

(1984) 04 DEL CK 0031
In the Delhi High Court
Case No : Civil Writ No. 2372 of 1981

Dr. R.K. Deka and others

APPELLANT

Vs

Union of India and another

RESPONDENT

Date of Decision : 27-04-1984

Acts Referred:

Constitution of India, 1950 — Article 226, 299
Contract Act, 1872 — Section 65, 70
Delhi Development Act, 1957 — Section 57
Specific Relief Act, 1963 — Section 20

Citation : AIR 1984 Delhi 413

Hon'ble Judges : S.S. Chadha, J

Bench : Single Bench

Advocate : Y.S. Chitley and Jagdeep Kishore, for the Appellant; D.K. Kapur and Sanjay Sharma, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Chadha, J.—This order will dispose of C.W. Ps. 2372/81, 1704/82, 250/1983 and 2100/83, filed under Article 226 of the Constitution of India seeking appropriate writs, orders or directions. The petitions raise the question, mainly on the ground of promissory estoppel of the legality of the policy decision of the Government in dropping a scheme for allotment of land in Delhi to non-resident Indians living abroad to build residential houses in Delhi.

2. The objective of the scheme which was announced by the Government in early 1978, was to facilitate non-resident Indians living abroad to build residential houses in India and thus to satisfy their natural urge to own property in their own country and to settle down therein whenever they wished to do so. It was felt that it was difficult for such persons living abroad to acquire properties through Government auctions or private dealers and, therefore, it was decided to frame the scheme which would facilitate this. The scheme was introduced in Delhi on an experimental basis. A non-resident Indian living abroad who does not own a residential plot of land/house/flat either in his/her name or in the name of

his/her family members as defined in Urban Land (Ceiling & Regulation) Act, 1976; i.e. wife/husband/unmarried children in Delhi/New Delhi, was eligible to apply for the allotment of a house plot under the scheme. Persons in the Indian Foreign Services were not entitled to get allotment under the scheme. The Land under the scheme is located at Badarpur, Mehrauli Road, New Delhi and is under the control of the Land & Development Officer, under the Ministry of Works & Housing, New Delhi.

3. The mode of payment of the price was also provided. The price of the plot (the premium) and the cost of construction on the plot was payable in foreign exchange to be converted into Indian rupees specifically for this purpose by its sale through the Reserve Bank of India or its authorised dealers. The annual ground rent and the share of the Government in the unearned increase in the value of the land on its transfer was payable in Indian rupees. If, however, the lease-hold rights of the lessee in the plot allotted were to be transferred or assigned to another nonresident Indian residing abroad, the share of the Government in the unearned increase in the value of the land on such transfer or assignment was payable in foreign exchange in the manner prescribed above. The entire price of the land and the cost of construction was payable in foreign currency. The plots were normally available in one size of 334.452 sq. metres (400 sq. yds. approximately). The total permissible covered area for a plot of 400 sq. yards is 4050 sq. ft. and, the approximate total cost of construction was given at Rs. 2,43,000/- (estimated @ Rs. 60/- per sq. ft). These rates were tentative and subject to variation depending on the rate prevailing at the time of construction, and the specifications adopted. It was permissible for the allottees to construct the house to any specifications that may be approved by the local body.

4. The scheme further provided that the plots would be allotted on lease-hold basis at the reserve prices of Rs. 200/- per sq. yd. (Rs. 239.20 per sq. metre). The price of the plot was payable in lump sum within a period of three months from the date of allotment. In addition to the cost of land each plot holder was required to remit to India foreign exchange equivalent to the cost of construction of the residential house to be built by his/her according to specification and plans approved by the local body. The allottees were permitted to deposit foreign exchange equivalent, if they so wished, to the cost of construction for full coverage on ground floor only. If and when they decided, to take up additional construction up to permissible limit, they were required to deposit additional foreign exchange in advance. In cases where multi-construction was essential under the prescribed land use, the allottees had to furnish an undertaking, in advance, to the effect that the requirement of the land use plan would be conformed. The construction was to conform to the Municipal bye-laws of the local Municipal Authority.

5. There were also general conditions. Not more than one plot could be sold to any individual under the scheme. No individual owning a land/house/flat in Delhi/New Delhi in his/her name or in the name of his/ her family members, as defined

in Urban Land (Ceiling & Regulation) Act, 1976, i.e. wife/husband/unmarried children, was eligible, to purchase any plot under the scheme. The plots were to be allotted on lease-hold basis. The purchaser had to pay the price of the plot, which would be called the premium in the manner prescribed above. In addition, the annual ground rent was also payable at the rate of 2% per annum of the premium from the date of allotment. The ground rent was subject to revision after every ten years from the date of allotment. The lease-deed was to be executed by the Land & Development Officer. The plot holder had to enter into, an agreement for lease, the terms of which were also indicated under the scheme.

6. Applications for allotment of plots under the scheme were invited and were to be addressed to the Land & Development Officer, Ministry of Works & Housing New Delhi in the prescribed form. The applicants interested in having a plot of land in New Delhi had to attach a demand draft in the name of Land & Development Officer for deposit as earnest money in foreign currency of an amount equivalent to Rs. 10,000/- for a plot of 400 sq. yds. The earnest money was not to carry any interest and could be forfeited in case the applicant did not accept the allotment of land, if offered to him/her and/or he/she did not comply with the terms and conditions of the allotment within the stipulated period. These are the only terms and conditions.

7. The individual petitioners applied separately for allotment of land measuring 400 sq. yds under the scheme at Badarpur, Mehrauli Road, New Delhi together with the bank demand draft/cheque for Rs. 10,000/- for deposit as earnest money for this purpose. The Land & Development Officer acknowledged separately the receipt of the application for allotment of plot and the bank demand draft/cheque and sent a draft lease agreement for being initialled by the applicant on each page. The draft lease agreements duly initialled by the applicants were received by the Land & Development Officer and acknowledged. On enquiries made by the applicants, the Land & Development Officer stated that the allotment of the plots was likely to be made by the end of 1979. On subsequent enquiries, the Land & Development Officer informed the applicants that the development of the area had already been taken in hand and it is anticipated that the allotment of plots would be made by December, 1980.

8. In answer to an unstarred question in the Rajya Sabha, the Minister of Works & Housing stated on 26/27th August, 1981 that a scheme for allotment of residential plots in Delhi to non-resident Indians living abroad was formulated. However, on reconsideration, the Government had decided to drop the scheme. The petitioners then moved this Court for quashing the decision and action of the Government in dropping the scheme on the grounds, inter alia, that it is arbitrary, capricious and contrary to the doctrine of promissory estoppel.

9. In the affidavits in opposition to the writ petitions filed on behalf of the Government, it is pleaded that the petitions are not maintainable inasmuch as they seek to enforce a civil liability alleged to have arisen out of breach of

contract: that there is no legally enforceable contract between the parties and that the legal right alleged to have been violated by the respondents in these cases is neither fundamental nor statutory and is not enforceable by issuance of a writ of mandamus or any other writ, order or direction. It is further pleaded that the petitions are not maintainable by reasons of the fact that they seek judicial review of a policy decision which in no manner can be said to be in violation of any of the fundamental rights or otherwise unconstitutional.

On merits it is pleaded that the Government dropped the scheme for the allotment of land in Delhi to non-resident Indians living abroad as it weighed heavily with the Government and that it was not desirable to divert scarce resources of the country to such non-priorities scheme, namely, providing residential plots to nonresident Indians who were affluent and could afford to pay market price for the land. It is further submitted that the scheme proposed sale of residential land at the rate of Rs. 200/- per sq. yd at a time when pre-determined market rate fixed by the Government for residential plots by Government itself stood revised to Rs. 600/- per sq. yd up to March 31, 1979 and Rs. 1.660.66 per sq. yd from April 1, 1981 (Rs. 2.000/- per sq. metre). It was thus felt that allotment of land at the price of Rs: 200/- per sq. yd. which was for below the market rate could not be justified, According to the Government, the allotment of land at the price of Rs: 200/- per sq. yd. would be against public exchequer and thus against public interest It was thought that public interest required that the resources of the society were not dissipated for the benefit of affluent sections of people who could look after their own needs for land or houses. The Government felt that the development of the land was a non-priority and development of the land for this purpose would have required an expense of over one crore of rupees which the country could ill-afford for such a non-priority scheme.

10. The preliminary objection pressed by Mr. D.K. Kapur, the learned counsel for the Government is that the dispute between the parties is in the realm of contract. It is unnecessary for me in these cases to examine the rights and liabilities of the State under a contract entered into by it, as the petitioners have neither based their claims on contract nor advanced any such plea. There had been no strict compliance of the requirements of Art 299 of the Constitution. This provision is mandatory and not directory. It is enacted as a matter of public policy. There was no concluded contract between the parties within the requirements of Art. 299 of the Constitution by the acceptance of the application of the petitioners for the allotment of land measuring 400 sq yds for construction of a residential house on Badarpur, Mehrauli Road, New Delhi according to the scheme. Even if there is a concluded contract, the failure of the Government to carry out its part of the obligation may amount to breach of contract for which remedy lies elsewhere. A writ of mandamus cannot be issued for compelling the Government to specifically perform the contract. (See Radhakrishna Agarwal and Others Vs. State of Bihar and Others,). If the question involved in the present petitions was merely the breach of alleged contract, then the counsel is right that

no writ or order can be issued under Art, 226 of the Constitution in such case to compel the authorities to remedy the breach of contract pure and simple. Such is not the case in these petitions. The doctrine of promissory estoppel is invoked in these petitions. If the principle of promissory estoppel is attracted, then it would certainly estop the Government from packing out of its obligation arising from a solemn promise made by it to the petitioners. A court can enforce Compliance by a public authority of the obligation laid on it unless it is established that there are special considerations in public interest.

11. Even though it is not necessary for attracting the doctrine of promissory estoppel, that the promisee acting in reliance on the terms should suffer any detriment, yet in this case, urges the counsel, the petitioners have altered their position to their prejudice. It is contended that several other schemes were announced by the Government and/or Delhi Development Authority simultaneously but the petitioners could not apply in view of the provisions contained in Delhi Development Act, 1957 (for short called the Act), namely, that a person who had already applied for a plot of land was disqualified to apply either in his own name or in the name of his dependents.

This argument is advanced under some misapprehension. The land for the scheme of allotment of land in Delhi to nonresident Indians living abroad to build residential houses in Delhi was not acquired under any scheme under the Act. S. 57 of the Act empowers the Delhi Development Authority, to make regulations, inter alia, for the management of the properties of the Authority. In exercise of the said powers the Regulations called the Delhi Development (Management of Properties) Regulations, 1961 have been framed and notified. Under Regulation 5, properties which have been acquired or purchased in pursuance of a scheme have, as far as possible, to be utilized for the execution of the same scheme. If any property which has been so acquired is later found to be surplus for the purposes of that scheme, the Authority has a discretion, subject to any directions given by the Central Government, to utilise, to let out, or to dispose of that property in such manner and subject to such terms and conditions as it considers expedient. The petitioners have not placed any material on the record that the land located at Badarpur, Mehrauli Road has been acquired for that particular scheme.

The Regulations called Delhi Development Authority (Management and Disposal of Housing Estates) Regulations, 1968 have also been framed and notified. Scheme has been defined in Regulation 2(30). "Scheme" means "Scheme prepared by the Authority for the creation of one or more Housing Estates." Regulation 7 States "a dwelling unit or flat in the Housing Estate of the Authority shall be allotted only to such person who or his wife/her husband or any of his/her dependents/relations including unmarried children does not own in full or in part on free-hold or leasehold basis a residential plot or house in the urban area of Delhi, New Delhi and Delhi Cantonment." The ineligibility would be only on "owning" and not by merely making an application in one scheme or the other.

There was no bar for the petitioners applying simultaneously in other schemes of the Authority or Government.

12. Secondly, it is submitted that the petitioners acting upon the solemn promise made by the Government parted with and deposited earnest money of Rs: 10,000/- in foreign exchange and signed documents for lease deed with the Government. Some of the petitioners, having been assured by the Government, left their jobs in their respective countries of their employment and came to Delhi with hard earned foreign exchange so that they could build their houses and settle in their own country. The submission is that the Government intended to be legally bound and intended its promise to be acted upon and when it was so acted upon, the Government is estopped from backing out. The plea of estoppel, says the counsel, is entitled to be sustained by the Court. It is urged that if the Government is not held to its promise, the petitioners would be put in a very disadvantageous position. The decision in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, is relied on by Dr. Chitale as the sheet anchor of the invoked doctrine of promissory estoppel. It was held (Para 8):-

.....The true principle of promissory estoppel, therefore, seems to be 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 affect 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 between the parties, and this would be so irrespective whether there is any preexisting relationship between the parties or not.

He urges that the defence of executive necessity was clearly negated by the Supreme Court when it was pointed out that it did not release the Government from its obligations to honour the promise made by it, if the citizen acting in reliance on the promise has altered his position. The counsel submits that the objectives of the scheme are unchanged in as much as the urge to own the property has not been satisfied and the foreign exchange resources of this Country still require augmentation. The mere inadequacy of the consideration for the transfer of the plot is no ground as the Government cannot act like a real estate dealer; even a dealer is debarred from raising such a plea on the analogy of the provision of Section 20 of the Specific Relief Act 1963.

13. The question that arises for consideration in these petitions is whether the notification of the scheme for allotment of land in Delhi to non-resident Indians living abroad to build residential houses in Delhi and relying on which the petitioners made applications together with the earnest money of Rs. 10,000/- in foreign exchange which were accepted by the Government, would estop the Government by operation of the doctrine of promissory estoppel from dropping the scheme. The scheme was not notified under any statute or statutory

obligation of the Government. It was a policy decision pure and simple. The considerations which prompted the Government to take an executive decision for notification of the scheme are clearly decipherable from the scheme itself. There was a twin purpose. The allottees were required to pay the cost of land in foreign exchange and in addition to remit to India foreign exchange equivalent to the cost of construction of the residential house to be built. The policy decision was announced with a view to lure non-resident Indians living abroad to augment the foreign exchange resources of this country. Ours is a welfare state. It is the paramount obligation of the State to ensure availability of situations, circumstances and environments in which every citizen can effectively exercise and enjoy his right to property as also other fundamental rights. There is a natural urge of all Indian citizens to own property in their own country. With a view to facilitate this the scheme was notified by the Government. It was a laudable decision.

14. The scheme was, however, dropped. I have already referred to the averments in the counter-affidavit. The considerations which weighed with the Government in dropping the scheme, *inter alia*, were public interest, inadvisability of frittering away national resources in non-priority schemes and an equitable distribution of land resources for ever increasing demand of economically backward classes. In view of the sharp increase in land prices and the cost of development it was thought inequitable to allot land at the rate of Rs. 200/- per sq yd. to nonresident Indians who are among the affluent sections of people especially when the policy of the Government is to auction residential plots of more than 200 sq. yds. area to private persons so that the maximum return could be obtained in the sale of such plots. These reasons, in my view, are germane and sound for the variation of the earlier executive decision of the announcement of the scheme. There is no covenant express or implied, in the scheme that it excludes the exercise of general discretionary powers for the public good. Public policy should not and does not remain static. Public policy would be useless if it was to remain in fixed mould for all times to come. It has to be transformed, suited or varied from time to time depending upon the welfare of the community at any given time. The executive necessity inheres the power of variation of the earlier policy decisions of the State.

15. Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., was relied upon to urge that whether the agreement is executive or administrative in character, the Courts have power in appropriate cases to compel performance of the obligations imposed by the schemes upon the departmental authorities. It is significant to note that the defence of executive necessity was not relied upon in the affidavit in opposition filed on behalf of the Union of India in Indo-Afghan's case (*Supra*). That decision is an authority for the proposition that in the absence of a plea of executive necessity, the Court in appropriate cases is entitled to compel performance of obligation imposed by the scheme. Government's executive power is exercised in its discretion for the public good. No Government can bind itself not to exercise that discretion when the public interest demands

its exercise. A Government vested with executive power to be exercised in public good cannot and does not undertake to fetter itself in the future use of these powers and in the exercise of the discretion. Even in that case it was made clear that in our jurisprudence the Government is not exempt from liability to carry out the representations made by it as to its future conduct and "it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it" (emphasis supplied). The necessity or expediency for public interest has only to be disclosed. The disclosure would allow a judicial review whether or not the Government has to act according to the terms of the scheme and not arbitrarily or at its whim to ignore the promises made.

16. My task is made easier. P.S. Kailasam, J. in *Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others*, referred to the decisions of the English Courts which clearly indicate that the English Courts did not accept the view of Lord Denning, J. in "*Robertson v. Minister of Pensions*," (1949) 1 K.B. 227, The House of Lords in "*Howell v. Falmouth Boat Construction Co. Ltd.*," (1951) A.C. 837 disagreed with the view of Lord Denning J. by holding that there could not be an estoppel against express provisions of law nor could the State by its actions waive its rights to exercise powers entrusted to it for the public good. Devlin, J. stated: ?

When the Crown, or any other person, is entrusted, whether by virtue of the prerogative or by statute, with discretionary powers to be exercised for the public good, it does not when making a private contract in general terms, undertake (and it may be that it could not even with the use of specific language validly undertake) to fetter itself in the use of those powers, and in the exercise of the discretion.

The extract from the American jurisprudence which summarises the American Law and the decision of the Supreme Court of the United States in "*Federal Crop Insurance Corporation v. Merrill*," (1947) 332 U.S. 380 were referred to which make it clear that the plea of estoppel is not available against the Government or its legislative or executive functions except for preventing fraud or manifest injustice. Their Lordships then dealt at some length with the cases of our own Supreme Court laying down that the principle of estoppel is not available against the Government in the exercise of legislative, sovereign and executive power. The scope of the plea of doctrine of promissory estoppel against the Government was summed up as follows:?

- (1) The plea of promissory estoppel is not available against the exercise of the legislative functions of the State.
- (2) The doctrine cannot be invoked for preventing the Government from discharging its functions under the law,
- (3) When the officer of the Government acts outside the scope of his authority, the plea of promissory estoppel is not available. The doctrine of ultra vires will come into operation and the Government cannot be held bound by the

unauthorised acts of its officers.

(4) When the Officer acts within the scope of his authority under a scheme and enters into an agreement and makes a representation and a person acting on that representation puts himself in a disadvantageous position, the Court is entitled to require the officer to act according to the scheme and the agreement or representation. The Officer cannot arbitrarily act on his mere whim and ignore his promise on some undefined and undisclosed grounds of necessity or change the conditions to the prejudice of the person who had acted upon such representation and put himself in a disadvantageous position.

(5) The officer would be justified in changing the terms of the agreement to the prejudice of the other party on special considerations such as difficult foreign exchange position or other matters which have a bearing on general interest of the State.

Their Lordships then referred to the decision in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, and dealt with in detail the observations now relied upon by the petitioners. It was ruled:?

With respect, we feel we are unable to agree with the interpretation put by Bhagwati, J. Bhagwati, J. states "the defence of executive necessity was thus clearly negated by this Court and it was pointed out that it did not release the Government from its obligation to honour the promise made by it, if the citizen acting in reliance on the promise, had altered his position. The doctrine of promissory estoppel was in such a case applicable against the Government and it could not be defeated by invoking the defence of executive necessity." The same view has again been reiterated at page 682 where it is stated "the law may, therefore, now be taken to be settled as a result of this decision that where the Government makes a promise knowing or intending that it would be acted on by the promisee and in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution." These observations would be right if they are read with the qualifications, laid down in the *Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd.*, and other cases.

The further observations of the learned Judge that: "Every one is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned, the former is equally bound by the latter." Again "but if the Government makes such a promise and the promisee acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promise like any other private

individual do not appear to convey the true effect of the decision." The decision of this Court in *Century, Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another*, was understood by justice Bhagwati as refusing to make a distinction between the private individual and public body so far as the doctrine of promissory estoppel is concerned, These observations would be correct only if they are read with the exceptions recognised by Justice Bhagwati himself elsewhere in his judgment along with other restrictions imposed by judgments of this Court.

We find ourselves unable to ignore the three decisions of this Court, two by Constitution Benches *M. Ramanatha Pillai Vs. The State of Kerala and Another*, and *State of Kerala and Another Vs. The Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. etc.*, and the third by a Bench of four Judges of this Court in *Excise Commissioner, Uttar Pradesh, Allahabad and Others Vs. Ram Kumar and Others*, on the ground that the observations are in the nature of obiter dicta and that it cannot be insisted as intending to have laid down any proposition of law different from that enunciated in the *Indo-Afghan Agencies* case. It was not necessary for this Court in the cases referred to above to refer to *Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd.*, or if properly understood, it only held that the authority cannot go back on the agreement arbitrarily or on its mere whim. We feel we are bound to follow the decisions of the three Benches of this Court which in our respectful opinion have correctly stated the law. We are also unable to read the case of the House of Lords, in *Howell v. Falmouth Boat Construction Co. Ltd.* (1951) AC 837 (supra) as not having overruled the view of Denning, J. and as not having expressed its disapproval of the doctrine of promissory estoppel against the Crown nor overruled the view taken by Denning, J. in *Robertson v. Minister of Pensions* (1949) 1 KB 227 that "the Crown cannot escape the obligations under the doctrine of promissory estoppel."

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We feel we are in duty bound to express our reservations regarding the "activist" jurisprudence and the wide implications thereof which the learned Judge has propounded in his judgment. The first part of the judgment relates to the Development of law relating to promissory estoppel in England following the *High Trees* case (1956) 1 All ER 256. As pointed out by us earlier the doctrine of promissory estoppel is not very helpful as we are governed by the various provisions of the Indian Contract Act. Sections 65 and 70 provide for certain reliefs in void contracts and in unenforceable contracts where a person relying on a representation has acted upon it and put himself in a disadvantageous position. Apart from the case in *Robertson v. Minister of Pensions* (1949) 1 KB 227, the House of Lords in *Howell's* case and the Privy Council in *Antonic Buttigieg's* case AIR 1947 PC 29 and the other English Authorities do not agree with the view that the plea of promissory estoppel is available against the Government. Further, we have to bear in mind that the Indian Constitution as a matter of high policy in public interest, has enacted Article 299 so as to save the Government liability

arising out of unauthorised acts of its officers and contracts not duly executed.

17. This latest decision of the Supreme Court has laid down that the Court can enforce compliance by a public authority of the obligations laid on him if he arbitrarily or on his mere whim ignores the promises made by him on behalf of the Government. It would be open to the authority to plead and prove that there were special considerations which necessitated his not being able to comply his obligations in public interest. The voluntary announcement of the scheme was conceived with a purpose but the Government is at liberty to vary the scheme in public interest. The Government had not tied its hands by any undertaking that the scheme would not be withdrawn in future. The scheme has been dropped in the interests of general public. I have to accept the averments in counter-affidavit, as there is no machinery for the Court to ascertain as to what is good for the public. The Government has stated reasons and given justifications in dropping the scheme. The Government has disclosed to the Court what are the facts, circumstances and considerations on account of which the Government claims to have dropped the scheme and thus exempted from the liability. In my view, the considerations are such as to render it inequitable to enforce the withdrawn promise against the Government.

18. The result is that the writ petitions fail and are dismissed with no order as to costs.