

(2011) 05 MP CK 0037

In the Madhya Pradesh High Court

Case No : Writ Petition No. 5698 of 2008 (Jabalpur)

Mangal Amusement (P) Ltd. and Another

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 19-05-2011

Acts Referred:

Easements Act, 1882 — Section 52

Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 — Section 19, 23A, 23A(2), 38

Motor Vehicles Act, 1939 — Section 68F(1D)

Motor Vehicles Act, 1988 — Section 217(2), 217(4)

Transfer of Property Act, 1882 — Section 105

Citation : (2011) ILR (MP) 1912 : (2011) 5 MPHT 485

Hon'ble Judges : S.R. Alam, C.J.;Alok Aradhe, J

Bench : Division Bench

Advocate : A.M. Mathur, Ravindra Gupta, Sanjay Agarwal and Abhinav Shanodkar, for the Appellant; Kumares Pathak, Dy. A.G. for the Respondents Nos. 1 and 2 and R.N. Singh and Arpan J. Pawar for the Respondents Nos. 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

Alok Aradhe, J.—The Petitioners by way of this petition, inter alia seek quashment of the notification dated 19.11.2003 (Annexure P-28) in respect of change of land use of the land in question as well as the order dated 23.9.2003 (Annexure P-25) passed by the Principal Secretary, Housing and Environment Department by which the Indore Development Authority has been directed to invite the tenders afresh. The Petitioners also seek a declaration to the effect that the notification dated 19.11.2003 retaining the land use as it was originally designated and declared in the master plan of 1975-1991 is ab initio void. The Petitioner have further prayed for a direction to the Respondents to ignore the order dated 23.9.2003 (Annexure P-25) passed by the Principal Secretary while considering the application for renewal, dated 9.2.2010 submitted by the Petitioners. The Petitioners also seek a direction to the Indore Development

Authority to issue the licence to them to run the amusement park. The Petitioners have also sought a direction to the Respondents to consider and decide the application dated 29.12.2000 (Annexure P-15) for construction of second phase of the amusement park.

2. In order to appreciate the controversy involved in the writ petition, it is necessary to refer to relevant facts which are stated infra. The Petitioners No. 1 is a company incorporated and registered under the provisions of the Companies Act, 1956 whereas the Petitioners No. 2, is its Managing Director. The Petitioners No. 1 company has been constituted and incorporated for the sole purpose of setting up an amusement park in the State of M.P. and particularly at Indore. The Respondent No. 3, Indore Development Authority is a body incorporated u/s 38 of the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 (hereinafter referred to as the 1973 Act"). The Respondent No. 3 authority by a resolution dated 6.10.1987 resolved to install a children amusement centre on an area admeasuring approximately 7 to 8 acres on commercial land comprised in Scheme No. 54 of the authority which forms part of the land admeasuring 17.931 hectares, on the pattern of "Appu Ghar" in New Delhi. The Respondent No. 3 authority with a view to implement the aforesaid resolution, invited tenders on 26.11.1991 vide an advertisement. Pursuant to the aforesaid advertisement the Petitioners as well as four other tenderers submitted their tenders. The tenders were opened on 24.11.1992.

3. As per the facts set forth in the petition, the Petitioners No. 1 company was found to be only qualified, eligible and successful tenderer-fulfilling all the norms and conditions laid down by the Respondent No. 3 authority. However., the Respondent No. 3 authority delayed the acceptance of the Petitioners" tender on flimsy grounds and for extraneous considerations. In the circumstances aforesaid, the Petitioners No. 1 approached this Court by filing a writ petition, namely, M.P. No. 313/1992 which was allowed vide order dated 23.3.1994 (Annexure P-12) by Indore Bench of this Court and the Respondent authority was directed to accept the tender of the Petitioners company. In compliance of the aforesaid direction issued by Indore Bench of this Court the Petitioners No. 1 company was allotted 7.66 acres of land for establishment of amusement centre. It is the case of the Petitioners that a document though styled as licence deed (Annexure P-13) which in fact for all intents and purposes was a lease deed in law was executed between the parties on 6.5.1994. As per the terms and conditions of the aforesaid deed, the land was initially let out to the Petitioner company for a period of fifteen years with a provision for further-renewal of the term by fifteen years by enhancement of the licence fee by 40% and thereafter on such rate -and percentage as may be mutually agreed upon and decided by the parties as provided in Clause 8 of the deed. The Petitioners have stated in the writ petition that the land use of land admeasuring 7.66 acres allotted to the Petitioners as per the development plan of 1975-1991 was commercial and, therefore, the same was allotted to the Petitioners for amusement park. As per the Petitioner"s version it developed the aforesaid land, constructed pathways

installed the rides and games, constructed administrative building, office, kiosks, shops and food centres, etc. by spending an amount of Rs. 4 Crores and completed the construction work in the month of June, 1995 as per the terms and conditions of the document dated 6.5.1994, after obtaining permission from the Respondent No. 3 authority as well as Municipal Corporation, Indore.

4. Thereafter the Petitioners submitted an application 29.12.2000 (Annexure P-16) for permission of construction of second phase of amusement park. However, during the pendency of the application submitted by the Petitioners for construction of the second phase, the land use from regional park to commercial in respect of the land comprised in survey numbers 257, 258 part, 259, 260, 261, 262, 264, 265 and 265 part, and the land use of the land allotted to the Petitioners was sought to be changed from commercial to regional park by the State Government, at the instance of the Respondent No. 3 authority. Accordingly, a public notice dated 9.3.2001 was issued by which objections were invited with regard to proposed change in the land use. In the meantime, in response to the letter of the Respondent No. 3 authority, Joint Director, Town and Country Planning vide order dated 7.5.2002 (Annexure P-33) permitted the activities of the second phase of the amusement Park. Thereafter the Respondent No. 3 authority vide communication dated 5.8.2002 sought the project report from the Petitioners. The Petitioners in response to the aforesaid query submitted the project report on 14.8.2002. The Chief Executive Officer of the Indore Development Authority by communication dated 27.5.2003 addressed to the Principal Secretary, Housing and Environment Department, sought the approval with regard to construction of the second phase of amusement park. The aforesaid letter contained a recommendation in favour of the Petitioners. However, the Principal Secretary of the Housing and Environment Department vide order dated 23.9.2003 (Annexure P-25) refused to accord the permission for construction of second phase of the amusement park on the ground that in the matter of grant of licence by the Respondent No. 3 authority to the Petitioners. the procedure which has been adopted was not in accordance with law and was not transparent and, therefore the proposal of the Indore Development Authority cannot be sanctioned. Accordingly, the Indore Development Authority was directed to issue fresh tenders for grant of licence in accordance with the Rules and Procedure and by adopting the transparent procedure.

5. In compliance, of the order dated 23.9.2003. the Respondent No. 3 authority passed a resolution for cancellation of the licence granted to the Petitioners vide Annexure P-27. Accordingly, a show cause notice dated. 8.1.2007 (Annexure P-31) was issued to the Petitioners for cancellation of the licence by the Respondent No. 3 authority. The Petitioners submitted a reply, dated 22.1.2007 (Annexure P-32). The reply submitted by the Petitioners was placed before the Board of the Respondent No. 3 authority on 14.8.2007 which passed a resolution on 14.8.2007 that the State Government be apprised that the Indore Development Authority does not agree with the findings contained in the order of the Principal Secretary for cancellation of the licence awarded to the Petitioners

as well as the legal and factual scenario once again. Accordingly, the communication dated 1.9.2007 contained in Annexure P-26 was sent to the Principal Secretary, Housing and Environment Department, Government of M.P.

6. As stated supra, during the pendency of the application of the Petitioners for construction of the second phase of amusement park, a notification was issued at the instance of the Respondent No. 3 authority by the State Government on 9.3.2001 u/s 23A of the Act by which the land use of the land held by the Petitioner was sought to be changed. The Petitioners submitted an objection to the aforesaid modification in the land use. However, the Principal Secretary, recommended the change of land use vide note-sheet Annexure P-13. Thereafter the final notification dated 19.11.2003 u/s 23A(2) of the Act was issued by which the land use of the land in question was changed.

7. In the meanwhile proposed development plan for the year 2011 was published and the objections were invited with regard to development plan by the Joint Director within a period of, thirty days. The Petitioners once again submitted an objection on 18.7.2003 to the Chief Executive. Officer of the Respondent No. 3 authority and the Chief Town Planner of the Indore Development Authority to the proposed change in the land use. The objections were also submitted to the Joint Director. However, the proposed development plan 2011 was withdrawn in December, 2005 and a new draft development plan. 2021 was published and once again the objections were invited. The Petitioners in response to the notice inviting objections once again submitted an objection on 10.8.2006. The Petitioners were served with a notice of hearing on objection on 3.10.2006. In the meantime the Chairman of the Respondent No. 3 authority also vide letter dated 17.5.2007 (Annexure, P-8) addressed to the Deputy Secretary of the Housing Environment Department recommended that land use of the land allotted to the Petitioners be kept commercial in the master plan of 2021. In response to the aforesaid letter of the Chairman, Deputy Secretary of the Housing and Environment Department vide letter dated 10.7.2007 (Annexure P-9) informed the Respondent No. 3 that before the final publication of the master plan objections and suggestions of the Indore Development Authority would be considered by the State Government. However, the master plan 2021 was published on 1.1.2008 (Annexure P-10) without considering the objections of the Petitioners and suggestions of the Indore Development Authority. In accordance with the terms and conditions of the licence, the Petitioners submitted the application for renewal of the licence on 5.2.2010 however, no decision was taken on the application submitted by the Petitioners. In the aforesaid factual background, the Petitioners have approached this Court seeking the reliefs as stated supra.

8. A reply has been filed on behalf of the Respondent Nos. 1 and 2, in which, inter alia, it is pleaded that writ petition suffers from delay and laches as in the instant writ petition notifications dated 9.3.2001 and 19.11.2003 have been challenged and the writ petition has been filed in the month of May, 2008. It has

been averred that the Petitioners have failed to explain the delay in challenging the notifications dated 9.3.2001 and 19.11.2003. An objection with regard to the locus standi of the Petitioners to challenge the legality and validity of the notifications dated 9.3.2001 and 19.11.2003 has also been taken on the ground that the Petitioners were granted the licence of running amusement parks for a period of 15 years only which has already been expired. The Petitioners have not challenged the order dated 23.9.2003 passed by the State Government (Annexure-P/25). It has further been averred that Indore Development Plan has been published and has come into force w.e.f. 1.1.2008. The land in question on which amusement park is situate has been earmarked as city/other parks whereas the land comprised in khasra Nos. 257, 258 (part), 259, 260-262, 264, 265 and 265 (part) situate on A B Road, admeasuring 18.22 hectares has been earmarked as commercial area. The new development plan has been published as per the Section 19 of the Act. Only four objections including the objection preferred by the Petitioners were received in response to the proposed change of land use in the development plan. The Petitioners were afforded an opportunity of hearing and after considering the objections and suggestions, the final notification was issued.

9. The Respondent Nos. 3 and 4, in their reply, have also taken an objection to the maintainability of the writ petition on the ground that no cause of action is available to the Petitioners to file the writ petition. The writ petition suffers from delay and laches. The Petitioners were granted licence to operate title amusement park and changes in the land use do not, in any way, effect the Petitioners or their status as a licensee. It has further been averred that the Board of Indore Development Authority by the resolution dated 8.5.2003 took a decision to grant permission for construction of amusement park and banquet hall on the terms and conditions mentioned in the resolution itself and the said permission was subject to the approval of the State Government. The resolution dated 8.5.2003 was modified by the resolution No. 149 dated 19.5.2003 (Annexure-R/5).

10. In accordance with the directions contained in the order of the State Government dated 23.9.2003, the matter was placed before the Board and the Board vide resolution dated 12.2.2005 (Annexure-R/7) took a decision to issue a detailed show-cause notice to the Petitioners. It has further been averred in return that the Indore Development Authority is bound by the orders and directions of the State Government. No right has accrued in favour of the Petitioners so as to enable it to challenge the land use in development plan. It has further been averred that the land use between the two chunks of land was interchanged because of certain reasons. The land use of land situate towards the south of the MR-10 i.e. in the Village of Bhamori is commercial. The proposal to develop a major city centre was accepted by the State Government vide order dated 23.8.1979 and pursuant to the said permission, the authority had developed major city center known as "Meghdoot Upvan" and another chunk of land situate on AB Road was developed as commercial. Therefore, the land use of

these lands was interchanged. The expenditure which the Petitioners have allegedly incurred is the subject matter of verification. It has further been averred that process for change in land use was taken way back in the year 1979 and it was not as if the Government woke up one fine morning and decided to change the land use. The Petitioners are only a tenant and not the owner of the land. It has further been pleaded that Petitioners have no locus standi to file the writ petition and to seek reliefs as claimed in the petition.

11. Mr. A.M. Mathur, learned senior counsel for the Petitioners submitted that the deed dated 6.5.1994 (Annexure-P/13) is, in fact, not a licence deed but is a lease deed. As per deed dated 6.5.1994, the possession of the land in question was handed over to the Petitioners and the permanent structures were allowed to be constructed. Clause-8 of the deed confers right of renewal on the Petitioners and makes it obligatory to renew the deed on an enhanced payment. The Indore Development Authority vide Resolution dated 14.8.2007 has already recommended for granting permission of second phase of the park and letter dated 1.9.2007 was sent to the Principal Secretary to give approval. Thus, the deed dated 6.5.1994 (Annexure-P/13) is a lease and not a licence. It has further been submitted that a clause like Clause-8 appearing in the deed dated 6.5.1994 was considered by the Supreme Court in Sudhir Kumar and Others Vs. Baldev Krishna Thapar and Others, In support of the proposition that document dated 6.5.1994 is a lease deed, learned Counsel has placed reliance on the decision of the Supreme Court in C.M. Beena and Another Vs. P.N. Ramachandra Rao, . The Respondent authority is ready and willing to renew the lease which can be inferred from the documents Annexure- R/1 dated 13.6.2002-an application of the Petitioners for construction of second phase of the amusement park, Annexure-R/3 reply of the Petitioners dated 19.6.2002, resolution dated 8.5.2003 by which permission was granted for construction of second phase of amusement park (Annexure-R/4), modified resolution dated 19.5.2003, by which recommendation for construction of second phase of the amusement park was made to the State Government vide letter dated 27.5.2003 by Respondent No. 3, resolution dated 14.8.2007 of the Indore Development Authority again recommending for second phase of construction (Annexure-R/8), letter dated 1.9.2007 (Annexure-P/26) written by Indore Development Authority to the State Government showing disagreement with the order dated 23.9.2003 passed by the State Government and the letter of the Chairman of the Indore Development Authority (Annexure-P/34) to keep the land use of the Petitioners' land as commercial as per Development Plan 2021. It has further been contended that as per renewal clause, namely, Clause 8 contained in the lease deed, it is mandatory and obligatory for the Indore Development Authority to renew the lease. In support of his aforesaid submission, learned senior counsel has placed reliance on the decision of the Supreme Court in M/s. Gurcharan Singh Baldev Singh Vs. Yashwant Singh and others, , Murarilal Jhunjhunwala Vs. State of Bihar and others, and The Cheran Transport Co. Ltd. Vs. Kanan Lorry Service and Another,

12. It has further been submitted that order dated 23.9.2003 (Annexure-R/6) issued by the State Government is illegal and is without jurisdiction as the land in respect of which the lease was granted to the Petitioners belong to the Indore Development Authority and not to the State Government. The State Government, in fact, has no role to play either in grant of permission of second phase of the construction of amusement park or in the matter of renewal of lease. In support of his aforesaid submission, reliance has been placed on a decision of Supreme Court in the case of K.K. Bhalla Vs. State of M.P. and Others, The Respondents are bound by the doctrine of promissory estoppel and are under an obligation to renew the lease deed as, well as permit the Petitioners to proceed with second phase of construction of the amusement park. It has further been submitted that the objection raised by the Petitioners that writ petition suffers from delay and laches is misconceived. There is no delay in filing the instant writ petition. In fact, on 29.11.2007, the Chairman of the Indore Development Authority by a communication addressed to the Principal Secretary of Housing and Environment, Government of Madhya Pradesh recommended to keep the land use of the Petitioners' land as commercial in Development Plan, 2021 and the writ petition was filed in the month of May, 2008 i.e. within a period of one year. The entire facts and circumstances of the case leading to filing of the writ petition have been narrated in paragraph 4 of the writ petition which show that the writ petition does not suffer from any delay and laches. In support, of his submission, learned senior counsel has relied on the decisions of Supreme Court in Chairman, U.P. Jal Nigam and Another Vs. Jaswant Singh and Another, and Suresh Chand v. Union of India and Ors. (2004) 13 SCC 563. It has further been submitted that once writ petition is admitted for hearing and the delay has been satisfactorily explained, the writ petition cannot be dismissed on the ground of delay. In support of the aforesaid proposition, reference has been made to a decision of the Apex Court in Ravindra Nath Vs. State Bank of India and Others,

13. On the other hand, Shri R.N. Singh, learned senior counsel for Respondent Nos. 3 and 4 has submitted that initially in the writ petition, the Petitioners have only sought the relief of quashing of the proposed modification vide notification dated 9.3.2001 (Annexure-P/17) and notification dated 19.11.2003 (Annexure-P/26). It was only when the Respondents filed their reply and raised an objection with regard to delay and laches and non-challenge to the communication dated 23.9.2003 (Annexure-P/25), the Petitioners sought an amendment in the writ petition which was allowed by this Court vide order dated 7.11.2008. Subsequently, yet another amendment application was preferred by which the Petitioners sought certain additional reliefs in the writ petition, which was allowed by this Court vide order dated 13.8.2010 by which the reliefs in the form of Clause (g) and(h) were incorporated in the para 7 of the writ petition. It was further submitted that document dated 6.5.1994 (Annexure-P/13) is not only titled as licence, but its contents also show that it is a licence to run the amusement centre on the land in question for a period of 15 years. From perusal

of Clause 1 of the terms and conditions of the licence it is apparent that development of certain infrastructure like pathway, roads, boundary walls, landscaping, installation of rides and games was mandatory whereas construction of food and beverage centre, kiosks, shops, administrative building, etc. was left at the option of the licence holder. The development of the infrastructure as per the terms and conditions contained in the licence dated 6.5.1994 was to be done with the approval of the Respondent Nos. 3 and 4. It was further submitted that there was no transfer of interest of premises which were let out on licence and the Petitioners were only permitted to use the premises. A complete reading of the document dated 6.5.1994 clearly establishes that Respondent Nos. 3 and 4 by virtue of the provisions contained therein exercised sufficient control over the licensed premises without any transfer of interest. Though, licence deed contains renewal clause, yet the same is exclusively at the discretion of the Respondent Nos. 3 and 4. The said clause does not guarantee the renewal. Presently the land use in question as per the development plan is city/other parks. The Petitioners have no locus to challenge the change in the land in use and the Petitioners are trying to step in the shoes of the owner of the land. The Indore Development Plan has already been published and brought into force w.e.f. 1.1.2008, The period of licence has expired and the Petitioners have no right to continue in the premises which was let out to them under the licence. In support of the submission that document in question, namely, deed dated 6.5.1994 is a licence, learned senior counsel for Respondent Nos. 3 and 4 has placed reliance on decision of Supreme Court in Associated Hotels of India Ltd. Vs. R.N. Kapoor, , Mrs. M.N. Clubwala and Another Vs. Fida Hussain Saheb and Others, The Corporation of Calicut Vs. K. Sreenivasan, , B.M. Lall (Dead) by Lrs. Vs. Dunlop Rubber and Co. Ltd. and Others, and Chandy Varghese and Others Vs. K. Abdul Khader and Others,

14. Mr. Kumaresh Pathak, learned Dy. Advocate General has supported the submissions made on behalf of the Respondent Nos. 3 and 4.

15. We have considered the submissions made on both sides. The following issues arise for consideration in the facts and circumstances of the case as well as in view of the submissions made before us by learned Counsel for the parties:

(i) Whether the deed dated 6.5.1994 (Annexure-P/13) is lease or a licence.

(ii) Whether Clause 8 of the deed dated 6.5.1994 (Annexure-P/13) is mandatory in nature and casts an obligation on the Indore Development Authority to renew the lease.

(iii) Whether the order dated 23.9.2003 is illegal and without jurisdiction as the lands in question are the lands belonging to the Development Authority and the State Government and. therefore. State Government has. no role to play, either in grant of permission of second phase or for renewal of lease.

(iv) Whether the Respondents are bound by doctrine of promissory estoppel in the facts of the case.

(v) Whether the writ petition is liable to be dismissed on the ground of delay and laches.

(vi) Whether the Petitioners have the locus stands to challenge the change in land use.

(vii) Whether notification dated 19.11.2003 (Annexure-P/28) in respect of change in land use of the land in question is ab initio void.

16. We may now address ourselves to the first issue which is a core issue involved in the case, namely, whether the deed dated 6.5.1994 (Annexure-P/13) is a lease or licence. In Halsbury's Laws of England IVth edition, the expression "lease" is defined to mean "an instrument in proper form by which the conditions of a contract of letting are finally ascertained, and which is intended to vest the right of exclusive possession in the tenant, either at once, if the term is to commence immediately, or at a future date, if the term is to commence subsequently, is a lease which takes effect from the date fixed for the commencement of the term without the necessity of actual entry by the tenant".

The term "Licence" has been defined in Halsbury's Laws of England IVth edition in following words

A licence is normally created where a person is granted the right to use premises without becoming entitled to exclusive possession of them, or where exceptional circumstances exist which negative the presumption of the grant of a tenancy. If the agreement is merely for the use of the property in a certain way and on certain terms while the property remains in the owner's possession and control, the agreement operates as a licence, even though the agreement may employ words appropriate to a lease.

Section 105 of the Transfer of Property Act, 1882 defines "lease" of immovable property as under:

105. Lease defined. - A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time express or implied, or in perpetuity, in consideration of a price paid or promised or of money, a share of crops, service or any other things of value to be rendered periodically or on specified occasion, to the transfer or by the transferee, who accepts the transfer on such term.

Section 52 of the Indian easements Act, 1882 defines a "licence" to mean:

52. "Licence" defined. - Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence.

17. Thus, a lease is essentially a transfer of an interest in immovable property entitling the lessee to the enjoyment of such immovable property which includes

the right to possession thereof. Another essential feature of a lease is that the transfer must be for consideration, though it may be for a limited period or in perpetuity. A lease can be effected only by a bilateral transaction in which both lessor and lessee should be the parties. On the other hand, the characteristics of licence are that it grants the licensee right to do something on the property which otherwise would have been unlawful for him to do so. The distinction between the lease and licence has been considered by the Supreme Court in catena of decisions, namely, *Associated Hotels of India Ltd. (supra)*, *Uttamchand Vs. S.M. Lalwani*, *Konchada Ramamurthy Subudhi and Another Vs. Gopinath Naik*, *Board of Revenue and Others Vs. A.M. Ansari and Others*, *Khalil Ahmed Bashir Ahmed Vs. Tufelhussein Samasbhai Sarangpurwala*, *Capt. B.V. D'Souza Vs. Antonio Fausto Fernandes*, *K. Sreenivasan (supra)* and *Chandy Varghese (Supra)*. From a close scrutiny of the aforesaid decisions, following tests for determination whether a document creates a lease or licence can be taken as well established:

(i) To ascertain whether a document creates licence or lease, substance of the document must be preferred to the form. The Court must refer to the object and the circumstances under which document is executed. The character of the transaction turns on the operative intent, of the parties.

(ii) The real test is the intention of the parties. The Court must apply the test of dominant intention of the parties. The Court must determine the character of the document by asking itself as to what was the dominant intention of the parties in executing the document. The question whether a particular transaction creates a lease or licence is always the question of intention of the parties and, therefore, has to be inferred from the facts and circumstances of each case.

(iii) If a document creates an interest in the property, it is a lease but if it permits another party to make use of the property, of which the legal possession continues with the owner, it is a licence.

(iv) If under the document, a party gets exclusive possession of the property, prima facie, he is considered to be a tenant, but circumstances may be established which negative the intention to create a lease. However, the test of exclusive possession is not conclusive by itself to arrive at the conclusion that the transaction in question is a lease. Merely exclusive possession is not decisive for drawing an inference that the document in question is a lease and not licence.

(v) A lease is a transfer of right to enjoy the premises whereas the licence is a privilege to do something on the premises which otherwise would be unlawful.

(vi) Occupation of licensee is permissive by virtue of grant of licence in his favour, though he does not acquire any right in the property and the property remains in possession and control of the grantor, but by virtue of such a grant, he acquires a right to remain in occupation so long the licence is not revoked and/or he is not evicted from its occupation either in accordance with law or otherwise.

18. In the backdrop of aforesaid well settled tests, to determine the question whether a particular document is a lease or a licence, we may now examine the deed dated 6.5.1994 (Annexure-P/13). Clause 1 of the terms and conditions of the document dated 6.5.1994 which is titled as "licence", shows that land ad-measuring 7 acres is given to the Petitioners No. 1 -company on licence initially for a period of 15 years. The relevant part of Clause 1 reads as under:

.... The licence will have to develop inside infrastructure such as path-ways, roads boundary walls, landscaping, installation of rides and games etc., etc. at his own cost as approved by the Authority. Construction of Food and Beverages Centres, kiosks, shops, administrative buildings, toilet....

Clause 2 deals with period of licence which prescribes that period of licence shall commence from the date of activation of the park or 18 months from the date of giving possession, whichever is earlier. It is not in dispute before us that the period as prescribed in Clause 2 has expired in the month of June, 2010. Clause 3 provides that period of completion of project shall be 24 months from the date of handing over of the possession of the land failing which the licence may be terminated, forfeiting the earnest money and other payments, if any, by the authority. Clause 4 provides that advance licence fee shall be payable only before first of June. In case, the licensee fails to pay the fee on or before the due date, the amount of licence shall carry interest @ 18% per month for the period of default. Clause 5 empowers the Indore Development Authority to charge an amount equivalent to 25% of the entry fee which is payable by the licensee apart from the licensee fee. Clause 6 deals with earnest money. Clause 7 provides that an authority or an officer authorized in this behalf shall have the power to examine the accounts of collection of entry fee, as and when it deems fit. Clause 7 also empowers the authority to regulate the mode of collection of entry fee. Clause 8 thereof reads as under:

The licence may be renewed for further period of 15 years by enhancing the licence fee. maximum by 40% and thereafter at such a percentage as may be decided by the Authority.

Thus, Clause 8 provides that licence may be renewed for further period of 15 years by enhancing the licence fee, maximum by 40% and thereafter as such percentage as may be decided by the authority. Clause 9 entitles the licence to redeem the bank guarantee of Rs. Five lacs after completion of three years from the date of activation of the amusement park. Clause 10 casts an obligation on the licensee to buy rides, games, etc from the supplier manufacturing the aforesaid items indigenously. Clause 11 provides that licensee shall install one roller coaster, one ferris wheel, bay train and one set of merry cups, one Columbus and one telecombat must be erected with other rides. Clause 12 provides that amusement centre shall be operated and managed by the licensee himself at his own costs and responsibilities. Clause 14 provides that in the event of violation of any of, the terms and conditions mentioned herein above, on the part of the licensee, the decision of the Chairman of the Indore Development

Authority shall be final.

19. Thus, if the deed dated 6.5.1994 (Annexure-P/13) is read as a whole, the following facts are graphically clear:

(a) The dominant intention between the parties is to let out the land for setting up amusement park. (b) Clause (1) reveals, that licensee is under an obligation to develop an infrastructure which is necessary for setting up of amusement park, such as pathways, roads,; boundary walls, landscaping installation of rides and games etc. at his own costs as approved by the Authority, whereas the construction of food and beverages centers, kiosks, shops, administrative buildings and toilets is also permissible as per the requirement and is at the option of the Petitioners.

(c) The rides and games which are to be installed by the Petitioners No. 1 at its own costs and has to be approved by the authority, is in the nature of fixtures.

(d) The rides and games etc. should be brought from the supplier/ manufacturer in India indigenously.

(e) Indore Development Authority is entitled to charge 25% of the entry fee and; shall have the power to examine accounts of collection of entry fee as and when deemed fit. The Authority has also the power to regulate the mode of collection of entry fee.

(f) The amusement park has to be operated and managed by the licensee at his own cost and responsibilities.

(g) As per Clause 11, licensee has to install one roller coaster, one ferris wheel, bay train and one set of merry cups, one Columbus and one telecombat with other rides.

(h) In the event of violation of terms and conditions of the licence, the decision of the Chairman of Indore Development Authority is final.

20. Thus, if the term sand conditions contained in document dated 6.5.1994 are read as a whole it leaves no iota of doubt that the document only confers a right to use the land in a particular way i.e. to run the amusement center without creating any interest or a right in respect of the land on the licensee and the Indore Development Authority retains the possession of the land leased out to the Petitioners No. 1. A mere right to raise construction on payment of annual rent amounts to merely a right to do something on the land leased out and it does not create an interest in the property. We are fortified in our conclusion by a Division Bench decision of Nagpur High Court in case of AIR 1952 325 (Nagpur) So far as the reliance placed on behalf of the Petitioners in the case of C.M. Beena (supra) is concerned, in paragraph 8 itself the Supreme Court has held that real intention of the parties as decipherable from complete reading of the document, if any, executed between the parties, and the surrounding circumstances have to be seen. The inference whether a document has to be

treated as a lease or licence, has to be drawn by looking at the document as a whole. Thus, the aforesaid decision is of no assistance to the Petitioners. Thus, if the contents of the deed dated 6.5.1994 are tested on the touchstone of well settled legal principle to determine whether particular deed is a lease or licence, it leaves no iota of doubt in our minds that document dated 6.5.1994 (Annexure-P/13) is a licence and not a lease, for the reasons which we have already referred to supra. Accordingly, it is held that the deed dated 6.5.1994 is a licence. The first issue is answered accordingly.

21. Now, we may come to the second issue whether under Clause 8 of the deed, the Indore Development Authority is bound to renew the licence. In preceding paragraphs we have already held that the document in question is a licence and not the lease, A careful scrutiny of the language employed in Clause 8 of the deed dated 6.5.1994 shows that it confers a discretion on the development authority to renew the licence for a further period of 15 years. It also empowers the Respondent No. 3-Authority to enhance the licence fee at the time of renewal of licence subject to a maximum of 40%. The licence is determinable in nature and its renewal is dependant on the will of the grantor. In the instant case, admittedly, the licence has come to an end by efflux of time, in the month of June, 2010. Since the grant in question has been held to be a licence, therefore, Clause 8 which even otherwise is not couched in mandatory terms cannot be held to confer any indefeasible right on the Petitioners to seek renewal as a matter of right. So far as the reliance placed by the Petitioners in the case of Sudhir Kumar (supra) is concerned, the said case was a case of lease and was not of licence and, therefore, is of no assistance to the Petitioners. Similarly, in the case of M/s. Gurcharan Singh Baldev Singh (supra) the question which arose for consideration before the Supreme Court was whether application for renewal of carriage permit under the Motor Vehicleless Act, 1939 is saved on the commencement of Motor Vehicleless Act, 1988. The Supreme Court while answering the question has held that application for renewal for grant of permit made under the old Act is saved, in view of Section 217(2) and (4) of Motor Vehicleless Act, 1988. Thus, the aforesaid case also does not help the case of the Petitioners.

22. Similarly in the case of Murarilal Jhunjhunwala (supra), an application for grant of licence was made under the provisions of Bihar Trade Articles (Licences Unification) Order (1984). The authority did not pass any order on the application submitted by the dealer who was carrying on the business under the bona fide belief that he would be granted licence. The licensing authority neither rejected the application nor pointed out any defect. In the aforesaid factual background, it was held by the Supreme Court that dealer cannot be prosecuted for not obtaining the licence. The Supreme Court further found that under the provisions of aforesaid notification of 1984, the licensee was eligible for grant of licence. Accordingly, a direction was issued to grant the licence. Thus, the aforesaid case is also of no assistance to the Petitioners. Similarly, in the case of Charan Transport Co, Ltd. (supra), the Supreme Court while dealing with the

scope and ambit of Section 68-F(1D) of the Motor Vehicleless Act, 1939 held that operator had the right of renewal of the permit under the Act. Thus, the aforesaid case is also of no help to the Petitioners. For the aforementioned reasons, we are of the considered opinion that Clause 8 of the licence deed does not cast an obligation on the Respondent authority to renew the deed.

23. We may now come to the issue of validity and legality of the order dated 23.9.2003 (Annexure-P/25) passed by Principal Secretary, Housing and Environment Department. Since, it has already been held that Petitioners have no right to claim renewal of the licence and the period of licence has admittedly expired in the month of June, 2010 and besides that the land use in respect of the land in question has already been changed, therefore, the issue with regard to legality and validity of order dated 23.9.2003 has been rendered academic in the facts and circumstances of the case. Accordingly, it is not necessary for us to examine the same.

24. This brings us to the fourth issue involved in the case, namely, whether the Respondents are bound by the doctrine of "promissory estoppel". In *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, the relevant principle underlying promissory estoppel was expounded by the Supreme Court as follows:

... 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 pre-existing relationship between the parties or not.

However, in the instant case, essential ingredients for applicability principle of promissory estoppel are miserably lacking. The Petitioners have been permitted to install rides and games under the licence. The period of licence has already expired. Thereafter, no promise has been made to the Petitioners which has either created a legal relationship or affects a legal relationship. Even if it is assumed that such promise was made, the Petitioners have neither done anything nor have altered their position except by submitting an application for renewal. For yet another reason, doctrine of promissory estoppel will not have any applicability in the facts and circumstances of the case as the land use of the land in question has already been changed and therefore, even assuming for the sake of arguments that doctrine of promissory estoppel applies then also the Respondents cannot be compelled to renew the licence for the reason that Petitioners have no legally enforceable right to seek removal and the same would tantamount to permitting the use which is not permissible in the eye of law. Thus, for the aforementioned reasons the irresistible conclusion is that the

doctrine of promissory estoppel has no applicability in the facts and circumstances of the case.

25. Since, we have already dealt with the merits of the case, it is not necessary for us to examine the issues of delay and laches in filing the petition and the locus stands of the Petitioners.

26. The next issue is whether notification dated 19.11.2003 (Annexure-P/28) in respect of the change in land use of the Petitioners is ab initio void. The procedure with regard to land use has been prescribed under the provisions of Nagar Tatha Gram Nivesh Adhiniyam, 1973. u/s 23A of the Act, the State Government is required to publish a draft of the modified plan together with notice of preparation of draft modified plan and the place or places where the copies may be inspected, continuously for two days in such two daily news papers which are in the approved list of the Government for advertisement purpose having circulation in the area to which it relates and a copy thereof shall be affixed in a conspicuous place in writing in the Office of Collector inviting objections and suggestions in writing from any person with respect thereto within fifteen days from the date of publication of such notice. After considering all the objections and suggestions and after giving reasonable opportunity of being heard, the State Government shall confirm the modified plan.

27. Admittedly, in the instant case the Petitioners have submitted an objection to the modification in the development plan. Thereafter, the notification dated 19.11.2003 with regard to change in the land use has been issued. Learned senior counsel for the Petitioners during the course of argument could not point out, any fundamental defect in the procedure adopted by the State Government with regard to change in the land use, which renders the notification dated 19.11.2003 as ab initio void. Thus, the notification dated 19.11.2003 permitting the change in the land use of the land in question cannot be said to be ab initio void. Even if the argument of the Petitioners that under the Development Plan, 2021, the activity of amusement park is permissible for recreational land use, is accepted, the same has no impact on the facts of the case as we have already held that the licence was granted to the Petitioners vide licence dated 6.5.1994 (Annexure-P/13), and the period of licence has already expired. The Petitioners have no right to claim renewal of the licence under Clause 8 of the licence. For the aforementioned reasons, the notification dated 19.11.2003 cannot be held to be ab initio void.

28. In the result, writ petition fails and is hereby dismissed.

Petition dismissed.