
(1991) 07 DEL CK 0013
In the Delhi High Court
Case No : L.P.A. No. 47 of 1984

Dr. R.K. Deka and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 10-07-1991

Acts Referred:

Citation : AIR 1992 Delhi 53

Hon'ble Judges : Milap Chand Jain, C.J.; Arun Kumar, J

Bench : Division Bench

Advocate : Mr. K. K. Venugopal, Jagdeep Kishore, Ms. Rekha Aggarwal and N.N. Sawhney, for the Appellant; Madan Lokur, for the Respondent

Judgement

Arun Kumar, J.—This Letters Patent Appeal is directed against the judgment of a learned single Judge of this court dated 27th April, 1984 (reported in AIR 1984 Delhi 413. By the said judgment, writ petitions filed on behalf of the petitioners challenging the legality of the decision of the Government in dropping a scheme for allotment of land in Delhi to non-resident Indians, living abroad, were dismissed. The petitioners feeling aggrieved have filed the present appeal.

2. The facts necessary for purposes of decision of the present appeal are that the Central Govt. announced a scheme in early 1978 for allotment of residential plots to nonresident Indians living abroad. The objective of the scheme was to facilitate the nonresident Indians living abroad to build residential houses in India and thereby satisfy their natural urge to own property in their own country. The scheme was introduced in Delhi on an experimental basis. Non-resident Indians living abroad, who did not own residential plots/ houses/ flats either in their own name or in the name of their family members, (as defined in the Urban Land (Ceiling and Regulation) Act 1966) were eligible to apply for allotment of plots under the scheme. However, persons working for the Indian Foreign Services were not eligible to take benefit under this scheme. This was a scheme under the control of Land and Development Officer under the Ministry of Works and Housing Govt. of India. The brochure for the scheme stated that the land under

this scheme was located at Badarpur Mehrauli Road, New Delhi. The objective of the scheme as stated in the brochure reads:-

"This scheme is intended to facilitate nonresident 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 wish to do so. As it is difficult for such persons living abroad to acquire properties through Govt. auctions or private dealers, it has been decided to frame a scheme, which will facilitate this.

The scheme will, for the present, be introduced in Delhi on an experimental basis."

3. The mode of payment under the scheme was required to be as under:-

"The price of the plot (the premium) and the cost of construction on the plot shall be 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 Government in the unearned increase in the value of land on its transfer shall be payable in Indian rupees. If, however, the leasehold rights of the lessee in the "Plot allotted are transferred or assigned to another non-resident Indian residing abroad, the share of the Govt. in the unearned increase for the value of land on such transfer or assignment shall be payable in foreign exchange in the manner prescribed above."

4. The Government had to develop the land and carve out the plots before allotment to the prospective allottees under the scheme.

5. On the question of price of land and cost of construction, the brochure contained the following information:-

"V. Price of Land and Cost of Construction

The entire price of land and the cost of construction is payable in foreign currency. The total permissible covered area for a plot of 400 sq. yds. (334, 452 sq. meters)is 4050 sq ft. (376.25 sq. meters)and the approximate total cost of construction Rs. 2,43,000 (estimated @ Rs. 60 per sq. ft.). These rates are tentative and subject to variation depending on the rate prevailing at the time of construction, and the specifications adopted. It will be permissible for allottees to construct the house to any specifications that may be approved by the local body.

The plots will be allotted on lease-hold basis at the reserve price of Rs. 200/- per sq. yd. (Rs. 239.20 per sq. meter).The price of the plot will be payable in lump sum within a period of 3 months from the date of allotment."

6. Each plot was intended to be of the size of 334.452 sq. metres (400 sq. yds. approximately). The total covered areas for a plot of 400 sq. yds was to be 4050 sq. ft. and the approximate total cost of construction was estimated at Rs. 2.43/- lacs. these rates were tentative and subject to variation depending upon the rate

prevailing at the time of construction and the specifications to be adopted. However, so far as the price of the land was concerned, it was fixed at Rs. 200/ - per sq. yard and the allotment was to be on leasehold basis. The price of the plot was payable in a lump sum within three months from the date of allotment. Not more than one plot could be allotted to any individual under the scheme. The annual ground rent was payable at the rate of two and half per cent per annum of the premium from the date of allotment. The ground rent was subject to revision after every 10 years from the date of allotment. The lease deed was to be executed by the Land and Development Officer. The terms of lease were indicated in the brochure issued to launch the scheme.

7. The applications for allotment of plots under the scheme were to be addressed to the Land & Development Officer, Ministry of Works and Housing, in the prescribed form along with a demand draft in the name of the Land & Development Officer towards earnest money for foreign currency of an amount equal 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. It was also provided under the scheme that "in case the number of applicants exceeds the number of plots available for allotment, the allotment of plots will be made by draw of lots. The last date for receipt of applications was 30th April, 1978. However, this date had to be extended from time to time in view of a very lukewarm response. The last and final extended date for receipt of applications was 31st May, 1979 and by that date 325 applications were received by the Government. This is as per information revealed by the official records Produced at the time of hearing of the appeal.

8. The petitioners applied separately under the scheme and along with their application forms transmitted the amount of Rs. 10,000/- in foreign exchange towards earnest money as required under the scheme .The proposed draft of lease agreement were also received by the Land & Development Officer from the various applicants along with their initials thereon. It is the case of the petitioners that after having made the applications, they made enquiries from the Land & Development Officer about the likely date of allotment of the plots. On these enquiries they were informed that the development of the area had been taken up and the allotment of plots would follow soon. It is further submitted on behalf of the petitioners that they suddenly learnt about the scheme being dropped through a reply to an unstarred question in the Rajya Sabha by the then Minister of Works and Housing on 26th/27th of August, 1981. In that reply the Minister stated in Parliament that on reconsideration the Govt. had decided to drop the scheme. Without waiting for individual intimation or other information the petitioners moved this court by way of writ petitions under Art. 226 of the Constitution of India challenging the decision of the Govt. in dropping the scheme. According to the petitioners the impugned decision of the Govt. is totally arbitrary, capricious and vocative of the doctrine of promissory estoppel. In fact

the petitioners have totally based their case before us on the doctrine of promissory estoppel. Before the learned single Judge there was some controversy raised on the question as to the matter being in the realm of contract and, Therefore, not amenable to writ jurisdiction of this Court and secondly there being no violation of any fundamental or statutory right. However, as already stated, before us the case has been totally confined to the applicability of the doctrine of promissory estoppel. On this question the stand of the Govt. is that the scheme was dropped as it was considered not desirable to divert scarce resources of the country to such a non priority scheme, i.e. providing residential plots to non-resident Indians who were otherwise affluent enough and -could afford to pay market price for purchasing property wherever they wish to. It was also stated in the counter-affidavit that the scheme proposed sale of residential land at a rate of Rs. 200/ - per sq. yd. at a time when the market rate fixed by the Govt. itself for residential plots in the area stood revised to Rs. 600/ - per sq. yds. up to 31 st March, 1979 and Rs. 2000/ - per sq. metre w.e.f. 1 st April, 1981. It was thus felt that allotment of land at the price of Rs. 200/- per sq. yds. was way below the market rate and was totally unjustified. This was considered to be against public interest to divert scarce national resources for serving the interest of a comparatively affluent section of people who were non-resident Indians and were living abroad. Public interest demanded that the scarce resources of the society be not dissipated for the benefit of such an affluent class. Even otherwise it was considered that development of land for purposes of allotment for residential houses was in a non priority areas and the cost of development of land at the relevant time itself was above Rs. one crore which was not in public interest considering the cost at which the land was to be allotted.

9. Since the petitioners/ appellants have based their case solely on the doctrine of promissory estoppel, it is necessary to examine its various legal aspects. According to the petitioners the scheme propounded by the Govt. was a promise held out by it to allot plots of the size of 400 sq. yds. to each of the applicants who were eligible under the scheme and who paid the requisite earnest money and were willing to comply with rest of the conditions under the scheme. The petitioners claim to have acted on the promise and altered their position by depositing the earnest money in foreign exchange with the Govt. along with their application forms. Further they claim to have been always ready and willing to perform rest of the conditions under the scheme. It is also submitted on behalf of the petitioners that though suffering a detriment is not at all a prerequisite for the applicability of the doctrine of promissory estoppel, yet the petitioners have suffered a detriment inasmuch as apart from parting with their money, they did not apply for allotment of land elsewhere in the hope that they will get the residential plots allotted under this scheme. Thus, according to the petitioners, irrespective of the question of detriment, the necessary ingredients for enforcement of the doctrine of promissory estoppel are present in the case and the Govt cannot be allowed to resile from its promise. Further the avowed object

of the scheme was to earn foreign exchange. It was not a case of a bare promise being held out. The Govt. had gone ahead much further and even the land had been identified and notice board was displayed in the area showing that the land was meant for this particular scheme. The Government had only to undertake development of the said land before the plots could be allotted to the applicants. The petitioners have placed on record a copy of the map showing the location of the land. The petitioners claim that they have done whatever they were required to do under the scheme and they were always ready and willing to do the rest. Therefore, there is no reason on facts as well as in law, why the Govt. be not held bound to its assurance and why the scheme be not enforced? According to the petitioners it is a fit case for enforcement of the doctrine of promissory estoppel and the Govt. not being allowed to resile from its promise.

10. This Bench had occasion to deal with the doctrine of promissory estoppel in a recently delivered judgment in *Rakesh Kumar Kwatra v. DSIDC* (C.W.P. No.3378/87, decided on 2-5-1991). The development and application of this doctrine in India has been considered in detail in the said judgment. Suffice it to say here that it is an equitable principle evolved by courts to mitigate the hardship which a strict rule of law may entail. It is well established that equity always steps in to mitigate the rigor of law. In England Lord Denning was responsible for bringing the doctrine into limelight with his celebrated judgment in the *Central London Property Trust Ltd. v. High Trees Houses Ltd.*, (1956) 1 All ER 256. In this case the landlords let a new block of flats in 1937 on a ninety years lease at a ground rent of 2500 pounds a year. Few of the flats had been let at the outbreak of the war in 1939, and, in view of the tenants difficulty in paying the rent out of profits in prevailing conditions, the landlords agreed in writing in 1940 to reduce the rent to 1250/- pounds. No duration of the reduction of rent was specified and there was no consideration for it. The tenants paid the reduced rent. By early in 1945 the whole block of flats was let. On September, 1945 the landlords wrote asking that the full rent of 2500/- pounds should be paid and claiming arrears of 7916/- pounds. They subsequently brought a test action to recover the balance of rent. Denning, J. (as He then was) held:-

"It was noticed that the doctrine of promissory estoppel, as it has come to be known, is neither in the realm of contract nor in the realm of estoppel as it was known to common law.

If I consider this matter without regard to recent developments in the law there is no doubt that the whole claim must succeed. This is a lease under seal, and at common law, it could not be varied by parol or, by writing, but only by deed; but equity has stepped in, and the courts may now give effect to a variation in writing. That equitable doctrine could hardly apply, however, in this case because this variation might be said to be without consideration.

As to estoppel, this representation with reference to reducing the rent was not a representation of existing fact, which is the essence of common law estoppel, it was a representation in effect as to the future a representation that the rent

could not be enforced at the full rate but only at the reduced rate. At common law, that would not give rise to an estoppel, because as was said in *Jorden v. Money*, (1854) 5 HLC 185, a representation as to the future must be embodied as a contract or be nothing. So at common law it seems to me there would be no answer to the whole claim."

The judgment goes on to consider the position in view of the developments in law and ultimately holds:

"The time has now come for the validity of such a promise to be recognised. The logical consequence, no doubt, is that a promise to accept smaller sum in discharge of a larger sum, if acted on, is binding, notwithstanding the absence of consideration, and if the fusion of law and equity leads to that result, so much the better. At this time of day it is not helpful to try to draw a distinction between law and equity. They have been joined together now for over seventy years, and the problems have to be approached in a combined sense.

It is to be noticed that in the sixth interim report of the Law Revision Committee, it was recommended that such a promise as I have referred to should be enforceable in law even though no consideration had been given by the promisee. It seems to me that, to the extent I have mentioned, that has now been achieved by the decisions of the courts.

I am satisfied that such a promise is binding in law."

11. The doctrine of promissory estoppel gained prominence in India with the judgment of the Supreme Court in *Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd.*, . The following observations of Bhagwati C.J. in *Union of India (UOI) and Others Vs. Godfrey Philips India Ltd.*, , contain the statement of the law on this point so far as this country is concerned -

"It has often been said in England that the doctrine of promissory estoppel cannot itself be the basis of an action : it can only be a shield and not a sword : but the law in India has gone far ahead of the narrow position adopted in England and as a result of the decision of this Court in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, , it is now well settled that the doctrine of promissory estoppel is not limited in its application only to defense but it can also find a cause of action. The decision of this court in *Motilal Sugar Mills case* (supra) contains an exhaustive discussion of the doctrine of promissory estoppel and we find ourselves wholly in agreement with the various parameters of this doctrine outlined in that decision."

12. Thus the decision of the Supreme Court in *M. P. Sugar Mills case* is really the enunciation and statement of the law on the subject. It is a landmark judgment in the area so far as this country is concerned and holds the field in spite of its dilution in a subsequent judgment of the same court in *Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others*, , which now stands overruled by *Union of India (UOI) and Others Vs. Godfrey Philips India Ltd.*, .

13. The petitioners / appellants have heavily relied on the said judgment of the Supreme Court *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, . In fact their entire case is based on this judgment. In order to appreciate the dictum of the said judgment, it is necessary to state certain basic facts leading to the ultimate decision of the Supreme Court.

14. Letter dated 23rd January 1969 issued on behalf of the State Govt. contained a clear and categorical representation on its behalf that the proposed vanaspati factory of the appellant would be entitled to exemption from sales tax in respect of sales of vanaspati within the State of U.P. for a period of three years from the date of commencement of production. The appellant relying on the said representation borrowed money from various financial institutions, purchased plant and machinery and set up a vanaspati factory at Kanpur. The State Govt. sought to resile from the said representation and deny the benefit of the exemption to the petitioner. It was held by the Supreme Court that the State Govt. was bound by virtue of the doctrine of promissory estoppel to make good the representation made by it. In the course its detailed judgment certain observations made by the apex court need to be noticed. They are reproduced as under *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, :-

"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 place between the parties, and this would be so irrespective whether there is any preexisting relationship between the parties or not.

The law may, Therefore, now be taken to be settled as a result of this decision, that where the Government takes 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 Govt. would be held bound by the promise and the promise would be enforceable against the Govt. 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 Art. 299 of the Constitution. It is elementary that in a republic governed by the rule of law, no one, howsoever high or low, is above the law. Every one is subject to the law as fully and completely as any other and the Government is no exception in 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 as the latter. It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of

promissory estoppels ?Can the Government say that it is under no obligation to act in a manner that is fair and just or that it is not bound by considerations of "honesty and good faith"? Why should the Government not be held to a high "standard of rectangular rectitude while dealing with its citizens"? There was a time when the doctrine of executive necessity was regarded as sufficient justification for the government to repudiate even its contractual obligations, but let it be ,said to the eternal glory of this Court, this doctrine was emphatically negated in the Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., , and the supremacy of the rule of law was established. It was laid down by this Court that the Government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action. If the Government does not want its freedom of executive action to be hampered or restricted, the Government need not make a promise knowing or intending that it would be acted on by the promise and the promise would alter his position relying upon it. But if the Government makes such a promise and the promise 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. The law cannot acquire legitimacy and gain social acceptance unless it accords with the moral values of the society and the constant endeavor of the Courts and the legislatures must, Therefore, be to close the gap between law and morality and bring about as near an approximation between the two as possible. The doctrine of promissory estoppel is a significant judicial contribution in that direction. But it is necessary to point out that since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires, if it can be shown by the Government that having regard to the facts as they have subsequently transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favor of the promise and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because on the facts, equity would not require that the Government should be held bound by the promise made by it. When the Government is able to show that in view of the facts which have transpired since the making of the promise public interest would be prejudiced if the Government were required to carry out the promise, the Court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and alter his position and the public interest likely to suffer if the promise were required to be carried out by the Government and determine which way the equity lies. It would not be enough for the government just to say that public interest requires that the Government should not be compelled to carry out the promise or that the public interest would, interfere if the Government were required to honour it. The Government cannot, as Shah, J., pointed out in the Indo-Afghan Agencies case, claim to be exempt from the liability to carry out the promise "on some indefinite and undisclosed ground of necessity or expediency", nor can the Government claim to be the sole judge of its liability and repudiate it

"on an ex parte appraisalment of the circumstances". If the Government wants to resist the liability, it will have to disclose to the Court what are the subsequent events on account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether those events are such as to render it inequitable to enforce the liability against the Government. Mere claim of change of policy would not be sufficient to exonerate the Government " from the liability, the Government would have to show what precisely is the changed policy and also its reason and justification so the Court can judge for itself which way the public interest lies and what the equity of the case demands .It is only if the Court is satisfied, on proper and adequate material placed by the Government, that overriding public interest enquires, that the Government should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government. The Court would not act on the mere ipse dixit of the Government, for it is the court which has to decide and not the Government whether the Government should be held exempt from liability. This is the essence of the rule of law. The burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the Court would insist on a highly rigorous standard of proof in the discharge of this burden. But even where there is no such overriding public interest, it may still be competent to the Government to resile from the promise "on giving reasonable notice, which need not be a formal notice, giving the promise a reasonable opportunity of resuming his position", provided of course it is possible for the promise to restore status quo ante. If, however, the promise cannot resume his position, the promise could become final and irrevocable. Vide *Ajayi v. Briscoe*, (1964) 3 All ER 556."

On whether suffering a detriment is necessary for invoking the doctrine of promissory estoppel, this is what the Court observed (para 33 of AIR):-

"The alteration of position need not involve any detriment to the promisee. If detriment were a necessary element there would be no need for the doctrine of promissory estoppel because, in that event, in quite a few cases, the detriment would form the consideration and the promise would be binding as a contract. There is in fact not a single case in England where detriment is insisted upon as a necessary ingredient of promissory estoppel.

We do not think that in order to invoke the doctrine of promissory estoppel it is necessary for the promise to show that he suffered detriment as a result of acting in reliance on the promise. But we may make it clear that if by detriment we mean injustice to the promise which would result if the promisor were to recede from his promise, then detriment would certainly come in as a necessary ingredient. The detriment in such a case is not some prejudice suffered by the promisee by acting on the promise, but the prejudice which would be caused to the promisee, if the promisor were allowed to go back on the promise.

It would, Therefore, be correct to say that in order to invoke the doctrine of promissory estoppel it is enough to show that the promisee has, acting in reliance on the promise, altered his position and it is not necessary for him to further show that he has acted to his detriment."

15. Subsequent decisions of the Supreme Court and some of the High Courts have reiterated the same legal principles in relation to the doctrine of promissory estoppel. While on this, it is worthwhile to notice that the doctrine of promissory estoppel is not an absolute doctrine which does not admit of any exceptions. The various exceptions to the applicability of the doctrine of promissory estoppel have been noticed in the judgments referred to hereinbefore. Our attention has been drawn to a recent judgment of the Rajasthan High Court to which one of us (Chief Justice Shri M. C. Jain) was a party. The said judgment is reported as *Malu Khan Vs. State of Rajasthan and Another*, . After restating the law on the subject, the judgment sums up the well recognised exceptions to the applicability of the doctrine. They are:-

(1) that there can be no promissory estoppel against the Legislature in the exercise of its legislative functions;

(2) that the Government or public authority cannot be debarred by promissory estoppel from enforcing a statutory prohibition;

(3) that the doctrine of promissory estoppel cannot be used to compel the Government or a public authority to carry out a representation or promise which is contrary to law;

(4) that the doctrine of promissory estoppel is not applicable in cases where the authority or power of the Officer of the Government or of the public authority is outside the authority of the power to make that; and

(5) that the doctrine of promissory estoppel being an equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have subsequently transpired it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favor of the promise and enforce the promise against the Government."

16. The fifth exception will include change in policy in public interest as recognised in the *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, . This finds more specific expression in *Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others*, , wherein it has been laid down on page 251 (of SCQ : (at p. 948 of AIR) of the report "another limitation is that the doctrine of promissory estoppel does not operate at the level of Govt. policy."

17. Mr. Lokur, learned Govt. counsel has brought to our notice yet another exception spelled out in the *M. P. Sugar Mills* case at page 644 of the report in the All India Reporter, *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar*

Pradesh and Others, , which runs as under:-

"But even where there is no such overriding public interest, it may still be competent to the Govt. to resile from the promise "on giving reasonable notice, which need not be a formal notice, giving the promise a reasonable opportunity of resuming his position" provided of course it is possible for the promise to restore status quo ante. If, however, the promise cannot resume his position, the promise could become final and irrevocable."

18. In the backdrop of this legal position we proceed to examine the case of the petitioners invoking the doctrine of promissory estoppel and seeking directions to the Govt. to compel it to honour the scheme in question. Before doing so let us notice how the impugned judgment of the learned single Judge dealt with the matter.

19. The learned single Judge was pleased to dismiss the writ petitions holding that the considerations which weighed with the Govt. in dropping the scheme were in public interest, viz., inadvisability of frittering away scarce national resources in a non-priority scheme. The learned single Judge also noticed that there was a sharp increase in land prices and the cost of development for which it was considered inequitable to allot land at the rate of Rs. 200 / - per sq. yd. to non-resident Indians who are among the affluent sections of people. These reasons were considered by the learned single Judge to be germane and sound for the variation of the earlier executive decision of the announcement of the scheme. According to the learned single Judge, public "policy should not and does not remain static. Public policy has to be transformed, suited or varied from time to time depending upon the welfare of the community at any given time. Ours being a welfare State it was considered that the decision to drop the scheme was in public interest. "No Government can bind itself not to exercise that discretion when 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. "

20. The decision of the learned single Judge was given on 27th April 1984. At that time Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, , held the field. This decision on the legal aspects of the doctrine of promissory estoppel had criticized certain observations made in the earlier decision of the Supreme Court in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , referred to hereinbefore. This decision had to some extent blunted the teeth provided to the doctrine of promissory estoppel in M. P. Sugar Mills case. In a nutshell, according to the judgment, if the decision to go back on the promise was arbitrary, contrary to law or without authority, only then the doctrine of promissory estoppel could be invoked, otherwise a fairly large scope was provided for the Govt. to reverse its earlier promises. This decision in Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, was specifically overruled in Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., and

the preeminent position of the decision of the Supreme Court in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, was restored.

21. The learned single Judge, Therefore, rightly relied on the decision of the Supreme Court in *M/s. Jeet Ram Shiv Kumar's* case while dismissing the writ petitions. The decision in *Godfrey Philips Ltd.* came later.

22. Relying on the judgment of the Supreme Court in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, , Mr. Venugopal, learned counsel for the appellants has urged before us that the avowed object of the scheme was to earn foreign exchange. The foreign exchange position of the Govt. of India has not improved so much as to. suggest that this object is no longer relevant. The stated object of the scheme was to facilitate non-resident Indians living abroad to build residential houses in India and thus satisfy their natural urge to own property in their own country and to settle down therein whenever they wish to do so. Even this object is very much in existence and has not disappeared with the passage of time. Therefore, according to the counsel, the Govt. was not justified in dropping the scheme.

23. Adverting to the reasons spelt out in the counter affidavit of the Govt., the learned counsel states that those reasons are such which were as much in existence at the time of promulgation of the scheme as they were at the time when it was decided to drop the same. In terms of the Supreme Court decision in *M. P. Sugar Mills* case, unless the reasons for the decision to drop the scheme or to resile from the promise are such that "hey have come into existence subsequent to the stage when the promise was held out, the Govt. could not be allowed to resile from the promise. The reasons given by the Govt. in its counter affidavit for dropping the scheme are:-

(a) It was not desirable to divert scarce resources of the country to such non-priority schemes, namely, providing residential plots to non-resident Indians who were affluent and could afford market price for the land.

In fact this statement includes the other aspect that the non-resident Indians are affluent persons.

(b) The sale of residential land at the rate of Rs. 200/ - per sq. yard at a time when predetermined market rate fixed by the Govt. for residential plots stood revised to Rs. 600/ -per sq. yd. up to 31st March 1979 and Rs. 1660.66 per sq. yd. from 1-4-1981. Allotment of land at the price of Rs. 200/- per sq. yd. to nonresident Indians who were affluent enough; at this price which was way below the market price, could not be justified and this would be against public interest. Public interest required that the resources of the society are not dissipated for the benefit of affluent sections of people who can look after their own needs.

(c) The development of land would have been at a cost which was not viable in relation to price at which the land was proposed to be sold and, Therefore, the

country could ill afford to embark upon such a scheme.

24. According to the learned counsel for the appellants, the reason (a) above was very much in existence at the time when the scheme was approved and launched and, Therefore, could not be said to be something which had come into existence subsequent to the earlier decision. So far as reason (b) is concerned, it is submitted that it was on account of delay on the part of the Govt. in implementing the scheme that stage was reached when the land prices shot up and the petitioners/ appellants could not be blamed for this. In other words the Govt. cannot be allowed to take advantage of its own wrong. Thus the same argument is advanced regarding reason (c) stated above because the rise in cost of development was also the result of delay in execution of the development work on the part of the Govt. for which the petitioners could not be held responsible. Thus according to the counsel for the appellant, none of these reasons satisfy the tests laid down by the Supreme Court in its decision in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, and the Govt. was liable to be directed to give effect to the scheme forthwith.

25. In addition to the aforesaid submissions the counsel for the appellants has also stated that it is not a bare statement of the Govt. in its counter affidavit which could be taken to be a gospel truth and accepted on its face. The onus is on the Govt. to place on record sufficient material to justify its stand. On this aspect of the case we may mention that the relevant Govt. files were produced before us during the course of the hearing of the case and we had occasion to take into the same.

26. According to the appellants the scheme announced by the Govt. was a definite scheme which contained a promise to allot residential plots to eligible applicants who were willing to fulfill the conditions under the scheme. The petitioners acted upon the promise and deposited the earnest money in foreign exchange. They initialed the pro forma of the lease deed to be executed between the parties and submitted the same to the Land & Development Officer. The land meant for allotment under the scheme was identified and sign board was displayed in the area stating that the land was meant for this scheme. The appellants were required to do nothing else. The appellants have shown their readiness and willingness to perform their remaining obligations under the scheme. The appellants have also relied on certain letters issued by the Ministry of Works and Housing in response to inquiries made by the appellants regarding the allotments to be made under the scheme. In this background the appellants submit that they have clearly altered their position on the basis of the promise held out to them by the Government under this scheme for allotment of - residential plots to them. It is further submitted on behalf of the appellants in this connection that not only they have altered their position but also they have suffered a detriment in as much as they have been prevented from applying for allotment of land elsewhere or from buying land or property in view of the eligibility condition under the scheme which provides that the applicant should

not "own" a residential plot of land/house/flat either in his/her name and/or in the name of his/her family members as defined in Urban Land (Ceiling and Regulation) Act 1976. According to the appellants this condition would have disqualified them from allotment under the scheme if they happened to own another residential plot, house or flat in their, own name or in the name of their spouse or unmarried minor children in Delhi or New Delhi. It is no doubt true that suffering a detriment is not at all necessary in order to invoke the doctrine of promissory estoppel. Since the appellants have raised this point, we may straightway deal with this. The disability or ineligibility would be only on "owning" and not merely making an application under any other scheme. Thus there was no bar for the appellants applying under any other scheme of the Govt. We agree with this observation of the learned single Judge in the impugned judgment on this aspect of the matter. We may add here that the wordings of the eligibility clause in the scheme clearly suggest that the word "own" refers only to the stage of making of the application. This finds support from another aspect of the eligibility condition which is "a non-resident Indian living abroad". A question may be raised about the force and effect of this portion of the eligibility clause. Should it mean that the applicant should continue to reside abroad for all times to come or this was applicable only at the time of making of the application? Surely it cannot be said that the applicant would be disqualified after he returned to India after having made the application initially while living abroad. Therefore, nothing substantial turns on this eligibility condition under the scheme and the appellants cannot be allowed to make much capital out of this submission.

27. Seeking to raise certain equities in favor of the appellants, the learned counsel for the appellants has submitted that for nearly four years the appellants were kept waiting and while the appellants waited, prices of land in the city kept on rising. Reference has been made to certain letters from the Ministry of Works & Housing to some of the appellants suggesting that progress was being made in the matter and steps were being taken to implement the scheme. On this basis it is urged that the appellants were lulled into inaction. This has resulted in tremendous prejudice to the appellants. The price of the land in the society have risen so much that it has become impossible to acquire any land or property in the city. Accordingly it is submitted by counsel that it is a fit case in which the Govt. should be compelled to keep its promise and allot plots to the appellants as per the scheme.

28. Apart from this the learned counsel for the appellants has also emphasised the fact that by deposit of earnest money certain rights have been created in favor of the appellants though it is conceded that there is no formal contract and as such there was no question of enforcement of a contract. But the promise held out and the altering of the position by the appellants by deposit of earnest money entitles them to seek the fulfillment of promise. In order to show the manner, nature and the legal consequences of earnest money, reliance has been placed on *Shri Hanuman Cotton Mills and Others Vs. Tata Air Craft Limited*, . In para 24 of the said judgment the following principles have been stated regarding

"earnest" money:-

- (1) It must be given at the moment at which the contract is concluded.
- (2) It represents a guarantee that the contract will be fulfilled or, in other words, "earnest" is given to bind the contract.
- (3) It is part of the purchase price when the transaction is carried out.
- (4) It is forfeited when the transaction falls through by reason of the default or failure of the purchaser.
- (5) Unless there is anything to the contrary in terms of the contract, default committed by the buyer, the seller is entitled to forfeit the earnest.

29. As already stated, it is conceded that the present case is not one of contract, since no contractual obligations ever came into play. Therefore, we do not appreciate how the concept of earnest as deducible from the principles stated herein above is relevant or can be of any help to the appellants.

30. The learned counsel for the appellants while concluding, referred to the above mentioned exceptions to the doctrine of promissory estoppel and submitted that the present case does not fall in any of these. As a result he urges that it is a fit case in which the Govt. should be compelled to carry out the scheme by invoking the doctrine of promissory estoppel in favor of the appellants.

31. Mr. Madan Lokur, learned counsel appearing for the Government has, apart from placing reliance on the stand of the Govt. spelt out in the counter-affidavit; drawn our attention to certain facts which led to the dropping of the scheme. For this he relied on Government records produced before us. We will revert to the same after dealing with certain submissions of the counsel based on the brochure regarding the scheme. It is urged that the very wording of the scheme suggests that it was on an experimental basis. By this he means, that there was an element of uncertainty in the scheme. If there was not enough response, Govt. was not bound to continue with the scheme. To illustrate the point it is submitted that suppose there were only 50 applicants under the scheme, even though the number of plots to be carved out was in the region of about 300. In such an event the counsel submits, the Govt. would have been fully justified to drop the scheme. Likewise it is submitted that there was another element of uncertainty of allotment in the scheme in as much as if the number of applicants was to be more than the number of the plots to be carved out, the allotment was envisaged to be on the basis of draw of lots. This would again mean that there could be no assured allotment and only those who were lucky in the draw of lots would get the allotment. The counsel for the respondent also submitted that the brochure containing the scheme was only by way of information and that is why it was called prospectus. According to him, prospectus does not mean that there was any firm promise to make allotment nor making an application mean certainty of application being accepted. It has also been submitted by the counsel for the respondent that the appellants were not debarred from applying

elsewhere and, Therefore, they cannot be said to have suffered any detriment because of the scheme of the Govt. This last aspect has already been dealt with by us in an earlier part of this judgment.

32. The Govt. records show that there was no sufficient response for the scheme in the beginning and that is why the time for making applications under the scheme had to be extended again and again. It is also seen that for this reason the Govt. was not willing to start the development work straightway. It was thought that if the scheme was to be abandoned for reason of lack of response, the expenditure on development would have gone waste. A note in the Govt.'s relevant file shows that about 3000 copies of the brochure were dispatched to foreign missions. Still there were only about 30 applications up to 30-4-78. This led to extension of date for making applications up to 31st July 1978. By this date also only 96 applications were received. Time was further extended by two months and by 30-9-78 only 150 applications were received. When the scheme was announced, 260 plots of the size of 400 sq. yds. each were decided to be carved out. Therefore, even up to 30-9-78 there were not enough applicants. This led to further extension of the last date up to 31-12-78 and by that date also only 226 applications were received. As already stated it was decided not to start the development work in view of the poor response under the scheme. By this time about an year had elapsed and revised estimates regarding the cost of development had to be worked out. In order to distribute the development cost further it was decided to have 307 plots rather than 260 plots. The last date for submission of applications was also extended up to 31st March 1979. Up to this extended date 298 applications were received. There was yet another extension of time up to 31st May 1979 by which date 355 applications were received. It is worth mentioning here that the land rates fixed by the Govt. for this area had been revised w.e.f. 1-4-79 to Rs. 600/- per sq. yd. and w.e.f. 1-4-81, they were raised to Rs. 2,000/- per sq. mtrs. The Govt. had extended the date for receipt of applications from time to time. As already stated, the fresh estimates for development were to be worked out and considered in the context of the price of plots which was predetermined under the scheme @ Rs. 200 / -per sq. yd. Therefore, the matter had to be placed before the Cabinet again for its consideration. The scheme had earlier been approved by the Cabinet, Therefore, at the time of its reconsideration also the matter was placed before the Cabinet. Taking an overall view of the situation, the Cabinet decided to drop the scheme on 6-8-1981 and the decision was subsequently announced in Parliament, to which the appellants have themselves made a reference.

33. According to the counsel for the respondent the scheme itself was born as a result of a policy decision by the highest decision making body in the Govt. There were compelling reasons before the govt. to review its policy decision in public interest and overriding public interest demanded that the scheme be dropped. This decision was taken by the same body which had earlier taken the decision to promulgate the scheme.

34. This narration of facts emerging from the Govt. records completely answers the argument of delay on the part of the Govt. in implementation of the scheme. The appellants had built up the argument on delay to show that it was on account of delay on the part of the Govt., that the cost of construction rose and the prices of the land also soared high leading to the impasse. The poor response to the scheme and the extension of the last date for making applications under the scheme from time to time shows that the Govt. was justified in extending the date and also in not starting the development work straightway after the announcement of the scheme. The Govt. was very well justified in considering that if there was no sufficient response under the scheme, the entire development cost would go waste in the event of the scheme having to be abandoned for lack of response. Public money cannot be wasted or frittered away. It was a wise decision on the part of the Govt. to wait before undertaking development of the area. Therefore, neither the Govt. can be blamed for delay nor can it be said to be a case of the Govt. trying to take advantage of its own wrong.

35. While on the question of delay, we may also deal with the argument of the appellants that through its letters, the Govt. lulled them into inaction which resulted in wastage of precious time during which land prices soared in the capital city. A reference to the letters shows that they do not hold out any further commitment than what was already there in the brochure. These were stock replies in response to letters from petitioners. If at all, such replies should have put them on the guard.

36. Having held that delay in undertaking development was justified, it follows that the cost of development had to be worked out again when sufficient number of applications were received and it was considered appropriate to start the development. By this time cost of development as well as land prices had soared so high that public interest demanded reconsideration of the entire scheme. It was in this context that the matter was placed before the Cabinet again. The Cabinet decided to drop the scheme in public interest. The decision to drop the scheme was motivated solely on account of overriding public interest. Public interest is supreme. Interest of a few has to yield to larger public good.

37. Promissory estoppel is an equitable principle. It cannot be enforced where its enforcement results in inequity. In the present case comparative equities have to be seen. While considering equity in favor of petitioners, who are comparatively smaller in number and belong to an affluent class, the inequity visited upon the general section of the Indian Society consisted of poor people has to be seen. Impact of enforcement of the doctrine on public interest cannot be ignored. Equity, in the circumstances of the present case, demands that the Govt. decision of dropping the scheme which is solely based on public interest, be upheld. To hold otherwise would result in unnecessary drain on our otherwise already scarce resources. Ours is a welfare State. The Govt. stands for greatest benefit to the largest numbers. Our resources being limited, the Govt. is bound

to set priorities for itself The object of the scheme 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 wherever they wish to do so". This object does not call for any priority when considered in the light of several other pressing public welfare needs. Public money has to be utilised first for purposes of various more pressing needs of our people. The nonresident Indians living abroad constitute a comparatively smaller group of affluent people who do not need this kind of Govt. support. It would be much better if through our limited resources more mouths could be fed, more children could be provided education and health care, water and electricity could reach every home, the shelterless could have a roof above their head to mention a few of the pressing public needs.

38. To the argument of the appellant that the compelling reasons for resiling from the promise should be proved to the hilt by the Govt. our answer is that this is not a case where more details than what is stated in counter are really required to be stated. If at all there was anything which was desired to be stated, it has been made good through production of the official files. Rest is a matter of inference. Taking an overall view of the entire defense or justification offered on behalf of the Govt. for dropping the scheme, we find that the Govt. decision is fully justified and the doctrine of promissory estoppel has to yield to overriding public interest as stated in the *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, . We feel that this case is eminently fit to fall in the exception based on overriding public interest.

39. Now coming to the question as to whether petitioners were put to notice of such an eventuality, we have already held that there was nothing in the scheme which prevented the petitioner or other applicants from taking steps for purposes of acquiring other property/ land. They were free to do so whenever they liked. Therefore, they could always resume their position. The fact that there was uncertainty of allotment under the scheme for at least two reasons, if not more, (scheme being experimental could have been dropped for want of sufficient response and uncertainty of allotment in the event of larger number of applicants than the number of plots) can be taken to be sufficient notice to the applicants which would have enabled them to resume their position or secure it in any other manner whenever they liked.

40. The element of lack of certainty of allotment of plots under the scheme so far as individual applicants were concerned to which reference has been made in the preceding paragraph, renders the case of the petitioners for enforcement of the doctrine of promissory estoppel itself very weak. Doctrine of promissory estoppel applies when there is a clear and unequivocal promise to do something on the part of the promisor. If the promisor retains the power of discretion of not being bound by the promise, the whole basis for invoking the doctrine, of promissory estoppel goes. In the present case nobody can say that the Govt. was bound to fulfill the scheme even if there were only a few applicants. The scheme itself

suggested that it was on an experimental basis. The experiment could be abandoned even at the earliest stage. This alone is sufficient to establish that there was no firm commitment from the Govt. Then in the event of the number of applicants being more than the number of plots, there had to be a draw of lots. Draw of lots would mean that some would not get the allotment. These unlucky applicants could be any. The argument of the appellants in this behalf that at least so much of the applicants as the number of plots could be assured of allotment, misses the , point. The uncertainty of allotment looms large for all the applicants because it could be any number out of them who would fail to get the allotment. The uncertainty has to be tested from the point of view of the individual applicants and not otherwise.

41. It is also worth mentioning in this context that the scheme does not say that in the event of the number of applicants being more than the number of plots, the allotment will be on a first come first served basis. No seniority list of applicants is envisaged. Therefore, even if the number of applicants could increase by one, all had to face a draw of lots for allotment and the unlucky could be anyone. This means uncertainty looms large on the mind of all.

42. These factors suggest that there was no firm promise or assurance by the Govt., which was capable of being enforced. Therefore, there is no occasion to invoke the doctrine of promissory estoppel in the present case.

43. Before parting with the judgment, we consider it worthwhile to deal with one aspect of the matter on which great stress has been laid by the learned counsel for the appellants. The Supreme Court decision in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, while dealing with the exceptions to the doctrine of promissory estoppel has recognised it as an exception that the Govt. may for compelling reasons have to reverse its policy decision. However, it has been equally emphasised that the reasons should have come into existence subsequent to the policy or promise held out in the first instance. It is submitted by the .counsel for the appellants that in the present case the so called reasons for the change in the policy were very much in existence at the time of its initial formulations and, Therefore, for the said reasons the Govt. cannot be permitted to resile from the policy. The reasons referred to by the counsel like (a) it is not priority sector scheme; (b) it is for the benefit of non resident Indians who were affluent people; (c) the land is scarce and such resources of the State should be better utilised for other beneficial/ welfare measures, if taken in isolation, appear to be quite appealing. However, if an overall view has to be taken combining all the factors together, it will appear that the reasons for change in policy have come up subsequently and are in that sense subsequent events. It is important in this behalf to note that the cumulative effect of these various reasons came into play in a big way in view of the fact that initial response to the scheme was not quite encouraging and the govt. could not undertake the development of the land straightway. We have already noticed that by the initial last date for receipt of applications, i.e. up to 30478, there were only 30 applicants and even up to

the first extended date, i.e. 31-7-78 there were only 96 applicants. In the face of such a poor response the Govt. could not undertake the development work which was initially planned for 260 plots. There was every justification for the apprehension that in the event of sufficient number of applicants not coming forth, the entire project may have to be shelved and in such circumstances, if development work had started, the cost of development would have gone waste. Keeping all this into consideration, we have already held that the delay in undertaking the development work on the part of the govt. was fully justified.

44. This leads us to the second stage when finally the Govt. considered taking up the development work after sufficient number of applications were received. By this time the entire development cost had to be worked out again and it was found that it had risen very high. Therefore, nobody can be blamed for the factors which led to ultimate decision of dropping of the scheme by the Govt. All these factors really came into play subsequent to the promulgation of the scheme.

45. Thus even if the doctrine of promissory estoppel was to be applied in the facts and circumstances of the present case, the decision of the Govt. in dropping the scheme would really be covered under the exceptions to the said doctrine and the Govt. cannot be held liable to fulfill its alleged obligation/promise.

46. In the result this appeal fails and is hereby dismissed leaving the parties to bear their own respective costs.

Appeal dismissed.