

GAHC020000982023

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In the Gauhati High Court
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

KOHIMA BENCH

WP(C) 37/2023

Shri. Jongpongchiten Longchar
S/O Lt. Imnameri Longchar,
R/O Aonokpu Village,
Mokokchung,
Nagaland

.....Petitioner

-VERSUS-

1. The State of Nagaland and 3 Ors.
represented by the Chief Secretary
to the Govt. of Nagaland.
2. The Commissioner and Secretary
to the Govt. Of Nagaland Department of Forest Ecology
Environment Forest and Climate Change
Nagaland, Kohima
3. The Principal Chief Conservator of Forest and Head
of Forest Force Nagaland, Kohima
4. The Divisional Forest Officer,
Mokokchung, Nagaland

.....Respondents

BEFORE
HON'BLE MR. JUSTICE KARDAK ETE

Advocate for the petitioner : Mr. Tongpok Pongener.

Advocate for the Respondents : Ms. Livika

Date of Hearing : **27.02.2025**

Date of Judgment : **27.02.2025**

JUDGMENT & ORDER (Oral)

Heard Mr. Tongpok Pongener, learned counsel for the petitioner. Also heard Ms. Livika, learned State counsel for the State respondents.

2. By instituting this writ petition, the petitioner has prayed for a direction to the respondent authorities to appoint the petitioner on one of the 115 available vacancies of the post of Forest Guard in terms of the settlement dated 07.12.2016 entered into between the family of the petitioner and the Department of Forest, Govt. of Nagaland, whereby it is provided that the land owners shall accept the compensation amount of Rs. 8,25,000/- (Rupees eight lakhs twenty five thousand) only as approved by the State Land Acquisition Authority (hereinafter referred to as SLAA in short) on 08.08.2016 and as one time measure, the Department shall appoint a land owner to any Grade-III post against vacancy arising against sanctioned post in the Department in the future, for the land of the petitioner acquired for establishment of Forest colony under the Divisional Forest Officer, Mokokchung Division, at Longchem,

Mokokchung District.

3. The case of the petitioner in brief, shorn of unnecessary details, is that the petitioner is the owner of the land measuring 13,500 Sq. metres situated at Longchem under Mokokchung District. The said land was acquired by the Department of Forest for establishment of Forest colony under the Divisional Forest Officer, Mokokchung Division in the year 2003.

4. It is the contention of the petitioner that at the time of acquisition of the said land there was an oral agreement between the father of the petitioner and the Divisional Forest Officer, Mokokchung to the effect that compensation for the land shall be paid by the Forest Department and in addition to that, the land owner would be entitled for appointment in Govt. service as and when vacancy arises as well as the right to execute contract works. However, the orally agreed terms for land acquisition have not been executed. In the meantime, the father of the petitioner expired on 11.12.2006. The eldest brother of the petitioner had approached the respondent authorities by filing a representation for settlement of the compensation after the death of their father, however, same was not considered.

5. Thereafter, on coming to know about the notification dated 03.09.2011 issued by the Deputy Commissioner, Mokokchung notifying the rate of Premium on Land in Mokokchung township and its surrounding villages, the elder brother of the petitioner submitted another representation on 16.07.2013 seeking payment of the compensation as well as other benefits that has been orally agreed between the

Department and the father of the petitioner for acquisition of the said land.

6. Finally the SLAA held a meeting on 08.08.2016 and approved for payment of Rs. 8,25,000/- (Rupees eight lakhs twenty five thousand) only @ of Rs. 65 per Sq. metre. Thereafter, the Addl. Principal Chief Conservator of Forests (Territorial) by letter dated 23.09.2016, requested the Government for release of the said compensation to the land owners as approved by the SLAA. The petitioner issued a legal notice on 09.06.2016 demanding that if the Department does not release the compensation amount on or before 14.11.2016, along with written assurance that the land owner shall be appointed to Grade-III post against the first vacancy arising in the Department, the decision of the SLAA shall be deemed to be rejected.

7. Pursuant to the legal notice the Government has advised the department to have a dialogue/negotiation with the petitioner in the light of the process of the acquisition of land as per the approval of SLAA dated 08.08.2016 and to resolve the matter amicably. It is contended that pursuant to the said advise, a meeting was held on 07.12.2016 between the Department of Environment and Forest and the land owner, represented by the elder brother of the petitioner on behalf of the family members. Thereafter, a settlement was entered into between the Department of Forest and the family of the petitioner that the land owner shall accept the compensation amount of Rs. 8,25,000/- (Rupees eight lakhs twenty five thousand) only as decided by the SLAA on 08.08.2016 and as a one time measure the department shall appoint the land owner

to any Grade-III post against the vacancy arising against any sanctioned post in the Department. It was also settled that there shall not be any grant in perpetuity the right to the land owners for appointment on land ownership basis in the future.

8. Consequent to the above settlement, the Department has released the agreed amount of Rs. 8,25,500/- (Rupees eight lakhs twenty five thousand five hundred) only through the Deputy Commissioner on 17.01.2017, which has been duly accepted by the elder brother of the petitioner on behalf of the family. Based on the above settlement, the petitioner's elder sister has submitted a representation dated 25.10.2017 praying for appointment on one of the available vacancies of Grade-III post, however, the same was not considered. Having been not considered for appointment to the elder sister of the petitioner and she having been crossed the age limit for appointment, the petitioner submitted a representation on 11.08.2022 for appointment in terms of the settlement dated 07.12.2016. In the meantime, without considering the case of the petitioner, the Department has issued an advertisement for filling up of 115 posts of Forest Guard (Grade-III post) in the Department. Being aggrieved, this writ petition has been filed seeking appointment based on the settlement entered between the family of the petitioner and the Department of Forest.

9. Mr. Tongpok Pongener, learned counsel for the petitioner submits that since the Department has entered into settlement by agreeing and accepting, *inter-alia*, for appointment on the basis of land ownership in addition to the compensation of Rs. 8,25,500/- (Rupees eight lakhs twenty

five thousand five hundred) only , the petitioner is entitled to be appointed to any Grade-III post in the Department. Therefore, he submits that the respondent authorities may be directed to appoint the petitioner in terms of the Settlement dated 07.12.2016.

10. Mr. Tongpok Pongener, learned counsel, while referring to the decision of the High Court in the case of ***Rose Valley Real Estates & Constructions Ltd Vs. State of Tripura and Ors*** reported in ***2013 (2) GLT 219***, submits that the promissory estopples would come into play on the basis of the promise made by the Department as reflected in the settlement dated 07.12.2016. The relevant paragraphs of the said judgment are reproduced herein below:

“11.3. The State counsel, Ms. Guha relied on the decision of the Apex Court in the case of Ahok Kr. Maheshwari (supra) in para 19, 20, 21 and 22, which reads thus:-

19. There are many aspects of "promissory estoppels", but in the instant case we are concerned only with one aspect which is to the effect that if any "promise" has been made contrary to law, can it still be enforced by invoking this rule.

20. The basic principle is that the plea of estoppels cannot be raised to defeat the provisions of a statute. (See: GH.C. Ariff v. Jadunath Majumdar Bahadur 15; Mathra Parshad & Sons v. State of Punjab 16; Rishabh Kumar & Sons v. State of U.P.17)

21. This principle was reiterated in Union of India v. R.C. D'Souza 18 where a retired army officer was recruited as Assistant Commandant on temporary basis and was called upon to exercise his option for regularization contrary to the statutory rules. It was held that it would not amount to estoppel against the Department.

22. Whether a promissory estoppels, which is based on a "promise" contrary to law can be invoked has already been considered by this Court in Kasinka Trading v. Union of India 10 as also in Shabi Construction Co. v.

City & Industrial Development Corpn. 12 wherein it is laid down that the rule of "promissory estoppels" cannot be invoked for the enforcement of a "promise" or a "declaration" which is contrary to law or outside the authority or power of the Government or the person making that promise,"

11.4 *The commitments made before the court in the orders quoted above, clearly relates to factual aspects regarding occupation of Govt. land and space of car parking. There is nothing that any commitment was made contrary to the provision of law and therefore, I cannot agree with the submission of learned State counsel that the principles of promissory estoppels shall not apply in the given facts and circumstances of this case.*

11.5 *The doctrine of promissory estoppel can come into play on the basis of the promise itself and it is not necessary that all requirements of Section 115 should also be satisfied. If there was a promise on the part of the Govt. or the Municipality, even if it was not recorded, but it contained representations which were acted upon by the other party the Govt. and the Municipality becomes bound to carry out the promise. Here, in this case, the Municipality made a clear statement before the court that if the govt. land is vacated and space for 31 car parking is shown, necessary permission will be issued. The letter of the CEO of the Municipality, dated 31.05.2011 (Annexure R-3/3) to the counter affidavit C dated 20.06.11, filed by respondent Nos. 3 and 4 abundantly makes it clear that after the commitment was made before the court, the petitioner acted positively and so the doctrine of promissory estoppel in this case shall apply. This Court in the case of Vinay Cement Ltd. Vs. State of Assam & Ors. reported in AIR 1997 Gau 34 while deciding the issue of promissory estoppel in the given fact of that case has held that where promoter of a company, being encouraged by a govt, scheme and acted on the basis thereof, decided to set up an industry within the State and took all effective "initial" and "final" steps in setting up the industrial unit in the most backward District, placed firm orders in crores with suppliers, obtained necessary clearance certificate from the Pollution Board and other State and Central bodies, made expenditure of atleast 25% of the capital cost, there is no justification for the State Govt. to refuse to issue eligibility certificate under the scheme.*

What emerges from the case laws discussed above, is that for application of doctrine of promissory estoppel all what is required is that the party asserting the estoppel must have relied upon representation made to them and must have changed or altered the position by relying on that representation. In the case at hand, the petitioner has made out a clear case that they have acted positively on the representation made by the respondents and so the respondents cannot go back to the promise made before the court. "

11. The learned counsel for the petitioner has further relied on the case

of ***Kabir Tea Estate Vs. State of Assam and Ors*** reported in **2014 (3) GLT 636**, the relevant paragraphs are reproduced herein below:

“23. The doctrine of promissory estoppel is well established in the administrative law of India. It represents a principle evolved by equity to avoid injustice and, though commonly named promissory estoppel, it is neither in the realm of contract or in the realm of estoppel. The basis of this doctrine is the interposition of equity which has always, true to its form, stepped in to mitigate the rigour of strict law. The principle of promissory estoppel is that when one party has by his conduct made to the other a clear and unequivocal promise or representation which is intended to create legal relation or effect a legal relationship arise in the future knowing or intending that it would be acted upon by the other party to whom the promise or representation is made out and it is in fact so acted upon by the other party, the promise or representation would be binding on other parties 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. These factors so as to constitute promissory estoppel are absent in the instant case.

24. In M/s. [Motilal Padampat Sugar Mills](#) (Supra), the Apex Court while holding that the doctrine of promissory estoppel also applies to Government or State in whichever capacity it acts, also held that the Government will not be bound if it can show that equity lies in its favour. In the given facts and circumstances of the case, the following observations made in the said judgement is significant to note.

".....The doctrine of promissory estoppel is a significant judicial contribution in that direction. But it is necessary to point out that since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. If it can be shown by then Government that having regard to the facts as they have transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promisee and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because, on the facts, equity would not require that the Government should be held bound by the promise made by it.....".

12. On the other, Ms. Livika, learned State counsel, representing the State respondents, submits that the family of the petitioner represented by the elder brother of the petitioner has admitted and accepted the prevalent rate of Rs. 65 per Sq. metre before the District Level Land Settlement Board headed by the Deputy Commissioner, for which the

compensation of Rs. 8,25,000/- (Rupees eight lakhs twenty five thousand) only is entitled to be paid to the family of the petitioner. The above compensation of Rs. 8,25,000/- (Rupees eight lakhs twenty five thousand) only was approved by the SLAA by its approval dated 08.08.2016. Accordingly, the amount of Rs. 8,25,000/- (Rupees eight lakhs twenty five thousand) only has been paid and accepted by the elder brother of the petitioner. She submits that there is no policy for appointment in Government job to the land owner in addition to the payment of monetary compensation to the land owners. The policy is only to those land owners who have donated the land without any monetary compensation and that too limited to the Grade-IV post.

13. Ms. Livika, learned State counsel, submits that in the present case, the settlement has been entered into by the Departmental authority without any authority and sanction under the law, therefore, the settlement is not enforceable under law. She further submits that for recruitment of Level 3 and above post has to be through the Nagaland Staff Selection Board, with an exemption to post in question which is to be filled by public advertisement through the Department. Apart from the non enforceability of the above settlement under the law, the post in question cannot be filled up without there being a public advertisement which would be against the provisions of law and the scheme of public employment. Therefore, the petitioner is not entitled to be appointed on land ownership basis as the family of the petitioner has been adequately compensated by way of monetary compensation which has been agreed and accepted by the family of the petitioner, as such, the writ petition is liable to be dismissed.

14. I have considered the submissions of the learned counsels for the parties and also perused the materials available on record.

15. The land of the petitioner measuring 13,500 Sq metres on which the Forest colony at Longchem under the Divisional Forest Officer, Mokokchung is established, has been acquired in the year 2003. The respondent authorities finally decided for payment of land compensation measuring 136652 Sq. ft which is under the occupation of the Forest department on being recommended and approved for an of amount of Rs. 8,25,500/- (Rupees eight lakhs twenty five thousand five hundred) only @ of Rs. 65 per sq. metre by the SLAA.

16. Thereafter, on the demand of the petitioner, the State Government by a letter dated 23.09.2016 addressed to the Principal Chief Conservator of Forest, Government of Nagaland conveyed its observation and advised to have a dialogue/negotiation with one Imtione (elder brother of the petitioner) to resolve the matter amicably. Accordingly, the settlement with landowner in respect of the acquired land in question at Longchem, Mokokchung has been entered into by the Forest Department, the relevant paragraphs are extracted herein below:

“Without a doubt, the land in question has been purchased outright, but considering the peculiarity of circumstances as discussed above for which the land owner also cannot be faulted, negotiation with the land owner was made and the issue is proposed to be settled once and for all on the following conditions:

1. The land owner shall accept the compensation amount of Rs. 8,25,000/- (Rupees eight lakhs twenty five thousand) only, as decided by the SLAA on 08.08.2016.

2. As a onetime measure, the Department shall appoint a land owner to any Grade III post against vacancy arising against sanctioned post in the Department in the future...

3. This shall not grant any perpetual right to the landowner to claim appointment on landowner basis in the future."

17. On perusal of the above settlement, it reflects that the land owner shall accept the compensation amount of Rs. 8,25,000/- (Rupees eight lakhs twenty five thousand) only as decided by the SLAA on 08.08.2016 and as one time measure, the department shall appoint the land owner to any Grade III post against the vacancy arising against sanctioned post in the Department in the future.

18. Admittedly, the aforesaid amount of Rs. 8,25,000/- (Rupees eight lakhs twenty five thousand) only has been duly released and accepted by the family of the petitioner which is the first part of the settlement and the present grievance is to the second part of the settlement for appointment on the basis of land ownership to any Grade III post.

19. It is seen that the Department of Forest and Environment has issued an advertisement for filling up of 115 posts of Forest Guard (Grade-III) vide advertisement dated 13.01.2023.,the post which is exempted from the purview of the NSSB.

20. This Court vide order dated 09.05.2023, in the interim in the present proceedings, has directed that one post of Forest Guard shall be kept vacant in the Forest Department, after considering the objection of the learned State counsel that no appointment in Grade III can be given

in lieu of the land ownership.

21. It is noticed that as per the policy of the State, appointment can be made only in Grade-IV post on the basis of land ownership when the land is given to the government for administrative and other Government establishments. In the present case, although the monetary land compensation of Rs. 8,25,000/- (Rupees eight lakhs twenty five thousand) only has been paid to the family of the petitioner, there is an agreement between the Department and the family of the petitioner to the effect that in addition to the aforesaid monetary compensation, as a one time measure, the Department shall appoint the land owner to any grade III post against the vacancy arising against sanctioned post in the Department.

22. Having considered that the Forest Department has promised by way of settlement to appoint the land owner on land ownership basis to any Grade III post in addition to the monetary compensation of Rs. 8,25,000/- (Rupees eight lakhs twenty five thousand) only for the land in question acquired for establishment of forest colony under the Forest department, I am of the considered view that the petitioner would be entitled to be considered for appointment to any Grade III post in the Department as per the settlement entered into between the Department and the family of the petitioner.

23. It is true that the rule of promissory estoppels cannot be invoked for the enforcement of a "promise" or a "declaration" which is contrary to law or outside the authority or power of the Government or the person

making that promise. However, in the present case, since the Department has entered into a settlement pursuant to the advice of the Government, the doctrine of promissory estoppel would come into play in view of the said settlement as there is a clear promise on the party of the Department which the petitioner has acted upon, and, therefore, the Department/authority is bound to honour the promise. It is not discernable from the record that the above settlement by the Department has been made by the authority who is unauthorized and is contrary to the law. Thus, the petitioner would be entitled for consideration to be appointed to any Grade III post as per the settlement dated 07.12.2016.

24. In view of the discussion made herein above, I am of the considered view that the petitioner is entitled to be considered for appointment to any Grade III post as per the settlement dated 07.12.2016. Accordingly, it is provided that the respondent authorities shall consider the case of the petitioner for appointment to any Grade-III post in terms of the settlement dated 07.12.2016 within a period of 2 (two) months from the date of receipt of the certified copy of this order.

25. The writ petition stands allowed and disposed of accordingly. No order as to costs.

JUDGE

Comparing Assistant