(1974) 08 MP CK 0005

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 51 of 1972

Laghu Udyog Karmachari Co-operative Housing Society Ltd. APPELLANT

Vs

State and Others RESPONDENT

Date of Decision : 06-08-1974

Acts Referred:

Evidence Act, 1872 — Section 115
Madhya Pradesh General Clauses Act, 1957 — Section 21
Madhya Pradesh Town Improvement Trust Act, 1961 — Section 71, 83

Citation : AIR 1975 MP 93 : (1975) JLJ 547 : (1974) 19 MPLJ 887 : (1974) MPLJ 887

Hon'ble Judges : G.L. Oza, J;G.G.Sohani, J

Bench : Division Bench

Advocate : A.J. Bhojwani, for the Appellant; G.G. Solanki, Dy. Govt. Advocate (for Nos. 1 to 3) and S.D. Sanghi, (for No. 4), for the Respondent

Final Decision : Allowed

Judgement

Oza, J.

This is a petition filed by the petitioner seeking a direction for quashing the order passed by respondent dated 22-2-1972 withdrawing the permission granted by the Indore Improvement Trust with the approval of the Government and such other suitable directions.

Facts giving rise to this petition are that the petitioner is a co-operative housing society registered under the M. P. Co-operative Societies Act with the object of developing a housing colony for its members. It is alleged by the petitioner :--

(i) That this society before its registration was formed under the name the Maha Malav Co-operative Housing Society; but later it changed its name to "Laghu Udyog Karmachari Co-operative Housing Society Ltd." and was registered on 15-1-1971. This society had in view the land situated on Bhanwarkuva road. Indore within the limits of the Indore Municipal Corporation. This land is described as Khasra No. 1356/2 area 5.19 acres and Khasra No. 1358/2 area 3.51 acres total 8.70 acres and the society was negotiating with the holder of this land. But this land was included in a scheme of respondent No. 4 known as scheme No. 44 and a notification approving this scheme was issued by the State Government u/s 71 of the Madhya Pradesh Town Improvement Trust Act and published in the Madhya Pradesh Gazette dated 13th August, 1965. Consequently, the petitioner society moved respondent No. 4 requesting it to release this land from scheme No. 44 and for permission to the petitioner to develop it into a colony for the society. Petitioner also made clear in its request that it was prepared to purchase the land.

(ii) That respondent No. 4 by its letter dated 2-7-1971 informed the petitioner that respondent No. 4 has passed a resolution (No. 8 dated 20-1-1971) and has also obtained the sanction of the State Government for releasing this land from scheme No. 44. By this letter the petitioner was also informed by respondent No. 4 that the petitioner should proceed ahead. It was also intimated that in accordance with the resolution of the trust the condition which the trust proposes to impose shall be intimated to the petitioner when a decision is taken to that effect.

(iii) That the petitioner society, in pursuance of this intimation went ahead and got a sale deed executed from the original holder of the land for Rs. 1,40,000/- on 14-7-71 and got it registered. This sale deed according to the petitioner was executed in the name of the Vice-President of the society and therefore it also secured a registered document from the Vice-President described as "release deed" in favour of the petitioner society. After the sale was completed the petitioner proceeded ahead with the survey of the land and preparations of plans for the improvement. Petitioner also submitted the plans to respondent No. 4 for development and the petitioner alleges that it was informed that the representative of the officer in-charge, town planning would go on the spot and inspect the site on 31-1-1972. It is alleged that he in fact inspected the site and the plans and lay out of the petitioner society were approved. It is alleged by the petitioner that the respondent No. 4 recommended the lay out and plans of the petitioner society on the aforesaid land to the Town Planning office and forwarded the plans, estimates and lay outs with the recommendation for sanction vide letter No. 181 dated 24-1-1972 addressed by respondent No. 4 to respondent No. 3 with a copy endorsed to the petitioner. The respondent No. 4 through its Chairman then wrote a letter to the petitioner on 17-2-1972 bearing No. 429 intimating the conditions on which the land had been released by respondent No. 4 and directing that the petitioner will have to observe those conditions while carrying out the development of the colony, and it is alleged that the petitioner society accepted the said conditions and communicated their acceptance vide letter dated 22-2-1972 to respondent No. 4.

(v) That respondent No. 4, by their letter No. 474 dated 22-2-1972 intimated the petitioner that the permission and sanction accorded to the petitioner society vide their letter dated 2-7-71 has been cancelled and the petitioner in this petition, therefore seeks the quashing of these orders and a direction that respondent No. 4 should go ahead in accordance with the intimation sent by them vide letter dated 2-7-1971 and the resolution of respondent No. 4 that is Resolution No. 8 dated 20-1-1971.

On behalf of the respondent No. 4 there is not much dispute about facts. But it was contended that respondent No. 4 was not informed about the registered sale deed having been executed in favour of the petitioner. An attempt was also made to challenge the consideration for the sale deed. It is also contended that the letter dated 17-2-1972 written by the Chairman of respondent No. 4 was not under any resolution of respondent No. 4 and therefore was unauthorized. It is also contended that the conditions referred to in this letter was no intimation of acceptance of it; under these circumstances there is no completed contract. It was further contended that the respondent No. 4, being a statutory corporation, could act only within the four corners of law and by a resolution of the trust. The resolution on which reliance is placed by the petitioner was also not authorized as respondent No. 4 had no authority to permit the petitioner to develop a housing colony nor any authority under the law to release the land which was included in the scheme No. 44 and which vested in it because of the notification issued by the State Government u/s 71 of the M. P. Town Improvement Trust Act. It was contended that the principle of estoppel would not be applicable as respondent No. 4 could not be compelled tc do what in law it had no authority to do and therefore even if such an assurance was given by respondent No. 4 it could not be enforced. Lastly it is contended that in view of the facts of the case a remedy under Article 226 of the Constitution would not be appropriate.

The contention of the petitioner is that u/s 83 of the M. P. Town Improvement Trust Act. 1960 respondent No. 4 had the authority to dispose of by sale, lease, exchange or even otherwise dispose of any land vested in it or acquired by it under this act. Consequently the respondent No. 4 when it passed the resolution recommending release of this land from scheme No. 44 and obtained sanction of the State Government was acting u/s 83 and therefore it could not be said that this was not within the powers of respondent No. 4. It was also contended that Section 83 contemplated an act by respondent No. 4 "for the purposes of this Act" and the development of the housing colony by the petitioner would clearly fall within Section 38 of the Act and therefore it could not be said that it is not "for the purposes of this act." It was therefore contended that the trust being a statutory body having passed a resolution and asked the petitioner to go ahead with the scheme, and the petitioner on this representation having purchased the land, paid valuable consideration and proceeded with the scheme of development, the respondent No. 4 could not go back on its assurance. Learned counsel for the petitioner, in support of his contentions placed reliance on the decisions in Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., ; Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, ; Turner Morrison and Co. Ltd. Vs.

Hungerford Investment Trust Ltd., ; Jai Dev and Others Vs. The Land acquisition Collector, Mandi, ; Khunnoo Lall and Sons Vs. The Union of India (UOI) and Others, ; Venkatachalam and Others Vs. The State of Andhra Pradesh and Others, and also referred to Nimar Industrial Corporation Private Ltd., Khandwa Vs. Madhya Pradesh Electricity Board, Jabalpur, .

It was contended on behalf of the respondents that the resolution passed by the trust suggesting to the petitioner to purchase the land from the original holder and recommending the release of the land from scheme No. 44 was not in accordance with Section 83 of the Act. According to the learned counsel once a scheme has been approved by Government u/s 71 of the Act the land vests in the town improvement Trust and the Town Improvement u/s 83 could not release any part of the land so vested. Consequently, it was contended that the resolution passed by the Trust accepting the prayer of the petitioner could not be said to be within the powers u/s 83 and therefore it could not be said that the resolution could be passed within the powers conferred on the trust. It was also contended on behalf of respondent No. 4 that before this respondent could receive the letter written by the petitioner dated 22-2-1972 they had already communicated by their letter of the same date revocation of the earlier sanction. Consequently the offer, if at all made by respondent No. 4 was withdrawn before it was accepted. It was vehemently contended, on behalf of respondent No. 4 that the offer given out by the Trust after the resolution was passed was never accepted by the petitioner. Even the conditions which were communicated by the letter dated 17-2-1971 were not accepted by the petitioner. It is therefore contended that neither was there any completed contract, nor was there any assurance or promise made by respondent No. 4 which being a statutory corporation it could make under the powers conferred by law; and therefore, it was contended that no relief could be granted under Article 226 of the constitution. It was further contended that it is doubtful whether consideration was paid for getting the sale deed transferred as according to the respondent No. 4. It was challenged by them in their return. It was submitted that the resolution passed by the respondent No. 4 was ultimately set aside by the Government as not being within the powers of the Trust and therefore also it could not be said that any valid promise or assurance was given out by respondent No. 4. Learned counsel contended that the decision in Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., is based on the observations in Robertson v. Minister of Pensions, (1949) 1 KB 227 of Denning, J., but he contended that subsequently the House of Lords did not approve the observations to that extent and that the Supreme Court in India has only accepted the proposition to the extent that when the assurance is given out by a statutory authority, it should be such which it could give within the powers conferred upon it by the statute. Consequently, it was contended that if, within the scope of Section 83 of the Act respondent No. 4 could accept the request of the petitioner for release of the land from scheme No. 44 and secure- the sanction for that purpose from the State Government, then alone could it be said that the respondent No. 4 could not be allowed to go back on the assurance given by it. Learned counsel for the respondent also placed reliance on Halsbury''s Laws of England Third Edn Vol. 15 paragraphs 43 and 46 and Vol. 24 paragraph 1108.

It is not in dispute that the petitioner approached respondent No. 4 praying that it wanted to develop a colony for its members and had the land in view and therefore wanted that land to be released from scheme No. 44 with the sanction of the Government as scheme No. 44 had already been accepted by Government and a notification u/s 71 of the Act had been issued. It is also not in dispute that by letter dated 2-7-1971 the Chairman of the respondent No. 4 intimated the petitioner that by Resolution No. 8 dated 20-1-1971 sanction of the Government has been obtained for release of the land from scheme No. 44 and also that the petitioner may go ahead with its plans. It would be worthwhile to quote this resolution which was passed by respondent No. 4 the Indore Improvement Trust :

izLrko ?ekad " fnukad 2?&?&"?

^^U;kl ;g izLrko Loh?r djrk gS fd U;kl dh Ldhe ua? ?? [kkrhokyk Vsad ds fy;s Jh ewypUn dh [kljk uacj ??'''A2] ??''"A2 jdck ,dM ""? Hkweh fo/ku ds vuqlkj laikfnr dh tkdj U;kl esa osf"Br gks xbZ gSA ijUrq bl Hkweh dh ekax y?kq m|ksx deZpkjh lgdkjh x`g fuekZ.k lfefr }kjk us vius vkosnu i= fnukad 2?&??&"? ds }kjk bl Hkweh dks U;kl dh Ldhe ls eqDr dju ,oa mDr lfefr }kjk bldks fodkl djus ds fy;s dh gSA vr% x`g fuekZ.k lfefr dks izksRlkgu nsus ds vk/kkj ij U;kl ;g fu.kZ; ysrk gS fd ;fn ewypUn viuh mDr Hkweh y?kq m|ksx deZpkjh lgdkjh x`g fuekZ.k lfefr dks gLrkUrj djrk gS ,oa mDr lgdkjh lfefr dkyksuh dks fuek.kZ laca/kh fu;e dk ikyu djrs gq, U;kl tks Hkh ''krsZ bl laca/k esa izfrikfnr djsxk mlds vuqlkj fodkl djs rks U;kl mDr Hkweh dks y/kq m|ksx deZpkjh lgdkjh x`g fuekZ.k lfefr ds gd esa Ldhe ls eqDr djus ds fy;s ''kklu ls fuosnu djrk gSA bl izLrko dj Loh?fr ''kklu ls izkIr dh tk; rFkk Jh v/;{k egksn; bl izdj.k esa vkxs ds fu;e ds vuqlkj dk;Z okgh djsaA**

The relevant parts of this resolution clearly indicate that the Trust took this decision in order to encourage the petitioner society in its venture of developing a colony for its members. It was also emphasized in this resolution that the petitioner society would develop this colony in accordance with the conditions that may be imposed by the Trust. It was further resolved by this resolution that they would approach the Government to get this land released from the scheme, and that this resolution would be operative if Moolchand, the original holder, transfers this land to the petitioner society. It is thus clear that this resolution was based on two conditions one that Moolchand should transfer this land to the petitioner society and second, that the petitioner society agree to develop the colony in accordance with the conditions imposed by the Town Improvement trust. It was also resolved that the trust would secure the sanction of the State Government for release of this land and it is significant that after passing this resolution on 20-1-1971 it was communicated to the petitioner by letter dated 2-7-1971 when it appears that the Town Improvement Trust had already secured the sanction of the State Government as is clear from this letter :

---- bUnksj lq/kkj U;kl ds izLrko ?ekad " fnukad 2?&?&"? ds vk/kkj ij ''kklu us mijksDr Hkwfe Ldhe ?ekad ?? ls eqDr djus dh Loh?fr iznku dj nh gSA**

and the petitioner was therefore informed to proceed further in the matter. The resolution clearly indicated what the petitioner was expected to do, namely to secure a transfer from Moolchand and to agree to develop the colony in accordance with the conditions laid down by the Trust respondent No. 4. Admittedly, till then respondent No. 4 had not decided what conditions they proposed to impose on the petitioner. Therefore all that the petitioner was expected to do under this resolution was to secure the transfer of the land from Moolchand. And that is what has been secured by registered sale deed dated 14-7-1971.

Apparently, therefore by passing this resolution and intimating the petitioner after securing the sanction of the State Government the respondent No. 4 gave out a promise to the petitioner that if it secured the transfer of the land in dispute from Moolchand and agreed to abide by the conditions that may be imposed by the Improvement Trust, they will permit the petitioner to develop the colony. It was also intimated that for the release of this land from scheme No. 44 Government has also given its sanction.

The- only contention raised on behalf of respondent No. 4 is that this resolution could not be passed by respondent No. 4 within the powers conferred on it under the Act. Section 83 of the M. P. Town Improvement Trust Act, 1960 reads-

"83. Power to dispose of land-- Subject to any rules made by the State Government under this Act, the trust may for the purposes of this Act retain or may let on hire, lease, sell, exchange or otherwise dispose of any land vested in or acquired by it under this Act."

This section provides that the Trust may, for the purposes of this Act, either retain or may let on hire, lease, sale, exchange or otherwise dispose of any land vested in it or acquired by it under this Act. Admittedly this land vested in it because of the notification issued by the State Government approving scheme No. 44 u/s 71 of the Act. It was contended by the learned counsel for the petitioner that "otherwise dispose of" is wide enough to include the manner in which the trust chose to dispose of the land in dispute by getting the scheme modified by releasing the land in dispute and asking the petitioner to purchase it from the original holder, as admittedly, compensation had not yet been paid to the original holder (Moolchand). The objection of the learned counsel for respondent was on the ground that this is not "transfer" as according to him the Trust did not agree to transfer it to the petitioner. It was also contended that there was no authority with the State Government to release certain portion of the land which had been included in the scheme and notified u/s 71 of the Act. It was further contended that permitting the petitioner to develop a housing colony could not be said to be "for the purposes of the Act.''"

8-A. The pharse "otherwise dispose of is wide enough to cover any manner of transfer. It is no doubt true that the Trust did not choose to transfer itself for reasons best known to it but chose to transfer the land by the process suggesting that this will be released by the State Government from the scheme and thereby the original holder Moolchand will be in a position to transfer it to the petitioner society. It was contended that the Trust or the Government has no power to release any portion of the land as there is no specific provision in the Town Improvement Trust Act as in Section 48 of the Land Acquisition Act. It is not in dispute that the Trust had the power to include any land in a scheme when it prepares a scheme for the development of a town. It is also not in dispute that the State Government had the power to sanction such a scheme. Section 21 of the Madhya Pradesh General Clauses Act provides that where by any Madhya Pradesh Act, a power to issue notification, orders, etc., is conferred, then that power includes also a power to add to, amend, vary or rescind any notification, orders, rules or by-laws so issued. Apparently therefore if the State Government u/s 71 of the Town Improvement Trust Act could issue a notification including this land in a particular scheme, by operation of Section 21 of the General Clauses Act it also had the power to issue a notification releasing a portion of the land from the scheme. Similar is the provision in Section 21 of the Central General Clauses Act, 1897. Consequently it cannot be doubted that the State Government and respondent No. 4 had the power to release a portion of the land which was included in scheme No. 44 and by this process it has also the power u/s 83 of the Town Improvement Trust Act within the phrase "otherwise dispose of" to allow the petitioner to acquire title by transfer from the original holder Moolchand.

Another objection by the learned counsel was that it was not "for the purposes of the Act," as according to him allowing a private person, a society, to develop a housing colony was not within the scope of the purposes of the Act, learned counsel for the petitioner on the other hand, relies upon Section 38 of the Act, which reads-

"38. Housing Accommodation scheme--Whenever the Trust is of opinion that it is expedient and for the public advantage to provide housing accommodation for any class of the inhabitants within the Trust area, the Trust may frame a housing accommodation scheme for such purpose."

It is clear from this section that one of the purposes of this Act was to provide housing accommodation for any class of inhabitants within the trust area and in fact it was in pursuance of this that the scheme was framed. But it appears that the Trust was satisfied that the petitioner''s scheme of developing a housing colony for a particular category of persons who were entitled to be members of the society could be permitted as this section talked of "housing accommodation for any class of inhabitants within the area" and therefore it cannot be doubted that- when the Trust passed the resolution permitting the petitioner to develop a housing colony for a particular class of inhabitants in the area, it could not be said that this the Trust did, not in accordance with the purposes of the Act.

Apparently therefore, the resolution passed by the Trust, quoted above, was clearly within the powers conferred on the trust u/s 83 and was also for the purposes of the Act as stated above. The contention raised by learned counsel that the resolution was beyond the powers of the Trust-respondent No. 4 could not be accepted.

By this resolution respondent No. 4 held out a promise to the petitioner and this promise the respondent No. 4 in law could perform. In pursuance of this promise after intimation from respondent No. 4 the petitioner went ahead and got a sale deed executed in its favour from Moolchand. In Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., it was observed :

"We are unable to accede to the contention that the executive necessity releases the Government from honouring its solemn promises relying on which citizens have acted to their detriment. Under our constitutional set up, no person may be deprived of his right or liberty except in due course of and by authority of law; if a member of the executive seeks to deprive a citizen of his right or liberty otherwise than in exercise of power derived from the law--common or statute--the courts will be competent to, and indeed would be bound to protect the rights of the aggrieved citizens."

Similar, in Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, , it was observed-

"A representation that something will be done in the future may result in a contract, if another person to whom it is addressed acts upon it. A representation that something will be done in future is not a representation that it is true when made. But between a representation of a fact which is untrue and a representation express or implied to dp something in future, there is no clear antithesis. A representation that something will be done in future may involve an existing intention to act in future in the manner represented. If the representation is acted upon by another person it may, unless the statute governing the person making the representation provides otherwise, result in an agreement enforceable at law: if the statute requires that the agreement shall be in a certain form, no contract may result from the representation and acting therefore but the law is not powerless to raise in appropriate cases an equity against him to compel performance of the obligation arising out of his representation.

Public bodies are as much bound as private individuals to carry out representations of facts and promises made by them relying on which other persons have altered their position to their prejudice. The obligation arising against an individual out of his representation amounting to a promise may be enforced ex contract by a person who acts upon the promise: when the law requires that a contract enforceable at law against a public body shall be in certain form or be executed in the manner prescribed by statute, the obligation if the contract be not in that form may be enforced against it in appropriate cases in equity..... The Government is not exempt from the equity arising out of the acts done by citizens to their prejudice, relying upon the representations as to its future conduct made by the Government ..... If our nascent democracy is to thrive different standards of conduct for the people and the public bodies cannot ordinarily be permitted. A public body is in our judgment, not exempt from liability to carry out its obligation arising out of representations made by it relying upon which a citizen has altered his position to his prejudice." Apparently therefore, the respondent No. 4 could not be permitted to go back from his promise.

It was contended that the State Government acting u/s 150 of the Act has withdrawn the sanction accorded earlier and it is on that basis that the Chairman of respondent No. 4 intimated the revocation of the sanction accorded by respondent No. 4 and the Government earlier. It is rather strange that the State Government in its return has not referred to any order passed by it exercising powers u/s 150. Even respondent No. 4 who has contended that the Government revoked the sanction granted earlier, has also not placed on record any order of the Government. It is also clear that u/s 150 if any order to the prejudice of the petitioner was to be passed by the State Government, it could not be passed without any notice to the petitioner. That is also not the case set up by any of the respondent. In fact, learned counsel for respondent No. 4 frankly conceded that it was respondent No. 4 found responsible to carry out the promise, it was for it to carry it out as contemplated by the resolution referred to above. Apparently therefore it could not be contended that the State Government had by any order set aside the resolution passed by respondent No. 4. The Chairman of respondent No. 4 had communicated to the petitioner that Government has sanctioned modification of the scheme of releasing this land from scheme No. 44. Therefore the promise given out to the petitioner by the resolution, coupled with this intimation was that the Government has approved the resolution and has also sanctioned release of the land from scheme No. 44. And it is on that assurance that the petitioner acted in getting a sale deed executed.

Although a challenge was thrown about consideration of the sale deed admittedly the respondent No. 4 had not refused to carry out the promise on the ground that there was no proper or valid sale deed executed by Moolchand in favour of the petitioner. Therefore for our purposes it is not necessary to go into that question. Learned counsel for respondent No. 4 also contended that the conditions intimated to the petitioner by the Chairman of respondent No. 4 by letter No. 429 dated 17-2-1972 were without any authority as according to learned counsel these conditions have been intimated by the Chairman without any decision of the Trust. This is the assertion by respondent No. 4 in their return supported by an affidavit and it has not been contradicted by anything for the petitioner. Apparently therefore, respondent No. 4 has not yet laid down any conditions validly as according to learned counsel, respondent No. 4 could only act by passing a resolution laying down the conditions for the petitioner. In the absence of any conditions being laid down, there was nothing for the petitioner to do as the first part of the requirement of the resolution had already been complied with. It would be for the respondent No. 4 to lay down by a proper resolution the conditions which the petitioner is exepected to accept.

The petitioner has sought the quashing of the order of respondent No. 4 dated 22-2-1972 bearing No. 474 by which it chose to revoke the earlier sanction accorded by a resolution. On the argument of learned counsel for respondent No, 4 the resolution of respondent No. 4 could not be revoked by the Chairman and therefore on that basis also this order or intimation deserves to be quashed. It refers to certain orders of the Government but the respondent No. 4 has chosen not to place any order on record, nor has the State Government placed any order on record. Consequently there is nothing on record to suggest that there is any order of Government which was validly passed setting aside the decision of the respondent No. 4 Trust and also the earlier sanction accorded by the Government. By this letter respondent No. 4 wanted to go back from the promise which it had made to the petitioner society and on that promise the petitioner had acted to its detriment by getting a sale deed executed in its favour by Moolchand.

The result of the discussion is that the respondent No. 4 could not be permitted to go back on the promise given out by it and therefore the letter dated 22-2-1972 bearing No. 474 purporting to have been issued by the Chairman of respondent No. 4 is hereby quashed. It is directed that respondent No. 4 Indore Improvement Trust shall proceed to give effect to its resolution in appropriate and legal manner. The petitioner shall be entitled to the costs of this petition. The respondent No. 4 counsel fee Rs. 200/- (two hundred) if certified (sic). The security amount deposited by the petitioner shall be refunded to it after verification.