

(1992) 05 MAD CK 0001
In the Madras High Court

Dr. Kamala Dakshinamurthi and Others	APPELLANT
Vs	
Board of Trustees and Others	RESPONDENT

Date of Decision : 12-05-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8

Citation : (1992) 2 MLJ 604

Hon'ble Judges : Lakshmanan, J

Bench : Division Bench

Judgement

Lakshmanan, J.—Plaintiffs 1 to 3 have filed the above suit in a representative capacity after obtaining necessary permission from this Court

under Order 1, Rule 8 of the Code of Civil Procedure. In Appln. No. 2219 of 1989, this Court granted permission to the 3rd applicant viz., the

3rd plaintiff to prosecute the suit on behalf the applicants and also those applicants who are jointly interested in the relief, whose names have been

mentioned in the plaint. The order has been passed on 3.5.1989 and this Court directed notice by way. of publication in one issue of Malai Malar.

Accordingly, publication has been effected. Thereafter, the plaint has been presented.

2. The 1st defendant is the Board of Trustees of Srinagar Colony represented by its Executive Trustee R. Butchi. Defendants 2 to 6 are the

trustees and the 7th defendant is the Corporation of Madras represented by its Commissioner.

3. The 1st defendant Board of Trustees is a body constituted under a decree dated 18.7.1969 in C.S. No. 10 of 1964 for the purpose of taking

over and dealing with the vacant land in the said colony. The decree vested the vacant land in the 1st defendant and authorised the Board to sell

the lands and utilise the sale proceeds for the amenities intended for the common benefit of the colony. Among the lands vested, about 20 grounds of land described in the schedule to the plaint. The 1st defendant already obtained the sanction of the lay-out in L.A. No. 29 of 1957 and the Commissioner and Secretary, Housing and Urban Development Department, by G.O.Ms. No. 997, dated 19.11.1981, has allowed the appeal of the Executive Trustee of Srinagar Colony for conversion of the portion of the land measuring 20 grounds 615 sq. ft. in the approved layout No. 29 of 1957 in T.S. Nos. 92/2C and 92/3 of Venkatapuram village, reserved for public purpose under 10% reservation, into house sites. In view of the fact that the Government have already permitted conversion of the land into house-sites, the Board of Trustees by their communication dated 9.9.1982 issued notice calling for applications from the persons bona fide in need of house site and to allot the plots to them. It was stated in that communication that the Board of Trustees have prepared a sketch or layout for 20 grounds of plot of land at their disposal into 16 plots and that it was proposed to allot them among those found eligible by casting lots or by public auction. The Board of Trustees have called for from the applicants Rs. 15,000 per ground as deposit, which would be adjusted towards the cost of plot which would be ultimately allotted to them. The notice further stated that if it is decided to sell in public auction, it may not be necessary to pay any price in advance and if any other method is decided, the price will be fixed taking into account the market value, ignoring the abnormal value collected by the real estate speculators.

4. Originally, there were about 40 applicants who had applied for allotment of plots and also paid deposit. Subsequently, in view of the delay, many of the applicants withdrew their applications and only 15 were remaining including the plaintiffs herein. In May, 1988, a circular was issued by the 1st defendant by which the applicants were informed that the 7th defendant is insisting on payment of improvement charges i.e., the cost of laying roads, drainage, etc., in advance before approving the plan and that the amount has to be collected from the persons who will be allotted plots. It was stated that it has, therefore, become necessary to finalise the allotment. Subsequently, a meeting was held. In that meeting, the applicants were requested to contribute Rs. 35,000 each to make the sum of Rs. 8,00,000 as demanded by the 7th defendant towards

improvement charges. It was also stated that the minimum price per plot would be Rs. 1.5 lakhs. On this basis, a circular dated 26.5.1988 was issued. The plaintiffs and other applicants have paid Rs. 35,000 each as additional advance. The 3rd plaintiff has paid only Rs. 25,000." In spite of the fact that additional advance was paid, since nothing further happened, the plaintiffs caused a notice to be issued to the defendants calling upon the trustees to act in accordance with the circular dated 9.9.1982. The Board of Trustees sent a reply stating that there has been no concluded contract and the plots are offered for sale and not for the purpose of improving the locality but for different consideration and that the offer was also subject to the terms and conditions mentioned therein and unless those terms and conditions are fulfilled, the question of sale does not at all arise. It was also stated that since the contract is not possible, it was decided to return the amount due to the persons who have deposited. The 1st defendant returned the amounts.

5. The plaintiffs sent a rejoinder refusing to accept the cheques and they sent back the cheques to the 1st defendant. Inasmuch as the 1st defendant failed to act in accordance with the notice dated 9.9.1982, the suit was filed by the plaintiffs and other applicants for a mandatory injunction directing defendants 1 to 6 to take action pursuant to the notice dated 9.9.1982 for allotment of plots and also for a permanent injunction restraining defendants 1 to 6 from dealing with the plots in any manner whatsoever except in accordance with the circular dated 9.9.1982.

[Paras 6 to 15 omitted- Ed.)

16. Issue Nos. 1 and 3 :- These two issues can be taken up together. It was contended on behalf of defendants 1 to 6 that each one of the several parties will have his or their own individual rights and the transaction in question, as will be seen from the plaint, is based on offer and acceptance, i.e., on the basis of the contract. In such a situation, by any stretch of imagination, Order 1, Rule 8 of the CPC cannot apply and in fact, on the basis of the alleged contract, an individual suit for specific performance can only lie if the plaintiffs are so advised. Mr. V.S. Subramaniam, learned Counsel for the defendants further contended that an action on the basis of an alleged offer or proposal cannot be instituted as representative one and on this ground alone, this suit will have to be dismissed. It was reiterated

that atleast each one of the individual applicants will have his or her own cause of action and the same cannot be attempted to be claimed in a representative capacity

17. I am unable to agree with the contention raised by defendants 1 to 6 on these two issues. Under Order 1, Rule 8 of the CPC it is provided as

follows:

One person may sue or defend on behalf of all in same interest. Where there are numerous persons having the same interest in one suit, one or

more of such persons may, with the permission of the court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of all persons

so interested.

Sub-rule (2) is as follows:

The court shall in every case, where a permission or direction is given under Sub-rule (1) at plaintiffs expense, give notice of the institution of the

suit to all persons so interested, either by personal service, or where, by reason of the number of persons or any other cause, such service is not

reasonably practicable, by public advertisement as the court in each case may direct.

This provision is to benefit the other persons who have the same interest as that of the plaintiffs in the suit. The plaintiffs and the other applicants

have mentioned in the plaint that they are having a common interest, in the sense, all of them have interest in the matter of allotment of plot pursuant

to the notice dated 9.9.1982. They acquired common interest by virtue of that notice. Hence, I am of the view, that the suit is maintainable under

Order I, Rule 8, C.P.C.

18. In this case, as already stated, permission of the Court was sought before the institution of the suit in Application No. 2219 of 1989, which

was granted on 3.5.1989. This Court directed notice by way of publication in one issue of Malai Malar, which has already been made and it has

also been filed. Under these circumstances, there is nothing wrong in the institution of the suit in a representative capacity. Since this Court has

granted permission, there is no question of the defendants contending after the institution of the suit, that the suit is not maintainable under Order 1,

Rule 8 of the Code of Civil Procedure. In this connection, the decision cited by Mr. B.T. Seshadri, learned Counsel for the plaintiffs, reported in

Sankiah v. Vadakasi 1980 T.N.L.J. 86, can be usefully referred to. At page 90 it is clearly stated as follows:

It is not the concern of the defendants whether the persons whom the plaintiffs seek to represent see eye to eye with the plaintiffs in the matter of conduct of the suit.

I am of the view that the defendants have no locus standi to say that the plaintiffs are not competent to represent the others whom they seek to

represent. Therefore, the contention of defendants 1 to 6, based on the ground that the suit is not maintainable under Order 1, Rule 8 of the CPC

since the plaintiffs have no interest in common, is not sustainable. Hence, I answer Issue Nos. 1 and 3 in favour of the plaintiffs and hold that the

suit as framed is maintainable and that the suit filed in a representative capacity is also maintainable and not as alleged otherwise by defendants 1 to

6.

19. Issue Nos. 2 and 4:- These two issues can be answered together. In pursuance of the notice dated 9.9.1982 calling for applications for

allotment of plot and also asking the applicants to deposit earnest money of Rs. 15,000 per ground initially defendants 1 to 6 have made a

representation that in the event of the conditions mentioned in the notice being complied with, the defendants would act in accordance with the

notice i.e., allotment of plots in the manner set out in the said notice. It is not the case of the defendants that the plaintiffs and other applicants have

contravened any of the conditions and that the defendants cannot be compelled to act in accordance with the said notice. It will be pertinent to note

that even after the said notice, the matter was kept pending for nearly six years and only in the year 1988 i.e. on 26.5.1988, under Ex.P-8, the

defendants called upon the plaintiffs to pay an additional sum of Rs. 35,000 for each of the applicants to meet the improvement charges.

20. The notice calling for applications, which is sought to be enforced, is marked as Ex.P-2. By Ex.P-8, dated 26.5.1988, the defendants sent a

circular that on payment of improvement charges, the Corporation of Madras would be in a position to give sanction and after such payment, the

trustees would be in a position to act in accordance with the notice dated 9.9.1982. Having held out that the plots will be allotted to the plaintiffs

and other applicants in the manner contained in the said notice and having

collected an initial deposit of Rs. 15,000 and further advance of Rs.

35,000, it is no longer open to defendants 1 to 6 to contend that they are not bound to act in accordance with the notice dated 9.9.1982 since that

notice was issued without any commitment on the part of the Board of Trustees. So far, the 7th defendant has not issued sanction of the layout nor

did it impose any condition with reference to the sanction except payment of improvement charges. The Board of Trustees have miserably failed to

fulfil their obligations in regard to payment of improvement charges and there has been a serious dereliction of duty on their part and they cannot

take advantage of their own mistake. In fact, by Ex.D-9 letter dated 22.8.1988, the 7th defendant demanded a sum of Rs. 9,65,700 as tentative

improvement charges and they have given the calculation. The Board of Trustees had with them on the date of Ex.D-9 more than Rs. 10 lakhs

having collected from all the applicants, not only by way of initial deposit but also additional deposit. In view of this, the Board of Trustees, who

have failed to discharge the obligation enjoined on them, cannot contend that they are not bound to act in accordance with the notice dated

9.9.1982.

21. It is also false to allege that the 7th defendant has demanded an exorbitant amount. In fact, D.W. 1 in his cross-examination has clearly stated

that the 7th defendant has changed the improvement charges from Rs. 6.3 lakhs to Rs. 8.5 lakhs. He has also stated that Rs. 8.5 lakhs was

demanded in 1986 and because of this, Ex.P-8 circular was issued. Therefore, it is argued on behalf of the plaintiffs that the defendants are

estopped from contending that the plaintiffs have no right to insist on the defendants to act on the basis of the circular dated 9.9.1982. The plaintiffs

are not asking for the allotment of plots straightaway. There is an obligation on the part of defendants 1 to 6 by reason of the representation

contained in the notice dated 9.9.1982 and to prevent breach of that obligation, it has become necessary to compel performance of certain acts

which the court is capable of enforcing.

22. Under Scc.39 of the Specific Relief Act, the plaintiffs are entitled to compel performance of the act by defendants 1 to 6 by reason of the

notice dated 9.9.1982 and direct them to prevent breach of the Obligation on their part. The Plaintiffs have acquired legal right with reference to

the property in the manner set out in the notice dated 9.9.1982. In other words, the applicants who had acted in pursuance of the notice have acquired the legal right by virtue of which they reasonably believed that the Board of Trustees would conduct an auction or allot plots in the manner set out in the notice so that they would be in a position to acquire. The plaintiffs have also suffered a detriment by reason of the fact that in the hope that they would be in a position to get plots, the plaintiffs and other applicants have not made any efforts to acquire any land elsewhere in the City at the same price before the escalation of the land price. Under these circumstances, on the principle of promissory estoppel, defendants 1 to 6 are estopped from contending that they would not act in accordance with the circular dated 9.9.1982 and that the plaintiffs have not acquired any legal right.

23. It is contended by Mr. V.S. Subramanian, learned Counsel appearing for defendants 1 to 6, that the advertisement of an auction is merely an intimation of intention to sell and therefore, in the absence of fraud, the intending purchasers who attend the auction have no right of auction if the property is not put up for sale. He also contended that even when the property is put up, it may be withdrawn before the fall of the hammer. He further urged that in this case, no question of any fraud had been pleaded or proved and therefore, the question of fraud need not be considered and the announcement of the sale by auction or by lots will at best be only an invitation to offer. He has also invited my attention to certain passages from Halsbury's Laws of England, IV Edition, Volume II, paragraph 233 and Volume IX, paragraph 231. He further submits that in this particular case, only offers had been invited and it is admitted that the offers given by the plaintiffs or similar persons had not been accepted and consequently, no contract has come into being, which is capable of being enforced in any Court of Law. My attention was also drawn to the decision reported in *Harris v. Nickeson* (1873) L.R. 8 Q.B. 286. In that case, the defendant, an auctioneer, advertised in the London papers and distributed catalogues to the effect that certain brewing material plants and office furnitures would be sold by him at Bury St. on a certain day. The conditions were the usual conditions, the first being, the highest bidder to be buyer. The plaintiff therein, a commission broker in London, had a

commission to purchase at the sale of the office furniture advertised to be sold. He went to Bury St., St. Edmunds, attended the sale and purchased certain lots. Those described as office furniture were not put up for sale but withdrawn- The plaintiff brought an action to recover 2 pounds 12s 6d for two days loss of time and on these facts, the Judge gave judgment for the plaintiff but at the request of the defendants, gave him leave to appeal and the appellate Court had categorically held that the trial Judge was wrong and that there is no offer and that the plaintiff is not entitled to any damages. In the said circumstances, it is submitted, that the notice inviting offers cannot be one that could be treated to give right to a legal right of offer and acceptance, since the same is merely a notice inviting offers and the offer has been given in this case but that offer had admittedly not been accepted. It is well known that only the offer is accepted and it would ripen into contract. Till it ripens into a contract, there cannot be any cause of action. On this ground also, the plaintiffs claim cannot succeed.

24. On the question of promissory estoppel, it was argued on behalf of defendants 1 to 6 that the question of promissory estoppel cannot arise in view of the fact that even at the outset there is no contract that has come into existence. Further, it was argued that the 3rd plaintiff as P.W. 1 alone has given evidence and that the other two plaintiffs have not chosen to give evidence about their case pleaded in the plaint. Therefore, it was submitted, the question of estoppel, in the circumstances, cannot arise. I am unable to give my seal of approval for the contentions raised by the learned Counsel for defendants 1 to 6. As stated above, and as rightly urged by Mr. B.T. Seshadri, the circular dated 26.5.1988 under Ex.P-8 clearly states that on payment of the improvement charges, the 7th defendant would be in a position to give sanction and after such payment, the trustees would be in a position to act in accordance with the notice dated 9.9.1982. Defendants 1 to 6 having held out that the plots will be allotted to the plaintiffs and other applicants in the manner contained in the said notice and having collected initial deposit of Rs. 15,000 and further advance of Rs.35,000 from each applicant, it is no longer open to them to contend that they are not bound to act in accordance with the notice dated 9.9.1982 since that notice was issued without any commitment on the part of the Board of Trustees. In my view, defendants 1 to 6 are

estopped from contending that the plaintiffs have no right to insist on defendants 1 to 6 to act on the basis of the circular dated 26.5.1988. The

plaintiffs are not asking for allotment of plots straightaway. But, there is an obligation on the part of defendants 1 to 6 by reason of the

representation contained in the notice, and in order to prevent breach of that obligation, it has become necessary to perform certain acts, which this

Court is capable of enforcing. The two decisions cited by Mr. B.T. Seshadri can very well be noticed in appreciating his contention on the question

of promissory estoppel. The first decision is reported in Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., and the second, decision

is reported in Tapti Oil Industries and Another etc. Vs. State of Maharashtra and Others, .

25. Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., , was a case filed by the Gujarat State Financial Corporation against M/s.

Lotus Hotels Private Limited. The said Corporation, was an instrumentality devised to provide medium and long term credit to industrial concerns,

inter alia, Hotel Industry. M/s. Lotus Hotels Private Limited is a Private Limited Company incorporated mainly to carry on the business of hotel,

restaurant, cafe, etc. The said company proposed to set up a 4-Star Hotel under the name and style of Lotus Hotels. The promoter, after acquiring

land where the proposed 4 Star Hotel was to be set up at Baroda, approached the Corporation for a loan of Rs. 30 lakhs. The Corporation

sanctioned a loan of Rs. 29.93 lakhs on certain terms and conditions. The company wrote a letter to the Corporation accepting the terms and

conditions on which the Corporation agreed to advance the loan. As a part of the deal, the company had to create an equitable mortgage in favour

of the Corporation for securing the loan. The trouble erupted when in October, 1978, two pseudonymous letters purporting to have been written

by Ramanlal V. Patel and Chandrakant Pandya, addressed to the Chief Minister of Gujarat State and Chairman, Industrial Development Bank of

India, Bombay, respectively, were received making serious allegations against the promoter of the hotel about his character and credit worthiness

and also pointing out that he was facing several prosecutions in various Courts on account of his nefarious activities. Acting on this letter, the

I.D.B.I., who was approached for refinancing the loan, addressed certain enquiries to the office of the Corporation and then started an enquiry

which led to the delay in processing the promised loan. Ultimately, by letter dated 13.2.1979, the I.D.B.I., informed the Corporation that in view of the pending police enquiry against the promoter of the hotel, the application for refinancing is treated as closed leaving an option to the Corporation to resubmit the application on receipt of satisfactory report from the concerned authorities in regard to the pending enquiry against the main promoter. By that time, the promised equitable mortgage by the company was created in favour of the Corporation. All other documents required to be executed by the company in favour of the Corporation enabling it to receive the loan were also executed. However, the Corporation did not disburse the loan in terms of the agreement entered into between the parties. Ultimately, after protracted correspondence, the Board of the Corporation at its meeting held on 20.4.1979 resolved not to disburse the loan to the company and the President conveyed the information of the decision to the company. The company moved a petition under Article 226 of the Constitution in the High Court of Gujarat at Ahmedabad. A learned single Judge issued a mandamus directing the Corporation to disburse the promised loan to the company forthwith in accordance with its letter of offer dated 24.7.1978, followed by the agreement dated 1.2.1979. The Corporation preferred an appeal. A Division Bench of the Gujarat High Court, after hearing the appeal, agreed with the conclusion reached by the learned single Judge and dismissed the appeal. Then the Corporation filed the present appeal before the Supreme Court. Before the Supreme Court it was urged on behalf of the Corporation that the sanctioning of the loan by the Corporation in favour of the company was conditional upon the I.D.B.I. undertaking to refinance the loan and as I.D.B.I. declined to refinance the loan, the Corporation cannot be compelled by a mandamus to grant the loan. It was also incidentally urged that the dispute raised between the parties is in the realm of contract and at best the Corporation can be charged with breach of contract for which the remedy is by way of damages or any other remedy available to the company for breach of contract; but, in any case, a writ of mandamus cannot be issued compelling the Corporation to perform its part of the contract. The Supreme Court rejected both the contentions and held as follows:

It is too late in the day to contend that the instrumentality of the State which would be "other authority" under Article 12 of the Constitution can-

commit breach of a solemn undertaking on which other side has acted and then contend that the party suffering by the breach of contract may sue

for damages but cannot compel specific performance of the contract. It was not disputed that the Gujarat State Financial Corporation which is set

up u/s 3 is an instrumentality of the State and would be "other authority under Article 12 of the Constitution. By its letter of offer and the

subsequent agreement the appellant Corporation entered into a solemn agreement in performance of its statutory duty to advance the loan of Rs.

30 lakhs to the respondent-company. Acting on the solemn undertaking, the respondent proceeded to undertake and execute the project of setting

up a 4 Star Hotel. The agreement to advance the loan was entered into in performance of the statutory duty cast on the Corporation by the statute

under which it was created and set up. On its solemn promise evidenced by the aforementioned two documents, the respondent incurred

expenses, suffered liabilities to set up a hotel. Presumably, if the loan was not forthcoming, the respondent may not have undertaken such a huge

project. Acting on the promise of the appellant evidenced by documents, the respondent proceeded to suffer further liabilities to implement and

execute the project. In the backdrop of this incontrovertible fact situation, the principle of promissory estoppel would come into play.

The Supreme Court has also held that the principle of promissory estoppel would certainly estop the Corporation from backing out of its obligation

arising from a solemn promise made by it to the company. The Supreme Court further held that the company acting upon the solemn promise made

by the Corporation incurred huge expenditure and if the Corporation is held to its promise, the company would be put in a very disadvantageous

position and therefore, the principle of promissory estoppel can be invoked in this case. The Supreme Court has also referred to its earlier

decisions reported in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, and Jit Ram Shiv Kumar and Others Vs.

State of Haryana and Others, .

26. To the same effect there is another Full Bench decision of the Bombay High Court reported in Tapti Oil Industries and Another etc. Vs. State

of Maharashtra and Others, . In that case, reference was made to the judgment of the Supreme Court where the meaning of the word ""detriment

has been considered. It has been held that in order to invoke the doctrine of promissory estoppel, it is not necessary for the promisee to show that

he suffered detriment as a result of acting in reliance on the promise. But it was pointed out that if by detriment was meant injustice to the promisee,

which would result if the promisor were to recede from his promise, then the detriment would certainly come in as a necessary ingredient.

27. Applying that ratio, it can be safely taken in our case that the plaintiffs and other applicants have several detriment and if the Board of Trustees

are allowed to recede from their promise, then, definitely, injustice would follow to the plaintiffs and other applicants. The plaintiffs and other

applicants who have made initial deposits as early as 1982 and further advance in 1988, cannot be summarily told that the amount can be taken

back without interest. This would, in my view, definitely cause injustice. Therefore, on the principle of promissory estoppel, defendants 1 to 6 are

estopped from contending that the plaintiffs have no right and that defendants 1 to 6 need not act in accordance with the notice dated 9.9.1982.

[Paras 28 to 30 omitted - Ed.]

31. Defendants 1 to 6 would contend that in the notice dated 9.9.1982, mention has been made that the deposit is being collected without any

commitment. This does not mean that the notice is issued and the deposit is collected merely for the purpose of returning it as and when they

please. What is meant by ""without commitment"" in Ex. P-2 is this:

There are only 16 plots. There were 40 applicants. The notice stated that all the applicants would not be entitled to allotment and such of the

applicants who get it by lots or in public auction alone entitled to allotment. There was no assurance that by payment of deposit, the applicants

would be entitled to the plots.

Therefore, none of the contentions of the defendants, in my view is tenable or acceptable by this Court.

[Paras 32 and 33 omitted - Ed.]

34. To sum up, the position is this: Under Issue No. 1, I hold that the suit is maintainable. Under Issue No. 2, I hold that defendants 1 to 6 are

estopped from contending that the plaintiffs have no right to insist on the

defendants enforcing the circular dated 9.9.1982. Under Issue No. 3 I

hold that the suit filed in a representative capacity is maintainable. Under Issue No. 4, I hold that the plaintiffs have legal right to enforce the circular

as contended in para 6 of the written statement and para 5 of the additional written statement. Under the Additional Issue, I hold that the plaintiffs

are entitled to the relief asked for.

35. In the result, the suit is decreed as prayed for and defendants 1 to 6 are directed to remit to the 7th defendant the amount payable towards

betterment charges from and out of the earnest money paid by the plaintiffs and other applicants, and conduct an auction so as to enable the

plaintiffs and other registered applicants to bid for the plots and to allot the plots to the highest bidder for each plot. There will also be a decree for

permanent injunction restraining the 1st defendant from alienating the vacant land measuring about 20 grounds in Srinagar Colony,

Saidapet, Madras-15, in any manner other than by allotment of plots as per the circular dated 9.9.1982. The suit as against defendants to 6 is

decreed with costs of the plaintiffs payable by the 1st defendant. The suit as against the 7th defendant is dismissed without costs.