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Court : Delhi

Decided On : Sep-21-1979

Reported in : AIR1980Delhi83

Judge : Prakash Narain and; S.B. Wad, JJ.

Acts : Constitution of India - Article 226; Delhi Development Act, 1957 - Sections 2A

Appeal No. : Civil Writ Petition Appeal No. 348 and 1177 of 1973, 443 of 1975 and 1041 of 1976

Appellant : Jasjit Films (P) Ltd. and anr.

Respondent : Delhi Development Authority and ors.

Advocate for Pet/Ap. : P.N. Lekhi,; Swantantar Kumar,; S.N. Chopra and;

Judgement :

S.B. Wad, J.

(1) The petitioners in these writ petitions under Article 226 of the Constitution have prayed for a mandamus against the Delhi Development Authority (for short D.D.A.) :

1. for restraining the D.D.A. from recovering the ground rent for the plot taken on perpetual lease from the D.D.A. for construction of cinema houses ; and 2. to direct the D.D.A. to carry out and complete the development of civic complex around their cinema houses in ac- cordance with the assurances given to them by the D.D.A.;

Writ Petitions Nos. 443 of 1975 and 1041 of 1976 are filed on behalf of the Milan, Cinema at Karampura, Delhi. Writ Petition No. 348 of 1973 is filed on behalf of Deep Cinema at Wazirpur, New Delhi, Writ petition No. 1177 of 1973 is filed on behalf of Payal Cinema Narayana, New Delhi. In support of their claim, the petitioners have relied on the principles of promissory estoppel.

(2) Since most of the factual averments and the reliefs claimed are common to all the four writ petitions, we will examine in detail one writ petition, namely, C.W. Petition No. 443 of 1975 as a representative petition.

(3) A plet of land measuring about 2972.41 Sq. Mts. situate at Shopping Centre, Karampura was given on perpetual lease under the Government Grants Act, 1895 to the petitioners for constructing a cinema house after accepting bid in an open tender. The tenders were invited by D.D.A. for the payment of annual rental/ground rent and not for premium. The land in question belongs to the Union of India but under section 21 of the Delhi Development Act, 1957 the D.D.A. is empowered to dispose of the land, inter-alia, by way of lease. On 16th June, 1969, the petitioners submitted a tender for Rs. 2,01,6001- for annual rental of the plot. On 28th September, 1969, the D.D.A. communicated its acceptance of the tender and called upon the petitioners to complete the lease-deed. The first payment of the annual rental was duly paid by the petitioners and possession of the plot was given to them on 26th March, 1970. The cinema house namely, Milan, was constructed by the petitioners and it started functioning from 12th of September, 1970. The petitioners failed to make the payment of the annual rental for the year 1972-73 within the stipulated time. The D.D.A., thereforee, issued a demand notice to the petitioners. According to the terms of the lease-deed, D.D.A. can recover the arrears of annual rental as arrears of land revenue. After receiving the demand notices, the petitioners filed the writ petition on April 3, 1975.

(4) The petitioners submitted in the writ petition that the D.D.A. represented to them that plots were 'ideally situated' which induced them to give such a high bid of over Rs. 2 Lacs. The petitioners contended that the representation of the Ideal situation' led to legitimate expectation that D.D.A. wanted to develop the area around the cinema according to the Master Plan with District Shopping Centre and the residential colonies which would enable them to attract cinema goers of class and quality. It was contended that it was the statutory duty of the D.D.A. to carry out the development according to the Master Plan. It was further contended that contrary to their assurances at the time of filling up tenders, the D.D.A. has failed to carry out the planned development around the cinema and the proposed District Centre. It was averred that in consequence of the neglect of the D.D.A., the petitioners were suffering loss and had fallen in arrears of the payment of annual rental. The petitioners state that they made several representations to the D.D.A. and even requested the D.D.A. to convert the lease to an outright sale. The petitioners relied upon certain provisions of the Delhi Development Act and contended that there is a mutuality of performance of the contract between the petitioners and the respondents. The petitioners performed their part but the respondents did not. The duties to be performed under the contract, it was averred, are statutory duties and enforceable by writ proceedings.

(5) The D.D.A. in its counter affidavit has raised certain preliminary objections to the maintainability of the writ petition. The D.D.A. contended that the petitioners agreed to abide by the terms and conditions of the tender and perpetual lease after fully satisfying themselves of the location of the cinema plot; that after having taken advantage of the lease-hold rights, the petitioners are estopped from denying their liability to pay the annual rent (and interest) stipulated by the terms and conditions of tender and lease. It is further contended that the petitioners, in effect, are trying to enforce the contractual obligations and that they cannot do so through a remedy of writ under Article 226 of the Constitution. It is then contended that the petition involves disputed and complicated questions of facts for which a detailed investigation and evidence would be necessary. It is submitted that this is not within the scope of the proceedings under Article 226 of the Constitution and the petition was liable to be dismissed. On merits. the D.D.A. has denied that any assurances, as alleged by the petitioner were ever given by the respondents or

their officers. It is further averred that all the essential developments such as S.W. Drains Sewerage, roads, parks, water supply and electricity was completed in 1969, i.e. before the tenders for the plot were invited. It is denied That the D.D.A. was not developing the area according to the Master Plan. The answering respondent denies that the cinema is suffering any loss and/or the answering respondent is responsible for the alleged loss. The D.D.A. has denied that there was any negligence on their part in developing the area as alleged. It has also denied the allegagation that the surroundings of the cinema house were slums or that there were un-hygenic conditions. The D.D.A. further asserts that there is no statutory obligation on the D.D.A. towards the petitioner and that they had discharged all their contractual obligations. It is finally submitted that the petitioners are liable to pay the annual rental (and the interest according to the contract and lease-deed.

(6) In his oral submission the learned counsel for the petitioner, Shri P. N. Lekhi, contends that petitioner's case is fully covered by the decision of the Supreme Court in M.P. Sugar Mills v. State of U. P. : [1979]118ITR326(SC) . Mr. Lekhi submits that acting on the D.D.A.'s representation that by the time the construction of the cinema house is completed, the entire market complex in phase I of the Master Plan will be completed by the D.D.A., the petitioner undertook the commitment of paying Rs. 2 Lacs as ground rent for the plot. The counsel submits that the said representation and assurance can be directly traced to the provisions of D.D.A, Act. He further submits that such a representation is clearly implied in the auction notice issued by the D.D.A. The counsel further submits that the equity is in his favor and not the D.D.A. and the court should, thereforee, render all assistance to the petitioner. The learned counsel also contends that agreeing to pay Rs. 2 Lacs annually and constructing a cinema house with large investment, are serious steps in the alteration of the original position of the petitioner arising out of the representation of the D.D.A. As regards the preliminary objection of the D.D.A. Shri Lekhi submits that the D.D.A.'s obligation in the bargain is a statutory and equitable obligation and not a contractual obligation and hence this court can issue mandamus giving appropriate direction to the D. D. A. As far as the reliefs that this court can grant, Shri Lekhi submits that the court should restrain the D.D.A. from recovering the ground rent till all the promised development is

completed by the D.D.A. He further submits that mandamus be issued to the D.D.A. directing the D.D.A. to complete that part of the development which the D.D.A. in its counter affidavit admits has not been completed.

(7) In order to decide whether and what relief can be granted to the petitioner, some important questions should be decided. They are :

1. Whether as a matter of fact, there is any representation made by the D.D.A. which can be enforced in a court of law ; 2. Assuming that there is a representation by the D.D.A. whether the representation is derived from the contract between the parties or is dehors to the contract ; 3. Assuming that the representation does not have its origin purely in the contract, whether the alleged representation creates a public duty and/or an equitable right in the petitioner; 4. Whether the equities are in favor of the petitioner ; 5. Assuming that the petitioner is entitled to a mandamus, in what form can the mandamus be given considering the facts ; (i) that the petitioner does not want to avoid the entire contract but merely wants that the ground rent should not be charged; (ii) development of vast areas under a Master Plan require enormous resources and time on which the D.D.A. cannot have effective control;

(8) Promissory estoppel is an expanding doctrine. The development of this branch of law in India is sui generis. Let us now take a brief resume. It has a long history of over hundred years. In The Ganges Manufacturing Company v. Souruj Mull and others, H.R. Calcutta series (1880) 669(2), the doctrine of estoppel by representation was first applied by the Calcutta High Court in the area of private law. M|s Cohen & Bros had contracted with the defendants to buy 1,80,000 gunny bags for cash on delivery. Subsequently the plaintiffs agreed with Mis Cohen to advance Rs. 15,0001- against 87,500 bags. The defendants gave delivery orders to M|s Cohen, although the goods remained unpaid for M/s Cohen then endorsed certain of the delivery orders over to the plaintiffs. On these orders the agents of the defendants at the request of M/s Cohen wrote the following words :

'the bearer of this will personally take delivery of each lot as required'

The plaintiffs took delivery of 50,000 bags but defendants refused to deliver to him the remainder on the ground that M/s Cohen had not paid him according to the terms of the contract. On these facts, the trial court decreed the suit. On appeal by the defendants, the Ganges Manufacturing Co., the High Court held 'that by their conduct, the defendants induced the plaintiffs to advance Rs. 15,0001- to M|s Cohen and it was not open to the defendants to repudiate the transfer. The Court observed 'Estoppels in the sense in which that term is used in English legal phraseology are matters of infinite variety, and are by no means confined to subjects which are dealt with in Chapter Viii of the Evidence Act. A man may be estopped not only from giving particular evidence, but from doing acts, or relying upon any particular arguments or contentions which the rules of equity and good conscience prevent him from using as against his opponents.'

(9) This case is an important landmark in the development of doctrine of estoppel by representation in India. Three principles were established by this case (1) that equity by way of representation is a separate variety from one which is incorporated in sections 115 to 117 of the Evidence Act and that court has always a power to invoke this principle in equity and good conscience, to prevent a defendant from residing from his promise; (2) that a promise or representation can furnish a cause of action and is not merely a defense; (3) it is not necessary that for the application of this rule of equity consideration should pass between the promissor and the promissee.

(10) Twenty years thereafter the principle was made applicable to a promise/representation made by Government in Ahmed Yar Khan and others v. Secretary of State for India 1901 IA 28 211. In that case the predecessor of plaintiff Ahmed Yar Khan, privately constructed what is known as 'Hajiwah Canal' on Sutlej River spending more than Rs. 9 Lacs. The canal was to pass through private lands and government lands. Government permitted the canal through the government lands on satisfying itself that considerable area of land would be rendered fit for cultivation in the District of Multan and that there was every hope of increase in the government revenue. Thereafter, a large tract of land including the lands under the canal were given by way of inam to the predecessors of the plaintiff in recognition of their loyalty and good service to the government and

particularly for digging the Hajiwah canal. One of the terms in the grant was that the government could take over the management of the canal for a temporary period for better management in the interest of public. Thereafter the government passed an order permanently taking over the management of the canal and seriously contesting the proprietory right of the plaintiff to the canal land. The plaintiff failed in the court of Divisional Judge of Lahore and the Chief Courts at Lahore. The Privy Council allowed the appeal and decreed the suit. The Privy Council held that the government must have intended the Khans to understand and fact, must have led them to accept that all government land required for the canal would be made over to them in proprietory right. The Privy Coun,cil applied the rule ennunciated in Ramsden' v. Dyson. LR (1) H.L. 129. Thus it was established by this case that doctrine of promissory estoppel can be invoked against the government. The case also illustrates that the rule of equity can be used as a cause of action and absence of consideration is no bar for invoking the principle.

(11) The importance of these two cases is that the questions such as whether a prior legal relationship is necessary between the parties, or whether existence of the consideration is necessary, as a prior condition, or whether the principle can serve as a cause of action, or whether the doctrine can be invoked against the State or not, were resolved by the Indian Courts at the beginning of the 20th century itself. These questions are still debated in England and the U.S.A.

(12) In the Municipal Corporation of the City of Bombay v. The Secretary of State for India in Council I.L.R.(1905) 29 Bom 580, the Municipal Corporation of Bombay surrendered its own lands in favor of the government, in consideration of a lease of Government lands created in favor of the Municipal Corporation, on the nominal rent of one pie per square yard annually. After taking possession of the lands the Corporation at considerable expense constructed stables, workshop ond chawls. The Secretary of State for India in Council filed a suit against the Corporation claiming arrears of rent @ Rs. 12,000 per annum and for a declaration that the lease be determined. Against the decree passed by the trial court, the Corporation appealed to the High Court. The High Court set aside the decree, upheld the lease hold-rights of the Corporation and directed that a reasonable rent be fixed in

accordance with agreement between the parties. Applying this rule of equity, the court held the Municipality, having, under an expectation created and encouraged by the Government that a certain interest would be granted, taken possession of the land with the consent of Government and upon the faith of such promise or expectation and with the knowledge of and without objection by Government, laid out money upon the land, had an equitable right to have such expectation realised. The court further held that the Crown comes within the range of this equity and relied upon Plimmer v. The Mayor of Wellington, and Ahmed Yar Khan v. Secretary of State for India in Council. The Court also pointed out that such equity differed essentially from the doctrine embodied in section 115 of the Evidence Act, which is not a rule of equity, but is a rule of evidence formulated and applied in the court of law. This case, further reiterated the principle that promissory estoppel binds the Crown (the State) as that of a private citizen.

THECollector of Bombay v. Municipal Corporation of the City of Bombay, : [1952]1SCR43 , is a decision to the earlise one. However, this is the first decision of the Supreme Court in this field. Chandra Sekhera Aiyer J, in his judgment observed, 'whither it is the equity recognised in Ramadevis case, or it is some other form of equity, is not of much importance. Courts must do justice by promotion of honesty and good faith as far as it lies in their power. This observations added precision and clarity to the doctrine.

(13) The decisions of the Supreme Court in the Union of India and others v. M/s. Angio Afghan Agencies etc., Air 1968 S.C. 718. Ulhas Nagar Municipal Council case (1974) S.C.R. 854 and M. P. Sugar Mills case, : [1979]118ITR326(SC) , go further than the earlier decisions in one respect. The petitioners in these cases had asked for a mandamus against the Government to enforce certain monetary benefits, promised by the Government. In Anglo Afghan case import benefits in the scheme of export promotion were claimed by the petitioner. In Ulhas Nagar and M.P. Sugar Mills case certain tax exemptions were sought to be enforced against the Government. What was claimed was a benefit and not the reimbursement of loss as in earlier equity cases. The Supreme Court did not insist on the proof of the detriment to the petitioners. The Supreme Court through these decisions granted relief to the petitioners and, thereby established the principle that for

invoking the doctrine of promissory' estoppel it was not necessary for a party claiming the relief to show that he had suffered any loss or detriment. It is sufficient, the court held, for a petitioner to show that he had altered his position acting on the representation of the promisor.

(14) At this stage a brief sketch of comparative development of this branch of law in India and England would not be out of place, It is generally made out that Lord Denning's judgment in High Tree's case is the first authoritative enunciation of the doctrine of promissory estoppel. But England is still to evolve a comprehensive and cohensive doctrine and several questions are still to be resolved through decisions of Higher Courts. Lord Hailsham L. C. In Wood- house A.C. Isreal Cocoa S. A. V. Nigerian Produce Marketing Ltd. (1972) 1. ALR 271 H. L. at page 282. Voiced this feeling when he observed 'The time may soon be when the whole sequence of cases based on promissory estoppel since the war beginning with Central London Property Trust Ltd. High Trees Ltd. may need to be reviewed and reduced to a coherent body of doctrine by the courts. I do not mean to say that any one is to be regarded with suspicion. But, as is common with an expanding doctrine they do raise problems of coherent exposition which have never been systematically explored'. The questions that still need judicial recognition are whether existence of prior legal relationship (by way of contract or otherwise) is necessary or not and whether doctrine provides a new cause of action or not. This is illustrated by the recent statement of the doctrine in the 4th edition (1976) of the Halsbury's Laws of England. At page 1017 the learned Editors state 'when one party has by his words or conduct made to the other a clear and unequivocal promise or assurance which was intended to affect relation between them and to be acted on accordingly then once the other party has taken him at his word and acted on at the one who gave the promise or assurance cannot afterwords be allowed to revert to their previous legal relations as if no such promise or assurance had been made by him but he must accept their legal relations subject to the qualification which he himself has so introduced. The doctrine cannot create any new cause of action where none exvisted .....'. Whether a promise without consideration would create legal liability and whether a promisemust prove detriment before claiming relief under this doctrine, are also questions still hotly debated in England. In the area of Crown liability (on' the basis of the doctrine)

there is no direct decision of House of Lords. Spencer Bower and Turner in the Law relating to Estoppel by Representation (Third Edition, 1977, at page 121) point out that the authorities in support of crown liability are case of 'acquiescence' and not promissory estoppel. In Howell v. Falmouth Boat Construction (1951) 2 All E.R. 278 the House of Lords did not in so many words approve Lord Denning's dicta in Robertson v. Minister of Pensions (1948) 2 All E.R. 765 that representation made by one department of Government binds another, pointing out that the department making the representation in that case had no statutory authority to do so.

(15) The reasons for the quicker development of the doctrine (particularly in the field of the State liability) in India are not difficult to seek. Liability of Crown in law was first recognised in England by Crown Proceedings Act, 1947. In India this liability was recognised a hundred years earlier. Section 65 of the Government of India Act, 1858 states 'The Secretary of State in Council shall and may sue and be used as well as in India as well in England by the name of the Secretary of State in Council as a Body Corporate; and all persons and bodies Politic shall and may have and take the same suits, remedies and proceedings, legal and equitable, against the Secretary of State in Council of India as they could have done against the said company.....'. Secondly the doctrine of consideration is so firmly entrenched in common law and judicial thinking in England, that even after fusion of common law and equity (brought about by Supreme Court Judicature Act, 1873 and 1925) the English Courts resist any attempt at diluting the requirement of 'consideration'. In India, principles of equity are Incorporated in our codified law from the beginning with liberty to courts to draw on their sense of justice, equity and good conscience where codified law does not make any express provision. Thus law and equity were always running in the same stream in India. Denning J observed in High Trees case (regarding the case from which he had drawn support) 'the cases are a natural result of the fusion of law and equity'. In contrast even British Judges (who sat in Indian High Courts) freed themselves of the shackles of British Judicial tradition and showed judicial independence in the evolution of this branch of law.

(16) We feel it is unnecessary to travel abroad in search of the principle, since our courts have authoritavely resolved many of the vexed questions long before England faced them. 'High Trees' do not appear to be so high at all on the background of mature and independent development of the doctrine in India. To look to High Trees for solution is like imparting H.M.T. Watch from England with English marking or to go to England to see India peacock in London Zoo. This attitude is injurious to the development of Indian jurisprudence.

(17) Applying the principle of promissory estoppel, the first question that falls for determination is whether the D.D.A. had made any representation as alleged by the petitioners and if so, what is the nature of such a representation. The petitioner alleges that the representation had been made through the D.D.A. Act. Reliance is placed on sections 6, 8, 22 and 41 of the Act. Section 22 authorises the Central Government to place at the disposal of the D.D.A. all or any of the developed lands and undeveloped lands in Delhi vested in the Union of India for purposes of development, in accordance with the provisions of the Act. Section 6 permits the D.D.A. to secure development of Delhi according to plan and for that purpose to dispose of the land. The mode of such disposal is laid down by section 8 of the Act. This section states that land should be disposed of by auction and the premium should be determined by the highest bid, except in certain, cases. Section 2-D of the Act defines 'What is development' and section 2-A defines as to what is meant by providing 'amenity'. 'Development' means carrying out building, engineering, mining or other operations. The 'amenities' envisaged by section 2-A are roads, water supply, street light, drainage sewerage, public works and such other conveniences as the Central Government may by notification in the official gazette specify to be an amenity for purposes of the Act. Relying on these provisions the petitioner contends that a representation had been made to him that the development would be carried out by D.D.A. according to the 'Master Plan' including the District Centre simultaneously the construction of the cinema house. The petitioner has also described the said alleged representation as a statutory duty of the D.D.A.

(18) The contention has no merit as it is based on misconception regarding true nature of enactment. Acts of Parliament cannot be treated as representations to

citizens. Such enactments either create duties for the statutory bodies or the rights in favor of the citizens or both. In either case, the citizen has a remedy in law to force a statutory body to discharge the statutory duty and/or to get a statutory right enacted. Further, as a matter of fact the said provisions of the Act do not make any representation so as to induce the petitioner to alter his position. The said provisions of the Act are merely enabling in character and were necessary as the land does not belong to D.D.A. They do not amount to representation or statutory duty in law. They do not create any right in favor of the citizens.

(19) The petitioners next contend that the Government of India through its letter dated 2-5-1961 (Annexure P-40) has made the representation in the form of instructions to the Chief Commissioner, Delhi. Paragraph 8 of the said letter is pressed in service. Paragraph 8 only reiterates section 8 of the Act as it states 'As a general policy disposal of developed land should be made by auction and the premium should be determined by the highest bid, except in some cases'. We do not find any representation in the said instructions of the Central Government creating a cause of action or providing a defense to the petitioners, so as to avoid payment of ground rent by the petitioners. The submission, thereforee, fails.

(20) The petitioner strongly submits that the tender/auction notice, in the terms and conditions of auction (which have now become the terms and conditions of the contract between the parties and a lease deed) give a definite assurance inducing the petitioners to act upon the said representation. The tender notice states 'sealed tenders are invited for an ideally situated cinema site measuring about 2972.41 Sq. Metres at Karampura District Shopping Centre behind Moti Nagar Police Station at Najafgarh Road, by 16th June, 1969 up to I P.M.' Para 9-A of the terms and conditions of the auction reads :

'The cinema plot which measures 2972.41 sq. metres (32,000 sq. ft.) is located on' the junction of two 60 (18.28 metres) vide roads and is in one of the two portions of this community centre. The other portion of the community centre is in the adjoining plot, which is being developed by the Municipal Corporation of Delhi. This plot is bounded in the north east by 60' (18.28 metres) road in the south east by another 60' (18.28 metres) road which goes into the colony, towards south west

by 80' 36' (10.97 metres) wide road.'

to them that the Community Centre will be completed simultaneously with its own cinema house, that the colony near the community centre would also be developed and inhibited by people at the time the cinema house is complete. The construction of the roads mentioned would also be completed simultaneously. The petitioners urge that this was, what was meant by the words Ideally situated' occurring in the tender notice. The petitioner also contends that oral assurance was given to the petitioners by the D.D.A. officials at the time of the auction, that all these developments would be carried on simultaneously, with the construction of the cinema house by the petitioners.

(21) The D.D.A. in its counter-affidavit has strongly denied the allegation of the oral assurances. The D.D.A. has also denied that there was any promise of the simultaneous development of the community centre or colonies or the roads, as contended by the petitioners. The D.D.A. asserts that all the development within the meaning of section 2-D was carried out by the D.D.A. before the plot in question was put to auction.

(22) There are several infirmities in this contention of the petitioners, Firstly, we do not find that clause 9-A of the tender notice contains any specific undertaking or representation by the D.D.A. that the developments mentioned in that part would be carried out within any time limit, much less, simultaneous with the completion of the cinema house. The very title of para 9-A 'Location' would make it clear that the only purpose of para 9-A is to give definite idea to the prospective bidders as to the place where the plot in question was situated and in what surroundings. The petitioners have not furnished any evidence to show as to what part of the development mentioned in para 9-A was not completed by the D.D.A., assuming that the said development is to be carried out within the reasonable time. The various complaints made by the petitioners from time to time relate to the removal of the unauthorised constructions of jhuggiesghonpries and pavements shops, providing latrine blocks, construction of boundary walls etc. Obviously the D.D.A. had nothing to do with the said unauthorised constructions or cattle nuisance nor was any promise of representation made by the D.D.A. to prevent the said acts of

nuisance. We further hold that even cumulatively, the D.D.A, Act, the Home Ministry Instructions, the tender notice and the terms and the conditions of tender supplied with the tender notice do not make any promise or representation to the petitioners, creating in them a right in equity to force the D.D.A. to fulfill the alleged promises.

(23) Even assuming that there is a representation made by the D.D.A. to the petitioners, what is the nature of this representation Looking to the prayer of the petitioners in a writ petition can it be said that there is any representation made by the D.D.A. that till the time the alleged developments are carried out, the petitioners would not be liable to pay the ground rent The liability to pay ground rent arises out of the clear terms of the contract between the parties and particularly out of the lease deed. Under the contract and the lease deed, the liability to pay ground rent, commences from the date of giving possession of the plot in question to the petitioners. The liability does not accrue from the date of the completion of the cinema house or from the completion of alleged developments. Indeed, the petitioners had paid the ground rent for the first year according to the Installments fixed by the contract even before the commencement of the construction of the cinema house. There is no nexus alleged or established by the petitioners, between the alleged representation of the development of the areas and liability to pay the ground rent. It is interesting to note that the petitioners do not want to surrender the plot or claim recession of contract but merely want to avoid payment of ground rent.

FORthe application of doctrine of promissory estoppel, it is necessary to prove that but for the inducement, the petitioners would not have altered their position. There must be a casual connection between the representation by one party and action taken by the other party to alter his position. The petitioners have not produced any evidence to establish such a casual link between the two. It is not even pleaded that petitioners were offered alternative sites with the same advantage with lesser price and they rejected those offers in preference to the offer made by the D.D.A. because of the representation made by the D.D.A. In these circumstances it can be fairly concluded that the petitioners entered the transaction as prudent businessman, commercially weighing the benefits and price

in the deal with open eyes. They knew that they were running a business risk while entering into the transaction.

(24) Ii is true that for claiming the equitable relief on the basis of promissory estoppel, it is not necessary to prove that a petitioner has suffered some detriment or loss. However, the petitioners have based their claim on the alleged loss suffered by them. There are no particulars nor any evidence furnished by them. Indeed, if they were suffering heavy loss as alleged by them, they would not have resisted the attachment of the gate money enforced by the D.D.A. by way of coercive process. Further, for succeeding in the petition, the petitioners must prove that loss has been occasioned to them due to the inaction or negligence on the part of the D.D.A. There is a vague allegation made by the petitioners that because the Community Centre has not been developed and the colonies around the cinema halls are not fully inhabited, they are not able to attract high class audience. In one of the connected petitions it is contended that as the high-way is not completed, the petitioners are deprived of the prospective spectators coming from the civic localities which would be connected by the said high-way. These averments are too vogue and equivocal, for taking note of order to fix legal liability on the D.D.A.

(25) Even assuming that the petitioners have some claim against the D.D.A. are they entitled to press in service any equitable remedy Since promissory estoppel is an equitable remedy, the petitioner, must prove that equity is in their favor. He who seeks equity must also do equity.

(26) What is the conduct of the petitioners in the present dispute The petitioners completed the construction of the cinema house in August 1970 and are exhibiting films since that time. After paying the first year's ground rent, they have failed to pay any ground rent. The annual ground rent is a little over Rs. 2 lakes. At the time the petition was filed, the petitioners were in the arrears of about Rs. 8 lacks. The petitioners by exhibiting films have been earning good deal of profit ever since 1970. As stated earlier, the petitioners do not want to surrender the plot to the D.D.A. but merely want to avoid the payment of the ground rent. Indeed, at one stage, the petitioners had suggested the D.D.A. to make an outright sale of the

plot in question, in their favor. The conduct of the petitioners shows that they want to take full benefit of the bargain by retaining the plot, but merely want to avoid the payment of the ground rent. The D.D.A. on the other hand has spent huge monies on the admitted development of the area, but at the same time is denied the rent of Rs. 2 lacs for the last so many years. The D.D.A. is a public authority, which needs resources for undertaking planned development of Delhi. We do not find that the petitioners have come with clean hands to invoke the doctrine of promissory estoppel against the D.D.A.

(27) Even assuming that the petitioners have an enforceable equitable claim against the D.D.A. can they in law. seek extraordinary remedy of mandamus in this court We have shown earlier that the D.D.A. Act and the Home Ministry Instructions do not amount to any representation in law. The liability for the payment of the ground rent arises out of the contract and the lease deed between the partics. This liability is created by express agreement in writing between the D.D.A. and the petitioners. The entire transaction is in the realm of contract or private law and not in the realm of public law at all. The doctrine of promissory estoppel as stated in the M.P. Sugar Mills case is limited to public law areas. It appears that the allegations regarding the representation through the D.D.A. Act and the Home Ministry Instructions are being pressed with a view to bring the case within the ratio of M.P. Sugar Mills case. We are of the view that the petitioners cannot derive any support for their claim from the said decision of the Supreme Court. Since the transaction is entirely in the realm of contract, the petitioners will have to file a suit to enforce the specific performance of the contract or to claim damages, by means of a civil suit. Writ petition is not a remedy for enforcing contractual obligations. The petition fails on this ground alone.

(28) The second relief claimed by the petitioners is of mandamus praying this court to direct the respondents to develop the plot in accordance with the plan and the instructions issued by the Central Government and assurances held out to the petitioners by the respondents. The said prayer is not specific and is devoid of any details. Assuming that it is an independent prayer unconnected with ground rent the petitioners have failed to prove that any specific un-ambiguous and un-equivocal representation was made by the D. D. A. in this regard. Indeed, the

D.D.A. has strongly asserted that all development in accordance with section 2-A of the Act (such as construction of roads, drainage, sewerage street lighting etc.) was completed by them before the plot in question was put to auction. In these circumstances, the petitioners cannot claim the second relief nor can a mandamus be issued on such vague allegations as made in the petition.

(29) The counsel for the petitioners, Mr. P. N. Lekhi has lastly urged with a certain amount of passion, that it is the duty of this Court in its equitable jurisdiction, to make government (D.D.A.) behave and respect its moral commitments. No doubt, the source of equity jurisdiction in this area is in honesty and good faith of public bodies and we are keenly aware of the powers and obligations of court. 'Promissory Estoppel' holds a great promise for future. It is a very potent weapon. But precisely for this reason we should heed the signal : Caution. We must adjust equitable remedies according to the circumstances and genuine public interest.

(30) There are promises and promises. Some are so general that it would be impossible to enforce them with any specific direction. Development of a city according to master plan or construction of a high way fall in this category. There are some promises or assurance which do not directly serve any public interest but serve some personal or party ends. Promises of financial benefits, appointments guarantee and contract given on the eve of or with an eye on elections fall in the second category. Promises of this nature raise serious questions of public morality and ethical standards of the leaders of public affairs. If we keep the door wide open it might defeat salient concept of equity adding unjustified burden on the public ex-chequer and honest tax payer. 'Promissory estoppel' cannot be used by us as young George Washington's AXE.

(31) The petitions fail. The Rule is discharged. No costs.

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