

(1991) 03 MP CK 0026
In the Madhya Pradesh High Court
Case No : S.A. No. 343 of 1976

Gopaldas and Others

APPELLANT

Vs

Municipal Corporation and Another

RESPONDENT

Date of Decision : 19-03-1991

Acts Referred:

Evidence Act, 1872 — Section 115

Quanoon Municipality Hai Riyasat Gwalior, 1993 — Section 45, 46, 46(2)

Specific Relief Act, 1963 — Section 10

Citation : (1991) JLJ 431 : (1991) 36 MPLJ 654 : (1991) MPLJ 654

Hon'ble Judges : R.C. Lahoti, J

Bench : Single Bench

Advocate : K.N. Gupta, for the Appellant; M.G. Khedkar, for the Respondent

Judgement

R.C. Lahoti, J.

The plaintiff/appellants have come up in appeal aggrieved by the judgments and decrees of the Courts below dismissing their suit for specific performance of a contract for sale.

The case of the plaintiffs is that their predecessors-in-interest namely late Shri Motilal and late Shri Prahlad Das had applied for purchase of a piece of land from the then Municipality of Gwalior in the year 1948. The Municipal Council resolved in favour of the prospective purchasers requiring them to deposit Rs. 58-6 Annas, which was done. The property was under litigation at that time. When the litigation was over and demand was made for executing the sale-deed, the municipality took up the plea that the land was Nazul land, the ownership vesting in the State, and hence the municipality was not competent to execute the deed of sale.

On suit being filed, the defendant municipality did not file any written statement but the case was contested by the State Government. It was submitted that not only the title vested in the State but also that the Municipal Council now

constituted under M. P. Municipalities Act, 1961 was not obliged to fulfil the obligations incurred by the Gwalior Municipality. It was also submitted that no contract having been entered into between the plaintiffs' predecessors-in-interest and the Municipal Council, specific performance could not be claimed. Plea as to limitation was also taken.

The lower Appellate Court while affirming the decree of the trial Court has observed that the alleged agreement is said to have been made in the year 1948 when Quanoon Municipality Hai Riyasat Gwalior, Samvat 1993 was in force. Section 45 thereof provided for any contract (including one for the sale of land) by Municipal Council being made only in the prescribed manner. Section 46 thereof provided that the contract entered into should be in writing signed by two members of the Council one of which should be either the President or the Vice-President and the Secretary should also sign the same. The contract should bear the seal of the municipality. Section 46(2) of the Act enacted that any contract not executed in accordance with Section 46(1) would not be binding on the Municipal Council. Admittedly, such a contract with the prescribed legal formalities was not entered into. The contract was not, therefore, binding on the municipality and could not have been enforced.

The learned counsel for the appellants placing reliance on the leading authority of the Union of India and Ors. v. Anglo Afghan Agencies etc. AIR 1968 SC 718 submitted that even if the existence of contract with all its formalities was not made out, still this Court should hold the defendant bound by its promise by applying the doctrine of promissory estoppel and decree the suit. They relied on the following passage : -

".....even though the case did not fall within the terms of Section 115 of the Evidence Act, it was still open to a party who had acted on a representation that the Government shall be bound to carry out the promise made by it, even recorded in the form of a formal contract as required by Article 299 of the Constitution."

The doctrine of promissory estoppel has been very recently explained by their Lordships of the Supreme Court in Vasantkumar Radhakisan Vora Vs. The Board of Trustees of the Port of Bombay, Their Lordships have said as to the doctrine of promissory estoppel : -

"It is neither in the realm of contract nor in the the realm of estoppel. Its object is to interpose equity shorn of its form to mitigate the rigour of strict law."

"The promissory estoppel cannot be used compelling the Government or a public authority to carry out a representation or promise which is prohibited by law or which was devoid of the authority or power of the officer of the Government or the public authority to make."

"Before making the public authority responsible for acts of its subordinate, it must be established that the subordinate officer did in fact make the

representation and as a fact, is competent to make a binding promise on behalf of the public authority or the Government. Ultra vires acts do not bind the authority and insistence to abide by the said ultra vires promise would amount to putting premium and legitimacy to ultra vires acts of subordinate officers."

Just as Sections 45 and 46 of Gwalior Municipalities Act prescribed essential formalities of contracts on behalf of the municipality so is Article 299 of the Constitution of India providing formalities of contracts on behalf of Government under pain of non-enforceability for failure to comply with the formalities. Article 299 has come up before the Apex Court on several occasions. Only two decisions may be noticed.

1 In *The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others*, their Lordships held : -

"It is now well settled that the provisions of Article 299 of the Constitution which are mandatory in character required that a contract made in the exercise of the executive power of the Union or of a State must satisfy three conditions viz. (i) it must be expressed to be made by the President or by the Governor of the State, as the case may be; (ii) it must be executed on behalf of the President or the Governor, as the case may be and (iii) its execution must be by such person and in such manner as the President or Governor may direct or authorised. Failure to comply with these conditions nullifies the contract and renders it void and unenforceable."

2 The above said decision has reiterated the principles laid down in *Mulamchand Vs. State of Madhya Pradesh*, wherein their Lordships held:-

"There is no question of estoppel or ratification in a case where there is contravention of the provisions of Article 299(1) of the Constitution. The reason is that the provisions of Section 175(3) of the Government of India Act and the corresponding provisions of Article 299(1) of the Constitution have not been enacted for the sake of mere form but they have been enacted for safeguarding the Government against unauthorised contracts. The provisions are embodied in Section 175(3) of the Government of India Act and Article 299(1) of the Constitution on the ground of public policy on the ground of protection of general public and these formalities cannot be waived or dispensed with."

3 These principles have been re-affirmed in the subsequent decisions (see *Commissioner of Income Tax, Kanpur Vs. Dr. R.S. Gupta*, and *State of Punjab and Others Vs. Om Parkash Baldev Krishan*,

It is, therefore, clear that the doctrine of promissory estoppel does not operate in the realm of contract. If any contract to be enforceable is required by law governing it to be executed with certain formalities and the law further enjoins that the contract shall not be binding in the absence of such formalities having been complied with, the beneficiary under the contract cannot sue for specific performance of the contract by taking resort to the doctrine of promissory

estoppel. The contention raised by the learned counsel for the appellant, therefore, fails.

Inasmuch as, the plaintiffs have failed on the first ground itself, it is not necessary to examine the other contention as to whether the successor municipality could be held bound by the obligations incurred by the predecessor municipality of Gwalior State, as also the contention as to whether the title had come to be vested in the State by operation of law.

Though the plaintiffs have been held not entitled to secure specific performance of the contract, still, the amount of consideration deposited by them should be returned by the defendants.

For the foregoing reasons, the appeal is partly allowed. Though the decree of the Courts below dismissing the plaintiffs' suit for specific performance of contract for sale is upheld but, it is directed that the Municipal Corporation, Gwalior shall refund the amount of Rs. 58-6 Annas to the plaintiffs. In the facts and circumstances of the case, the parties are left to bear their own costs throughout.