

(2014) 05 AHC CK 0102

In the Allahabad High Court

Case No : C.M.W.P. Nos. 43162, 43179, 48640 and 48641 of 2007

Ashyana Sahkari Awas Samiti Ltd.

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 30-05-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 229, 301, 304

Evidence Act, 1872 — Section 115

Land Acquisition Act, 1894 — Section 17, 4

Citation : (2015) 3 ADJ 737 : (2014) 105 ALR 439 : (2014) 5 AWC 4826

Hon'ble Judges : Suneet Kumar, J; Ashok Bhushan, J

Bench : Division Bench

Advocate : K.N. Tripathi, S.S. Shukla, Anoop Trivedi, Rashtrapati Khare, Anurag Khanna, Ganesh Kumar Verma and Kapil Tyagi, Advocate for the Appellant; A.S. Rana and A.P. Srivastava, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—These four writ petitions filed by Registered Housing Cooperative Societies raising common questions of facts and law have been heard together and are being decided by this common judgment. Counter and rejoinder affidavits have been exchanged in all the writ petitions, with the consent of the learned Counsel for the parties, we proceed to decide all the writ petitions finally.

2. The Writ Petition No. 48641 of 2007, Ashyana Sahkari Awas Samiti Ltd. v. State of U.P. Thru" Principal Awas Vikas U.P. and others, is being treated as leading writ petition. It is sufficient to note the facts and pleadings in Writ Petition No. 48641 of 2007 to decide all the writ petitions.

3. The petitioner, in Writ Petition No. 48641 of 2007, Ashyana Sahkari Awas Samiti Ltd. v. State of U.P. Thru" Principal Awas Vikas U.P. and others, is a registered Housing Cooperative Society within the meaning of U.P. Cooperative Societies Act, 1965. The society by various sale-deeds purchased the land from

owners in village Kaila and Mitthapur. The sale-deeds were obtained on different dates from 20th December, 1998 to 28th March, 2000. The Society purchased the land to provide the residential accommodation to its members after development. The State Government from time to time had taken various policy decisions in context of acquisition of land of Registered Housing Cooperative Societies. A Government Order dated 2nd June, 1998 was issued by the State Government referring to earlier Government Order dated 9th April, 1980 and 25th April, 1984 by which the State Government to bring uniformity in acquisition of land by various Development Authorities and U.P. Awas and Vikas Parishad laid down various conditions for regularising the land of various Registered Housing Cooperative Societies. The Government Order provided that in event prior to issuance of notification u/s 4 (of Land Acquisition Act), the land has been purchased by Housing Cooperative Societies or it has been sold to its members, the said land shall be regularised under the Scheme of Awas Evam Vikas Parishad/Development Authorities. The Government order further provided that 60% of the acquired land after development be made available to the Cooperative Societies. A notification u/s 28 of U.P. Awas Evam Vikas Parishad Adhiniyam, 1965 was issued on 28th November, 1998, for an housing scheme, namely, "Delhi Bulandshar Bye Pass Road, Bhumi Vikas Evam Grahasthan Yojna Ghaziabad". In the said notification, land of the petitioner's society was also included. Notification u/s 32 of the 1965 Act dated 19th September, 2002 was published, notifying the scheme which scheme was published in the U.P. Gazette dated 12th October, 2002. The State Government issued a Government Order dated 22nd October, 2002 laying down the policy decision for regularisation of land of Registered Cooperative Housing Societies. The State Government in Government Order dated 22.10.2002 had referred to earlier Government Order dated 10th September, 2001 after considering the policy as was then existing. The Government decided to modify the policy of regularisation of land of Registered Housing Cooperative Societies. Under the new policy, the State Government laid down several conditions. One of the condition which was mentioned in the Government Order dated 22nd October, 2002 was to the effect that only that land of Registered Cooperative Societies be included for regularisation which was purchased 18 months before issuance of notification u/s 4 of the Land Acquisition Act.

4. After issuance of the Government Order dated 22.10.2002 the U.P. Awas Evam Vikas Parishad issued a notice dated 27th August, 2003 to the petitioner's society to appear before the Executive Engineer of the Awas Evam Vikas Parishad with regard to regularisation of land of society as per Government Order dated 22nd October, 2002. The detail information from the society was sought for alongwith consent for such regularisation.

5. The petitioner's society raised various objections against the Government Order dated 22nd October, 2002. Petitioner filed a Writ Petition No. 9157 of 2006 which petition was disposed of by a Division Bench of this Court on 16.2.2006 directing for considering of the representation of the petitioner submitted before

Housing Commissioner. In pursuance of the order of this Court dated 16.2.2006, the Housing Commissioner rejected the representation of the Society by order dated 16.9.2006. The Housing Commissioner held in the order that as per the Government Order dated 22.10.2002 the regularisation of only that land is permissible which has been purchased. 18 months before issuance of notification u/s 4. It was mentioned that notification u/s 28 of the 1965 Act was published on 28th November, 1998, hence the land of the petitioner's society is not covered by Government Order dated 22nd October, 2002, hence it cannot be regularised. The writ petitions have been filed by the petitioner praying for following reliefs:

"(i) Issue a writ, order or direction in the nature of certiorari to quashing the Government Order dated 22.10.2002 containing as (Annexure-5) to this writ petition.

(ii) Issue a writ, order or direction in the nature of certiorari to quashing the order dated 16.9.2006 passed by Awas Aayukt Lucknow, contain as (Annexure No. 10) to this writ petition.

(iii) Issue a writ, order or direction in the nature of mandamus directing the respondents to 60% development land to be given to the petitioner from the total area vested in the Society.

(iv) Issue a writ order or direction in the nature of mandamus directing the respondents to consider the sale-deed of the petitioner Registered on the basis of Notification of scheme in regularization.

(v) Issue a writ, order or direction in the nature of mandamus which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

(vi) To award the cost in favour of the petitioner in this writ petition."

6. The counter-affidavit has been filed both by the State Government as well as U.P. Awas Evam Vikas Parishad. The State Government in its counter-affidavit has pleaded that the State has been changing its policy on the basis of the practical experiences and looking to the need of hour. It is pleaded that after Government Order dated 2nd June, 1998, certain confusion and practical problems were noticed, hence Government Order dated 22.10.2002 was issued laying down new policy for regularisation of land of Registered Housing Cooperative Society in the scheme of U.P. Awas Evam Vikas Parishad. In its counter-affidavit the U.P. Awas Evam Vikas Parishad supported the Government Order dated 22.10.2002, it was stated that petitioner's land was not covered by the Government Order dated 22.10.2002, hence claim has rightly been rejected.

7. The Writ Petition No. 48641 of 2007 was dismissed by Division Bench of this Court vide judgment dated 5.10.2007. The Division Bench dismissed the aforesaid writ petition by following order dated 5.10.2007:

"Heard learned Counsel for the parties.

The exemption claimed by the petitioner has been denied on the ground that the

land in question has not been purchased before 18 months of the issuance of the notification dated 28th November, 1998 u/s 28 of Awas Evam Vikas Parishad Adhiniyam, 1965.

We do not find any illegality in the impugned order. The writ petition is dismissed."

8. Similarly, the other three writ petitions were also dismissed by this Court giving almost identical reasons.

9. Against the order passed by the Division Bench dated 5.10.2007, a Special Leave to Appeal (Civil) No. 25342 of 2007 was filed before the Apex Court. Similarly Special Leave to Appeal (Civil) were also filed by the petitioners of other three writ petitions in the Apex Court. All the Special Leave petitions were decided by judgment and order dated 1st September, 2010. The Apex Court set aside the judgment of the High Court observing that the High Court has not considered the issues raised in the writ petition. The judgment of the High Court dismissing the writ petition was set aside and the matter was remitted to the High Court for fresh disposal. It is useful to quote the order of the Apex Court:

"Leave granted.

These appeals are directed against orders passed by the Division Bench of Allahabad High Court dismissing the writ petitions filed by the appellants for issue of writ of mandamus to the respondents to extend them benefit of the policy of regularisation of land vested in the Registered Cooperative Housing Societies.

One of the grounds on which the appellants have challenged the orders of the High Court is that the writ petitions filed by them were dismissed without advertng to the legal issues raised therein.

We have heard learned Counsel for the parties and are satisfied that the impugned orders are liable to be set aside because the High Court has not considered the issues raised in the writ petitions and decided the same by recording the reasons which it was expected to do while exercising jurisdiction under Article 226 of the Constitution.

Consequently, the appeals are allowed. The impugned orders are set aside and the matters are remitted to the High Court for fresh disposal of the writ petitions filed by the appellants by passing speaking orders.

The parties are given liberty to file plea dings/additional pleadings and documents before the High Court within a period of two months from today."

10. After the matter was remitted by the Apex Court, the writ petitions have been heard and are being decided by this common judgment.

11. We have heard Sri K.N. Tripathi, learned Senior Advocate, Sri Anoop Trivedi, Sri Rashtrapati Khare, Sri G.K. Verma and Sri Kapil Tyagi for the petitioners. Sri

A.P. Srivastava appearing for the U.P. Awas Evam Vikas Parishad and Sri Suresh Singh, learned Additional Chief Standing Counsel appearing for the State.

12. Learned Counsel for the petitioners in support of the writ petition contended that the State Government had issued a Government Order dated 2nd June, 1998 providing for regularisation of land of Cooperative Societies which were purchased prior to issuance of notification u/s 4, the petitioners were entitled to get the benefit as was extended by the Government Order dated 2nd June, 1998 and the State Government could not have withdrawn the said benefit, by subsequent Government Order dated 22.10.2002. It is submitted that the Government Order dated 22.10.2002 takes away the vested right of the petitioners, hence the said Government order is not applicable on the purchase made prior to issuance of the Government Order. It is submitted that the Government Order dated 22.10.2002 at best may be prospective. It is submitted that the State Government having held out a promise to regularise the land of the Housing Cooperative Societies which were purchased prior to notification u/s 4, the State is now estopped from changing the policy. It is submitted that doctrine of promissory estoppel is attracted in the facts of the present case and the State Government cannot be allowed to change its policy which was earlier prevalent. It is further submitted that the executive orders issued by the State Government cannot be made retrospective nor it can effect earlier policy as was issued by the Government Order dated 2nd June, 1998. It is submitted that petitioners have purchased the land for the same purpose i.e., for providing residential accommodation to its members and the scheme notified by U.P. Awas Evam Vikas Parishad is also for the same purpose, hence the land of the petitioners were entitled to be regularised under the scheme as per the policy of the Government dated 2nd June, 1998.

13. Learned Additional Chief Standing Counsel appearing for the State submits that the State Government is fully entitled to take policy decisions from time to time and similarly it can amend its policy from time to time as required. It is submitted that the Government Order dated 22.10.2002 has been issued changing the earlier policy which was neither workable nor in the public interest. He submitted that the transaction which were completed prior to 22.10.2010 has not been annulled and the said Government Order was applicable for regularisation made of the land of Society subsequent to 22.10.2002. It is submitted that the petitioner's representation has rightly been rejected by the Housing Commissioner since they were not entitled for regularisation of their land which was not purchased 18 months before section 4 notification. It is submitted that Government has changed its policy after having practical experience in implementing the policy for last four years. Some of the short coming of the policy were already noted in the Government Order. He submits that petitioners are not entitled for relief, their land having not purchased 18 months prior to the issuance of notification u/s 28 of 1965 Act.

14. Sri A.P. Srivastava, learned Counsel for U.P. Awas Evam Vikas Parishad

adopted the submission raised by learned Additional Chief Standing Counsel. He submits that Housing Commissioner by giving cogent reasons has rejected the representation which need no interference by this Court in exercise of writ jurisdiction.

15. Learned Counsel for the parties have also placed reliance on various judgments of the Apex Court and this Court which shall be referred to while considering the submissions in detail.

16. From the submissions of learned Counsel for the parties and pleadings on record, following are the issues which arises for consideration in these writ petitions:

(i) Whether the State Government which had issued the Government Order dated 2nd June, 1998 extending the promise to regularise the land of Housing Cooperative Societies which were purchased prior to issuance of notification u/s 4 (of Land Acquisition Act) is justified in removing/changing the above policy by providing that for regularisation of land, the land should have been purchased 18 months prior to section 4 notification.?

(ii) Whether the principle of promissory estoppel is attracted in the facts of the case and on the said principles the Government Order dated 22.10.2002 deserves to be struck down.?

(iii) Whether petitioners are entitled to get regularisation of their land in the scheme of U.P. Awas Evam Vikas Parishad, namely, "Delhi Bulandshar Bye Pass Road, Bhumi Vikas Evam Grahasthan Yojna Ghaziabad" which was purchased prior to issuance of the notification u/s 28, dated 28th November, 1998.?

17. All the above issues being interrelated are being taken for consideration together.

18. U.P. Awas Evam Vikas Parishad notified the Housing scheme by the notifications dated 28.11.1998 u/s 28 and the notification dated 19th September, 2002 u/s 32(1) of the Act, 1963 published in U.P. Gazette on 12th October, 2002. Immediately, thereafter. Government Order dated 22.10.2002 was issued bringing substantial change in the earlier policy regarding regularisation of land of the Registered Housing Cooperative Society. A new policy for regularisation/absorption of land of Registered Housing Cooperative Societies was issued. Para. 2(1) and para. 3 of the Government Order is relevant which is quoted as below:

19. A perusal of the aforesaid Government Order indicates that societies whose land have been acquired by U.P. Awas Evam Vikas Parishad or Development Authorities can make an application for regularisation of its land provided it fulfil the conditions as laid down in the Government Order dated 22.10.2002. The Government Order indicates that regularisation or absorption of land of Registered Housing Cooperative Society is not automatic rather it is necessary that Housing Cooperative Society may make an application for absorption. Requirement of making an application has been consistently provided since there

may be cases of housing cooperative societies who may not be interested in regularisation of their land and they may be satisfied for compensation to be received consequent to the acquisition of their land.

20. The Government order dated 2nd June, 1998, the earlier Government Orders and subsequent Government Orders including the Government Order dated 22.10.2002 are the Government Orders laying down policy pertaining to regularisation of land of registered housing co-operative societies. It is well settled that policy decision taken by the State can be changed from time to time. It is useful to refer the preposition, as laid down in the judgment of Apex Court in the case of Dhampur Sugar (Kashipur) Ltd. Vs. State of Uttranchal and Others, that the State has not only the power to frame a particular policy but it has untrammelled power to change, re-change, adjust and readjust the policy. Following was laid down in paragraph 75:

"The State and its instrumentality has also power to change policy. The executive power is not limited to frame a particular policy. It has untrammelled power to change, rechange, adjust and readjust the policy taking into account the relevant and germane considerations. It is entirely in the discretion of the Government how a policy should be shaped. It should not, however, be arbitrary, capricious or unreasonable."

21. The petitioner in support of writ petition has relied on doctrine of promissory estoppel. Before we proceed further to consider the submissions of learned Counsel for the petitioner and the issues raised, it is necessary to recapitulate the basic ingredients of doctrine of promissory estoppel and to find out as to when the doctrine of promissory estoppel is to be invoked.

22. The promissory estoppel is not strictly the estoppel as contemplated u/s 115 of the Evidence Act but is an equitable doctrine enforced against the Government or its instrumentalities estopping it resiling from its promise or representation on the basis of which promisee has altered his position. The doctrine was enunciated and explained in Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., in which case following was laid down in paragraph 23:

"23. Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an ex parte appraisalment of the circumstances in which the obligation has arisen."

23. The doctrine has been elaborated and firmly recognised by the Apex Court in the celebrated judgment of Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, It was held that since doctrine of promissory estoppel was an equitable doctrine, it must yield when the equity so requires. It was also held that if it can be shown by Government that having regard to the facts as they have transpired, it would be inequitable to hold the Government to the

promise made by it. The Court would not raise an equity in favour of the promisee. Following was laid down in paragraph 24:

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

In the same paragraph it is further observed that:

"...The Government cannot, as Shah, J., pointed out in the Indo-Afghan Agencies case, claim to be exempt from the liability to carry out the promise "on some indefinite and undisclosed ground of necessity or expediency", nor can the Government claim to be the sole judge of its liability and repudiate it "on an ex parte appraisal of the circumstances". If the Government wants to resist the liability, it will have to disclose to the Court what are the facts and circumstances on account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether those facts and circumstances are such as to render it inequitable to enforce the liability against the Government. Mere claim of change of policy would not be sufficient to exonerate the Government from the liability: the Government would have to show what precisely is the changed policy and also its reason and justification so that the Court can judge for itself which way the public interest lies and what the equity of the case demands. It is only if the Court is satisfied, on proper 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 not act on the mere ipse dixit of the Government, for it is the Court which has to decide and not the Government whether the Government should be held exempt from liability. This is the essence of the rule of law. The burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the Court would insist on a highly rigorous standard of

proof in the discharge of this burden."

24. The same proposition was again reiterated in Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., Following was laid down in paragraph 12:

"12. There can therefore be no doubt that the doctrine of promissory estoppel is applicable against the Government in the exercise of its Governmental, public or executive, functions and the doctrine of executive necessity or freedom of future executive action cannot be invoked to defeat the applicability of the doctrine of promissory estoppel."

25. The question again came for consideration before the Apex Court in Kasinka Trading and another, etc. etc. Vs. Union of India and another, In the said case, the action of the Union of India for withdrawing a time bound exemption notification for import of P.V.C. resin was under challenge. The exemption was to continue in force up to 31.3.1981 but before the expiry of the time period in the notification, the withdrawal notification was issued on 16.10.1980. It was contended before the High Court as well as before the Apex Court that Government must be held bound by the representation it had made in the exemption notification and it was estopped on the basis of promissory estoppel to go back on its promise. Elaborating the doctrine of promissory estoppel it was held that withdrawal of exemption in public interest was justified and the appellant could not invoke the doctrine of promissory estoppel. Following was laid down in paragraphs 11, 12, 21 and 24:

"11. The doctrine of promissory estoppel or equitable estoppel is well established in the administrative law of the country. To put it simply, the doctrine represents a principle evolved by equity to avoid injustice. The basis of the doctrine is that where any party has by his word or conduct made to the other party an unequivocal promise or representation by word or conduct, which is intended to create legal relations or effect a legal relationship to arise in the future, knowing as well as intending that the representation, assurance or the promise would be acted upon by the other party to whom it has been made and has in fact been so acted upon by the other party, the promise, assurance or representation should be binding on the party making it and that party should not be permitted 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 or are intended to take place between the parties.

12. It has been settled by this Court that the doctrine of promissory estoppel is applicable against the Government also particularly where it is necessary to prevent fraud or manifest injustice. The doctrine, however, cannot be pressed into aid to compel the Government or the 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". There is preponderance of judicial opinion that to invoke the doctrine of promissory estoppel clear, sound and positive foundation must be laid in the

petition itself by the party invoking the doctrine and that bald expressions, without any supporting material, to the effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the Government would not be sufficient to press into aid the doctrine. In our opinion, the doctrine of promissory estoppel cannot be invoked in the abstract and the Courts are bound to consider all aspects including the results sought to be achieved and the public good at large, because while considering the applicability of the doctrine; the Courts have to do equity and the fundamental principles of equity must for ever be present to the mind of the Court, while considering the applicability of the doctrine. The doctrine must yield when the equity so demands if it can be shown having regard to the facts and circumstances of the case that it would be inequitable to hold the Government or the public authority to its promise, assurance or representation.

21. The power to grant exemption from payment of duty, additional duty etc. under the Act, as already noticed, flows from the provisions of section 25(1) of the Act. The power to exempt includes the power to modify or withdraw the same. The liability to pay customs duty or additional duty under the Act arises when the taxable event occurs. They are then subject to the payment of duty as prevalent on the date of the entry of the goods. An exemption notification issued u/s 25 of the Act had the effect of suspending the collection of customs duty. It does not make items which are subject to levy of customs duty etc. as items not leviable to such duty. It only suspends the levy and collection of customs duty, etc., wholly or partially and subject to such conditions as may be laid down in the notification by the Government in "public interest". Such an exemption by its very nature is susceptible of being revoked or modified or subjected to other conditions. The supersession or revocation of an exemption notification in the "public interest" is an exercise of the statutory power of the State under the law itself as is obvious from the language of section 25 of the Act. Under the General Clauses Act an authority which has the power to issue a notification has the undoubted power to rescind or modify the notification in a like manner. From the very nature of power of exemption granted to the Government u/s 25 of the Act, it follows that the same is with a view to enabling the Government to regulate, control and promote the industries and industrial production in the country. Notification No. 66 of 1979 in our opinion, was not designed or issued to induce the appellants to import P.V.C. resin. Admittedly, the said notification was not even intended as an incentive for import. The notification on the plain language of it was conceived and issued on the Central Government "being satisfied that it is necessary in the public interest so to do". Strictly speaking, therefore, the notification cannot be said to have extended any "representation" much less a promise" to a party getting the benefit of it to enable it to invoke the doctrine of promissory estoppel against the State. It would bear repetition that in order to invoke the doctrine of promissory estoppel, it is necessary that the promise which is sought to be enforced must be shown to be an unequivocal promise to the other party intended to create a legal relationship and that it was acted upon

as such by the party to whom the same was made. A notification issued u/s 25 of the Act cannot be said to be holding out of any such unequivocal promise by the Government which was intended to create any legal relationship between the Government and the party drawing benefit flowing from of the said notification. It is, therefore, futile to contend that even if the public interest so demanded and the Central Government was satisfied that the exemption did not require to be extended any further, it could still not withdraw the exemption.

24. It needs no emphasis that the power of exemption u/s 25(1) of the Act has been granted to the Government by the Legislature with a view to enabling it to regulate, control and promote the industries and industrial productions in the country. Where the Government on the basis of the material available before it, bona fide, is satisfied that the "public interest" would be served by either granting exemption or by withdrawing, modifying or rescinding an exemption already granted, it should be allowed a free hand to do so. We are unable to agree with the learned Counsel for the appellants that Notification No. 66 of 1979 could not be withdrawn before 31.3.1981. First, because the exemption notification having been issued u/s 25(1) of the Act, it was implicit in it that it could be rescinded or modified at any time if the public interest so demands and secondly it is not permissible to postpone the compulsions of "public interest" till after 31.3.1981 if the Government is satisfied as to the change in the circumstances before that date. Since, the Government in the instant case was satisfied that the very public interest which had demanded a total exemption from payment of customs duty now demanded that the exemption should be withdrawn it was free to act in the manner it did. It would bear a notice that though Notification No. 66 of 1979 was initially valid only up to 31.3.1979 but that date was extended in "public interest", we see no reason why it could not be curtailed in public interest. Individual interest must yield in favour of societal interest."

26. To the same effect are the judgments of the Apex Court in Arvind Industries and others Vs. State of Gujarat and others, and D.C.M. Ltd. and Another Vs. Union of India (UOI) and Another, In D.C.M. Ltd. (supra), the Central Government sanctioned a scheme in November, 1975 providing incentive to new sugar factories and also to those sugar factories who had applied for and completed their expansion projects during the period 1.11.75 to 20.10.80. The incentives consisted partly of higher percentage of levy-free sugar quota and partly of concessions in the excise duty. The Central Government w.e.f. 17.12.1979 again modified the sugar policy to provide for partial control with dual pricing as was the situation prior to August 16, 1978. The Government after examining the various altered parameters for revising the scheme announced a revised scheme to provide incentives to the new sugar factories and expansion projects. This revised scheme came into effect from the sugar year 1980-81. The new scheme of the year 1980 was made applicable even to those industries who were otherwise entitled to the benefit of the scheme announced in the year 1975. The appellants after completing the expansion projects at the two places,

on 6.8.80 and 13.8.80 applied for necessary eligibility certificate for additional free-sale sugar entitlements as per the "incentives announced. The respondents allowed the incentives as per the revised 1980 scheme. However, the appellants asserted that the incentives as per the scheme announced in the year 1975 must be given to them. A writ petition was filed by the appellant which was dismissed by the High Court and an appeal was filed in the Apex Court which too was dismissed. The Apex Court laid down following in paragraphs 6, 7 and 9:

"6. We have considered the rival submissions. It is well-settled that the doctrine of promissory estoppel represents a principle evolved by equity to avoid injustice and, though commonly named promissory estoppel, it is neither in the realm of contract nor in the realm of estoppel. The basis of this doctrine is the interposition of equity which has always, proved to its form, stepped in to mitigate the rigour of strict law. It is equally true that the doctrine of promissory estoppel is not limited in its application only to defence but it can also found a cause of action. This doctrine is applicable against the Government in the exercise of its Governmental public or executive functions and the doctrine of executive necessity or freedom of future executive action, cannot be invoked to defeat the applicability of this doctrine. It is further well-established that the doctrine of promissory estoppel must yield when the equity so require. If it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be unequitable 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 (vide Godfrey Philips case).

7. In this case we have found that the Government before refusing the incentive scheme of the year 1975 have taken into account various factors including the decontrol of sale of sugar for the period from 16.8.78 to 17.12.79. Further if the prayer of the appellants were to be allowed, several lakhs of quintals of sugar will have to be released as incentive levy-free sugar which otherwise meant for public distribution system. We agree with the learned Judges of the High Court when they observed that the "petitioners who availed of the resulting benefit due to decontrol cannot in all fairness lay claim to be restored the benefit of the incentives in full now over again though the basic premise became non-existent. The benefit under the subsequent scheme in force from November 15, 1980 has already been accorded to them in full measure".

9. Taking all these factors into consideration, we have no doubt that on the facts of this case, the Principle of Promissory Estoppel has no application at all. The judgment relied on by the learned Senior Counsel for the appellants, namely, Godfrey Philips case supports the case of the respondents on facts. In the result

the appeal fails and is accordingly dismissed. No costs."

27. In *Sales Tax Officer and Another Vs. Shree Durga Oil Mills and Another*, the claim was made by the respondent mill on the basis of Industrial Policy Resolution dated 18.7.1979 of the Government of Orissa to the effect that sales tax was not payable by a new industry on the purchase of raw materials for the period prescribed in the industrial policy resolution. The case of the writ petitioner before the High Court was that it set up its industry pursuant to industrial policy resolution. It obtained huge loans from United Bank of India hence, it was entitled for tax exemption in terms of the IPR. The High Court allowed the writ petition on the ground that in the IPR, a clear and unequivocal promise had been made. The appeal was filed, wherein the Apex Court reversed the judgment of the High Court and laid down following in paragraphs 14, 17, 22 and 24:

"14. Moreover, the Government may change its industrial policy if the situation so warrants. Merely because, the I.P.R. as announced for the period 1979-1983, it does not mean that the Government cannot amend or change the policy under any circumstance. As a matter of fact, in this case the Government had published another I.P.R. on 31.7.1980 modifying the earlier I.P.R. The vires of the Second I.P.R. has not been challenged. The two I.P.Rs. have not been issued under any particular statute. A general announcement was made by the Government that certain economic policy would be pursued for the acceleration of the growth of the industrial sector in the State of Orissa. For that purpose, a package of measures for stimulating the growth of industries were announced. It was specifically made clear in the I.P.R. dated 18.7.1979 that:

"Government orders will issue laying down the mode of administering the concessions and incentives by departments concerned."

17. Moreover, it is well settled that any I.P.R. can be changed if there is an overriding public interest involved. It has been stated on affidavit by the State of Orissa that after a package of incentives was given to the industries, the Government was faced with severe resource crunch. On a review of its financial position, it was felt that for the sake of the economy of the State, it was necessary to limit the scope of exemption granted to various industries. Accordingly, further notifications were issued u/s 6 of the Orissa Sales Tax Act from time to time. Because of this new perception of the economic scenario, the scope of the earlier notifications was restricted by subsequent notifications issued u/s 6. This also led to issuance of the second I.P.R. dated 31.7.1980.

22. The view taken by its Court in *Kasinka's* case was reiterated by a Bench of three-judges in the case of *Shrijee Sales Corporation and Another Vs. Union of India (UOI)*, It was laid down in that case that the determination of applicability of promissory estoppel against the Government hinges upon balance of equity or public interest. In case there is a supervening public equity, the Government would be allowed to change its stand; it would then be able to withdraw from

representation made by it which induced persons to take certain steps which may have gone adverse to the interest of such persons on account of such withdrawal. Once public interest was accepted as the superior equity which can override individual equity, the aforesaid principle should be applicable even in cases where a period had been indicated for operation of the promise. In that case, a notification was issued exempting customs duty on P.V.C. By a second notification the exemption was withdrawn. The Court held that the facts of the case revealed that there was a supervening public interest and the Government was competent to withdraw the first notification without giving any prior notice to the respondent.

24. In our opinion, the plea of change of policy trade on the basis of resource crunch should have been sufficient for dismissing the respondent's case based on the doctrine of promissory estoppel. Public interest demanded modification of the earlier I.P.R."

28. The principles were again reiterated in *Bannari Amman Sugars Ltd. Vs. Commercial Tax Officer and Others*, The appellants questioned legality of the order dated 1.9.1988 directing discontinuance of purchase tax exemption in case of mills which exceeded the ceiling of Rs. 300 lakhs during the period of five years, and Government letter dated 28.12.1988 which made the order dated 1.9.1988 operative retrospectively from 1.4.1988. The writ petition was dismissed by the High Court negating the plea of promissory estoppel against which an appeal was filed. The Apex Court laid down in the said case that there is a discretion to change the policy in exercise of the executive powers. However, the change in policy must be made fairly and not arbitrarily. Following was laid down in paragraphs 9 and 20:

"9. While the discretion to change the policy in exercise of the executive power, when not trammelled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heart beat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for discernible reasons, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualized than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness.

20. In *Shrijee Sales Corporation and another v. Union of India* 1897 (3) SCC 398, it was observed that once public interest is accepted as the superior equity which

can override individual equity the principle would be applicable even in cases where a period has been indicated for operation of the promise. If there is a supervening public equity, the Government would be allowed to change its stand and has the power to withdraw from representation made by it which induced persons to take certain steps which may have gone adverse to the interest of such persons on account of such withdrawal. Moreover, the Government is competent to rescind from the promise even if there is no manifest public interest involved, provided no one is put in any adverse situation which cannot be rectified. Similar view was expressed in *M/s. Pawan Alloys and Casting Pvt. Ltd., Meerut etc, etc. Vs. U.P. State Electricity Board and others*, and in *Sales Tax Officer and Another Vs. Shree Durga Oil Mills and Another*, it was further held that the Government could change its industrial policy if the situation so warranted and merely because the resolution was announced for a particular period, it did not mean that the Government could not amend and change the policy under any circumstances. If the party claiming application of the doctrine acted on the basis of a notification it should have known that such notification was liable to be amended or rescinded at any point of time, if the Government felt that it was necessary to do so in public interest."

29. A Bench of three Judges in *Shree Sidhballi Steels Ltd. and Others Vs. State of U.P. and Others*, after considering all relevant decisions on the subject, had laid down following in paragraphs 32 and 33:

"32. The doctrine of promissory estoppel is by now well recognized and well defined by catena of decisions of this Court. 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 229 of the Constitution. The rule of promissory estoppel being an equitable doctrine has to be molded to suit the particular situation. It is not a hard and fast rule but an elastic one, the objective of which is to do justice between the parties and to extend an equitable treatment to them. This doctrine is a principle evolved by equity, to avoid injustice and though commonly named promissory estoppel, it is neither in the realm of application of doctrine of promissory estoppel the promisee must establish that he suffered in detriment or altered his position by reliance on the promise.

33. Normally, the doctrine of promissory estoppel is being applied against the Government and defense based on executive necessity would not be accepted by the Court. However, 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.

Where public interest warrants, the principles of promissory estoppel cannot be invoked. Government can change the policy in public interest. However, it is well settled that taking cue from this doctrine, the authority cannot be compelled to do something which is not allowed by law or prohibited by law. There is no promissory estoppel against the settled proposition of law. Doctrine of promissory estoppel cannot be invoked for enforcement of a promise made contrary to law, because none can be compelled to act against the statute. Thus, the Government or public authority cannot be compelled to make a provision which is contrary to law."

30. At this juncture, it is relevant to note that certain other judgments of the Apex Court which have been relied upon by the learned Counsel for the parties in support of their respective submissions.

31. Learned Counsel for the petitioner has referred to a judgment of the Apex Court in Ghaziabad Sheromani Sahkari Avas Samiti Ltd. and another etc. Vs. State of U.P. and others etc., In the said case five cooperative societies have challenged the notifications u/s 4 read with section 17 where the land of cooperative society was acquired. The writ petition was dismissed by the High Court against which the societies approached the Apex Court. In the said case the Apex Court examined the case of the petitioner for release of the land. The Apex Court held that release of about 20 acres of land for five housing co-operative societies shall be sufficient to meet the requirement of the members of the societies. The said judgment of the Apex Court was on its own facts and no such preposition was laid down in the said case which may help the petitioners in the present case.

32. The petitioner also relied on certain judgments for the preposition that executive orders can have no retrospective effect nor it can destroy any right which has been crystallized. Reliance has been placed of the judgment of Apex Court in Uday Pratap Singh and Others Vs. State of Bihar and Others, . The Apex Court in the said case laid down following in paragraphs 6:

"6. By a catena of decisions of this Court, it is now well-settled that by an executive order the statutory rules cannot be whittled down nor can any retrospective effect be given to such executive order so as to destroy any right which become crystallized."

33. Similar preposition were laid down by the Apex Court in Govind Prasad Vs. R.G. Parsad and Others, The petitioners have also placed reliance on judgment of Apex Court in State of Orissa and Others Vs. Mangalam Timber Products Ltd., In the said case respondents had established an industry. The respondents consumed the raw material, subsequently the State Government proposed to make a revision with retrospective effect the price of raw material which decision was challenged and struck down by the Apex Court. The Apex Court has affirmed the judgment of High Court and laid down following in paragraph No. 4:

"4. Having heard the learned Counsel for the parties, we are satisfied that no

case is made out for interference with the judgment of the High Court. Before the High Court, the principal plea of the respondent was that there was no contract in writing and therefore the applicability of the principle of promissory estoppel was not established. The High Court has rightly discarded this plea. To attract the applicability of the principle of estoppel it is not necessary that there must be a contract in writing entered into between the parties. We are not satisfied even prima facie that it was a case of an error committed by the State Government of which it was not aware. The State of Orissa should have, while holding out the representation, taken into consideration the fact—who will have to do re-plantation and that the permission of the Government of India would be needed for the purpose. The State cannot take advantage of its own omission. The State Government having persuaded the respondent to establish an industry and respondent having acted on the solemn promise of the State Government, purchased the raw material at a fixed price and also sold its products by pricing the same taking into consideration the price of raw material fixed by the State Government and supplied; the State Government cannot be permitted to revise the terms for supply of raw material adversely to the interest of the respondent and effective from a back date and place the respondent in a situation which it will not be able to resolve. The respondent could not have revised their price from a back date and recovered it from innumerable consumers to whom their finished products were supplied at a fixed price."

34. The above case was on its own facts and does not help the petitioners in this case.

35. The judgment of Apex Court in Mahabir Vegetable Oils Pvt. Ltd. and Another Vs. State of Haryana and Others, was a case where the Apex Court laid down that what is granted by the State can also be withdrawn by the Government except in cases where the principles of promissory estoppel applies. It is useful to quote paragraphs 35 and 36:

"35. The said decision itself is an authority for the proposition that what is granted can be withdrawn by the Government except in the case where the doctrine of promissory estoppel applies. The said decision is also an authority for the proposition that the promissory estoppel operates on equity and public interest.

36. In Bannari Amman Sugars Ltd. v. C.T.O. it was stated: (SCC p. 637, para. 19)

"19. In order to invoke the doctrine of promissory estoppel clear, sound and positive foundation must be laid in the petition itself by the party invoking the doctrine and bald expressions without any supporting material to the effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the Government would not be sufficient to press into aid the doctrine. The Courts are bound to consider all aspects including the results sought to be achieved and the public good at large, because while considering the applicability of the doctrine, the Courts have to do equity and the

fundamental principles of equity must for ever be present in the mind of the Court.""

36. The judgment of Apex Court in MRF Ltd., Kottayam Vs. Assistant Commissioner (Assessment) Sales Tax and Others, have been cited, referring to the earlier judgment of the Apex Court, following was observed in paragraphs 33, 34, 35, 36:

"33. In a recent judgment in the case of Mahabir Vegetable Oils Pvt. Ltd. and Another Vs. State of Haryana and Others, this Court in para. 25 observed that "it is beyond any Cavil that the doctrine of promissory estoppel operates even in the legislative field." This was in connection with a statutory notification under the Haryana General sales Tax Act.

34. In Kasinka Trading's case (supra) and Rom Industries v. State of Jammu and Kashmir 2005 (7) SCC 348, on which reliance has been placed by the learned Counsel for the respondent do not disturb the settled position in law that where a right has already accrued, for instance, the right to exemption of tax for a fixed period and the conditions for that exemption have been fulfilled, then the withdrawal of the exemption during that fixed period cannot effect the already accrued right. Of course, overriding public interest would prevail over a plea based on promissory estoppel, but in the present case there is not even a whisper of any overriding public interest or equity. Notification SRO 38/98 was an amendment and not a clarification of SRO1729/93 and was expressly made prospective w.e.f. 15.1.1998.

35. Besides, a plea of promissory estoppel is in the nature of an equitable plea and must be determined in the facts and circumstances of each case where it is raised. In the case of Rom Industries (supra) the deciding factor was that the exemption notification in question had been itself held to be unconstitutional in an earlier case as violative of Articles 301 and 304 of the Constitution of India and, therefore, could not form the basis of any right. The observation made in para. 8 of that judgment have to be read in that context. Besides, the State Government in that case had no option except to withdraw the notification. It is so observed in that judgment in para. 9:

"The State Government, in view of the decision of this Court had no other option but to place edible oils in the Negative List. The questions whether Shree Mahavir Oil Mills 1996 (11) SCC 39, has been rightly decided or not and whether it is in conflict with the principles enunciated in Video Electronics, 1990 (3) SCC 87, are moot. But while the decision stands, the State Government is bound to comply with it."

36. In Kasinka Tading's case (supra), the notification in question was a customs exemption Notification for a fixed period. The judgments in Pournami Oils Mills's case (supra) and Shri Bakul Oil Industries's case (supra) were distinguished in the said case on the ground that the notifications in those cases were incentive notifications. It was observed in para. 27:

"Again in Bakul Oil Industries (supra) it was the incentive to set up industries in a conforming area that the exemption had been granted and the Court held that the Government could withdraw an exemption granted by it earlier only if such withdrawal could be made without offending the rule of promissory estoppel and without depriving an industry entitled to claim exemption for the entire specified period for which exemption had been promised to it at the time of giving incentive. Both these cases therefore cannot advance the case of the appellant and are distinguishable on facts because the exemption notification u/s 25 of the Act which was issued in this case did not hold out any incentive for setting up of any industry to use P.V.C. resins and on the other hand had been issued in exercise of the statutory powers, in public interest and subsequently withdrawn in exercise of the same powers again in public interest. In our opinion, no justifiable prejudice was caused to the appellants in the absence of any unequivocal promise by the Government not to act and review its policy even if the necessity warranted and the "public interest" so demanded. Thus, in the facts and circumstances of these cases, the appellants cannot invoke the doctrine of promissory estoppel to question the withdrawal notification issued u/s 25 of the and Act."

37. Having noted the preposition of law as laid down by the Apex Court in various judgments, now we have to apply the said preposition on the facts of the present case. Whether the State due to principles of promissory estoppel is estopped from changing its policy which were earlier issued on 2nd June, 1998 and whether any vested right has been accrued to the petitioners under the Government Order dated 2nd June, 1998 which could not have been taken away by subsequent Government Order dated 22.10.2002? As noted above, the Government is free to frame its policy and change the same from time to time. Even policy which was issued on 2nd June, 1998 on the issue of regularisation of land in the land acquisition proceedings was issued changing the earlier Government Orders dated 9.4.1980 and 25.4.1984 as noted above. The Government is the best judge to review its policy from time to time so that it may best serve the society and advance the public interest. The Government, thus, was not estopped from changing its policy of regularisation of land and the substantial change brought by Government Order dated 22.10.2002 was well within the domain of the State Government.

38. The Submission that petitioners have acquired a vested right by Government Order dated 2nd June, 1998 to get their land regularised which was acquired prior to notification u/s 4 needs to be answered now.

39. We have already noted that under the Government Order dated 22.10.2002, there is no automatic regularisation of land of a housing society. The scheme was notified u/s 32. The scheme u/s 32 was notified only on 19th October, 2002, thus, acquisition of the land of cooperative societies was declared on 19.10.2002. The Government Order was issued on 22.10.2002 i.e., within three days. There is no automatic absorption/regularisation of land of housing society under

Government Orders issued from time to time. Various conditions as laid down in different Government Orders have to be fulfilled before regularising the land in the scheme. The regularisation/absorption of the land has to be done by the concerned development authorities or the U.P. Awas Evam Vikas Parishad, on fulfillment of the conditions of the Government Order. Thus, it cannot be said that by mere issuance of the Government Order dated 2nd June, 1998 any right was vested in the petitioner. There is no case that under the Government Order dated 2.6.1998 any regularisation of land of petitioner was done which is sought to be taken away by Government Order dated 22.10.2002. After issuance of the Government Order dated 22.10.2002 notice was issued to the petitioner in Writ Petition No. 48641 of 2007 on 27th October, 2003 and the process for consideration of the claim for regularisation had started.

40. Thus, we conclude that there is no vested right accrued to the petitioner under the Government Order dated 2nd June, 1998. The executive order cannot be given retrospective effect is the submission which have been made by the learned Counsel for the petitioner. There is no dispute to the preposition that the executive order cannot be given any retrospective effect nor any vested right can be taken away by an executive order by the State Government. The Government Order dated 22.10.2002 is prospective in nature and applies for the claim of regularisation/absorption which were to be under taken after 22.10.2002, any transaction which was already completed prior to issuance of Government order dated 22.10.2002 was not effected nor was annulled.

41. In taking above view, we are fully supported by the Full Bench Judgment of this Court in the case of Anand Kumar Sharma Vs. State of U.P. and Others, (in which one of us Hon"ble Ashok Bhushan was also a member).

42. Before the Full Bench, two questions were referred which have been noted in the judgment which were to the following effect:

"1. Whether the application of the petitioner dated 25.7.2005 submitted for grant of freehold right on the basis of the Government Order dated 1.12.1998 (Paragraph 7) and the Government Order dated 10.12.2002 (paragraph 5) was entitled to be considered in accordance with the Government policy as was in existence on the date of application or the Government policy as amended by Government Order dated 4.8.2006, was to be taken into consideration while deciding the application on 18.12.2006?

2. Whether the Division Bench judgment in Dr. O.P. Gupta and Others Vs. State of U.P. and Another, lays down the correct law?"

43. After considering the submission of the parties and noticing the relevant judgments on the subject, the Full Bench answered the aforesaid questions and held that the consideration shall be made in accordance with the subsequent Government Order. In the said case, the Full Bench had occasion to consider the concept of vested right. The Full Bench also laid down that policy decision can be changed by the State Government from time to time. Full Bench answered the

questions in paragraphs 46 of the judgment which is quoted below:

"In view of the foregoing discussions, our answer to the abovenoted two questions are:

(1) The application of the petitioner dated 25.7.2005 submitted for grant of free hold right on the basis of the Government Orders dated 1.12.1998 and 10.12.2002 was entitled to be considered in accordance with the Government's policy as was in existence at the time of passing of the order. The Government Order dated 4.8.2006 was rightly relied on by the Collector while rejecting the application on 18.12.2006.

(2) The Division Bench judgment in Dr. O.P. Gupta's case (supra) does not lay down the correct law insofar as it holds that the application for grant of freehold right is to be considered as per the Government policy as was in existence on the date of making application for grant of freehold right."

44. In view of the foregoing discussion, we thus, conclude that doctrine of promissory estoppel is not applicable in the present case, the State was fully entitled to change its policy from time to time and the Government Order dated 22.10.2002 was well within the power of the State Government. The petitioners had not acquired any vested right under the Government Order dated 2.6.1998 nor the present case is a case of taking away any vested right of the petitioners. We do not find any infirmity in the Government Order dated 22.10.2002 and the decision of Housing Commissioner dated 16.9.2006 which may warrant any interference in exercise of writ jurisdiction. The petitioners are not entitled for any relief in these writ petitions. All the writ petitions are dismissed. Parties shall bear their own costs.