

(1993) 07 MAD CK 0082

In the Madras High Court

Case No : Writ Petition No. 7718 of 1982

Chemech Engineers Pvt. Ltd.

APPELLANT

Vs

The Director of Industries and Commerce and others

RESPONDENT

Date of Decision : 14-07-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 15(4), 16(4), 226
Evidence Act, 1872 — Section 115

Citation : AIR 1994 Mad 14

Hon'ble Judges : Janarthanam, J

Bench : Single Bench

Advocate : R. Krishnamurthy, V. Rangarajan, for the Appellant; P. Rajagopal, V. Sridevan and S.K. Selvaraj, for the Respondent

Judgement

1. M/s. Chemech Engineers Pvt. Ltd., Egmore. Madras-600 008 (petitioner -- for short "company") is a private limited company said to be carrying on business of construction of various types of chemical plants. The company applied to the Director of Industries and Commerce, Madras-600 005 (first respondent) for allotment of a developed plot in the Industries Estate, Ambattur, Madras-600058. The Plot Bearing No. 108 measuring an extent of 1 acre 70 cents (renumbered and sub-divided as Plots Nos. 108A, 108B and 108C, each measuring 57 cents, after addition of one cent making a total of 1 acre 71 cents) at Ambattur Industries Estate was allotted to the company by that first respondent on 8-8-1967.

2. Cost of plot at Rs. 30,000/- per acre works out at Rs. 51,000/-. As per the terms and conditions of allotment, 50% of the cost, namely, Rs. 25,500/- should be paid within 15 days from the date of receipt of the order of allotment and the balance in two instalments (viz., 25% of the cost is payable within two years from the date of taking possession of the plot and the balance is payable within one year from the date on which the second instalment falls due) and failure to pay the amount of 50% of the cost within 15 days thereof will automatically

result in the cancellation of the allotment. Allotment of the plot may be reserved for a further period beyond 15 days on written requisition, which may extend up to one year, on payment of reservation charges at 7-1/2% per annum. The allottee of the plot shall commence construction within six months and complete construction within two years from the date of taking possession of the plot, besides finalisation of the assignment formalities.

3. The company, however, did not comply with the condition of payment of 50% of the cost on issuance of allotment order within 15 days thereof; but preferred to avail reservation of allotment of plot for a maximum period of one year by payment of reservation charges. Innumerable reminders had been sent for remittance of 50% of the cost and only on 5-8-1968, nearly after a lapse of one year, the company has chosen to remit the amount, besides payment of Rs. 150/- by means of a cheque together with its letter dated 10-3-1970 towards 50% of the cost of one cent added.

4. On 4-11-1968, the company took possession of the plot. Despite lapse of two years since taking possession of the plot, the company neither paid the balance of instalments due; nor taken steps to commence and complete construction, besides finalisation of assignment formalities.

5. To the demand notices issued on 17-12-1970, 19-1-1971, 9-2-1971 and 6-3-1971, the company, in its letter dated 31-3-1971, explained its tight financial position and its other difficulties, besides indicating that it was taking early steps to prepare the plan of the factory building. The first respondent issued an ultimatum in his letter dated 12-4-1971 to comply with the terms and conditions on or before 25-4-1971 positively.

6. The first respondent again, in his letter dated 15-5-1971, requested the company to comply with the directions of his letter dated 12-4-1971, No reply forthcame. The first respondent, however, in his letter dated 24-5-1971 directed the company to send its reply to the letters dated 31-3-1971 and 12-4-1971 stating that if no reply was received by 5-6-1971, it would be presumed that the company was not interested in the allotment and action would be taken to resume the plot without any further notice. The company, by its letter dated 2-6-1971, informed the first respondent that the plan for the proposed factory building was under preparation and consequently, requested time by 45 days to submit the plans for approval. But even thereafter, nothing proceeded further, in the sense of submission of plan for approval and commencement and completion of the construction.

7. The first respondent, in his letter dated 5-2-1972, informed the company that the cost of the building was reduced from Rs. 30,000/- to Rs. 20,000/- per acre and the company was requested to pay the balance sum of Rs. 8,550/-. The company was further informed that the second and third instalments of the cost of the plot had already fallen due on 3-11-1970 and 2-11-1971 and therefore, it was directed to remit the said amount with penal interest at once, besides

stating that if no compliance is made on or before 20-2-1972, it would be presumed that the company was not interested in the plot allotted and steps would be taken to cancel the allotment order without further intimation.

8. Since the company failed to comply with any of the demands the first respondent, by his letter dated 17-5-1972, stating inter alia that the company

(i) failed to execute the assignment deed;

(ii) failed to submit the plan for approval; and

(iii) defaulted in payment of second and third instalments due on 3-11-1970 and 2-11-1971, even after repealed notices,

cancelled the allotment. The company was however informed that the plot cost would be refunded after deducting the recoveries due to the department.

9. The company thereafter, however, in its letter dated 2-6-1972 informed the first respondent that due to its tight financial position, it could not pay the balance cost of the plot and that the said amount would be paid within 15 days from the date of the said letter and that immediately after the payment, steps would be taken for the submission of the building plan for approval and also execute the deed of assignment in favour of the department. The company, along with the letter dated 13-6-1972, enclosed a cheque for the balance amount with penal interest to the tune of Rs. 11,158-03, which was duly acknowledged by the department in its letter dated 28-6-1972. The first respondent, by his letter dated 21-3-1974 informed the company that despite possession of the plot having been taken over by the company on 4-11-1968, the requisite formalities had not been complied with all along and further stated that if the company failed to commence construction of the building within 15 days from the date of receipt of the said letter, possession of the plot would be taken over by the department. The company, however, on 26-4-1974 informed the first respondent that steps had been taken for finalising the plans for setting up of a factory, which would include the procurement of machinery. Despite adequacy of opportunity having been given, the company, though remitted the balance of cost of the plot allotted to it later, did not, however, submit the plan for approval; nor had it executed the deed of assignment, leave alone the commencement and completion of the construction.

10. The Industrial Estate, Ambattur, which was under the control of the first respondent, was however transferred initially to SPTCOT in the year 1974, and thereafter to SIDCO in the year 1976. The company appeared to have entered into correspondence with the department canvassing for regularisation of the allotment of the plot, after revocation of the cancellation of the order of allotment. Such correspondence did not yield any dividend and what happened was that SPICOT on 17-3-1976 and SIDCO on 16-9-1976 confirmed the earlier order of cancellation by the first respondent dated 17-5-1972.

11. The company, by its letter dated 28th September, 1976 requested SIDCO to

consider its case again and give an opportunity to it explain its case and while so doing, it also intimated that it had started fencing the plot, after finalising the details with the civil contractor to proceed with the construction of the factory building. The Deputy Manager, SIDCO Industrial Estate, Ambattur, however, by his letter dated 30-3-1979 sought for necessary particulars regarding the stage of the fencing, approval of the assignment deed and building plan so as to enable the office to proceed further in the matter. Even subsequent thereto, the approval of (he building plan and finalisation of assignment formalities had not been completed.

12. The Development Officer, SIDCO Industrial Estate, Ambattur by his letter dated 26-6-1982 requested the company to hand over the plot to JE (M) on or before 3-7-1982, failing which action would be taken to resume the plot without further notice. Since the company did not hand over possession of the plot as directed, the same was resumed on 26-7-1982 and the said fact was intimated to the company by letter dated 9-8-1982 requiring it to remit the maintenance charges on Rs. 1,906-65 up to that date. The receipt of the said letter was acknowledged by the company on 11-8-1982.

13. The Development Officer, SIDCO, Industrial Estate made a personal inspection on 2-9-1982 it was then noticed that the company had put up fencing and made arrangements for laying foundation. Finding that this act of the company was nothing but short of trespass into Government land, the Development Officer, by his letter RC No. 11002/A7/76 dated 8-9-1982 sent by registered post with acknowledgment due requesting the company to remove the fence and other materials kept there on or before 20-9-1982, thereby intimating that failure to do so will result in the removal of those materials, without the same being handed over to the company and the charges for the removal being debited to the account of the company. The company, aggrieved by the said decision, resorted to the present action praying for issue of a writ of certiorari to quash the same.

14. The writ petition had been dismissed by a learned Judge of this Court by order dated 4-12-1990 and the operative portion of the said order runs thus :

"6. It is seen that the order of cancellation of the allotment dated 17-5-1972 has not been challenged. The order dated 8-9-1982 is merely a consequential order informing the petitioner that it has trespassed into the property and put up the fence and asking it to remove the fence and other materials kept in the property as otherwise the respondents would be forced to remove them treating the petitioner as a trespasser. There is no infirmity in the order dated 8-9-1982. Accordingly, the writ petition is dismissed. No costs."

15. The aggrieved company filed W.A. No. 11 of 1991 and a Division Bench of this Court by order dated 9-1-1991 dismissed the said appeal with the following observations :

"2. It is not disputed before us that the order of allotment had been cancelled on

account of the violation of the terms and conditions of allotment by the order dated 17-5-1972 and that order of cancellation was not challenged. In the absence of challenge to the order of cancellation, the respondents action to direct the appellant not to trespass into the land could not be put in issue. Since the department has resumed the land, it was well within the right of the respondents to ask the appellant by order dated 8-9-1982 not to trespass into the property and to remove the fencing and the materials kept on the property failing which the respondents themselves would be forced to remove the same. No infirmity could be found in this order. The learned single Judge, in our opinion, rightly dismissed the writ petition, and for what we have noticed above, we see no reason to take a contrary view. The writ appeal fails and it is accordingly dismissed.

3. Learned counsel for the appellant submitted that the respondents had accepted payments even after the order of cancellation and that the amounts paid by the appellant had not been returned to the appellant. It shall be open to the appellant to work out its remedies, if any, in accordance with law elsewhere."

16. The petitioner-Company further agitated the matter before the Supreme Court by filing a SLP (Civil) No. 3673 of 1991. Granting leave, the Apex Court in Civil Appeal No. 1029 of 1991 passed an order dated 7th October, 1991 and the order so passed runs as under:

"In the High Court the writ petition was dismissed principally on the ground that the cancellation of the order of allotment dated 17-5-1972 had not been specifically challenged. It is, however, pointed out on behalf of the appellant that there is ample correspondence to show that, even subsequent to 17-5-1972. the respondents have received amounts from the appellant in respect of the allotments and also proceeded on the footing that the allotment was still subsisting. A lot of correspondence in this behalf relied upon by the appellant has been placed before us. An affidavit has also been filed to state that a number of these documents, though not all, had also been placed before the High Court at the time of hearing. In view of this, we think that the best course is to set aside the orders of the learned single Judge and the Division Bench of the High Court, restore the writ petition to the file of the learned single Judge and request the learned single Judge, to proceed to dispose of the writ petition after taking into consideration the correspondence relied upon by the appellants and hearing both parties. We direct accordingly. This appeal is allowed. There will be no order as to costs."

17. Subsequent to the dismissal of the writ appeal and prior to the filing of the Special Leave Petition, the company filed a suit in C.S. No. 213 of 1991 on the file of this Court impleading respondents 1 and 3 herein as defendants seeking the relief of declaration and injunction. It also filed O.A. No. 172 of 1991 seeking interim injunction pending disposal of the suit. The company could not, however, obtain favourable interim orders as desired. In the SLP that had been filed, the company though made a point at reference to the suit so instituted, yet it did not

disclose the nature and character of the suit and what all was stated therein was, "Anticipating immediate steps by the respondents to dispossess them, the petitioner has filed a suit on the file of the High Court, by way of abundant caution."

thereby impliedly creating an impression that the suit that was filed was one for the relief of injunction, in view of the urgency involved in the matter.

18. Subsequent to the restoration of the writ petition to the file of this Court, the company filed WMP No. 5879 of 1992 on 12-3-1992 to implead M/s. Paramount Pollution Control Ltd., Madras-600 010 and M/s. Polycoat Industries. Madras-600 031 as respondents 4 and 5 for effective adjudication of the dispute, inasmuch as Plots Nos. 108-A and 108-C had been respectively allotted to them and steps had been taken by them to put up constructions therein. The company also filed on the same date WMP No. 5878 of 1992 to raise additional grounds.

19. On 29-9-1992, the company filed WMP No. 23632 of 1992 for interim injunction restraining the Paramount Pollution Control Ltd., Madras-600010 the proposed 4th respondent from putting up superstructure or construction or continuing the present construction on the disputed land, namely, Plot No. 108-A, part of total plot 108 in the northern phase of the industrial Estate. Madras. The said injunction application was listed for hearing on 30-10-1992, when a learned single Judge of this Court passed the following order :

"The writ petition is for issue of a writ of certiorari to quash the proceedings dated 8-9-82 in and by which the petitioner was directed to remove the fencing in a plot and hand over possession of the plot in pursuance of an earlier (order) dated 17-5-72 cancelling the allotment in favour of the petitioner. The writ petition was originally dismissed and the matter was taken up to the Supreme Court and the same has now been restored with a direction to consider the same afresh on all aspects of the matter. In the meanwhile, the said plot seems to have been allotted to two persons, viz., 4th and 5th respondents. The 4th respondent is said to be constructing on a portion of the plot. The present application is to refrain the 4th respondent from proceeding with the construction. In my opinion, it would be in the interest of all the parties to maintain status quo and have the WP itself disposed of. I, therefore, direct the parties to maintain status quo as on today, and direct the WP to be posted for final disposal on 17-11-92. Direction to maintain status quo will not prevent the 4th respondent from taking such steps as may be necessary to protect the building materials which have been gathered at the site."

20. Since proposed respondents 4 and 5 effectively participated in the proceedings without even the application being allowed impleading them as parties to this writ petition, WMP No. 5879 of 1992 is ordered as prayed for.

21. No formal orders are necessary at this stage in WMP No. 5878 of 1992, as learned counsel on either side have been allowed to advance arguments on

additional grounds raised also.

22. Mr. R. Krishnamurthy, learned Senior Counsel appearing for the petitioner-Company would of course submit that though the cancellation of the allotment order resulted in the passing of the order dated 17-5-1972, as a consequence of non-compliance of the conditions of allotment, in the sense of non-payment of cost of the plots, commencement and completion of the construction and finalisation of assignment formalities within the time-bound schedule as agreed upon, yet, certain events that had happened highlighted by the correspondence exchanged between the parties would point out in crystal clear terms the conduct on the part of the respondents 1 to 3 or anyone on their behalf, stamped as a representation amounting to a promise or inducing a belief or expectation in the mind of the company that the order of allotment still subsisted, notwithstanding the fact of its cancellation, in the sense of the same deemed to have been revoked, without passing any formal order of cancellation and the instilled belief or expectation in the mind of the company made them proceed further with the matter to its detriment and in this view of the matter, this Court, in the exercise of its extraordinary jurisdiction under Art. 226 of the Constitution of India, protect the interests of the company on the basis of the principle of promissory estoppel and the theory of legitimate expectation as propounded by Courts of superior jurisdiction in this country and to such a submission, of course, Mr. V. Raghu-pathy, learned Additional Government Pleader representing the first respondent; Mr. P. Rajagopal, learned counsel appearing for respondents 2 and 3 and Mr. V. Sridevan, learned Senior Counsel appearing for respondents 4 and 5 expressed disapproval by striking a discordant note vehemently.

23. The main thrust of the argument of learned Senior Counsel Mr. R. Krishnamurthy for the company as above is based on the applicability of the doctrine of promissory estoppel and the theory of legitimate expectation espounded by the Apex Court, on sound principles of equity in larger interests of the Society, to mitigate the rigour of law in a bid to avoid injustice being caused and, therefore, it becomes necessary for me to advert to those decisions, in order to understand the subject and extend the applicability of those principles in a given situation before ever I delve deep to enter into a discussion of the facts and circumstances of the instant case.

24. In *Chhaganlal Keshavlal Mehta Vs. Patel Narandas Haribhai*, , their Lordships of the Supreme Court in paragraph 23 had said :

"23. To bring the case within the scope of estoppel as defined in S. 115 of the Evidence Act : (i) there must be a representation by a person or his authorised agent to another in any form -- a declaration, act or omission; (2) the representation must have been of the existence of a fact and not of promises for future or intention which might or might not be enforceable in contract; (3) the representation must have been meant to be relied upon; (4) there must have been belief on the part of the other party in its truth; (5) there must have been action on the faith of that declaration, act or omission, that is to say, the

declaration, act or omission must have actually caused another to act on the faith of it, and to alter his former position to his prejudice or detriment; (6) the misrepresentation or conduct or omission must have been the proximate cause of leading the other party to act to his prejudice; (7) the person claiming the benefit of an estoppel must show that he was not aware of the true state of things. If he was aware of the real state of affairs or had means of knowledge, there can be no estoppel; (8) only the person to whom representation was made or for whom it was designed can avail himself of it. A person is entitled to plead estoppel in his own individual character and not as a representative of his assignee."

25. In *Vasantkumar Radhakisan Vora Vs. The Board of Trustees of the Port of Bombay*, their Lordships had stated thus :

"11..... The principle of promissory estoppel is that where one party has by his word or conduct made to the other a clear and unequivocal promise or representation 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 or representation is made and it is in fact so acted upon by the other party to whom the promise or representation is made and it is in fact so acted upon by the other party, the promise or representation 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. The doctrine of promissory estoppel is now well established one in the field of administrative law. This principle has been evolved by equity to avoid injustice. It is neither in the realm of contract nor in the realm of estoppel. Its object is to interpose equity shorn of its form to mitigate the rigour of strict law.....

12..... the promissory estoppel cannot be used compelling the Government or a public authority to carry out a representation or promise which is prohibited by law or which was devoid of the authority or power of the officer of the Government or the public authority to make. We may also point out that the doctrine of promissory estoppel being an equitable doctrine, it must yield place to the equity, if larger public interest so requires, and if it can be shown by the Government or public authority, for having regard to the facts as they have transpired that it would be inequitable to hold the Government or public authority to the promise or representation made by it. The Court on satisfaction would not, in those circumstances raise the equity in favour of the persons to whom a promise or representation is made and enforce the promise or representation against Government or the public authority.

Equally promissory estoppel should not be extended, though it may be founded on an express or implied promise stemmed from the conduct or representation by an office of the State or public authority when it was obtained to play fraud on the constitution and the enforcement would defeat or tend to defeat the constitutional goals. For instance a right to reservation either under Art. 15(4) or

16(4), in favour of the Scheduled Castes, Scheduled Tribes or Backward Classes was made with a view to ameliorate their status Socially, economically and educationally so as to assimilate those sections into the main stream of the society. The persons who do not belong to those classes, but produce a certificate to mask their social status and secure an appointment to an office or post under the State or public employment or admission into an educational institution maintained by the State or receiving aid from the State, on later investigation, though belated, was found that the certificate produced was false and the candidate was dismissed from the post or office or debarred or sent out from the institution or from the balance course of the study, the plea of promissory estoppel would always be found favour with the Courts and being easily extended in favour of the candidate or party that played fraud on the Constitution. It would amount not only putting a premium on the fraud on the Constitution, but also a denial to a reserved candidate and the general candidate as well. Therefore, the plea of promissory estoppel should not be extended to such areas.

13.....

14..... before making the public authority responsible for acts of its subordinate, it must be established that the subordinate officer did in fact make the representation and as a fact is competent to make a binding promise on behalf of the public authority or the Government, ultra vires acts do not bind the authority and insistence to abide by the said ultra vires promise would amount to putting premium and legitimacy to ultra vires acts of subordinate officer."

26. In Narendra Kumar Maheshwari Vs. Union of India (UOI) and Others, , Their Lordships in paragraph 106 said :

".....the doctrine of legitimate expectation applies only when a person had been given reason to believe that the State will abide by the certain policy or guideline on the basis of which such applicant might have been led to take certain action. The doctrine is akin to the doctrine of promissory estoppel.....

However, it has to be borne in mind that the guidelines on which the petitioners have relied are not statutory in character. These guidelines are not judicially enforceable. The competent authority might depart from these guidelines where the proper exercise of his discretion so warrants."

27. In Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries, , their Lordships in paragraphs 7 and 8 expressed :

"7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law, A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure, which is "fairplay in action". Due observance of this obligation as a part of good administration raises

a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and is instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review,

8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent."

28. In the light of the principles, as evolved by the Supreme Court in the aforesaid cases, I may now endeavour to give a legal fitment to the facts of the instant case. There is no pale of controversy that the company applied for allotment of a plot in the Industrial Estate, Ambattur, Madras and it was consequently favoured with an order of allotment by the first respondent in the year 1967. It is not as if the plot was allotted without any conditions, but with certain conditions attached to the allotment. The conditions attached to such an allotment and agreed upon by the company, as stated earlier, consisted in the payment of cost of the plot; commencement and completion of construction and finalisation of the assignment formalities in a time-bound programme. Admittedly the company, even after fully availing of the maximum period of one year of reservation by payment of the prescribed charges did not effect payment of 50% of the cost of the plot in due time and as a matter of fact, the same had been paid only after repeated reminders and thereafter, the company took possession of the plot on 4-11- 1968. There were certain further obligations cast on the company on and from the time of taking possession of the plot, the obligations being that 25% of the cost was payable within two years from the date of taking possession and the balance was payable within one year from the date on which

the second instalment fell due, apart from commencing the construction within six months and completing the construction within two years from the date of taking possession of the plots. The company neither paid the subsequent instalment within the dates due; nor commenced or completed the construction within time stipulated or at any subsequent point of time except resorting to state some reason or the other to the notices and reminders sent by the first respondent. Therefore, there was no other go for the first respondent except to cancel the order of allotment by his letter dated 17-5-1972.

29. The company did not keep quiet and dormant despite receipt of order of cancellation. It initially sent a communication dated 2-6-1972 to the first respondent expressing its inability to pay the amount, as a consequence of the tight financial position it faced and promised to remit the same within 15 days thereafter and accordingly, along with its letter dated 13-6-1972, enclosed a cheque for the balance of the amount and penal interest to the tune of Rs. 11,158-03. The amount so sent was also duly acknowledged by the department in the letter dated 28-6-1972. By the acceptance of the belated payment, by no stretch of imagination, it can be said that the first respondent condoned the other formalities, thereby created an impression amounting to a promise or inducing a belief or expectation in the mind of the company that the order of allotment was still subsisting, in the sense of there being a deemed revocation, when especially the first respondent did specifically state by his letter dated 21-3-1974 that the requisite formalities associated with the allotment order had not been complied with, despite possession had been taken over on 4-11-1968. No doubt, the first respondent has intimated the company that failure to commence construction within 15 days from the date of receipt of that letter, possession of the plot would be taken over by the department. Not only there was failure on the part of the company to commence construction, even thereafter, but also finalisation of the assignment formalities had not been completed. The company simply by its letter dated 26-4-1974 informed the first respondent that due steps had been taken for complying with those formalities, besides making a fervent appeal and request for regularisation of the allotment of the plot. The request for regularisation of the allotment did not yield any dividend, in the sense of an order favourable to the company at the hands of the first respondent.

30. Even subsequent to the transfer of the Industrial Estate, Ambattur to SIPCOT, the company, by its letter dated 30-1-1975 requested for regularisation of the allotment of plot and SIPCOT, after taking into consideration the contents of the said letter, rejected such a request and confirmed the order of cancellation of allotment on 17-3-1976. Though the company faced colossal failure in its attempt to have the plot regularised at the hands of the first respondent as well as SIPCOT, it made a further attempt to have the allotment regularised by giving a letter dated 27-3-1976 to SIDCO, after transfer of the developed plots in the Industrial Estate, Ambattur from SIPCOT with effect from 1-8-1976. SIDCO also, after consideration of such a request, rejected the same on 16-9-1976 by stating

thus :

"In this connection we wish to state that your request for revocation of cancellation was carefully examined. We find there is no reason to revise the orders already passed by SIPCOT in their letter No. DP2/AMB/ 119/74 -- SIPCOT dt. 17-3-76. The orders cancelling the Allotment of Plots Nos. 108A to 108C (NPO) made in your favour will therefore stand.

Kindly acknowledge receipt of this letter and arrange to hand over the above plots to the Dy. Manager Indl. Estate, Ambattur before 30-9-76 as already requested."

It was thus clear that between 17-5-1972 and 16-9-1976, there was no positive representation or act or omission on the part of the authorities creating a hope in the mind of the company that the order of allotment had been still subsisting and the company, quite conscious and quite aware of the stage and fact, was making fervent and persistent attempts in a desperate way in vain to have the regularisation of the plot by giving requisitions for cancellation of the order of allotment.

31. The company, rather caught between the devil and the deepsea, by its letter dated 28th September, 1976 requested SIDCO to consider its case again by giving an opportunity to explain its position. While making such a request, the company, feeling the imminence of dispossession in the near future, had intimated in a dare-devil way, with an ulterior object of grabbing possession of the plot that it had started fencing after finalising the details with the Civil Contractor to proceed with the construction, although it had not complied with any of the formalities required to be complied with as per the terms and conditions of the allotment order. Thereafter, it appears that there was exchange of correspondence and one such correspondence is referable to the letter of the Deputy Manager, Industrial Estate, Ambattur dated 30-3-1979 seeking for necessary particulars regarding the stage of fencing and approval of the assignment deed and building plan, so as to enable the office to proceed further in the matter. Nothing can be read from this sort of a letter that the company was given any ray of hope that the order of allotment was still subsisting, in the sense of cancellation order of allotment having been revoked. The terms and tenor of the letter, if subjected to broad spectrum analysis, would indicate that it was exploratory in nature as respects various details of information asked for.

32. It is open secret that either at the time when the letter emanated or even subsequent thereto, the approval of the building plan and finalisation of the assignment formalities had not been completed. Pursuant to the orders of cancellation of the allotment by the first respondent, the Director of Industries and Commerce on 17-5-1972, subsequently con-firmed by SIPCOT as well as SIDCO, after taking into consideration the request of the company for regularisation respectively on 17-3-1976 and 16-9-1976, and nothing thereafter culminated in the rejection revocation of the orders of cancellation -- the

Development Officer, SIDCO, Industrial Estate, Ambattur requested the company by his letter dated 26-6-1982 to hand over the plot to JE (Maintenance), on or before 3-7-1982, thereby indicating that failure in that regard would result in action being taken for resumption of the plot without further notice. The company did not, however, surrender possession of the plot as directed, with the result, the same had been resumed on 26-7-1982 without any let or hindrance. Further, the attention of the company was drawn by letter dated 9-8-1982 as to its liability to pay maintenance charges of Rs, 1,906-65, till date of resumption of the plot and the said letter was acknowledged by the company on 11-8-1992.

33. Subsequent to 11-8-1992, the company, realising that the game was up, in a bid to wrest possession, started storing materials in the plot to make it appear that it is making arrangements for laying foundation and in such process, it had put up fencing around the plot and such action of the company came to adverse notice of the Development Officer, SIDCO, Industrial Estate, when he made a personal inspection on 2-9-1982 and he, realising that the act of the company was nothing short of a trespass into the Government land, by his letter Rc. No. 11002/A7/76 dated 8-9-1982 requested the company to remove the fence and other materials kept there on or before 20-9-1982 or otherwise, they will not be handed over to the company but removed from the plot and the charges of removal will be debited to its account. It is thus clear that there was no declaration, act or omission made or done by any of the authorities either between the period 4-11-1968, the date of taking possession of the plot by the company and 17-5-1972, the date of cancellation of the order of allotment and thereafter till 16-9-1976, the date of confirmation of the earlier orders of cancellation by SIDCO or 8-9-1982 when the offending trespass was sought to be removed, which created such an impression amounting to promise or inducing a belief or expectation in the mind of the company that the order of allotment still subsisted, in the sense of the order of cancellation having been revoked at any point of time, thereby making the company to proceed further and alter its position to its detriment and what is worse was that the company even without challenging the earlier orders of cancellation and resumption of possession, which aspect is getting revealed only by the correspondence produced pursuant to the directions of the Supreme Court, resorted to the present action, even suppressing the factum of re-sumption of possession and challenging the action of the authorities in taking steps for removal of the trespass committed by the company and in such state of affairs, there is no legitimacy for the company to invoke to its aid the doctrine of promissory estoppel and the theory of legitimate expectation, in a bid to assail the action taken by the authorities to remove the trespass. Therefore, the submission made in this regard bristles next to nothing.

34. Mr. V. Sridevan, learned Senior Counsel appearing for the respondents 4 and 5 would resort to make an incidental submission, adopted by learned Counsel appearing for the other respondents, revolving on the question of pursuit of parallel remedies simultaneously, one invoking the jurisdiction of the civil forum and the other writ jurisdiction, when especially the subject matter agitated upon

is one and the same in both the forums. In elaboration of this submission, he would say that the company, in the process of challenge or assailing the action of the department in taking steps for the removal of the alleged trespass committed by the company seeks to canvass the position that the company was the owner of the plot, without even taking action to set aside the earlier orders of cancellation of allotment and resumption of possession in the present action, which is the same relief, when compared with the relief of declaration and consequential injunction prayed for in the suit in C.S. No. 213 of 1991 on the file of this Court. He would then pose a question, "Whether the pursuit of such parallel remedies is permissible under law?" After posing such a question, he would say that the answer is provided by the apex Court of this country in the case of Jai Singh Vs. Union of India and Others, .

35. Before straightway stating the rule evolved therein, I feel it is better to pen down the basis or juridical facts in order to appreciate the facts of the present case in the best of fashion possible in the light of the ruling so arrived at.

(a) In that case, the appellant took on lease 180 acres of land from the Government of Rajasthan on June 18, 1962 for the purpose of mining gypsum ore for a period of 20 years. Section 9(2) of the Mines and Minerals (Regulation and Development) Act, 1957 relates to royalties in respect of mining leases. According to that provision, the holder of a mining lease granted on or after the commencement of the said Act shall pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral. The Second Schedule provided at item No. 13 the rate on which royalty, etc., in respect of gypsum is to be paid. Accordingly to that item at the relevant time, royalty would be at the rate of Rs. 1.25 per tonne of gypsum containing 85 per cent and above $\text{CaSO}_4 \cdot 2\text{H}_2\text{O}$ and at the rate of 75 paise per tonne of gypsum containing less than 85 per cent $\text{CaSO}_4 \cdot 2\text{H}_2\text{O}$.

(b) Royalty was demanded from the appellant in respect of gypsum won by him at the rate of Rs. 1.25 per tonne. The case of the appellant, however, was that the gypsum which was won by him contained less than 85 per cent $\text{CaSO}_4 \cdot 2\text{H}_2\text{O}$. As against that, the stand taken by the respondents was that the appellant failed to furnish the analysis reports from a standard laboratory to show that gypsum won by him contained less than 85 per cent $\text{CaSO}_4 \cdot 2\text{H}_2\text{O}$. Revision filed by the appellant against the decision of the Rajasthan Government to charge royalty at the rate of Rs. 1.25 per tonne was dismissed by the Central Government.

(c) The High Court dismissed the writ petition on the ground that it involved determination of disputed question of fact. It was also observed that the High Court should not in exercise of its extraordinary jurisdiction grant relief to the appellant when he had an alternative remedy.

(d) The matter had further been agitated before the Supreme Court. After the

dismissal of the writ petition and prior to the matter being agitated before the Supreme Court, the appellant had agitated the same question by filing of a suit.

(e) In such a context, the Supreme Court while dismissing the appeal, said thus :

"It has also been brought to our notice that after the dismissal of the writ petition by the High Court, the appellant has filed a suit, in which he has agitated the same question which is the subject matter of the writ petition. In our opinion, the appellant cannot pursue two parallel remedies in respect of the same matter at the same time."

The observation of the Supreme Court as above is applicable on all fours to the case on hand.

36. For the reasons above, it goes without saying that the Writ Petition deserves to be dismissed and the same is accordingly dismissed. Rule Nisi issued shall stand discharged. There shall, however, be no order as to costs, in the circumstances of the case.

37. Petition dismissed.