

(1993) 02 CAL CK 0004
In the Calcutta High Court
Case No : Cr No 1991

Arun Plastics (P) Limited and Another	APPELLANT
Vs	
The Calcutta Municipal Corpn. and Others	RESPONDENT

Date of Decision : 26-02-1993

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : 97 CWN 1023

Hon'ble Judges : Umesh Chandra Banerjee, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Umesh Chandra Banerjee, J.—The doctrine of Promissory estoppel being a doctrine of equity is a rule evolved and adopted by the law Courts to prevent arbitrariness and consequent violation of Article 14 and to ensure fairness in governmental action. This Court in Surendra Prasad Mishra vs. O.N.G.C. (AIR 1987 Calcutta) laid emphasis that as a rule of equity and good conscience, the doctrine of promissory estoppel gives rise to an equity which the law Court will recognize even though, such a situation not constitute a legally enforceable cause of action. It is to be noted that Garth CJ, in an old Calcutta decision Ganges Manufacturing Co. (1880) ILR 5. Calcutta 669. also sounded a similar note as early as 1880 and one finds an echo of the same note in all subsequent decisions. In order, however, to appreciate this equitable doctrine one needs to analyze the doctrine and following ingredients of the doctrine clearly emerge on such an analysis :

- a) A promise is made intending to create legal relations.
- b) The said promise, to the knowledge of the promisor, was going to be acted upon by the promisee.
- c) The said promise was in fact acted upon by the promisee by an alteration of position.

d) As a result of such alteration of position, the promise has suffered a detriment.

In such a situation, the courts have held that the promise must be honoured. In other words the promisor is estopped from going back upon his promise.

2. Law Courts, however, in the process of development of this doctrine have gone to the extent of holding that even without any proof of detriment, this doctrine is applicable in some cases. Lord Denning, in an article in Modern Law Review (15, Modern Law Review Volume i, page 5) pointed out, with characteristic lucidity, the situations where this doctrine is attracted even without any proof of detriment. Lord Denning stated :

The difference may lie in the necessity of showing "detriment" where one party deliberately promises to waive, modify or discharge his strict legal rights, intending the other party to act on the faith of the promise, and the other party actually does act on it, then it is contrary, not only to equity but also to good faith, to allow the promisor to go back on his promise. It should not be necessary for the other party to show that he acted to his detriment in reliance on the promise. (Emphasis supplied). It should be sufficient that he acted on it. That is sufficient in the case of promises given on the formation of a contract. It should also be sufficient in the case of promise given on the modification or discharge of a contract."

The above narration is quoted with approval in the famous Treatise The Law Relating to Estoppel by Representation" (Sponger Bower and Turner-3rd Edition, Butterworths, 1977).

The Supreme Court in Delhi Cloth and General Mills Ltd., vs. Union of India (1988) SCC 86) also relied upon the above noted passage in Modern Law Review, with approval.

3. Lord Denning, however, illustrated the aforesaid in W.J. Alan and Co. Ltd. vs. E1 Nasr Export and Import C. (1972) (2) All England Reports page 127 at page 140) in the manner following :

A Seller may accept a less sum for his goods than the contracted price, thus inducing (his buyer) to believe that he will not enforce payment of the balance. (See Central London Property Trust Limited Vs. Rees). In none of these cases does the party who acted on the belief suffer any detriment. It is not a detriment but a benefit to him to have an extension on time or to pay less or as the case may be. Nevertheless he has conducted his affairs on the basis that he has had that benefit and it would not be equitable now to deprive him of it.

4. Even prior to 1988, the Supreme Court M.P. Sugar Mills vs. The State of U.P. (A 1977 SC 621) observed :

We do not think it is necessary in order to attract the applicability of the doctrine of promissory estoppel, that the promises acting in reliance of the promise, should suffer any detriment.

5. In the last noted decision, the Supreme Court further observed (Para 33, page 651) "It would therefore be correct to say that in order to invoke the doctrine of promissory estoppel it is enough to show that the promisor has acted in reliance on the promise, altered his position and this not necessary for him to further show that he has acted to his detriment."

6. Similar view has also been expressed by the Supreme Court subsequently in Union of India vs. Godfrey Philips India Ltd. (A : 1986 SC 806).

7. Having dealt with the concept as above, it would be worth wh(sic) to advert to the factual aspect at this juncture. Be it noted here, however, that the principal contention of Mr. Mookherjee, appearing in support of the writ petitioner is the applicability of this doctrine of promissory estoppel.

8. It appears that emboldened by the idea of a sophisticated market complex for Southern Calcutta's one of the most populous areas, the Municipal Authorities invited tenders for reconstruction and remodeling the Southern Calcutta's Lake Market which is rather in a dilapidated stage - tenders were invited, tenders were received and the writ petitioners tender was duly accepted. Certain provisions in the Deed of Agreement for the development work at the Lake Market area dated 2nd June, 1987 and as executed by and between the Calcutta Municipal Corporation and the petitioner Company ought, however, to be considered and for convenience"s sake are set out herein under :-

To construct the said commercial complex..... within a period of 30 months commencing from the date of this agreement subject to payment of premium and other amounts mentioned hereinafter....

The clause further provides as follows :-

"The Developer shall pay to the C.M.C. a sum of Rs. 31,00,000/-(Rs. Thirty one lacs) as premium in the manner as follows :-

a) 15% on or before signing the agree i.e., Rs. 4.65

b) Balance amount as below :

i)

30% within 75 days of approval of plan. i.e.

Rs. 9.30

ii)

30% within 9 months from the date of approval of plan. i.e.

Rs. 9.30

iii)

25% within 15 "months from the date of approval of plan. i.e.

Rs. 7.75

Rs. 31.00

9. On the further factual score, it appears that the writ petitioner immediately after such acceptance proceeded on to erect a temporary shed upon prior approval from the Municipal Authorities on Parasar Road, a busy, populous and the connecting link between the Southern Avenue and Rash Behari Avenue by reason wherefore a gigantic tin roof shed, measuring about 300 feet in length 40 feet in width was erected blocking the entire pavement and the 3/4th of the pitched road leaving hardly a 10 feet passage for passing and repassing the people in the locality were given to understand that the market would be a very sophisticated one and encroachment on the road will continue for a very short period that however, happened in early 1987; about six years have elapsed but the gigantic shed still looms large on Parasar Road; can any civilized society boast of encroachment of public street with the concurrence of the Municipal Authorities for a period of about six years. The answer, however, in my view, cannot but be in the negative. Without however, dilating much on that score it is to be noted that the concept of having a new building as against the exiting one for the entire market complex has originated from the Corporation of Calcutta.

10. Lake Market area is a purely residential area and the Calcutta Municipal Corporation, being the guardian of the society, provided the people in general of the area with a daily market place for the convenience of the people. Construction of a 4 or 5 storied building with two floors allotted to the market and three floors for the benefit of the development may not be as useful to the people in general as is in the other office areas. As noted above, it is a purely residential area and the traffic problem has assumed an unprecedented proportion and anybody passing and repassing or crossing the Lake Market area will have to face the same specially during morning and evening hours. Assuming, that the upper three floors would not be out to office but would also to be a purely residential occupation, there would be additional 50 to 60 flats which would mean additional at least 300 to 400 people with at least 50 to 60 additional cars can the area bear the burnt of this additional influx it is for the municipal Corporation to decide but the fact remains that Municipal Corporation themselves have decided not to go ahead with the project of high-rise building atop the market complex. The Corporation, themselves have abandoned the project and Mr. Roy appearing for the Calcutta Municipal Corporation in no uncertain terms submitted that by mere repairing of the market complex there will be no danger to the public at large. There is no doubt, of course, however, that the place needs immediate repair at least.

11. Incidentally, street hawking is a common phenomena in this city and the area in question is also no exception. Encroachment on payment is now a practical reality and shoplets thrive thereon. The erection of the tin roof shed of the magnitude, as noted above, attracted also various street hawkers and vendors to have an early settlement on the 10ft. passage. The road cannot any longer be

used by the public for the purpose as was originally thought upon both sides of the 10ft. passage, as noted above, there are now vegetable and other vendors doing a thriving business and the people in general also instead of going inside the market have started daily purchases from the vendors on the road the resultant effect of this is the closure of shops in the market, closure of shops on Parasar Road and the obstruction of passing and repassing even on foot, so far as the residents are concerned; this is however, not the end of the story, the conservancy service of the Municipality in the area in question seems to be extremely poor as the developer has already taken charge of the area in question by construction of a huge and gigantic shed. Significantly, however, the shed constructed by the developer still now remains unoccupied and obviously as in all modern society the place becomes a den. The resultant effect of such a state of affairs has rendered the residents in a state of very great distress.

12. On the further factual score, however, it appears that after the acceptance of petitioner's tender, petitioner duly paid a sum of Rs. 4,65,000/- to the Corporation in terms of the agreement thereafter the Corporation Authorities issued a show-cause notice as to why such a contract shall not be cancelled and it is at that juncture the petitioner moved this Court and obtained a stay order. During the course of hearing the Corporation Authorities in no uncertain terms submitted that the project has been abandoned and question of proceeding further with the contract does not and cannot arise.

13. Turning attention on to the issue of applicability of the doctrine in the facts of the matter under consideration, it appears that the relationship of the parties are governed by the terms of a written contract. While it is true that as a matter of principle, where relationship of the parties are bound by contract the doctrine of promissory estoppel has no manner of application this extreme proposition cannot be stated to be a relevant appreciation of the law, so far developed since the judgment of Garth C.J., in Ganges Manufacturing Company, down to the latest pronouncement of the Supreme Court in the case of Indian Aluminium Company Limited and another Vs. Karnataka Electricity Board and others, Admittedly however, the written contract between the parties provide the resultant effect of breach of contract including a claim for damages and also a proceeding for arbitration the issue, therefore, arises as to whether on the wake of such a clause, the agreement between the parties can be said to be bound by the doctrine of promissory estoppel? Before however, proceeding to deal with the issue it would be convenient at this juncture to take note of small factual details available in the matter in issue. By their representation dated 27th September, 1991 the petitioners informed the Municipal Corporation that question of termination of the contract does not arise and the Corporation is bound to carry out its obligation and to extend the time for performance of the contract. It has been pleaded that M/s. Arun Plastics has been at all material times and still remains ready and willing to perform its obligation and in any event M/s. Arun Plastics is not bound to make any further payment to the Corporation till such time as the Calcutta Corporation carries out its own obligation under the contract.

14. Turning attention on to the issue as above, admittedly, the relationship between the parties is governed in terms of an agreement in writing. The agreement records the resultant effect of a breach of Contract the agreement records the consequences of non-compliance with the terms of the agreement - can it be strictly said that the doctrine of promissory estoppel has its fullest application as contended by Mr. Mookherjee appearing for the writ petitioners. As noted above, the doctrine of promissory estoppel is an equitable doctrine - can the equity step in for the purpose of enforcing the terms of the contract between the parties in the facts of the matter under consideration - the contract provides in writing the rights and obligations of the parties it is a pre-determined fact known to the parties that if the Contract is complied with one set of consequences will follow whereas in the event, a contract is not fulfilled, another set of consequences will follow. Both the parties knew the consequences of their adherence to the terms of their agreement. It is to be noted that equity comes in aid of those persons who have no pre-determined right neither a pre-determined obligation. Incidentally, it is to be noted that the concept of doctrine of promissory estoppel has been enunciated only by reason of the concept of fairplay, justice and equity it has no independent existence of its own apart from the three set of events mentioned above. The law Courts have evolved this doctrine so as to see that no injustice is caused and it is this concept of justice which ought to be the pre-dominant factor in the matter of introduction of this concept of promissory estoppel.

15. Assuming, however, applicability of the doctrine, in the event of there being an agreement in writing but in that case an additional fact is required viz., that the parties by a negotiation or representation must come to a position wherefrom, it appears that the written contract will not be strictly enforced or will be kept suspended or its execution will be deferred and so on.

16. In the instant case, the parties concerned have not either by representation or by negotiations come to the position wherefrom it can be said that the rig) of the parties under the contract will not be enforced. In the absence of that factual position the doctrine of promissory estoppel cannot said to be of any application here where the right of the parties are governed by a concluded contract specially when one of the parties of the contract (here the writ petitioner) has understood that as a result of the alleged breach of contractual obligation of the corporation, the corporation will have to pay the damages. But in the instant case no such representation/promise or negotiations is either pleaded as it never existed.

17. In fact in the earliest judgment on Promissory Estoppel, Lord Cairns L.C. has illustrated this position by saying "The course of negotiation which has the effect of leading one of the parties to suppose that strict right under the contract will not be enforced" [Hughes vs. Metropolitan Rly. Co.: 1877 (2) AC 439]

18. In the instant case there is no such representation by the corporation leading the writ petitioners to suppose that the right arising under the contract will not

be enforced. On the other hand the writ petitioners are seeking the enforcement of the said contract as would appear from their representation to the following effect. "In the circumstances the question of terminating the contract does not arise, the Corporation is bound to carry out its obligation and to extend the time for performance on the said contract. M/s. Arun Plastics has been at all material three and still remains ready and willing to perform its obligation save and except their performance whereof has been prevented by the corporation. M/s. Arun Plastics is also not bound to make any further payment till such time as the Calcutta Municipal Corporation carries out its obligation under the contract."

19. Promissory estoppel is an equitable doctrine. Its application will not be possible where the same is not in accordance with equitable principle. In the facts of the matter under consideration without attending the hearing which the Corporation offered to the writ petitioners in respect of their show-cause notice, they have rushed to the Court. The right of the Corporation to terminate any agreement, assuming wrongfully, cannot be prevented with the aid of the doctrine of promissory estoppel. Promissory estoppel, being the product of an equitable doctrine, it presupposes equity in the conduct of the promise. This is based on the age old maxim. He who seeks equity must do equity.

20. On the basis aforesaid, can it be said that the introduction of the doctrine of promissory estoppel would be in the interest of justice, equity and good conscience and fairness demand that the same should be invoked. Where is the scope for the interest of justice being affected when the parties themselves have sorted out the necessary consequences of eventualities? It is the party concerned for whose benefit the law Court introduces the doctrine of promissory estoppel so that justice can be administered as per the need of the situation but in the event of there being an agreement in writing, justiciability of the introduction of the concept loses its force. Law Courts would not introduce the concept without any meaning - there must be some tangible reason and the facts must disclose gross miscarriage of justice, in the event of which, the law Court will rise up to the occasion and introduce this concept of promissory estoppel. This doctrine cannot be invoked readily but invocation depends upon existence of compelling circumstances so as to avoid miscarriage of justice and to give relief to person who deserves such a relief. The doctrine shall have to be introduced with utmost care and caution and no amount of laxity is permitted in the matter of introduction of this concept.

21. While it is true that law is crystal clear on the issue of promissory estoppel that the governmental agency ought to be bound by its promise but the concept of balance of convenience and inconvenience ought also to be considered while deciding an issue of the nature as the present one.

22. There is no manner of doubt that the concept of balance of convenience and inconvenience is one of the guiding principles in the matter of grant of injunctions - this concept is normally applicable in an application for injunction in a civil suit. The decision in American Cyanamide Case 1975 (2) All. E.R. 585 and

the decision of the Supreme Court in United Bank of India's case and the decision of this Court in Calcutta Tramways Company's case AIR 1986 Calcutta 316 in no uncertain terms held that balance of convenience is of primary requirement in the matter of grant of interlocutory injunction.

23. The question that arises for consideration in this writ application is whether the same principle can be imported on a writ application and whether the matter can be effectively adjudicated on the basis thereof but before going into the academic situation, let us first see for ourselves on the factual score as to whether such importation is permissible or not.

24. On the factual score, it appears that the residents of the area are having harrowing experience for about last six years. The entire public road is blocked and is not available for passing and repassing even on foot. The atmosphere has been polluted to such an extent that it is a near impossibility to even open a door or window on the road side building. From early morning till late in the evening the usual market atmosphere and stink prevail over the entire area. The conservancy service and the drainage system have practically come to a grinding halt; on the other side of the picture it appears that shed of about 300 ft. by 40 ft. is existing in the road supposed to be an alternative place for the market complex so as to allow the vendors to do their daily business from the shed - the shed however, becomes inoperative and vendors have chosen not to transfer themselves to the newly erected shed - the Municipal Authorities are delightfully silent and have not taken any steps in the matter of shifting of the vendors - the covered space under the shed has now become a den of anti-socials and place for all sorts of nefarious activities; This is an admitted state of affairs. The issue arises as to whether convenience of the residents of the area should be of prime consideration or not. The daily market goes admittedly, stay for a very short period of time but the residents of the locality are there throughout the day and night and are said to be facing enormous difficult and tremendous inconvenience.

25. Before proceeding, any further, a short factual detail ought to be noted at this juncture. It appears that there are altogether 241 vendors occupying the Lake Market Area yielding a total revenue of Rs. 16,952/- per month. Some portion of the market area seem to be unutilized. It is a matter of great surprise that when space remain unutilized inside the market, the Calcutta Municipal Authorities have allowed the vendors to be outside the market on the road as also on the pavement which is otherwise meant for passing and repassing without a demur or even without any step to remove them. Street hawking is a common scene mainly in the market area and this is applicable in all big metropolitan cities but has the Corporation Authority been able to take any step - unfortunately the answer is in the negative. Surprisingly however, in the list of permanent stall-holders submitted by the Corporation Authority, it appears that quite a good number of stalls are being occupied in the name of "occupier"s". No names have been given. It is for the Corporation to ascertain. Does that mean and imply that the occupiers of that particular stall goes on changing and

Corporation Authority has turned out to be a mere spectator. Incidentally, the list submitted is the list of permanent stalls and the occupier are supposed to be permanent in nature but unfortunately the facts depict otherwise and the Corporation Authority maintains a delightful silence and is completely oblivious as to happenings in the market.

26. Continuing with the issue as regards the convenience of the residents there cannot be any manner of doubt that the civic authority has a duty and a corresponding obligation to provide better living conditions to the people in general. The words better living conditions must be understood to have the widest possible amplitude so as to ensure benefit to the people at large since modern society needs modern living comforts. What was acceptable to the society in early 20th century cannot possibly be said to be acceptable on the wake of 21st century : Has the civic authority been able to discharge its obligation as regards conformant of benefit to the society in such a manner so as to be in conformity with the age and the time - the answer is in the negative. The civic authority has not been able to confer the benefit to the society as per expectation. But the issue arises as to whether inspite of such a failure on the part of the civic authority to discharge its duty to the society in the manner as is expected on the wake of 21st century, the law Courts would be a mere passive spectator and allow such a state of affairs to continue for all times to come the answer however, cannot but be in the negative.

27. At this juncture, however, one may have to consider the observations, as noted above, vis-a-vis the facts of the matter under consideration. Lake Market area is in the Southern part of Calcutta is a purely residential area, though, with certain shophlets to cater to the needs of the locality and it is with that perspective of the view, the civic authority provided-a space and a market was set up therein. But what is the state of the market - Admittedly, there cannot be any manner of dispute that the entire market complex is in utter disrepair and in a very very deplorable state. The inspection at the locale revealed the exact state of affairs which is set out herein below :

The entire tin shed roof is in such a state that no one can any longer attribute the same to be a shed. The shop-keepers have improvised it with tarpaulins and other covering materials which by no stretch can be termed to be a satisfactory way of doing things, but it is going on in that state for quite some time and the civic authority has not thought it fit to pay any attention therein and no reason could be attributed therefore. It is not that there is any dearth of staff managing the market. Staff personnel are there but the market has gone into disrepair to such an extent that it is well nigh impossible for market goers to obtain their daily necessities of life but somehow or other they have been managing with these state of affairs and probably will continue to manage until of course, a major incident or a mishap. It is indeed to be noticed here that some years back a portion of the balcony had given way and by reason wherefor there is no protection on the balcony at present.

28. On the further factual score, however, it shall have to be noted that on a specific question and specific enquiry from the Court, the Municipal Authority submitted that there cannot be any manner of dispute in regard to the structural stability of the building, though", however, it has been pointedly submitted that an extensive repair work is required inside the market; That the market needs an extensive repair work, replacement of wooden pillars, corrugated iron sheets or the asbestos sheets can easily be seen and it is on this score Mr. P.K. Roy, appearing for the Municipal Authority, submitted that within a period of four months from the date of clearance from this Court the Municipal Authority would be able to complete the work. On a visit to the market there is no manner of doubt that the whole atmosphere is dingy, dirty and people would try to avoid going if they can otherwise help the same. Market complex need not have a deluxe look but it must have a decent look at least so as to be able to give the basic amenities and comforts to the daily market goers. It is common knowledge that it is near impossibility to pass and repass through the pavement in the Lake Market area either during morning or evening hours by reason of total encroachment of the pavement by the street hawkers. Surprisingly, however, both the police and the Corporation. Authorities have lent deaf ears and blind eyes to the reality and the situation in the area is going from bad to worse so far as the civic amenities are concerned. In a civilized society the civic authority is required to see that the pedestrians also do not suffer but in this country it seems a rarity rather than a reality.

29. On this factual back drop there is no manner of doubt that the residents of the area in question are having tremendous inconvenience and which in my view can not and ought not to go unnoticed Law court exists to complete justice - would the interest of Justice be sub-served if the residents of the locality are allowed to stay in the midst of such inconvenience - In my view the answer can not but be in the negative. The concept of justice therefore requires the introduction of this concept of convenience in a writ petition. It is not that in any and every matter this concept can be adverted to - but if the facts warrant such introduction there ought not to be any hesitation in that regard. There is no manner of doubt that the market, if constructed, according to the plan as produced in Court, will have a decent and sophisticated look but the daily market goers need a very sophisticated building to but daily necessities of life including vegetable, fish, meat and etc., or they can do without such sophistication - the answer obviously is not far to seek. The market complex, admittedly, is in a very populous upper-middle class area and not in so-called sophisticated area. It is to be noted that the Lake Market Complex comprises an area of around 50,000 Sq. Ft. having about 5(five) floors atop the ground floor. At present the entire market barring only a small front road side two storied building the entire market complex is a total ground floor concept market and most of the houses in and around the market are of 2/3 storied and there is no tall building in that area. The construction, therefore, will have a definite impact of light and air, so far as the other adjoining buildings are concerned.

30. In any event, however, on the factual score it appears and as noted above, that the Corporation has abandoned the project and the issue arises as to whether on this factual backdrop it can be stated to be justifiable in regard to the importation of the doctrine of promissory estoppel in the facts of the matter under consideration. In my view, however, applicability of the doctrine of promissory estoppel on this factual backdrop and in the circumstances noted above does not and cannot arise. Law Courts exist for the society and law Courts discharge its duty in the matter of administration of justice so as to benefit the entire society. It is not out of place to mention that the old draconian concept of justice is no longer available and justice must be administered on the basis of the need of the society and not de hors the same - Does the society need a sophisticated market in the area or the society can do away with such a sophistication the answer obviously in the negative and in the affirmative respectively.

31. Let us now try to deal with the issue in a slightly more greater detail as contended by Mr. Mookerjee to the effect that in the event the law Courts do not find in favour of the writ petitioner the same would amount to travesty of justice by reason of alteration of the position and existence of an equity in favour of the writ petitioner and as such the Corporation Authority ought to be directed by the law Court to specifically perform its obligation in terms of the agreement between the parties. It was contended that the petitioner has altered his position by spending about Rs. 30 lacs in the matter of construction of the shed as also in the matter of payment of first installment of Rs. 4,66,00/- in terms of the agreement to the Calcutta Municipal Corporation and since the petitioner has already altered his position by way of financial involvement, the law enjoins that the State-Respondents ought to be directed to perform its part of the agreement and there ought not to be any hesitation in regard thereto.

32. In the normal course of events the law Courts would be within its jurisdiction on the basis of the doctrine of promissory estoppel to consider the matter in detail provided, however, the law Court finds the existence of an equity in favour of the writ petitioner; Can it be said that there exists an equity in favour of the writ petitioner so as to allow the exercise of the Writ Court's equitable jurisdiction in favour of the writ petitioner. Admittedly, the State project has been abandoned. The people in the area have had already experienced tremendous amount of sufferings for about last six years - the entire area has turned out to be a den of anti-socials and the surrounding atmosphere cannot but be termed to be totally polluted one on this background together with the factum of this Court's inability to restrict the time within which the project is to be completed - in my view, question of there being any equity in favour of the writ petitioner does not and cannot arise. It is placed on record however, that Mr. Mookherjee in order to avoid further inconvenience to the local residents has offered on behalf of the developer that 2/3rd of the encroachment on the road and the pavement would be removed and the project will be completed within a period of six to eight months. The Lake Market Babosayik Samity has also recorded its

concurrence to such but in my view, law Court cannot possibly put an embargo on to the writ petitioner as regards the time for the completion of the project. A five storied construction over an area of 50,000 Sq. Ft. cannot, in my view, be constructed overnight, removal of the hawkers from their existing place of business may also take some time than at present envisaged - would the law Courts allow a situation as is existing in present for a further indefinite period - the answer cannot but be in the negative. In any event it is not that the writ petitioner would be without any remedy for the recovery of loss and damage, if any it has suffered as such introduction of the concept of equity in favour of the writ petitioner is not warranted in the facts of the matter under consideration. Needless however to add that unless there are existing strong justifiable reasons to miscarriage of justice upon consideration of the entire factual aspect of the matter under consideration, the Law Courts can not possibly infer the existence of an equity.

33. Furthermore, the concept of balance of convenience can not possibly be said to be in favour of the writ petitioner to obtain any relief.

34. In that view of the matter, question of intervention by the writ Court does not and cannot arise. As noted above, it is not that the petitioner would be without any remedy - The civil court can properly deal with the matter for effective adjudication of the disputes between the parties so as to meet the ends of justice.

35. The writ petition, therefore, fails and is dismissed. All interim orders are vacated.

36. Considering, however, the need of the situation the Corporation Authority is directed to effect complete repair of the premises within a period of six months from the date hereof. It is further ordered that the market place shall have to be made water-tight so as to render proper facility to the market goers during the rainy season. Mr. Pal's client, being Babosayik Samity, is directed to keep a strict vigil in regard to the repair works to be effected in terms of the order of this Court and in the event of there being any departure in the matter of carrying out the obligations, so far as the Calcutta Municipality is concerned, the Samity would be at liberty to apply before the Court for proper direction. It is made clear that in the event the Corporation Authority decides not to go in for reinforce concrete roof of the market but use the ordinary corrugated tin roof or shed the same be effected in a manner so that no water percolates on the passage to cause inconvenience to the ordinary market goers as also to the vendors. Proper drainage facility shall have to be made by the Corporation Authority so that there is no accumulation of water inside the market area which is more or less a regular feature during the rainy season.

37. The Corporation Authority is further directed to remove the temporary structure on Parasar Road with utmost expedition and preferably within a period of three month from the date hereof. This order is, however, without prejudice to

the rights and contentions of the writ petitioner that the latter has suffered damages and the writ petitioner would be at liberty to take appropriate steps in regard thereto before the appropriate forum. In the event, however, the writ petitioner does not take any steps in that direction within a period of three months, the Corporation Authority is directed to refund the amount of money so received from the developer, being the writ petitioner herein with interest at the rate of 12% per annum. Such payment, however, in the event of there being an obligation to that effect, be made within a further period of two weeks from the expiry of three month period.

There shall, however, be no order as to cost. Prayer for stay is made but the same is refused.