

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.4993 of 2005

***M/s. Chanda Sekhar
Agrawala and Others***

***.... Petitioners
None***

-versus-

***O.S.F.C., Cuttack and
Others***

.... Opp. Parties

Mr. B. K. Das, Advocate for contesting
Opposite Party Nos.1 &3

**CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN**

**ORDER (Oral)
25.07.2022**

Order No.

06. 1. This matter is taken up through hybrid arrangement (virtual/physical mode).

2. Petitioner Nos.1 &2 are the partners of partnership firm named and styled as M/s. Gas Atmosphere (Petitioner No.3). By filing the present Writ Petition, they have prayed as under:

“9. That, the O.P. No.1 to 3 despite the request of the petitioners to postpone the date to hold the BLDC meeting, they did not consider the request of the petitioners and hurriedly and illegally sold away the case land in favour of Sarita Agrawal (O.P. No.5) on 11.3.2005 in the BLDC meeting negotiating at Rs.3,50,000/- and the earnest money deposit was Rs.70,000/- while the security deposit was Rs.70,500/-

and the balance price payable by the said Sarita Agrawalla (O.P. No.5) is Rs.2,62,500/-. The intimation letter issued to the said Sarita Agrawalla by O.P. No.3 for payment of the balance amount vide their letter dtd 14.3.05, the copy thereof has been forwarded to the petitioners vide memo no.1764/2004-05 dtd 14.3.2005, which suggests about the sale of the case land in favour of Sarita Agrawalla and the same has been made behind the back of the petitioners. The xerox copy of the above letter dtd 14.3.05 of the O.P. No.3 addressed to Sarita Agrawalla is annexed hereunto and marked as Annexure-4.

10. That, the O.P. No.1 to 3 have acted arbitrarily and committed illegality in transferring the case land by way of sale in favour of Sarita Agrawalla as per Annexure-4 behind the back of the petitioners, which is not only contrary to law but also devoid of the principle of natural justice. It has been settled that there can be no waiver unless the person who is said to have waived is fully informed as to his right and with full knowledge of such right, he intentionally abandons it. The above doctrine has been laid down by the Hon'ble Supreme Court reported in AIR 1979 S.C. 621 (M.P. Supar Mills Vrs State of U.P.) which postulates as to whether the state is bound by the principle of promissory estoppel u/s 115 Evidence Act and the relevant portion contained as para 8 of the above decision AIR 1979 SC(supra) is quoted below:-

“The true principle of promissory estoppel, therefore, seems to be 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 effect a legal relationship to rise in future, knowing or intending that it would be acted upon by other party to whom the promise it made it is in fact so acted upon by 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.”

In view of the above decision, the O.P. No.1 to 3 are estopped and by virtue of the principle of promissory estoppel and they are not entitled to go back upon the promise to sell the case land in favour of the petitioners, consequently, transfer of the same in favour of the third person (O.P. No.5) behind the back of the petitioners waiving their right thereof, there can be no waiver.”

3. None has appeared on behalf of the petitioners. Learned counsel for the contesting O.S.F.C. states that the present Writ Petition has been rendered infructuous as the industrial assets were sold in favour of Smt. Sarita Agrawalla/ Opposite Party No.5 on 11th March, 2005 for a total consideration of Rs.3,50,000/- and after issuance of the sale letter, the sale deed was registered and physical possession wa

handed over to Opposite Party No.5 on 26th May, 2005.

It transpires that the aforesaid partnership firm had purchased the property in question in auction conducted on 27th September, 1993 for sale consideration of Rs.2 lakhs towards the recovery of the outstanding liabilities of original loanee-M/s. Puri Biscuits and Company. The partnership firm except the down payment of Rs.75,000/-, concededly did not pay the remaining sale consideration leading to fresh auction conducted in favour of Opposite Party No.5.

4. In view of the above, we find the present Writ Petition has no merit and accordingly the Writ Petition is dismissed.

(Jaswant Singh)
Judge

(M. S. Raman)
Judge

AKK

25th July, 2022
Cuttack