrit Banaspati Co. Ltd.²).** It is open to a party, who has acted on a representation made by the Government to claim that the Government shall be bound to carry out the promise made by it, even though the promise is not recorded in the form of a formal contract as required by the Constitution. **(Indo-Afghan Agencies⁷; The Municipal Corporation of the City of Bombay v. The Secretary of State for India in Council⁸).** The Government is not exempt from liability to carry out the representation made by it as to its future conduct, and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise, solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an ex parte appraisalment of the circumstances in which the obligation has arisen. **(Indo-Afghan Agencies⁷).**

For the doctrine of promissory estoppel to apply it is necessary to show that the Railways have made a promise, acting upon which the petitioners' associations had altered their position, in that they had acted differently from what they would, otherwise, have done. While the second limb of the doctrine has been fulfilled

⁸ (1904) I.L.R. 29 Bom. 580 = LR 28 IA 211

on the petitioners having paid certain amounts to the State Government which, in turn, forwarded it to the Railways, it is necessary to examine whether the first limb of this doctrine has been fulfilled i.e., whether the Railways had made any promise to the petitioners' associations and, if so, the nature of the promise? The correspondence, referred to hereinabove, would show that the NGGO Society had requested the District Collector, by their letter dated 22.11.1990, that house site pattas be granted on payment of market value, in the subject land belonging to the Railways. This request was made by the petitioner in view of G.O.Ms. No.634 dated 02.07.1990 issued by the State Government that it would consider sale or lease of its land to various categories of Government employees, on payment of cost, if suitable land was available. It is pursuant to such a request by NGGO Society that the District Collector, Prakasam had, by his letter dated 02.01.1991, sought the opinion of the Divisional Railway Manager, for transfer of the land in favour of the State Government on payment of market value, in order to enable him to issue house site pattas to the NGGO Society.

It is no doubt true that the Senior Divisional Engineer, South Central Railway had informed the District Collector, by his letter dated 06.02.1991, that one of the proposals was to use the land partly or fully for the Railway Society. However the said letter dated 06.02.1991 makes it clear that, as per the extant instructions, railway surplus land would be handed over only to the State Government on the latter arranging payment of compensation at the prevailing market value. The correspondence between the Railway officials and the State Government officials is

mainly regarding the true market value of the subject land and, while initially the District Collector Prakasam, had, by his letter dated 11.12.1991, informed the Railways that the value of the proposed land was Rs.80,000/- per acre, their market value was revised thereafter by the District Collector in his letter dated 25.03.1995 to Rs.1,49,355/- per acre. The General Manager, South Central Railways informed the District Collector, by his letter dated 08.08.1995, that the information obtained by them showed that the market value was RS.1,77,493/- per acre plus 30% solatium plus contingency charges at 3% (ie.) for a total sum of Rs.2,36,065/- per acre.

The General Manager, South Central Railway sought the approval of the Railway Board, by letter dated 06.09.1995, for relinquishment of the subject land at Rs.1,77,493/- per acre plus usual codal charges and contingencies. It is only by letter dated 14.03.2001 was the approval of the Railway Board conveyed to the then General Manager, South Central Railway for relinquishment of the subject land to the State Government. The conditions stipulated by the Railway Board, for such alienation, was for transfer of possession of the subject land, to the State Government, only after receipt of the market value of the land prevailing at the time of its actual transfer and for collection in advance of easement and maintenance charges. Pursuant to the approval of the Railway Board, the Railways, by their letter dated 22.03.2002, sought information from the District Collector regarding the current value of the land. It is more than nine months thereafter, that the District Collector, by his letter dated

25.01.2003, had recommended the market value of the subject land at Rs.2,59,674/- per acre.

While the Chief General Manager, South Central Railway had conveyed his concurrence, by his letter dated 09.07.2003, to the market value as determined as Rs.2,59,674/- per acre plus easement, and maintenance charges (i.e.) for a total sum of Rs.1,05,19,394/- for the total extent of 40.51 acres, the fact remains that, despite repeated reminders, the said amount was not remitted in its entirety, by the petitioners Associations, till 12.02.2004 i.e for more than nine months after communication of the concurrence, of the Chief General Engineer to the District Collector, by letter dated 09.07.2003.

In the meanwhile, the District Collector informed the Railways, by his letter dated 25.02.2004, that only an extent of 36.19 Acres, from out of the total extent of 40.51 acres belonged to the Railways, and the remaining extent of 5.82 acres in Mamidipalem village was classified as a hillock and belonged to the State Government. This claim of the State Government was disputed by the Chief Engineer, South Central Railway who, by his letter dated 26.02.2004, informed that the entire extent of 40.51 Acres belonged to the Railways. While matters stood thus, the Chief General Manager was informed by the Divisional Manager, by his letter dated 24.05.2004, that the present market value of the subject land was in the range of Rs.79.20 lakhs to Rs.95.04 lakhs per acre; and this information was, in turn, communicated by Chief General Manager to the District Collector.

Before this dispute regarding the extent of land belonging to the Railways, and its market value, could be finally resolved the

Railways sought review of the order passed by this Court in W.P. No.11286 of 1993 dated 20.02.1997 and, by order dated 16.08.2004, the Division Bench appointed the District Judge to conduct an enquiry and report the rates which the subject land would fetch in the market as on date, if they were put to sale without any encumbrance, and after removal of encroachments. In the report submitted by him to this Court, the District Judge opined that the total value of the subject land was Rs.24,93,40,580 as per the prevailing market value. This market rate of Rs.24.93 crores was also disputed by the Railways which, in its additional affidavit filed before this Court in the Review WPMPs, contended that the total value of the subject land, of an extent of 40.51 Acres, was between Rs.52,76,68,456/- and Rs.55,44,97,662/-. The Division bench allowed the review application thereafter on 21.03.2005, and recalled its earlier order in W.P. No.11826 of 1993 and W.P. No.25593 of 1995.

The doctrine of promissory estoppel has certain limitations. The Government or public authority cannot be debarred by promissory estoppel from enforcing a statutory prohibition. Promissory estoppel cannot be used to compel the Government or a public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make. **(Godfrey Philips India Ltd.³; M/s.Motilal Padampat Sugar Mills Co. Ltd.¹).** In public law, the most obvious limitation on the doctrine of estoppel is that it cannot be evoked to give an overriding power which the authority does not in law possess. In other words, no estoppel can legitimate an action which is ultra

vires. Another limitation is that the principle of estoppel does not operate at the level of Government policy. Estoppel has, however, been allowed to operate against a public authority in minor matters of formality where no question of ultra vires arises. (**Wade, Administrative law, 5th edition, pp. 233-34; Express Newspapers Pvt Ltd. v. Union of India**⁹).

The doctrine of promissory estoppel, being an equitable doctrine, must yield when equity so requires. If it can be shown, by the Government or public authority, that, having regard to the facts as they have transpired, it would be inequitable to hold the Government or public authority to the promise or representation made by it, the Court would not raise an equity in favour of the person to whom the promise or representation is made, and enforce the promise or representation against the Government or public authority. The doctrine of promissory estoppel would be displaced in such a case because, on facts, equity would not require that the Government or public authority should be held bound by the promise or representation made by it. (**Godfrey Philips India Ltd.**³; **M/s.Motilal Padampat Sugar Mills Co. Ltd.**¹).

Promissory Estoppel, being an extension of the principle of equity, the basic purpose of which is to promote justice founded on fairness and to relieve a promisee of any injustice perpetrated due to the promisor's going back on its promise, is incapable of being enforced in a court of law if the promise which furnishes the cause of action or the agreement, express or implied, giving rise to binding contract is statutorily prohibited or is against public

⁹ AIR 1986 SC 872

policy. (**Amrit Banaspati Co. Ltd.**²). The doctrine of promissory estoppel cannot be used to compel public bodies or the Government to carry out a representation or promise which is contrary to law or which is outside their authority or power. Secondly, the estoppel stems from an equitable doctrine. It, therefore, requires that he, who seeks equity, must do equity. The doctrine cannot be invoked if it is found to be inequitable or unjust in its enforcement. (**Delhi Cloth and General Mills Ltd.**⁵).

It is only if the person making the promise had the authority to make it, can he be prevented, by the application of the doctrine of promissory estoppel from resiling on his promise. It is necessary, therefore, to examine the power conferred on Railway officials to alienate Railway Land. Chapter-X of the Indian Railways Code for the Engineering Department, issued by the Ministry of Railways (Railway Board), Government of India, relates to the custody, management and disposal of land. Paragraph-1001 of the Code refers to Article 294 of the Constitution whereunder all property and assets vest in the Union which is at liberty to dispose them of by sale, mortgage, etc. Paragraph-1004 of the Code stipulates, as the duty of the Railway Administration, to preserve unimpaired the title to all lands in its occupation; and to keep it free from encroachment. Paragraph-1008 stipulates that all Railway land should be managed on commercial lines, and each Railway Administration should endeavour to develop resources of, and put to profitable use, any areas in its occupation which, though not eligible for disposal or lying idle, can be put to profitable use. Paragraph-1010 stipulates that the engineering, or any other department of the Railways, as decided by the General

Manager at his discretion, will be responsible to him for the management of all land in the occupation of the Railways.

Paragraph-1035 of the Railway Code relates to disposal of land not required by the railways and stipulates that, in regard to all Railway land, the policy of the Railway Board is to limit holdings to actual requirements, present and prospective; every Railway Administration should, where they are not in a position to justify retention of land occupied by them, classify it as “eligible for disposal”, and arrange for its disposal agreeable to the rules in the subsequent paragraphs of the Code. Paragraph-1038 relates to disposal of land eligible for disposal and, thereunder, where it has been decided that a certain area of land is no longer required by any department of the Railways and it is, therefore, eligible for disposal to follow the procedure prescribed thereunder. The directions to be observed as stipulated in Paragraph-1038(1) is that the lands shall be first offered to the Railways or other Departments of the Central Government, if they desire to acquire it. Paragraph-1038(2) provides that, if the land is surplus to the requirements of the Central Government, the State Government, in which it is situated, would be given the option of assuming possession subject to the conditions mentioned therein. Paragraph-1038(2)(c) stipulates that the amount payable for the land would, in all cases, be its market value on the date of transfer. Paragraph-1038(2)(e) stipulates that, if the State Government does not desire to assume possession of any land, the Central Government should be free to dispose it of to a third party; but, before doing so, the Central Government would consult the State Government as to the levy of ground rent or assessment, and

the conditions, if any subject to which it should be sold; and, therefore, they would dispose of the land subject to the conditions, which the State Government may desire to impose.

In the present case, the Railways decided to alienate the subject land in favour of the State Government, and not to the Petitioner-Associations. It is the State Government which, in turn, had assured the associations i.e the Railway Society and the NGGO Society that the land would be allotted to them in accordance with the terms agreed to by the Railway Administration. In terms Paragraph-1038(2)(c) of the Railway Code, the amount payable for the land, in all cases, is at market value on the date of transfer, and this stipulation is what the Railway Board had also prescribed in its letter of approval dated 14.03.2001.

Power is conferred, by the Indian Railway Code, for alienation of railway land on the Railway Board. Para 1038(2) of the Code stipulates that the amount payable for the land should, in all cases, be its market value on the date of transfer. In terms of para 1038(2) of the Code, approval of the Railway Board was conveyed by its letter dated 14.03.2001 for alienation of an extent of Ac.40.51 cts to the State Government on condition that possession of the land should be transferred only after receipt of the market value of the land prevailing at the time of its actual transfer, besides collection of easement, maintenance charges etc. Failure on the part of the petitioners to make payment within time resulted in the Railway officials refusing to alienate the subject land to the State Government. Since the Railway Officials are required to exercise their power strictly in terms of the Railway

code, the doctrine of promissory estoppel cannot be invoked to carry out any representation which is contrary to the conditions stipulated in the Indian Railway Code.

In order to invoke the doctrine of promissory estoppel, it is also necessary that the representation must be clear. For the purpose of finding whether an estoppel arises in favour of the person acting on the representation, it is necessary to look into the whole of the representation made. It is also necessary that the representation must be unambiguous and not tentative or uncertain. (**Delhi Cloth and General Mills Ltd.**⁵). To found an estoppel a representation need not, necessarily, be susceptible of only one interpretation, but such as will reasonably be understood by the person to whom it is made in the sense contended for, and for this purpose the whole of the representation must be looked at. This is merely an application of the old maxim applicable to all estoppel, that they "must be certain to every intent". (**Delhi Cloth and General Mills Ltd.**⁵; **Halsbury's Laws of England, Halsbury's Laws of England 4th Edn. Vol. 16 p. 1071 para 1595**).

While it is true that the Chief General Manager, by his letter dated 13.04.2004, acknowledged receipt of the demand drafts for Rs.1,05,19,394/-, and informed the District Collector that further action would be taken for relinquishment of the said land, the words "*further action*" cannot be construed as a promise to relinquish the subject land, as just a month thereafter, the Chief General Manager, South Central Railway was informed by the letter of the Divisional Railway Manager dated 24.05.2004 that the total land value ranged between Rs.32.08 crores and Rs.38.50 crores per acre. That the value of the subject land is several times

the consideration of Rs.1.05 crores paid by the petitioners-associations is also evident from the report of the District Judge, Prakasam who caused an enquiry into the value of the land pursuant to the order of the Division bench dated 16.08.2004. The market value of the land, as ascertained by the District Judge, is nearly Rs.25 crores which is more than 20 times the consideration paid by the petitioners-Associations of Rs.1.05 Crores. It would, therefore, be wholly inappropriate for this Court to direct the Railways to transfer the subject land to the State Government for it, in turn, to allot it to the members of the petitioners-Associations merely for a sum of Rs.1.05 crores.

While Sri P.Sri Raghuram, Learned Senior Counsel appearing on behalf of the NGGOs Association, submitted that the members of their Association were willing to pay the market value of the subject land as determined by the District Judge, Ongole, Sri S. Ramachandra Rao, Learned Senior Counsel appearing on behalf of the Railway Employees Association, would request us to decide their contentions on merits, and submit that the members of the Railway Societies were neither obligated nor willing to pay the market value of the subject land as determined by the District Judge.

In this context, it is necessary to note that the price at which Government land should be transferred is not for this Court to stipulate. The Central Government (Railways) is the owner of the land, and it is open to it to fix such price as it thinks appropriate having regard to public interest which, inter alia, would include the interests of revenue. **(Rayalaseema Paper Mills Ltd. v.**

Government of A.P¹⁰). While determining the price of plots, and the amount to be paid, the Government, even after entering into a contract, acts purely in its executive capacity. Thereafter the relations are no longer governed by the Constitutional provisions, but by the legally valid contract which determines the rights and obligations of the parties inter-se. (**Bareilly Development Authority v. Ajai Pal Singh¹¹**). 'Price fixation is neither the function nor the forte of the Court'. Nor is it concerned with the policy or with the rates. The Court would exercise jurisdiction to enquire into the question, in appropriate proceedings, whether relevant considerations have gone in, and irrelevant considerations kept out of, the determination of the price. (**Rayalaseema Paper Mills Ltd.¹⁰; Union of India v. Cynamide India Limited¹²**).

The scope of judicial scrutiny would be far less where the price fixation is not governed by any Statute or any Statutory Order. It is only where the legislature has prescribed the factors which should be taken into consideration, and which should guide the determination of price, would the Courts examine whether the consideration, for fixing the price mentioned in the Statute or the Statutory Order, have been kept in mind while fixing the price; and whether these factors have guided the determination. Courts would not go beyond that point, more so when there is no law or statutory provision laying down the criteria or the principles which must be followed, or which must guide the determination of price. No doubt, any arbitrary action taken by the State would be subject to scrutiny by the Courts because arbitrariness is the very

¹⁰ (2003) 1 SCC 341

¹¹ (1989) 2 SCC 116

¹² (1987) 2 SCC 720

antithesis of the rule of law. But this does not mean that the Court would act as an appellate authority over the determination of price by the authorities. (**Rayalaseema Paper Mills Ltd.**¹⁰). What then should be the nature of relief to be granted in these Writ Petitions?

Before examining this question, it is necessary to take note of the eviction proceedings initiated against those who had encroached on the subject railway land i.e several of those whom the HPA claims to represent. By the notice in Form-A dated 07.07.1992, issued under Section 4(1) of the Public Premises (Eviction of unauthorised occupants amendment) Act, 1980, the South Central Railway sought to evict 296 encroachers. W.P.No.11826 of 1993 was filed by the HPA, and not by any of the individual encroachers who suffered the orders of eviction.

Aggrieved by the order passed by the Estate Officer, South Central Railway, Vijayawada, under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short, 'the Act'), to evict encroachers from the subject land, 158 individual encroachers, and the President of Annavarappadu Hut People's Association, Ongole preferred the appeal in A.S.No.78 of 1992 contending that they were in occupation of the sites for more than two decades; the purpose, for which the respondent had started eviction proceedings, was vague; the notice issued under Section 4 of the Act was defective; the order passed under Section 5 of the Act was also defective as the reasons for eviction were not given; and the occupants were not given a reasonable opportunity to state their grounds.

In his order, in A.S. No.78 of 1992 dated 28.09.1995, the Additional District Judge, Ongole observed that appellants 1 to 158

were occupants of the railway siding site; originally the erstwhile Southern Railway had acquired Ac.42-00 in different survey numbers of Mamidipalem and Annavarappadu revenue villages more than a century ago, and had laid a railway track though the said land for transportation of gravel and ballast quarried in Mamidipalem and Annavarappadu, which material was being used by the Railway authorities; after quarrying operations were completed, and the bottom of the hills in the said villages having been exhausted, the railway track and the railway siding went into disuse; and the appellants were claiming that they had encroached upon the railway site covered by the railway siding, and to have raised huts therein; and some of them had raised pucca houses in the place of the huts.

The learned Additional District Judge observed that there was no dispute that appellants 1 to 158 were in occupation of their respective sites, which was owned by the Railways; it was not their case that they were in occupation of the respective railway sites with any right or permission; their occupation of the respective sites was, admittedly, without any right or permission, and was totally unauthorized; appellants 1 to 158 were, therefore, in unauthorized occupation of Railway property as defined under Section 2 (2) (g) of the Act; the eviction order, passed by the Estate Officer under Section 5(2) of the Act, could not be equated with the eviction orders passed under the Rent Control Act or the Tenancy Act; in case of eviction of persons, in unauthorized occupation of public property, the authority was required to satisfy himself that the site or property, in occupation of the appellants, belonged to the Government, and to ascertain whether the person, in

occupation of the said property, had occupied it with or without authority; the moment the respondent came to the conclusion that the appellants were in occupation of the railway site without any authority and unauthorizedly, he could straightaway issue the order, under Section 5 (2) of the Act, for his or her eviction; in the present case, there was no dispute on the part of the appellants that the site in their occupation was railway property; appellants 1 to 158 did not make out any case of acquisition of right or title to their respective sites in their occupation, by way of adverse possession for over the statutory period; appellants 1 to 158 had no right to be in possession of the respective sites in their occupation; and they had no defence at all against the eviction proceedings launched against them by the Estate Officer of the Railway Administration.

With regards the contention that the Railway Administration proposed to alienate the site to the Railway Employees Association and to the NGGO Association and, if the Railway Administration intended to sell the sites, then the appellants and other occupants were prepared to purchase the respective sites in their occupation on payment of market value, the learned Additional District Judge held that the railway siding which was in unauthorised occupation, including by appellants 1 to 158, had become the heart of Ongole town, as the railway siding went across the Grand Trunk Road; if the unauthorised occupants intended to purchase the site at market value, then it was for them to approach the appropriate authorities with the appropriate prayer; and, while disposing of the appeal under Section 9 of the Act, the Court had no power or authority to make any observations about the proposal

to purchase the land at market value. The appeal was dismissed by the learned Additional District Judge, Ongole holding that appellants 1 to 158 were in unauthorized occupation of the railway property, and they were liable to be evicted from the sites in their occupation.

In his order, in W.P.M.P.No.31535 of 1995 in W.P.No.25593 of 1995 dated 14.11.1995, a learned Single Judge of this Court directed that the members of the petitioners-Society be continued in possession and enjoyment of the lands in S.Nos.63, 68, 69 and 70 of Mamidipalem and S.Nos.4, 17, 18, 45, 46 and 47 of Annavarappadu Revenue Villages suspending the order and decree passed in A.S.No.78 of 1992 dated 28.09.1995 on the file of the Additional District Judge, Ongole pending further orders. The aforesaid order was passed in a Writ Petition filed by the Annavarappadu Hut Peoples Association represented by its President E.Mallaiah Gowd, and not by any one of the individuals who suffered the eviction orders.

The effect of the order, passed in Review WPMP No.11240 and 33271 of 1997 in W.P.No.11826 of 1993 dated 21.03.2005, is that the earlier order passed in W.P.No.11826 of 1993 and 25593 of 1995 dated 20.02.1997, keeping the eviction order as upheld by the Additional District Judge, Ongole in abeyance, and in directing the respondents to consider the claim of the HPA for allotment of house sites on payment of market value in the same manner in which the Societies of Railway Employees and the NGGOs was considered and disposed of, is no longer in force. Consequently, the earlier orders of eviction passed by the Estate Officer, and as affirmed by the Additional District Judge, stand revived. As a

result, neither the South Central Railway nor the Government of Andhra Pradesh is obligated to consider the claim of the members of the HPA for allotment of house sites on payment of market value.

Neither have any of the actual encroachers individually questioned the order passed by the Additional District Judge, Ongole upholding the order of the Estate Officer directing their eviction, nor has any submission been put forth before us by Sri M.R.K. Chowdary, Learned Senior Counsel appearing on their behalf, on the merits of the order of eviction. The encroachers (allegedly the members of the HPA), who have admittedly encroached on the subject railway land, and who have suffered an order in A.S. No.78 of 1992 dated 28.09.1995, can no longer claim, as of right, that they should also be treated on par with the railway society and the NGGO society as their claim for allotment of the land, which they have encroached upon, is based on the earlier order passed in W.P. No.11826 of 1993 and 25593 of 1995 which was recalled by the Division bench in the order passed by it in the Review WPMP.

We must, however, bear in mind that like the NGGO Association and Railway Employees Association, members of the HPA have also paid their share of the total sale consideration of Rs.1.05 crores which amount is lying with the Railways ever since April, 2004 i.e for the past nearly 14 years. It is also necessary to note that the office of the Assistant Divisional Engineer, Ongole informed the Senior Divisional Engineer, by his proceedings dated 12.11.2005, that the approximate number of encroachments was

685 with 25 pucca buildings (RCC), 570 buildings with AC sheet roof and 90 thatched huts.

In the light of the order of the Additional District Judge, Ongole, in A.S. No.78 of 1992 dated 28.09.1995, the encroachers are liable to be evicted. Since no contentions have been put forth before us regarding its validity, we affirm the order in A.S. No.78 of 1992 dated 28.09.1995, and dismiss W.P. No.25593 of 1995. The justification for the Railways, to adopt the circuitous route of alienating the subject land to the State Government for it, in turn, to allot it to the members of the Railway society and NGGOs society, seems to be to overcome the prohibition in the Railway Code for alienating railway land to railway employees. The fact, however, remains that this procedure found acceptance with the State Government, apparently because a part of the subject land was proposed to be alienated in its favour to enable it to allot it in favour of the Non-Gazetted Government officers Association, all of whom were employees of the State Government. Can the HPA, in such circumstances, be faulted in questioning the validity of G.O.Ms. No.224 dated 15.03.1993 claiming that, since they were in possession of a substantial portion of the subject land *albeit* as encroachers, it is their possession which should be regularised by allotment of plots, instead of allotting the subject land to the Railway and the NGGO societies?

Our attention has not been drawn to any law in force which confers a right on encroachers to claim that the lands, which they have illegally encroached upon, should be regularised by allotment of plots in their favour. In the absence of any statutory right to claim preferential right for allotment of the subject land, it is not

open to the HPA, which represents these encroachers, to question allotment of land to the Railway and NGO societies vide G.O.Ms. No.224 dated 15.03.1993. While we see no reason to examine the validity of G.O.Ms. No.224 dated 15.03.1993 on its being challenged by encroachers whom the HPA represents, the above referred events show that, subsequent to the filing of the aforesaid Writ Petitions, the Railways have agreed to alienate the subject land in favour of the State Government, and the dispute between them relates only to the price at which these lands should be alienated.

Bearing these aspects in mind, let us now examine the nature of the relief to be granted to the petitioners-Associations. While none of the petitioner-associations can claim, as of right, that the Railways should alienate the subject land in their favour, that too at the market rate determined by the State Government in January, 2003, it is not even the case of the Railways that they do not wish to alienate the subject land in favour of the State Government. The dispute mainly appears to revolve around the market price on the basis of which the subject land should be alienated. The State Government disputes the title of the Railways over Ac.5.82 cents, and contends that this extent of land has been classified in the revenue records as hill-poramboke and that, from out of the total extent of Ac.40.51 cents, only Ac.36.19 cents belongs to the Railways. There is, admittedly, no bar for the Railways to alienate at least this extent of Ac.36.19 cents of land. A substantial portion of the subject land is under encroachment. Though an order for eviction of 296 encroachers was passed, out of whom 158 had preferred the appeal in A.S.No.78 of 1992 before

the Additional District Judge, Ongole, it is evident from the letter of the Assistant Divisional Engineer, Railways, Ongole dated 12.11.2005 that, even by then, there were 685 encroachments, with 25 pucca buildings (RCC), 570 with ACC roofed buildings and 90 thatched huts.

In case they intend retaining the subject land, the Railways would now have to initiate action for eviction of several of these unauthorised encroachments in accordance with the provisions of the Public Premises (Eviction) Act, 1971. While this Court may not be justified in issuing a mandamus, it would undoubtedly be in the interest of all the parties concerned to mutually discuss and resolve the dispute regarding the price to be paid for alienation of the subject land. We consider it appropriate, therefore, to dispose of all the Writ Petitions directing the respondent-Railways, in consultation with the Government of Andhra Pradesh, to finalise the market rate at which they are willing to alienate the subject land in favour of the State Government which, in turn, shall consider alienation of the subject land to the petitioner-Associations on receipt of the market value of the subject lands from the members of the said Associations. The entire exercise, culminating in a final decision being taken on whether the subject land should be alienated and, if so, at what price, shall be completed with utmost expedition and, in any event, not later than six months from the date of receipt of a copy of this order.

In case the parties are not mutually able to resolve the issue, the Railways shall then be entitled to retain the subject land and, instead, refund the consideration received by them of Rs.1,05,19,394/- (which was paid to them in April, 2004) with

interest at 12% per annum to the State Government which shall, in turn, pay the said amount to the members of the petitioner-Associations from whom it was received. This sum of Rs.1.05 crores, with interest at 12% per annum, shall be refunded within three months of a final decision being taken by the Railways, and in case the decision is not to alienate the subject lands in favour of the State Government. It is also made clear that, in case the Railways do not alienate the subject land to the State Government, it is open to them to take further action pursuant to the Judgment of the Additional District Judge, Ongole in A.S.No.78 of 1992 dated 28.09.1995, and to initiate proceedings afresh for eviction of the other encroachers, (who were not parties to the earlier proceedings for eviction), in accordance with law.

W.P. No.25593 of 1995 is dismissed and all the other Writ Petitions are disposed of in terms of the aforesaid directions. The Miscellaneous Petitions, if any pending, shall also stand disposed of. No costs.

RAMESH RANGANATHAN, ACJ

J. UMA DEVI, J.

Date:04.01.2018.

Note: L.R. copy to be marked.

B/o
MRKR/CS