

(2007) 08 RAJ CK 0076
In the Rajasthan High Court

Adaidya Solutions Pvt. Ltd.

APPELLANT

Vs

The RIICO and Others

RESPONDENT

Date of Decision : 10-08-2007

Acts Referred:

Constitution of India, 1950 — Article 299

Citation : (2008) 1 RLW 288

Hon'ble Judges : Govind Mathur, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Govind Mathur, J.—Acknowledging emergence of the information technology in business and industry, the Rajasthan State Industrial Development and Investment Corporation Limited (hereinafter referred to as "the Corporation") planned a new information technology park at Udaipur with an assurance to provide quality infrastructure such as communication facility, power, road, drainage etc. As per information technology policy of the Government of Rajasthan the Corporation while making efforts to inspire entrepreneur to set up IT Projects at proposed information technology park Udaipur also extended concessions and facilities including (1) land rebate upto 50% in land cost (development charges); (2) 100% exemption from stamp duty; (3) 50% exemption from electricity duty for seven days; (4) benefits under STP Scheme of Government of India for 100% EOU units registered with STPI; and (5) instalment facility for payment of 75% cost over a period of five years in 19 equal quarterly instalments with 13% interest per annum.

2. The petitioner, a company (hereinafter referred as "the Company") incorporated under the Indian Companies Act, 1956 acting upon the plan forwarded by the Corporation applied for allotment of industrial plot to instal information technology project, accordingly, a piece of land measuring 6444 sq. mtr. was allotted and a lease agreement in this regard was executed and registered on 16.5.2007.

3. The company, to establish its ambitious projects also availed an advance in a tune of Rs. 100 lacs from State Bank of India and invested about Rs. 90 lacs in raising part construction. The petitioner company also made certain commitments to various clients in India and abroad for strategic alliance. At this stage, a letter dated 23.7.2007 from the respondent Corporation was received by the petitioner company revoking allotment of land and also the lease agreement dated 16.5.2007, hence this petition for writ is preferred.

4. In reply to the writ petition the reasons given by the respondent Corporation compelling it to cancel allotment of land and revoking lease agreement are as follows:

6. That in the month of December, 2006, 17 applications were received in the Unit office, Udaipur within a period of 22 days. These 17 applications were forwarded in bunch to Head Office by Udaipur Unit for examination and advice so that the Unit Level Committee may take a view for allotment Under the rules, unit level committee is competent for allotment of land in IT Park, Udaipur.

7. That on examination of the applications it was observed that applicants have not submitted details relating to experience in IT promoters/directors and project reports did not have details relating to project. Since, availability of land in IT parks is very limited these applications were returned and unit office was directed to prepare an expression of interest for wider publicity and transparency as the earlier public advertisement was issued in January, 2004 so that serious and good IT projects are attracted in the IT Park.

8. That in the meanwhile, few entrepreneurs of Udaipur have represented for allotment of land to them in the IT Park based on the applications already submitted by them under the prevailing land allotment policy.

9. That it was also observed that earlier the land allottees except the petitioner and also by one party have not started any main building construction activities over the subject allotted plots. It was also thought proper to review the earlier land allotment cases in IT Park, Udaipur by a Committee comprising of Advisor (Infra), GM (IT), two members from IT sector, OIC STPI, Jaipur & Sr. DGM (P & D) and to do allotments for the remaining plots available with the RIICO to IT companies in IT Park, Udaipur.

It is, therefore, submitted that the basic issue for allotment of IT Park was to set up an Industry with respect to Information Technology, if companies of IT are not allotted subject piece of land and Industries of IT are not established in IT park then the very purpose of the same will be frustrated.

5. It is also asserted that the Corporation by virtue of Rule 27 of the Rajasthan Industrial Development and Investment Corporation Limited Disposal of Land Rules, 1979 (hereinafter referred to as "the Rules of 1979") is empowered to revoke allotment of plot made in favour of the company.

6. Looking to the fact that any delay in disposal of this petition will adversely

effect economic and industrial development plan, this matter is finally heard at admission stage with consent of the parties.

7. The decision of the Corporation is assailed by the petitioner company mainly On plea based on doctrine of promissory estoppel with the factual background that the petitioner company on solemn assurance given and representation made by the respondent Corporation acted upon to avail allotment of land and for that purpose it paid Rs. 48.36 lacs towards development charges. The company also obtained loan from State Bank of India for the sum of Rs. 100 lacs. A huge amount of that was spent on constructing a building for the purpose of setting up an infotech industry. The petitioner company also made certain commitments with its clients in India and abroad but by revoking lease agreement and cancelling allotment of land the respondent Corporation has put the company in disadvantageous position i.e. against the principles of promissory estoppel.

8. On other terminal, the stance of the respondent Corporation is that whatever action taken by it is justified in view of the provisions of Rule 27 of the Rules of 1979 and also that by making allotment of plot to the petitioner and certain other companies it was found not viable to achieve object for establishing I.T. Park. It is further contented that there was no contractual or pre-existing legal relation between the petitioner company and the respondent Corporation, thus, the plea of promissory estoppel is not available.

9. In view of the rival contentions, the question in focus is for application of doctrine of promissory estoppel in present set of facts. Fortunately I am having good number of precedents in hand to examine the issue involved.

10. Hon"ble Supreme Court in its leading authority on this subject in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , held as follows:

The true principle of promissory estoppel 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 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 preexisting relationship between the parties or not. The doctrine of promissory estoppel need not be inhibited by the same limitation as estoppel in the strict sense of the term. It is an equitable principle evolved by the courts for doing justice and there is no reason why it should be given only a limited application by way of defence. There is no reason in logic or principle why promissory estoppel should also not be available as a cause of action, if necessary to satisfy the equity. It is not necessary, in or to attract the applicability of the doctrine of promissory estoppel, that the promisee,

acting in reliance on the promise, should suffer any detriment. What is necessary is only that the promisee should have altered his position in reliance on the promise. But if by detriment we mean injustice to the promise which would 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. If this is the kind of detriment contemplated, it would necessarily be present in every case of promissory estoppel, because it is not account of such detriment which the promisee would suffer if the promisor were to act differently from his promise, that the Court would consider it inequitable to allow the promisor to go back upon his promise. In India not only has the doctrine of promissory estoppel been adopted in its fullness but it has been recognized as affording a cause of action to the person to whom the promise is made. The requirement of consideration has not been allowed to stand in the way of enforcement of such promise. The doctrine of promissory estoppel has also been applied against the Government and the defence based on executive necessity has been categorically negated. Where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. It is elementary that in a republic governed by the rule of law, no one, howsoever high or low, is above the law. Every one is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned, the former is equally bound as the latter. The Government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action. If the Government does not want its freedom of executive action to be hampered or restricted, the Government need not make a promise knowing or intending that it would be acted on by the promisee and the promisee would alter his position relying upon it. But if the Government makes such a promise and the promisee acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promise like any other private individual. But since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have subsequently 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. When the Government & able to show that in view of the facts which have transpired since the making of the promise, public interest would be prejudiced if the Government were required to carry out the promise, the court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and alter his position and the public interest likely to suffer if the promise were required to be carried out by the Government and determine which way the equity lies. It would not be enough for the Government just to say that public interest requires that the Government should not be compelled to carry out the promise or that the public interest would suffer if the Government were required to honour it.

11. It was held by the Apex Court, while reiterating the law laid down in the case of Motilal Padampat Sugar Mills Co. Ltd. (supra), in the case of Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., , that "there can be no promissory estoppel against the Legislature in the exercise of its legislative functions, nor can the Government or public authority be debarred by promissory estoppel from enforcing statutory prohibition, nor can promissory estoppel 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. Further, the doctrine of promissory estoppel being an equitable doctrine, it must yield when the 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 the facts, equity would not require that the Government or public authority should be held bound by the promise or representation made by it."

12. The preconditions and limitations for operation of doctrine of promissory estoppel as pointed out by Hon'ble Supreme Court in the case of State of Punjab Vs. Nestle India Ltd. and Another, are as follows:

(i) Promissory estoppel, long recognised as a legitimate defence in equity, can be the basis of a cause of action against the Government, even when the representation sought to be enforced is legally invalid in the sense that it would be made in a manner which was not in conformity with the procedure prescribed by statute.

(ii) The well-known preconditions for the operation of the doctrine of promissory estoppel are: (1) a clear and unequivocal promise knowing and intending that it would be acted upon by the promisee; and (2) such acting upon the promise by the promisee so that it would be inequitable to allow the promisor to go back on the promise.

(iii) The limitations are: (1) Since the doctrine of promissory estoppel is an equitable doctrine, it must yield when equity so requires. But it is only if the court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the court would refuse to enforce the promise against the Government. (2) No representation can be enforced which is prohibited by law in the sense that the person or authority making the representation or promise must have the power to carry out the promise. If the power is there, then subject to the preconditions and limitations, it must be exercised. If the statute does not contain a provision enabling the Government to grant exemption, it would not be possible to enforce the representation against the Government, because the Government cannot be compelled to act contrary to statute. But if the statute confers power on the Government to grant the exemption, the Government can legitimately be held bound by the promise to exempt the promisee from payment of sales tax.

(iv) The Government cannot rely on a representation made without complying with the procedure prescribed in the relevant statute, but a citizen may and can compel the Government to act on such a representation if the factors necessary for founding the plea of promissory estoppel are established.

13. The essence, that can be distilled in light of the authoritative pronouncements referred above, is that the doctrine of promissory estoppel marches with hypothesis that a promise given is binding even where there is no contractual or preexisting relationship, and where there is a clear and unequivocal promise knowing and intending that it would be acted upon by the promisee; and by acting upon the promise by the promisee, it would be inequitable to allow the promisor to go back on the promise. However, no representation can be enforced if that is prohibited by law and if the overriding public interest requires that promisor should not be held bound by the promise but should be free to act unfettered by it. The promissory estoppel is a legitimate defence in equity, thus, it is also a basis of a cause of action.

14. In the present case Rule 27 of the Rules of 1979, reliance on which is placed by the respondent Corporation, is having no statutory force as the Rules of 1979 are creation of the Corporation by exercising powers conferred by Article 93 (XV) of the Articles of Association of the R1ICO. Beside that, Rule 27 of the Rules of 1979 relates to proposal to dispose of a plot or an area but not to the allotments already made. The assessment, therefore, is to be made as to whether it shall be In public Interest to permit the respondent Corporation to deviate from the promise given to an entrepreneur i.e. the petitioner.

15. The petitioner is a company that want to instal an industrial unit relating to information technology. It has already invested a huge money for materlising its project. The company has also made strategic alliance with consumers in India and abroad. The photographs and the brochure of the company placed on record also establishes it well that the company is working in full swing to complete the

project. It is pertinent to note that the respondents also in their reply accepted that the petitioner has started construction activities on the plot allotted. The totality of the facts does not support the stand of the respondents that non-cancellation of plot allotted to the petitioner shall frustrate the policy of the Government for establishing I.T. Park at Udaipur. On the contrary, the petitioner being an industry relating to information technology, its establishment shall be in furtherance to achieve object of having an I.T. Park at Udaipur. Thus, it can be safely said that the petitioner is a bonafide entrepreneur.

16. In view of whatever said above, I do not Find decision of the respondent Corporation in public interest that may permit it to deviate from its promise. The petitioner company by acting upon the representation made by the promisor invested a huge money and have taken various steps for advancement of its business, therefore, the doctrine of promissory estoppel warrants to protect it from placing in any disadvantageous position by the impugned act of the respondents. As such, cancellation of the plot allotted and revocation of lease agreement is bad in eye of law.

17. Before parting with the case, it shall be appropriate to add that with emergence of new global economy, founded upon new institutional economy and manifested in new path of economic development with new public management, the public sector corporations set up to give impetus to industrial development have to adopt a mode of operation that is conducive to market and more business friendly. The agencies, like respondent Corporation, those are responsible for delivering economic and industrial promotion service have to reduce poor administration that includes uncertainty and whimsical decisions. An entrepreneur must not be under any fear of whimsical decision of the agencies and their unwarranted interference. There must be an atmosphere of effective assistance by State with an endeavour to gear up the base of economic growth, that is necessary for the nation building. The respondent Corporation has a major role in developing and shaping infrastructure, needed to stimulate industrial economic growth and to overcome infrastructural bottlenecks. All efforts should be made to bring down bureaucratic approach existing with governmental agencies like the respondent Corporation.

18. In result to whatever discussed above, this petition for writ is allowed. The decision communicated to the petitioner company by the respondent Corporation under the letter dated 23.7.2007 revoking allotment of land and also the lease agreement dated 16.5.2007 is declared illegal and, therefore, the same is quashed. The allotment of land made in favour of the petitioner company and the lease agreement dated 16.5.2007 are restored.

No order to costs.