

(1993) 06 SHI CK 0013
In the High Court Of Himachal Pradesh
Case No : Writ Petition No. 337 of 1992

Bhagat Singh Negi and Others

APPELLANT

Vs

H.P. Housing Board and Others

RESPONDENT

Date of Decision : 11-06-1993

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226
Evidence Act, 1872 — Section 115
Himachal Pradesh Housing Board (Allotment, Management and Sales of Houses/Flats)
Regulations, 1973 — Regulation 1
Himachal Pradesh Housing Board Act, 1972 — Section 25, 3, 53

Citation : AIR 1994 HP 60

Hon'ble Judges : Lokeshwar Singh Panta, J; D.P. Sood, J

Bench : Division Bench

Advocate : D.D. Sood and Anu Sharma, for the Appellant; K.D. Sood, J.R. Thakur and Om Prakash Sharma, A.A.G., for the Respondent

Final Decision : Partly Allowed

Judgement

D. P. Sood, J.—The petitioners seek the issuance of an appropriate writ, order or direction to the respondents prohibiting and restraining respondent No. 1, H. P. Housing Board (shortly hereinafter referred to as "the Board"), from converting the use of the area, shown in Annexure-PA of the Board at Sanjauli for construction of residential or commercial buildings, which was kept reserved for community facilities like play ground and park etc. in the original lay-out plan. They have also sought a direction to respondent No. 1 to provide facilities as promised by it at the time of advertisement for the sale of plots and constructed flats in Sanjauli under its Housing Scheme.

2. The Board acquired land in Sanjauli from the Government in the year 1977-78 against payment with a view to undertake works for the framing and execution of Housing Scheme. Under the Scheme the Board carved out certain plots and separate land for sale of plots and constructed flats. The constructed flats pertained to three categories of persons, namely; (i) EWS (Economically Weaker

Sections); (ii) LIG (Low Income Group); and (iii) MIG (Middle Income Group). The Board advertised the sale of the plots and constructed flats which allotment was governed by the H. P. Housing Board (Allotment, Management and Sales of Houses/Flats) Regulations, 1973, (shortly referred to as "the 1973 Regulations"), framed under the provisions of the Housing Board Act, 1972 (shortly referred to as "the Act").

3. Under the Scheme, petitioners Nos. 2 to 4 were allotted flats directly by the Board. However, petitioner No. 1 had purchased flat from Smt. Mandhir Sony on 3-8-1988 after obtaining permission for transfer from the Board. Many other persons besides petitioners applied for and consequently allotted the plots and flats etc. in this colony known as "Sanjauli Housing Board Colony".

4. The Board is a corporate Body having perpetual succession and a common seal. It can sue and be sued in its own name in view of Section 3 of the Act. Also considering the powers and duties of the Board to undertake the Housing Scheme in view of Section 25 of the Act, there is a pervading control of the State Government in the management and execution of works by the Board and any other matters including financial control. The Board is, thus, a "State" within the meaning of Article 12 of the Constitution of India and as such amenable to writ jurisdiction.

5. The case of the petitioners is that land measuring about 1000 sq. metres as shown in Annexure-PA was reserved for community facilities; that the Board had already recovered the costs of the land inclusive of this area plus development charges and costs for providing tank, sewerage pipes, street-lights and common path etc. as also for providing community facilities for the allottees of the houses in this Sanjauli Housing Colony. The petitioners further assert that the Board despite having assured to provide community facilities, like School, Dispensary, Playground etc. including an open ground space to the residents of the aforesaid colony, did not fulfil its promise. The residents of the aforesaid colony formed an Association known as Housing Colony Welfare Association of which they are the members. The Association repeatedly approached the Board for providing the community facilities (Ex. PC, dated 21-6-91 and Ex. PE dated 29-2-1992 as also by attending Board's meetings held in between this period) but remained unsuccessful. Later being surprised of the change of the purpose in the middle of March 1992, again requested the Board to stop the building work on the site in question and instead provide community facilities thereupon but of no avail.

6. The petitioners further assert that the lay-out plan (Annexure-PA) was approved by the State Government by publication in the Official Gazette as provided for in the Act, According to them the activities of the Board were partly financed by the Housing Urban Development Corporation (for short HUDCO) on the condition that sufficient space would be left in the colony as designed. It is also asserted that one copy of the lay-out plan (Annexure-PA) was sent to HUDCO and another copy to the Director, Town and Country Planning -- respondent No. 2. Both, HUDCO as also respondent No. 2 in exercise of the

powers under the H. P. Town and Country Planning Act, 1977 (shortly referred to as the Town and Country Planning Act), approved the plan which was in consonance with modern architectural requirement and Town Development Planning which requires that there should be an ample provision for community facilities like park(s), open space for garden and plantation etc. in the interest of ecology and environment.

7. Petitioners alleged that the Board converted the portion of the land meant for community facilities to that of the construction of multi-storeyed buildings which not only endangered the ecology and environment of the area but also made the other flats unfit for human habitation as the proper sunlight and clean air etc. has been blocked. Further they alleged that additional burden on the sewerage disposal system would be placed and with the provisions of more housing/commercial accommodation, more pressure has been put on health and sanitation facilities. This conversion has been challenged by the Association through, the petitioners who are the residents of Sanjauli Housing Colony on the ground that it is contrary to the provisions of the Act and the Scheme sanctioned thereunder and the legislative intent to protect and preserve the environment by reserving the space for the community facilities for the general public as also the terms and conditions of the agreement entered into between them and the Board.

8. The Board has resisted and contested the petition by contending that the petitioners have not come with clean hands in this Court and they have suppressed the real facts. It is pointed out that the Board got executive sanction of the Government amounting to Rs.96,64,480/- for the construction of 40 category II Class flats under Self Financing Scheme, Sanjauli, vide letter dated 27-7-1991 (Annexure R-1). Tender(s) (Annexure R-2) for construction of 32 category II flats were invited in the month of September 1991 and they were finalised in January 1992, (Annexure R-3); that the contractor undertook levelling work in February 1992 and started/ raised the construction above the plinth level. They further contended that the pillars of one block have been casted and the work is in progress of the second block and the total expenditure to the tune of Rs. 5.7 lacs have been incurred up to 22-5-1992. (Petition was filed on 18-5-1992). Besides, it is pointed out that the respondent No. 1-Board, has procured material against the project worth Rs. 10.7 lacs. According to the Board only 920 sq. metres will come under construction of the two blocks whereas the adjoining land to the extent of more than 1000 sq. metres has been earmarked for the community facilities Which is being developed by raising terraces as per para 7.2.2 of the Interim Development Plan for Shimla Planning Area as per marginal notes in the plan (Annexure R-4). Various photographs showing the work in progress and pointing out the location of the flats belonging to the petitioners have also been annexed. The Board further contends that no right of the petitioners has been affected by the construction which is being carried out. It is then contended that the Board never advertised or agreed that the community facilities will be provided. However, the land had been earmarked for the provisions of these facilities which are to be provided either by the

residents themselves or by local-body authorities or by the department concerned. Regarding the recovery of the cost it is contended that the cost of the whole land was nominal and was charged proportionately from the allottees. As regards the recovery of the expenditure on development, the Board admitted that it has been charged proportionately from the allottees. In short, the contention of the Board is that no promise was held out to the petitioners nor the principle of promissory estoppel is applicable in this case as the construction is being carried out by maintaining the ecological and environmental plans in accordance with the Interim Development Plan which was also sanctioned by the State Government and respondent No. 2. Further as per the Board, sufficient land has been kept for the community facilities and it is also being developed. In that view of the matter, the Board is not abusing its position for the disadvantage of the petitioners.

9. Respondent No. 2 admitted the approval of the original lay-out plan vide letter dated 5th Oct., 1981 wherein an area was reserved for community facilities in front of block Nos. 42 to 56 and in the rear of block Nos. 137 to 148 as indicated in Annexure-PB, marked in red. It is further pointed out that the Board did submit proposal for construction of two blocks in this area on 23rd September, 1991. This proposal remained without sanction till the filing of reply by respondent No. 2 on 25th June, 1992. Respondent No. 2 further admitted that the area meant for community facilities has not been developed at sight till that date.

10. In rejoinder, the petitioners reiterated the allegations made in the petition and controverted the stand taken by the Board. Further, according to them the area substituted for the purpose of providing community facilities is unfit for the purpose; firstly, because of its situation in between two nullahs; secondly, the same being near to a septic tank which has been constructed for the Housing Board Colonies; and thirdly, that this new area is at a distance and is of very steep gradient consisting of loose rock debris. The whole activities of construction undertaken by the Board is alleged to be contrary to the provisions of the Act as also Town and Country Planning Act besides being arbitrary, mala fide and violative of Arts. 14 and 21 of the Constitution of India. According to them, the Board is indulging in profiteering business by depriving the petitioners of their community facilities.

11. We have heard the learned counsel for the parties at length. They have also taken us through the entire record which we have closely examined.

12. A preliminary objection raised by Shri Kapil Dev Sood, learned counsel appearing for respondent No. 1 is "that the petitioners have no legally enforceable right investing them with locus standi to approach this Court by way of writ petition for seeking relief in equity jurisdiction", on the ground that there exists no privity of contract in between the parties to provide any such community facilities. The other questions which require determination on the basis of the pleadings and submissions of the learned counsel for the parties

are:--

(i) Whether the Board had no power to alter the Scheme and change the site in question?

(ii) In case the Board had power, was the exercise of discretion in converting the site in violation of Section 32 of the Act or in accordance with the norms provided under the law? and

(iii) Whether the interim development plan for Shimla has endangered the ecological and environmental plan of the area?

13. The petitioners have placed reliance on the law laid down in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, and *Bangalore Medical Trust Vs. B.S. Muddappa and others*, in support of their claim whereas *Shri K. D. Sood*, appearing for the Board has mainly depended upon the principles laid down in the case of *Union of India and others Vs. Hindustan Development Corpn. and others*, To ascertain these points, let us first look into the relevant statutory provision.

14. It is pertinent to note that the Board was established u/s 3 of the Act. The purpose underlying the Act is to provide all measures to be taken to deal with and satisfy the need of Housing accommodation. Once the Board undertakes the Housing Scheme under Chapter III of the Act it has to frame a programme, provide budget and publish it, by indicating the proposed area to be included in the Housing Scheme and the surrounding lands and then throw it open to inspection of the public at all reasonable hours at the office of the Board. In case some objections or suggestions relating to the scheme are raised by the person(s) affected thereby, the Board then considers those objections and modify the Scheme as it thinks fit. Thereafter the Board is required, by notification u/s 34 of the Act to publish a final scheme indicating the above said particulars and such scheme is then kept open to inspection of the public at all reasonable hours at the office of the Board. Such publication at the second stage, becomes the conclusive evidence that the scheme has been framed. Another Act referred to as the Town and Country Planning Act, has also been made applicable by the State Government to all the proposed development scheme undertaken by any local authorities or any authority specially constituted under this Act, u/s 29 thereof. The development scheme has to conform with the provisions of the development plan as laid down in the Town and Country Planning Act. In other words the development scheme under taken by the Board is then submitted to the Director, Town and Country Planning (respondent No. 2) for consideration. In case he (respondent No. 2) finds that it is not in conformity with the development plan under the Town and Country Planning Act, he is entitled to make necessary modification in the proposal for the development and the scheme is accordingly modified by the officer of the Board or such proposal for development together with the objection(s) raised by respondent No. 2 are submitted to the State Government for decision. However, in case no such objections are raised by the

Director (respondent No. 2), the development plan is presumed to have been approved. The final authority to approve such a development scheme lies with the State Government who on receipt of the proposal for development together with or without the objection, approves the same. Thus the over-all control of development and use of land in the planning area ultimately vests in respondent No. 2 who is responsible to see that such development plan conforms to the provisions of the development plan under the Town and Country Planning Act. Needless to state that Town and Country Development Authority is established by the State Government in accordance with Section 40 of the Town and Country Planning Act for proper implementation of the Town and Country Development Plan. The object of the statutory provisions is to make provisions for planning and development and use of land; to make better provisions for the preparation of development plan and sectoral plan with a view to ensure that town planning schemes are made in a proper manner and their execution is made effective. In other words, a careful reading of the statutory provisions of the two Acts is that the plan must be framed, sanctioned and ultimately implemented in accordance with its provisions.

15. The Scheme under the two Acts is, thus undoubtedly, statutory in character. The validity of neither the aforesaid Acts nor the scheme can be doubted.

16. Before we proceed to determine the crucial issues, it would be proper to narrate the admitted facts which emerge from the record. There is no dispute between the parties that the Housing Scheme under the Act was floated by the Board. It had earmarked the area for providing community facilities in the layout plan. It would also be pertinent to mention here that the development plan pertaining to Sanjauli Housing Colony was prepared by respondent Nos. 1 and 2 and ultimately the scheme was sanctioned by the State Government. From the pleadings of the parties as also the record annexed therewith, we find that neither the New Housing Programme under the Self Financing scheme nor the Interim development plan pertaining to Sanjauli Housing Colony was published through notification in the official gazette at any stage either under the Act or under the provisions of Town and Country Planning Act. The stand of the Board is that since the land on which the colony has been set up was acquired by it by transfer from the Government at a nominal price and no private person was involved to necessitate the issue, publication of notification in the official Gazette u/s 26 of the Act imposing a ban on new construction and additions and alternations in the Scheme area did not arise. Further it is apparent from the record that the change of the land use map indicating area reserved for providing community facilities was undertaken by the Board. The residential flats under the Self-Financial Scheme appears to have been started by inviting tenders on 17th August 1991 and site-levelling was completed during February 1992 and the foundation work of two blocks had been completed and R.C.C. pillars raised up to the ground floor slab level by this time. For the remaining two blocks the site levelling work was completed in the month of February 1992. During this period some correspondence with respect to the providing of community facilities was

going on in between till the end of February 1992. The construction work was being carried on through a contractor named Shri Satish Goel. Record shows that expenditure to the tune of Rs. 5.70 lacs had already been incurred up to 22nd May 1992 and the material worth Rs. 10.70 lacs had been procured for the construction of these flats. Also no stay order restraining the respondents to carry on the construction work had been obtained by the petitioners.

17. Firstly, we proceed to consider whether any such promise to provide community facilities was held out by the Board. We have already observed that original layout plan was duly sanctioned by the State Government. It did provide for an area reserved for community facilities. The Board altered it subsequently in the Interim Development Plan without publishing its notification in the official Gazette. The Board was under a legal duty to give publicity to it in accordance with the statutory provisions and to afford an opportunity to all persons to make suggestions or raise objections but this has not been done. The object behind publication of notification is laudable inasmuch as the persons acquiring property by spending huge amounts, should know about the surrounding environments, the atmosphere and the nature of basic facilities in which they and their children were going to settle for all times to come. In that view of the matter, the publication appears to be of mandatory nature.

18. In the instant case the scheme has been floated by the Board itself and plots and flats have been obtained by the petitioners pursuant to the sanction of the original layout plan Annexure PA showing the site in question, the former cannot now be allowed to take undue advantage of the situation by contending that only land was ear-marked for providing community facilities and no such promise was held out by the Board or that the facilities are to be provided either by the residents themselves or by Local Body Authorities or by the Department concerned. No doubt, advertisement floating the Scheme (Annexure R-10) and the higher purchase agreement entered into between the petitioners and the Board (Annexure R-11) does not specifically indicate the ear-marking of the land for providing community facilities or the amenities itself by the Board, yet the petitioners are entitled for the developed area to be provided by the Board for this purpose particularly in view of the fact that they have charged the costs of the whole hand proportionately from the allottees and also recovered the expenses on the development thereof in the same ratio. In other words, providing of community facilities in the colony being constructed by the Board strictly in accordance with the provisions of the Town and Country Planning Act, was implied. In that view, it cannot be said that no such promise was held-out by the Board or that the petitioners had no legitimate expectation, short of ownership, of such facilities being provided by the Board.

19. Now adverting to the next question whether the petitioners have locus standi to file the writ petition, we have already held that the Board is amenable to writ jurisdiction, it being a "State" within the meaning of Article 12 of the Constitution of India.

20. The complaint of the petitioners is that scheme has been violated by reasons of the conversion of the purpose. According to the petitioners, the scheme is a legitimate exercise of the statutory powers for the protection of the residents of the locality from the ill effects of disturbance of ecology and environment and the impugned conversion of the purpose upon the space reserved for community facilities, is an invalid and colourable exercise of powers to suit to the interest of the Board at the expenses of general public. Not only this, the petitioners have categorically asserted that the additional construction in question would turn the Housing Colony into a slum with no community facilities and open green space, park and play ground etc. to their disadvantage. Further they assert that such construction would deprive them from the enjoyment of free air and light and it will not only damage the hill side but it would also make other flats unfit for human habitation by putting additional burden on the sewerage disposal system which could ultimately prove to be injurious to health of the residents of the locality.

21. No doubt the Board has contended that the additional construct in factually does not deprive the petitioners of the alleged facilities yet for the purpose of deciding whether the petitioners have locus standi to institute the present writ petition, the allegations in the petition are only to be seen whether they give a cause of action to them or not.

22. The original lay-out plan was approved. The petitioners had spent money for the purchase of the flats with the expectation of enjoying the community facilities also. In fact they had legitimate expectation, short of ownership, for the enjoyment of free air, light and other convenience or amenities.

23. At this stage it would be proper to quote verbatim the observations of the apex Court from Bangalore Medical Trust Vs. B.S. Muddappa and others, at page 1915:

35. "Locus standi to approach by way of writ petition and refusal to grant relief in equity jurisdiction are two different aspects, may be with same result. One relates to maintainability of the petition and other to exercise of discretion. Law on the former has marched much ahead. Many milestones have been covered. The restricted meaning of aggrieved person and narrow outlook of specific injury has yielded in favour of broad and wide construction in wake of public interest litigation. Even in private challenge to executive or administrative action having extensive fall out, the dividing line between personal injury or loss and injury of a public nature is fast vanishing. Law has veered round from genuine grievance against order affecting prejudicially to sufficient interest in the matter. The rise in exercise of power by the executive and comparative decline in proper and effective administrative guidance is forcing citizens to espouse challenges with public interest flavour. It is too late in the day, therefore, to claim that petition filed by inhabitants of a locality whose park was converted into a nursing home had no cause to invoke equity jurisdiction of the High Court. In fact public spirited citizens having faith in rule of law are rendering great social and legal

service by espousing cause of public nature. They cannot be ignored or overlooked on technical or conservative yardstick of the rule of locus standi or absence of personal loss or injury. Present day development of this breach of jurisprudence is towards freer movement both in nature of litigation and approach of the courts. Residents of locality seeking protection and maintenance of environment of their locality cannot be said to be busybodies or interlopers. Even otherwise physical or personal or economic injury may give rise to civil or criminal action but violation of rule of law either by ignoring or affronting individual or action of the executive in disregard of the provisions of law raises substantial issue of accountability of those entrusted with responsibility of the administration. It furnishes enough cause of action either for individual or community in general to approach by way of writ petition and the authorities cannot be permitted to seek shelter under cover of technicalities of locus standi nor they can be heard to plead for restraint in exercise of discretion as grave issues of public concern outweigh such considerations."

Thus in the circumstances, it cannot be said that the petitioners cannot take legal steps for the protection of their rights. In other words the petitioners have locus standi to approach this Court by way of this writ petition, seeking the reliefs sought for in the petition.

24. Now we advert ourselves to determine the principle issues as to whether the Board could alter the scheme and whether the conversion of site is in accordance with law. It is well settled that financial gain by a local authority at the costs of the public welfare has never been considered as legitimate purpose even if the objective is laudable. In the instant case the local authority Board has framed the Interim Development Programme. This Development Programme at a belated stage was approved by respondent No. 2 and ultimately by the State Government when budget was allocated for the implementation of the same in October, 1992. It would be pertinent to note that this programme was not published. The petitioners had already submitted their objections/suggestions by asking the Board to provide them with community facilities as agreed to at the time of floating the Housing Scheme. Section 32 of the Act deals with the variation of Programme by the Board after it has been sanctioned. It reads as:--

"32. The Board may, at any time, vary any programme or any part thereof sanctioned by the State Government: Provided that no such variation shall be made if it involves an expenditure in excess of ten per cent of the amount as originally sanctioned for the execution of any housing scheme included in such programme or affects its scope or purpose."

A perusal of the above said Section shows that the Board is empowered to vary any programme or any part thereof at any time subject to the condition that such variation does not involve an expenditure in excess of 10% of the amount as originally sanctioned for the execution of any Housing Scheme included in such programme or in case such variation affects its scope or purpose. That is to say the exercise of power of alteration of Scheme visualises objective decision.

Nothing has been brought about on the record as to whether variation involved an expenditure in excess of 10% of the amount as originally sanctioned for the execution of the original programme. The only evidence brought about by both the parties is that the purpose of the land use of the area reserved for community facilities has been altered. It is not the case of the Board that they are not providing community facilities. Its stand is that the site has been altered to the adjoining land to that of the site in question but within the colony, has now been ear-marked for the said purpose and it is much more in area. In any case, according to them, the sectoral plan in the form of Interim Development Plan (Annexure R-4) ensures the planning scheme having been made in a proper manner in accordance with the para-meters laid down in 7.2.2 of the Interim Development Plan Scheme. In other words, the Board has varied a part of the sanctioned programme pertaining to Sanjauli Housing Colony by earmarking another area though adjoining to the earlier one, for the purpose of providing community facilities. Such variation required publication of the notification specifying the altered area proposed for providing community facilities to be included under the Housing Scheme and the surrounding lands were also required to be kept open to inspection of the public at all reasonable hours at the office of the Board before it was finally sanctioned by the State Government. This has not been done in the preparation of the programme for additional colony and thereby the Board has deprived the general public from making any suggestion(s) or raising objection(s) relating to the scheme as envisaged u/s 34 of the Act. Considering the object underlying the statutory provisions of Chapter III of the Act, publication of such notification at the two stages under Sections 30 and 34 of the Act appears to be of mandatory nature. It may be that the purpose of publication is to impose a ban on new construction, additions or alteration in the proposed scheme area as envisaged u/s 26 of the Act. However, a right accrues to the intending purchasers of the plots, and flats etc. in relation to the new Housing Scheme undertaken by the State Government or local authority etc. In any case the consideration of the objection or suggestion was a must and that too, by the Board.

25. In the instant case, the Board had considered the preparation of the Interim-Development Plan. The petitioners had also demanded the providing of the community facilities on the site in question by sending letters (Annexures PC and PE) and also by attending meetings with the officers of the Board. In other words, objections were communicated in writing not to alter the purpose of the site in question. It appears that the Board succeeded in seeking permission of the respondent No. 2 (Director Town and Country Planning), though at a belated stage and also the approval of the State Government which sanctioned the budget for the implementation of the new additional colonies on the site reserved for the community facilities. The purpose for which the site in question is being used is commercial one i.e., the construction of the flats of category II under partial self-financing scheme at Sanjauli to be allotted to the intending purchasers amongst the general public. Taking into consideration the entire facts

and circumstances and also topography of the area in which the Housing Scheme was undertaken by the Board, the Board had not exercised its discretion arbitrarily. It may also be noted that the petitioners have not set up a case that the Interim Development Plan was not kept open to inspection of the public as envisaged under the statutory provisions. Thus keeping in view the object regarding variation of the programme and preparation of the Interim Development Scheme pertaining to the petitioners' colony at Sanjauli, the respondents were empowered to convert the land use of the area reserved for the community facilities.

26. The case law discussed in *M/s. Motilal Padampat Sugar Mills Co. Ltd.* (supra) has been relied upon by Id. counsel for the petitioners in support of the proposition that the respondents' could not alter the purpose for the execution of which the site in question was reserved. At the very out-set, we may state that this authority does not help the petitioners to the extent of the change of site for providing community facilities instead of the area reserved therefore in the original lay-out plan. No doubt the principle of promissory estoppel binds the State also but it cannot be made applicable against the exercise of legislative powers. The legislature can never be precluded from exercising its legislative functions by resorting to it. Similarly, where the Government owes a duty to the public to act in particular manner, this principle cannot be invoked for preventing the Government from acting in the discharge of its duty under the law. The true principle of promissory estoppel as discussed in *Motilal Padampat Sugar Mills Co. Ltd.* (supra) is :--

"that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not. The doctrine of promissory estoppel need not be inhibited by the same limitation as estoppel in the strict sense of the term. It is an equitable principle evolved by the Courts for doing justice and there is no reason why it should be given only a limited application by way of defence. There is no reason in logic or principle why promissory estoppel should also not be available as a cause of action, if necessary to satisfy the equity. It is not necessary, in order to attract the applicability of the doctrine of promissory estoppel, that the promisee, acting in reliance on the promise, would suffer any detriment. What is necessary is only that the promisee should have altered his position in reliance on the promise."

27. On the same analogy the principle laid down in *Bangalore Medical Trust* (supra) case cannot be made applicable to the facts of the instant case. The facts

are patently distinguishable. In that case the statute entrusted the responsibility to alter and approve the Scheme to BDA but the BDA instead of exercising the powers itself, preferred to take directions issued on the command of the Chief Executive of the State in complete breach of faith reposed in it, and secondly the definition of "amenity" did not include in itself the conversion of public park into a private nursing home as an "improvement" in the Scheme.

28. In the instant case, firstly, only the site has been varied by the Board but it has not gone back upon the promise to reserve land for the purpose of providing the community facilities in accordance with the Act and Rules; secondly, the Board itself has varied the Scheme with objective decision to provide housing accommodation to others also from amongst the general public and thirdly, the State Government has approved and sanctioned the alteration though at a belated stage.

29. Now the above discussion take us to the next question whether the assurance of providing community facilities given by the Board should be directed to be implemented forthwith. Admittedly, the contract entered into between the parties pursuant to the floating of Housing Scheme under the Act and Town and Country Planning Act as also Rules framed thereunder also envisaged the providing of community facilities. It cannot be said that no such representation had even been made by the Board through advertisement qua the sales of plots and flats etc. The petitioners had a legitimate expectation that the Board shall discharge its obligation.

30. The apex Court has examined the doctrine of *legitimae expectation* elaborately in the case of *Union of India v. Hindustan Development Corporation* (supra) from different angles who is the expectant and what is the nature of the expectation? When does such an expectation become a legitimate one and what is the foundation for the same? What are the duties of the administrative authorities while taking a decision in cases attracting the doctrine of legitimate expectation? Referring to several judgments of Indian and Foreign Courts, it has been held that legitimate expectation gives the applicant sufficient *locus standi* for judicial review and the doctrine of the legitimate expectation is to be confined mostly to a right of a fair hearing before a decision which results in negating a promise withdrawing an undertaking, is taken. Further it has been held that the doctrine does not give scope to claim relief straightaway from the administrative authorities as no crystallised right as such is involved. The protection of such legitimate expectation does not require the fulfilment of the expectation where an overriding public interest requires otherwise. In other words in such exigencies the decision maker should justify the denial of such expectation by showing such overriding public interest. Thus persons like the petitioners in the instant case who have based their claim on the doctrine of the legitimate expectation, in the first instance, are required to satisfy that there is a foundation and thus has *locus standi* to make such a claim. In considering the same several factors which give rise to such legitimate expectation must be

present. The decision taken by the authorities must be found to be arbitrary, unreasonable and not taken in public interest. In these circumstances, if the Court is satisfied that a case of legitimate expectation is made out, the reliefs can be granted. Admittedly, the Housing Scheme was undertaken in the year 1977-78 by the Board. Also the sales of plots and constructed flats were subsequently advertised and under the Scheme petitioners were allotted respective housing accommodation in the year 1988 and since then they are in possession of their respective flats. Proportionate costs of the land including that of the area in question and also that of the development had also been recovered from each one of the allottees. In that view of the matter the petitioners had a legitimate expectation that the Board will provide such benefits, The alternate land has still not been developed though five years have elapsed since the allottees are in possession of their respective flats. The area now ear-marked for community facilities is situated between the two nullahs and requires substantial development at the hands of the Board. The petitioners assert that the new area now reserved for the purpose of community facilities is nearby the septic tanks but it has not been shown by cogent evidence as to at what distance the septic tanks are located. Judicial notice can be taken of the fact that the colony is being constructed on a hillock which is more than 6000 feet above the sea level. The Board, in fact, should have provided the community facilities to the petitioners as per their legitimate expectation within a reasonable time after handing over the possession of the flats, plots etc. to the petitioners.

31. We have already held that the petitioners have laid down foundation for showing us that the providing of community facilities by the Board has been unreasonably delayed. The public interest required that the respondents should have fulfilled their implied promise within a reasonable time after the floating of the Housing Scheme and ultimately handing over the possession of the property to the petitioners. These facts are writ large in view of the pleadings of the parties. We fully agree with the submissions of Sh. D. D. Sood appearing on behalf of the petitioners but to this extent only. As regards the change of the site in question reserved for the community facilities, the submissions of the learned counsel for the petitioners have no merit and are rejected.

32. In view of the above, the petitioners partly succeeds. Resultantly, we direct the Board (respondent No. 1) that the site now reserved for providing of the community facilities to the residents of Sanjauli Housing Colony be developed expeditiously and community facilities as indicated in Interim Development Plan (Annexure R-4) be provided to the petitioners as agreed to by it in accordance with the provisions of the Act and the Rules. The writ petition stands disposed of in terms of the above. No costs.