
(1991) 09 DEL CK 0009
In the Delhi High Court
Case No : Suit No. 308 of 1983

M.P. Mattur and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 11-09-1991

Acts Referred:

Citation : (1991) 21 DRJ 249

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Judgement

Usha Mehira, J.

(1) plaintiffs, Shri M. P. Matfaur & Others are stated to be allottees of quarters constructed at Hari Nagar, bearing No. 1 to 27 & staff quarters at G. T. Road, Delhi bearing Nos. 28-.072 and 74 to 104. These quarters are in Delhi Transport Corporation Staff Colonies mentioned above. Municipal Corporation of Delhi under the GOVT. of India Subsidised Housing Scheme for Industrial Workers constructed 300 houses known as? Integrated Subsidised Housing Scheme for Industrial Workers and Economically Weaker Sections of the Community." The construction was started in the year 1962-63 and completed in the year 1965-66. Total costs incurred worked out to Rs. 3504 Lacs, out of which, a sum of Rs. 6.25 Lacs and Rs. 156 Lacs were provided by the Central Government as loan and subsidy to cover the cost of construction.

(2) The houses consisted of small two rooms and regular two rooms quarters. There were about 100 small two rooms quarters and 200 regular rooms quarters. The allotment was to be made after determining the overall cost for regular two room houses and single two room houses. The Lieutenant Governor of Delhi (Administrator) in 1965-66 taking into consideration the various factors, determined the overall cost for regular two room house at Rs. 4.200.00 and single two room houses at Rs. 2500.00. Subsidised monthly rent to be charged was fixed at Rs. 16.00 and Rs. 13.50p respectively

(3) On account of the Delhi Road Transport Law, Amendment Act), 1971 (hereinafter or called the Drtc Amended Act), that. Delhi Transport Undertaking of the Municipal Corporation of Delhi was converted into Delhi Transport Corporation (hereinafter called the "DTC") with effect from 3/11/1971. According to the provisions contained in Delhi Road Transport Laws (Amendment Act), all Rules, Regulations, Notifications relating to Transport service, whether made under the Delhi Road Transport Authority Act or under any other Act were to remain in force and deemed to be made by the New Corporation. By virtue of the provision of the Amended Act, the employee of the erstwhile authorities were deemed to be the employee of the D.T.C. with such designation as the new Corporation may determine. They were to hold office by the same tenure, on the same terms and conditions of service. They were also to get the same pension, gratuity and all other matters as they would have held, if the new Corporation had not been established. It was also the term of the transfer that no condition would be altered to the disadvantage of the employees without the approval of the Central Government. The service rendered previously would be counted in the New Corporation.

(4) , On 9/02/1978 Government of India, Ministry of Works and Housing intimated the policy of the Government in respect of houses built for Industrial Workers under the integrated subsidised Housing Scheme for Industrial Workers and Economically Weaker Sections of Community. These were required to be retained for allotment to the eligible workers on rental basis. It was further decided that the aforesaid houses built under the aforesaid scheme could be transferred to those in occupation subject to certain conditions. Since this letter was addressed to the Secretaries, in charge of Housing Department of all the State Governments and not to the D.T.C., therefore. D.T.C. Colony Tenant Association approached the Union Government through Ministry of Works and Housing asking to clarify whether this policy was applicable to them or not. In response to this representation, intimation was received that the Government of India was not in a position to issue any direction to the employers. Not being satisfied with the reply of the Government of India, the Industrial Workers in general and D.T.C. employees in particular resorted to take stringent measure and, Therefore, issued notice of strike. On account of the strike notice the Management started dialogues with the employees. As a result of discussion and on account of settlement arrived at between the Management and the Employees action to go on strike was withdrawn. Number of demands were raised. One of the demand by the employees was transfer of houses built under the integrated subsidised Housing Scheme in favor of occupants within six months. The D.T.C. agreed to do so. Vide decision communicated 14/02/1979 Government of India permitted such of the employers who were willing to sell by way of transfer the built-up houses to Industrial Workers and Economically Weaker Section of the Community under the integrated subsidised Housing Scheme on the conditions enumerated therein. While the decision was yet to be taken by the Dtc, the Delhi Administration on the other hand approved the decision to sell houses

constructed under the integrated Subsidised Housing Scheme for Industrial Workers and Economically Weaker Sections of the Community at various places at Delhi. On 18/04/1979 the Board of the Dtc passed a Resolution agreeing to sell the houses to its occupants at G.T, Road and Hari Nagar Colonies. In the subsequent meeting on 31/08/1979 the Resolution for the sale of houses to its occupants was approved subject to the conditions laid down In the Government Circular dated 14/02/1979 On a clarification sought by the Dtc, Government of India clarified that the sale price was to be strictly worked out in accordance with the instructions contained in its letter dated 14/02/1979. Pursuant to the decision made by The DTC Board, allottees were asked to furnish the details. However, the DTCBoard, subsequently, reviewed its carrier decision of April. 1979 on the ground that occupants of the staff quarters in other colonies of the DTC would make a similar demand. Moreover the facility of the housing accommodation to its employees was already short, Therefore, it was not desirable to sell these houses. The decision has been taken by the General Manager-cum-Chairman in order to deprive the benefit to the because of his malafideintentions- On a clarification sought the Government of India communicated that the question of implementation of the Scheme will arise after final decision is taken by the Board. As a result of this review, the plaintiff is have suffered irreparable loss. The refusal to implement the Scheme regarding transfer of houses to the occupants, according to the plaintiffs, malafide,discriminatory, illegal and void, hence the suit.

(5) Defendants were called upon in response to which only D I'C filed the written statement. So far as other defendants are concerned, namely,Union of India, and Delhi Administration they choose not to file any writtenstatement

(6) Defendant No. 3 i.e. the Dtc took legal and factual objection inter alias on the grounds that the plaintiffs have no legal right to ask for the sale of the houses, That the Scheme is only recommendatory and not binding in nature. The implementation of the said Scheme was at the sole discretion of the employer and the plaintiff cannot compel the defendant to implement the same. In the absence of any legal light suit for declaration is not maintainable For the implementation of the Scheme prior approval of the Ministry of Shipping and Transport i e. the Ministry concerned is necessary.Since the approval has not been accorded by the said Ministry Therefore, the defendant is not bound to implement the Scheme. Moreover no staff colony build in any other Public Sector has been sold to its occupants nor any such instructions have been issued by the Bureau of Public Enterprises. As the defendant has not committed any breach of the statutory obligation, Therefore,the plaintiffs have no vested right to to institute the suit. A writ petition filed by similarly situated occupant of the house namely, Shri J N.Bediwas dismissed by be Division Bench of this court. In view of the present suit is not maintainable. Legal and valid orders of eviction have already been passed by the Estate Officer against the plaintiffs No 85 &103, Therefore, these two plaintiffs have no right to ask for any relief. The suit is otherwise not maintainable because it is not filed in a a representativecapacity.

In the absence of particulars it is not possible for the defendant to ascertain whether these plaintiffs are eligible or not. Moreover, few of the plaintiffs have since retired from service they have no right to ask for the transfer of these tenements, which facility was granted to them as part of their service. One of the conditions for eligibility of the Scheme is that the employee does not own a house or property in his name or in the name of his wife and children nor has he sold or transferred his property in the name of some other person. So far as plaintiffs No. 19, 26, 29, 31, 37, 2, 12, 16, 39, 36, 40, 44, 57, 55, 60, 63, 69, 87, 99 and 16 are concerned, they have failed to give such a declaration. Therefore, they are not eligible for being considered. So far as plaintiffs No. II. 34, 38, 49, 54, 30, 45, 19, 18, 6, 52, 86, 85, 28, 48, 51, 83, 103, and 87 are concerned, they no longer continue to be in service with the defendant. No. 3 These quarters were allotted to the employees at the relevant time on account of their being in employment of the defendant. Since some of these plaintiffs ceased to be the employee after retirement, Therefore, this scheme is not applicable to such of the employees. The scheme as such is not applicable to the houses built by the DTC. The Central Government had granted a meagre amount as loan and subsidy to cover a portion of the cost of construction which in turn was refundable with interest. The Board of the DTC vide Resolution dated 18/04/1979 only principally agreed to consider for the sale of these houses. The said resolution is not an actual decision. Moreover it was only an Administrative action not quasi judicial decision. Apprehending that such demands would be raised by other employees in other colonies of The DTC like Shadipur colony, the Board had to review its earlier decision regarding the transfer of ownership right in these two colonies. While reviewing this decision, the Board has also taken into consideration the acute shortage of accommodation to its employees and also the financial implications involved. On 28/02/1986 the Ministry of Transport i.e. the concerned Ministry of the Defendant has declined to approve the proposal of transfer of quarters. The initial allotment to the employees were made in accordance with the rules framed by the Allotment Committee constituted by the Defendant-Corporation, therefore, these allotments were made in pursuance to the decision of the Managing Committee and not on account of any scheme. The Government of India has left the discretion with the employer to adopt the Scheme or not to adopt, but if it does, then in that case position of housing stock has to be considered and these have to be replaced for other eligible workers. Since DTC was not in a position to replace the housing stock hence it had to review the proposal. These tenements if are allowed to be sold, the defendants will suffer irreparable loss because its other employees who are waiting for allotment would be deprived of the same. DTC is not in a position to replace the housing stock with the meagre resource at its command and also on account of acute shortage of land availability. It was in this background that the matter was reviewed by the Board. The Board's decision of review is in the larger interest of its employees. the Ministry concerned has also not given the approval for the sale of these houses.

(7) In replication plaintiffs refuted the averments of the defendant and in particular the fact that the Dtc agreed only in principle to consider the sale of the houses. In fact the Dtc actually agreed to sell these houses and thereafter sought approval for the sale of the quarters of the Govt. of India. Other averment of the written statement have also been denied.

8. On the pleadings of the parties, the following issues were framed:

1. Whether the suit is not maintainable for the reasons stated in the written statement? OPD2. Whether the suit is bad for misguide of cause of action? OPD3. Whether the suit is bad for misguide of parties, OPD4. Whether the suit is not correctly valued for the purposes of court fee and jurisdiction? If so, what is the correct value 5. Whether the suit for declaration as framed is not competent? OPD6. Whether the withdrawal of the scheme for transfer of houses to allottees/ occupant is illegal, discriminatory and vide for mentioned in paras 20(a) to (f) and (h)? OPP 7. Whether defendants 1 and 2 are estopped from withdrawing the scheme OPP8. Whether the defendants 1 and 2 were duly served with notice u/s 80 CPC? 9. Whether the implementation of the scheme in question is not mandatory? OPD10 Whether the decision for the transfers of quarter to allottees/ occupants contained in Resolution dated 18/04/1979 was not a final decision and could, Therefore, be withdrawn? OPD11. Whether defendants 1 and 2 are estopped from withdrawing and reversing the decision contained in Resolution dated 18/04/1979 by the act and conduct? 12. Relief.

(9) I have heard the learned counsel for the plaintiff Shri O. N. Vohra and for the defendant Shri B. S. Banerjee. During the course of arguments Mr. Banerjee conceded that in view of the amendment of the plaint, the objections raised by him on the basis of which the issues No. 2, 3 & 5 were framed no longer survive and Therefore, he is not pressing issues No. 2, 3 & 5. These issues are accordingly decided in favor of the plaintiff and against the defendants.

(10) plaintiff herein are the occupants of tenements constructed under the Integrated Subsidised Housing Scheme for Industrial Workers and Weaker Section of the Community (hereunder called the Scheme). They are, Therefore, claiming the right of transfer of these tenements in their favor in term of the Scheme as modified in the year 1978 by the Government of India. Mr. Vohra, Therefore, contended that the objection of the defendant that the plaintiffs have no right to file the suit in the absence of any legal character or to any right to property is without force in view of Section 34 of the Specific Relief Act. Since the plaintiffs are claiming transfer of tenements which are in their occupations and which were constructed to be ultimately sold and transferred in their name, they have got a legal character and a right on that property.

(11) In order to appreciate the objection of the defendants, one has to keep in mind the provisions of Section 34 of the Specific Relief Act which reads as under :

discretion of court as to declaration of status of right : any person entitled to any legal character, or to any right as to any property, may institute a suit against any

person deny in deny, his title to such character or right, and the court may in its discretion make there in a declaration that he is so entitled and the plaintiff need not in such suit ask for any further relief.

(12) A bare reading of Section 34 makes it clear that a decree declaring status can be passed. The plaintiffs in order to make themselves entitled for the transfer of the tenements by sale have to establish their legal character and the right in the property. The perusal of documentary as well as oral evidence placed on record proves that plaintiffs are occupying these tenements which were constructed under the Scheme subsequently. Under the said Scheme followed by various clarifications and directions issued by the Government of India, allottees of such tenements are entitled to the transfer by sale. On account of the scheme and the clarification issued by the Government of India, the plaintiffs acquired a legal character and a vested right in these tenements. They thus seek declaration both in regard to property as well as their legal character. Their contentions are fortified from the documents Ex.P-I and Ex.P-13. Ex.P-I is a letter issued by the Government of India, Ministry of Works and Housing dated 3/08/1979 which is reproduced as under:

GOVERNMENT of India Ministry of Works and Housing (Nirman Aur Awas Mantralaya) No.N.I4018/I/76-IIT New Delhi, dated the 3/08/1979 To, The Administrative Officer (II) Delhi Transport Corporation Indraprastha Estate, New Delhi-110002. Subject : Integrated subsidised Housing Scheme for Industrial Workers and Economically Weaker Sections of community - sale of house built by the employees to their workers. Sir, I am directed to refer to your letters No. Admn-I-107(3)/79 dated 25/05/1979 and 15/06/1979 and to say that the clarifications sought for therein on various points involving policy are furnished in the enclosed statement. 2. As regards the other points, the Dtc may decide themselves, in consultation with the Administrative Ministry if necessary. Yours faithfully, sd/- (K.S. Narayana) Under Secretary to the Government of India.

With Ex P-I (here is an Annexure D-I attached which is a statement showing various points raised by Dtc and answered by Government of India. Some of the point answered by Govt. of India and which are relevant for the determination of this issue are reproduced as under:-

Points raised. Clarification/Comments. 1. In respect of 300 houses built by As already advised in this Ministry "the Dtc at Hari Nagar and G.T. Road letter of even No, dated the 25.5.79, for Industrial Workers and Economic- the sale price strictly to be worked icily Weaker Section of community, out in accordance with the instruct- they received only half of the sub- corporation contained in letter dated side against the full subsidy of 25% 14.2.79, i.e, full original cost of the approved cost of construction. construction minus 20% of the Thus they accepted only 12/1-2 inst- admissible subsidy. The questioned of 25% of the approved cost of as to how much subsidy (5% or 2/1-construction, as subsidy, 2%) is to be refunded to the Central As such (it is presumed) the pur- Govt. can be decided along with chasers will be given an adhoc the case relating to the

payment of 10% (as against 20% as per our outstanding amount of loan by the letter of 14.2.79) and that only 25% DTC.(as against 5% as per our letter of 14.2.79) will be credited to the Govt. of India.3. Whether such of the employees Para 4 of this Ministry's letter dated as were initially workers within the 14 2.79 clearly stipulate that the meaning of the Factories Act. 48 at employers, who are willing to sell the time of allotment, but subsequent- houses, may sell the houses to the inertly ceased to be so because of workers. Eligibility of the intending transfer, promotion to officers cadre purchasers may be determined accor-etc. are also entitled to purchase dingly.houses occupied by them".4. Whether the workers who retired Each case will have to be decided on several years ago and in whose cases merits, in consultation with the either eviction orders have been Labour Commissioner. Delhi passed or their cases are subjudice Administration, and if necessary before the Estate Officer for eviction,with this Ministry.but have continued to hold on the possession unauthorisedly, are also to be given the ownership rights.13. The Wage limit of Rs. 350/500 This question is not relevant in the was fixed several years ago and on context of the sale of houses.account of a rising trend in the However, this question has Already wages of the employees, it should been examined and it has been decided be raised to Rs. 1000.00 p.m. not to raise the existing limits,

(13) Vide Ex P-13 dated 18/08/1978 the Government of India clarified regarding sale of these houses to the Labour Commissioner, Delhi Administration. By these clarifications, the Government of India made it clear that it was for the employer to decide whether these houses were to be transferred by sale to the economically weaker sections of the community who were in occupation of these houses. It was also made clear that Each in divided case has to be decided on its merit in consolation with the Ministry of Works and Housing. In view of this clarification, the plaintiffs can claim the benefit under the Scheme. Mr. Vohra contended that the benefit once given cannot be withdrawn. To strengthen his argument he has placed reliance the decision of Govt. of India communication to the Chairman-cum-General Manager, Dtc dated 16.5.86 Ex. P-2 which is reproduced as under:

GOVERNMENT of India Ministry of Shipping and Transport(Transport Wing)No. TGD(60)/76 16/05/1980.to the Chairman-cum-General Manager,Delhi Transport Corporation.1. P. Estate, New Delhi.Sub: Sale of houses at G. T. Road and Hari Nagar Dtc colonies to the occupants thereof.Sir.I am director to refer to your letter No. Admn. 107(3)/80 dated 3/03/1980 wherein you bad intimated that the Board bad also decided that the decision already taken by it in this behalf bore-examined in consolation with the Government and matter be brought up again for its consideration. This matter has been considered and it is observed that it would be advisable that the Board stick to its earlier decision of July, 79 as it would not be proper to revere a decision which bad been taken in the interest of the employees.2. After the Board has reconsidered the matter and approves theproposal, Government approval may be sought in due course.Yours faithfully,sd/-(B.R. Chavan)Deputy Secretary to the Govt. of India.

(14) Since the defendants have decided to withdraw the benefit under the modified scheme, Therefore, the right of the plaintiffs which was there In the property if being deprived, hence they have status as envisaged u/s 34 of the Specific Relief Act, 1963 to invoke the jurisdiction of this Court.

(15) Mr. Banerjee then contended that decree if passed would be violative of the provision of the Public Premises (eviction of un-authorised occupants) Act, 1971 (hereinafter called the Pp Act). This argument to my mind is without force. Two provisions i.e. Pp Act and the scheme are distinct and different. These are to be applied in different sets of circumstances. Under the scheme even if a worker ceases to be in employment still he would be entitled to the transfer by sale of the tenement provided he is in "occupation" of the same as intimated by the Government of India vide Ex. P-13 dated 18/08/1978. Retirement, superannuation or crossing of wage limit are not relevant at the time of implementation of the scheme. In the scheme the emphasis is given on the word occupation, the rest of the considerations are significant at a later stage. Where the Pp Act will come into force because of the retirement or termination of service of the employee.

(16) So far as individual case are concerned, their eligibility for transfer of tenements under the Scheme would be considered by the employers clarified and communicated by the Ministry of Works & Housing in Ex.P-13. Therefore, if at the time of considering the eligibility defendant no. 3 come to the conclusion that some of the plaintiffs are not eligible, the defendant can declare them so. The point at issue is not whether plaintiffs are eligible or not, the point in issue is whether the benefit once accrued in favor of the occupants of the tenements can be withdrawn by defendants No. 1 & 3. If the said defendants are going to withdraw such benefit has the right not accrued in favor of the plaintiffs? The answer will be in the affirmative. These plaintiffs will have a right to force the defendants to implement the decision already taken and if they are covered under the Scheme they will be entitled to its benefit by way of transfer by sale of tenements. The decision to give the benefit once taken, accepted and acted upon has to be implemented and, Therefore, the relief has been sought by the plaintiffs.

(17) The Scheme so far has not been withdrawn by the Central Government. Para 23(8) of the Scheme which reads as under:

This scheme will remain in force till withdrawn. The GOVERNMENT of India reserves the right to withdraw the scheme or make any modification in the scheme without notice.

So far it is not the case of the defendants that the Government of India has invoked para 23 sub para (8) of the Scheme. Having not done so and the scheme still being in vogue, the plaintiffs have a right to file the suit for declaration as well as for mandatory injunction. Therefore, I find that the suit in the present form is maintainable. The issue is accordingly decided in favor of the plaintiff and

against the defendants.ISSUE No, 4

(18) The main plank of defendants argument of suit being not properly valued for the purposes of court fees is that the plaintiffs in the garb of declaration are seeking relief of Specific Performance According to Mr.Banerjee, the suit should be valued u/s 7(VI)(c) of the CourtFee Act and ad valorem court fees should have been paid. This argument can be rejected on a short ground, plaintiffs are not asking any specific performance of any act of the defendants. They are seeking a relief with regard to the scheme which according to them was accepted and acted upon by the defendant and the benefit of the scheme, the said defendants are illegally and unauthorisedly going to withdraw. They want declaration the effect that this withdrawal of the benefit should be declared illegal, void and discriminatory. They are not asking this court to allot them the tenements, Therefore, there is no question of specific performance. Their case is not covered u/s 7(IV)(c) of the Court Fee Act, 1817. The other contention of Mr Banerjee that plaintiffs should pay individual court fee as they are asking for individual reliefs. This argument is also without force All the 103 plaintiffs have asked one declaration i.e. resolution dated 2/03/1981 by which defendants want to withdraw earlier resolution dated 18/04/1979 be declared illegal, void and ineffective. Since there is a breach committed by the Dtc of its own decision which was accepted and acted upon, Therefore, mandate should be issued. A bare reading of the plaint would show that the plaintiffs are asking this court to declare that the tenements were constructed under the Scheme and acceding to the said Scheme which was accepted and acted upon. a right has accrued in their favor. It is only the subsequent resolution of the Board dated 2/03/1981 which they have challenged. Therefore, to my mind, they are not liable to pay individual court fees as their case is common and they are asking only one relief and not 103 reliefs. To my mind court fee has been correctly paid. Hence this issue is decided against the defendant and in favor of the plaintiffs.

(19) Defendants 1 & 2 have not filed the written statement, Therefore, the averments of the plaint are deemed to have been admitted to the effect that the notice u/s 80 CPC has been duly served on the defendant-UOI. Even, otherwise, Shri M.P. Mathur appearing as Pw1 has proved that the notice u/s 80 CPC was served on the defendant before filing the suit. On this part of his testimony there is no cross examination. His statements remained uncontested and uncontroverted on the record. In view of the facts, the issue is decided in favor of the plaintiff and against the defendants.

(20) Since these issues are inter-connected and overlapping Therefore these can be disposed of together. The defendants No 1 & 2 i.e. Union of India and the Chief Secretary, Delhi Administration have not filed the written statements. Therefore, presumption can be that they are not interested in the outcome of this suit nor have they denied the allegations of the plaint. But by sheer oversight or may be due to mistaken belief in issues No. 7&11, the words "defendants 1 & 2" has been typed instead of "defendants 1 & 3" This mistake can

be rectified because the pleadings as-a-whole have to be construed. It is the substance of the plaint and not the form that matters. Parties had actually understood each other's case and after understanding the same went to trial and led evidence. They had no misunderstanding about each other's allegations. Therefore, a generous construction is to be placed so that substance is grasped for determination of justice. From the pleading of the parties as they are on record it is not disputed rather it is a forgone conclusion that the plaintiff and the contesting defendant no. 3 knew that it is the defendants No. 1 & 3 who are intending to withdraw the scheme. The plaintiffs had actually made grievances against their action and not the action of the Chief Secretary, Delhi Administration i.e. Defendant No. 2. Defendant No. 3 while defending the reversal of earlier decision to transfer the tenements knew that it is the defendants No. 1 & 3 who are responsible and answerable to the claim set up by the plaintiffs. Therefore, there is omission or mistake while framing the issues, though nothing turns on the same since issues are overlapping and if taken together leave no manner of doubt that the real controversy is between plaintiff and defendants 1 & 3. The issues framed are for guidance only and these can be amended at any time for determining the real controversy between the parties. Mr Banerjee appearing for defendant No. 3 had been justifying the action of defendants 1 & 3 against these issues. Infact these issues relate to defendants 1 & 3 and not to the defendants 1 & 2. He, in fact, tried to justify the action of defendants Nos. 1 & 3 while discussing these issues. Therefore, for deciding these issues, I am taking into consideration that against issues Nos. 7 & 11 it should be "defendant 1 & 3" instead of "defendants 1 & 2".

(21) It is an a dictated case of the parties that the scheme which was formulated in 1962 and modified in 1978 is still in force and the GOVERNMENT of India has not so far withdrawn the same though empowered to do so under para 28(3) of the Scheme. 300 tenements were constructed under the scheme in the year 1965-66 by the predecessor of the DTC i.e. MCD. MCD has also transferred such like houses to its employees occupying those houses. In fact the defendants No. 3 had adopted the modified scheme and decided to implement it for which purpose the price of the tenements were also negotiated. Each employee in occupation of the tenement was asked to furnish the requisite details. This shows that the scheme was accepted by the DTC. The defendant No. 3 took the decision to reverse it only as an after thought. Hence Mr. Vohra, counsel for plaintiff contended that plaintiffs are challenging the reversal on the grounds, inter alia, of estoppel as well as promises or estoppels. Therefore there is no reason why these tenements should not be transferred to "occupants" of these houses. Delhi Administration has also implemented this scheme so far its employees are concerned.

(22) In order to appreciate the respective contentions of the parties it would be worthwhile to know the disputes and inter-se relation between The DTC, its employees and the MCD. Delhi Transport Corporation came into existence in the year 1971. It is the citation of Road Transport Laws (Amendment) Act, 1971. Since

then it is governed by the Road Transport Act, 1950 as amended by the Laws Amendment Act of 1971, The background of transport service so far as Delhi is concerned has been as under :-

(23) Delhi Transport Undertaking was created by Delhi Transport Authority Act, 1950. This Act was repealed by Delhi Municipal Corporation Act, 1957. It was on account of the Delhi Road Transport Laws (Amendment) Act, 1971 that the Road Transport Act, 1950 was made applicable to Delhi by carrying out amendments therein. Delhi Transport Corporation is a corporation of the Union Territory of Delhi. It is an instrumentality of the state and thus State within the meaning of Article 12 of the Constitution of India. It is an autonomous body. The tenements in question which earlier vested in the Municipal Corporation of Delhi now vest in the Delhi Transport Corporation. Mr. Vohra contended that Delhi Transport Corporation has absolute control over the use and the disposal of the tenements in question because of section 19(2)(b) of Road Transport Corporation Act, 1950 which says :- "19(2)(b) to acquire and hold such property both moveable and immovable, as the Corporation may deem necessary for the purpose of any of the said activities, and to lease, sell or otherwise transfer any property held by it;" Since these tenements belong to DTC, Therefore, its Board passed there resolution agreeing to transfer these houses by sale. The said resolution is Ex P-7. This resolution Ex P-7 was subsequently confirmed vide resolution (Ex.P-8) No. 139/79 Item 84/78 dated 31/08/1979 Ex.P-8 is reproduced as under:

MINUTES of the meeting of the DTC Board held on 31.8.79 at 15.15 hours in the Board Room Resolution No. 139/79 Item 84/78; Sale of house at G.T. Road and Hari Nagar colonies the occupants thereof. (Shri T.D. Gupta, Dy. G. M. (P) was called in) Resolved that the proposal of sale of houses to the occupants of G.T. Road and Hari Nagar Colonies be approved subject to the conditions laid down by the Central Government in their Circular No. N-14010/1/77-111 dated the 14th February, 79 at Annexure "C" to the part (d) of the agenda note and also the conditions as enumerated in para 4 of the part (4) of the agenda note, beside the following conditions: (i) The economic rents be charged from the occupants with effect from the date their wages become more than Rs. 500.00 per month. (ii) The purchaser will have no right to the demolishing the building or hypothecating the same after the transfer of the ownership of the house. (iii) Those who have been dismissed from services or have resigned the job from the Corporation are not eligible for the transfer of the houses; (iv) Those who have land or house in any residential area in the name of any of their family member including husband, wife and minor children are not eligible. The Board also desired that liability of DTC to pay the ground rent to DDA be ascertained. In case it is found that the DTC would be liable to pay ground rent to DDA, it would obviously have to be provided in the terms of transfer of the houses that the transferees would pay the ground rent at the same rate to the DTC. Resolves also that the Chairman-cum-G.M. and is hereby authorised to decide all the details and formulation of legal documents on to be basis of legal advice and also to decide all other relevant and issues which may arise in connection therewith.

(24) According to Mr Vohra it was in pursuance to the above said resolution .that the Administrative Officer, Headquarter, of the Dtc issued acircular dated 14/06/1979 asking the workers, representatives and the General Secretary to give the Information in the prescribed form. Thereupon the workers who were allottees of the houses at G.T. Road and HariNagar Colonies were asked to verify the form and submit the same latest by 21/06/1979. The said circular is Ex. P-16,Ex. P-17 is the form which was to be filled up by each individual occupant of the tenement. Vide Ex.P-18 dated 16/06/1979. the same Administrative Officer asked for further information regarding the date of retirement of each allottee. In annual report of the Dtc for the year 1978-79 at "C" on page 56 there is &clear indication that Dtc were prepared to transfer the ownership of 300quarters built under the subsidised industrial housing schemes to these occupants as per Government policy annual report is Ex. P-19.

(25) This scheme after modification in 1978 was accepted by The DTC and was also acted upon. The implementation of the scheme by DTC was duly approved by the Government of India. He further contended that Dtc tried to withdraw the same but the Government of India,Ministry of Shipping and Transport vide letter dated 16/05/1980 Ex.P-2 informed the Chairman-cum General Manager, Dtc that the Board should stick to the earlier decision of July, 1979 as it would not be proper to reserve the decision which had been made in the interest of the employees.The letter Ex. P-2 is reproduced as under:

GOVERNMENT of India Ministry of Shipping and Transport(Transport WingTo,The Chairman-cum-General Manager,Delhi Transport Corporation,I.P. Estate, New Delhi.Sub : Sale of houses at G.T. Road and Hari Nagar Dtc colonies to the occupants thereof.Sir, I am directed to refer to your letter No. Adml. 107(3)/80 dated 3/03/1980 where in you bad intimated that the Board bad also decided that the decision already taken by it in this behalf by reexamined in consultation with the Government and matter be brought up again for its consideration. This matter has been considered and it is observed that it would be advisable that the Board stick to its earlier decision of July, 79 as it would not be proper to reserve a decision which bad been taken in the interest of the employees.2. After the Board has reconsidered the matter and approves theproposal. Government approval may be sought in due course.Yours faithfully.sd/-(B.R. Chavan)Deputy Secretary to the Government of India.

(26) Therefore Mr. Vohra contended that in view of this documentary evidence which is proved on the record, the defendant/DTC is stopped from denying the benefit of the said scheme nor can the Dtc be permitted to withdraw the same after giving assurance to its employees that scheme.would be implemented within six months. The principle of estoppel and;particularly promissory estoppel would apply to the facts of this case. The modified scheme of 19/8 having been accepted and acted upon by defendant No. 3 it now cannot reverse that decision. The decision taken vide resolution Ex. P-7 is final and binding. The decision Ex. D-12 to reverse the decision dated 18/04/1979 is discriminatory, malafide and

against the law.

(27) The Government of India, Ministry of Works and Housing, the creator of the scheme had already permitted the Dtc to transfer the tenements in accordance with the terms of the scheme as modified in 1978. Therefore according to Mr. Vohra the contention of the Dtc that there is no approval by the Ministry of Shipping and Road Transport is without substance. In fact it is the Government of India. Ministry of Works and Housing whose decision is binding on the Dtc as this scheme is the creation of Ministry of Works and Housing. The said Ministry has already given the approval. The Ministry of Shipping and Road Transport at no stage directed the Dtc not to implement or accept the scheme. It is only on the asking of the Dtc for reversal of earlier decision that the Ministry of Shipping and Road Transport declined approval

(28) Mr, Vohra laid stress on the evidence adduced by the parties in order to strengthen his case Mr. M P. Mathur (PW-I) testified that on 14/02/1979 there was a circular of Government of India reiterating the position of 1978 scheme. The Department of Dtc invited applications from them for transferring the houses. They submitted the requisite particulars. The Dtc board on 18/04/1979 agreed to implement the scheme. During the pendency of the case the Management of the Dtc informed the plaintiffs that if they withdraw their case from the court, transfer would be effected. But the plaintiffs did not rely on this assurance because of past experience hence refused to withdraw this case. According to him resolution dated 4/09/1985 and 7/11/1985 are still in vogue. According to him Delhi Administration has already transferred by sale to its occupants the houses in Karampura, Nehru Nagar, Vishvakarma Nagar and girl Nagar. Houses in these colonies were also constructed under the scheme. When subjected to cross-examination, Mr. Mathur however, could not give details about the eligibility of each individual nor could tell the market value of the houses. But so far as the scheme and the allotment is concerned, he withstood the test of cross-examination. Mr. Samey Chand (DW 1) Administrative Officer of the Dtc admitted that DTC had adopted the standard allotment Rules framed under the scheme. He also admitted that these tenements were constructed by the Dtc or its predecessor Mcd under the scheme. When confronted he had to admit that letter dated 25/05/1979 (Ex. P-21) was issued under his signature. The perusal of this letter shows that the Dtc had decided to sell the houses in two of its colonies to the occupants of the same. He perforce had also to admit that a letter was received from the Government of India dated 16/05/1980 thereby approving the transfer of these houses to the allottees of the same. The said letter is Ex. P-2 which has already been reproduced above. Shri R.D. Mathur appearing as DW-2 when subjected to cross examination admitted that eviction orders only against plaintiffs No. 28 & 45 are pending and those against whom eviction orders had been passed are still in occupation of these tenements. He also admitted that except plaintiffs No 12 & 99 other plaintiffs have given the requisite declaration as asked for by the DTC. He further admitted that quarters in colonies like Karampura, Nehru Nagar, Vishvakarma Nagar and girl Nagar which we

reconstructed by Delhi Administration under the scheme have been transferred to the allottees thereof Mr Vohra then placed reliance on the notice dated 20/01/1965 issued by the Delhi Transport Undertaking pursuant to which the applications were invited from the employees under the scheme for transfer of these tenements by sale. He, Therefore, contended that the control on the user and disposal of these tenements vested with The DTC. Government of India, Ministry of Works and Housing alone was to be approached for approval if at all approval was necessary. But even that Ministry has already given permission to the defendant No. 3 to transfer these houses by sale. The Dtc is left with no constraint whatsoever in implementing the scheme. There is only one constraint which is stipulated in Section 19-B of the Laws Amendment Act, 1971 which is as under :

19-B. Corporation to obtain the approval of the Central Government in certain cases In the exercise of any of its powers under this Act, the Corporation shall not incur on any single work, service or scheme or of any other purpose a capital expenditure of more than twenty five lakhs of rupees except with the previous approval of the Central Government.

It was Therefore contended that constraint is not an disposal of properties, moveable or immovable. It is in fact on the exercise of any power under the Act and incurring on any single work capital expenditure. Neither of these two contingencies arise in the case in hand The disposal in the present case is with the concurrence of the Ministry of Finance by the Ministry of Works and Housing and so far as the single work capital expenditure is concerned, that would arise subsequently.

(29) Mr. Banerjee appearing for defendant No. 3 on the other band contended that under the Delhi Road Transport Authority Act, 1950 it is the Ministry of Shipping and Road Transport whose permission and approval for the implementation of the scheme is required and not of the Ministry of Works and Housing. The loan for construction of these tenements was obtained from the Ministry of Shipping and Transport For this reason also approval of the said Ministry is necessary. The necessary arose for review of the earlier decision because of financial constraint and on account of acute shortage of accommodation. Dtc is not in a position to replace the housing stock. The workers similarly situated in other Dtc colonies, like Shadipur will raise similar demands for transfer of their tenements and that is not possible for the Dtc to do. Board Resolution No. 30 of 1979 of decision 8/03/1979 sought postponement of the consideration of the DTC's dated 31/07/1978 and of 27/02/1979. It was done because The DTC was under pressure on account of the financial implication as there was no resources available for the replacement of these tenements. There is in fact birth of land in Delhi, Therefore, there is no chance of replacing the housing stock. It was in this background that the decision to review the earlier resolution which was a "mere proposal" or could be called "agreeing in principal" was passed. According to Mr Banerjee resolution No. 55 dated 18th

April, 197[^] docs not confer any right on the plaintiff as it was not a final decision. Vide the said resolution the defendants only "principally agreed" to consider the adoption and implementation of the scheme. Resolution could be called a "loud thinking" nothing more. Therefore no right accrued in favor of the plaintiffs. So far as individual cases are concerned, Mr. Mathur appearing as PW-1 has admitted that he could not tell whether all the plaintiffs are eligible for allotment of these tenements or not. He could not tell exactly the salaries drawn by each of the plaintiffs in 1965-66 or in 1978-79. He also could not deny that the plaintiffs No. 82 & 99 were allotted quarters No. 123 & 130 respectively nor could he deny that the plaintiffs No. 2, 12, 16, 19, 26, 29, 31, 36, 37, 39, 40, 44, 55, 57, 60, 63, 69, 80, 87 & 99 did not furnish the required particulars demanded by the defendant; nor could he deny the suggestion that the plaintiffs at SI. Nos. 6, II. 18, 19, 28, 30, 34, 38, 45, 48, 49, 51, 52, 54, 65, 83, 85, 86, 87 & 103 have since retired from service. He also could not tell that eviction proceedings have been initiated against plaintiffs No. 25, 85 & 103 under the Pp Act. Nor could he tell that Pp Act proceedings were pending against plaintiffs No. 11, 18, 19, 38, 45, 48, 52, 54, 65 and 87. He could not deny the suggestion that the Board can review its own resolution. He could not tell how many plaintiffs have their own houses in Delhi. He had no knowledge as to how many plaintiffs have since resigned from service or retired nor could tell the market value of the houses as in the year 1983. On the contrary, according to Mr. Banerjee, the fact that these plaintiffs are not eligible has been corroborated by the testimony of Shri R.D. Mathur (DW-2). For this reason also these plaintiffs are not eligible for the transfer of houses by state. In the absence of individuals coming in the witness box their rights cannot be asserted. PW-1 alone cannot prove the legal character and the right in property of other plaintiffs.

(30) It was further contended that this suit is not maintainable because one of the plaintiff Shri J.N. Bedi had earlier filed a writ petition claiming the same reliefs which are claimed in this suit. The said writ petition was listed as Civil Writ Petition No. 2045/81. The said petition was dismissed in limine by a speaking order of 15th September, 1982. While dismissing the writ petition the Division Bench held that the plaintiff had no legal right nor he could ask for the transfer of the tenement. Hence these plaintiffs have no right in the property as observed by the Division Bench.

(31) DTC allotted these tenements to the plaintiff under the rules formulated by it and not on the basis of the terms and conditions of the scheme. These tenements were allotted somewhere in 1965-66. The scheme if had not been modified in 1978, would not have been applicable to The DTC. Therefore, these allottees of 1965-66 have to be governed by the terms and conditions of their allotment and not by the terms and conditions stipulated under the scheme. Thus all the plaintiffs against whom eviction orders have been passed by the Estate Officer and confirmed by the Appellate Court are not eligible, qua them the decision of Estate Officer is final as stipulated u/s 10 of the Pp Act. Some of these plaintiffs against whom Pp Act proceedings were initiated raised these very pleas

before the Estate Officer but the same were rejected vide order dated 26/02/1983 (Ex.D-1) and by the Appellate Court vide order dated 6/08/1983 (Ex. D-2). As on 18/04/1979 none of the plaintiffs was eligible as per the term of the allotment. Without conceding Mr. Banerjee contended that even if the scheme is ordered to be implemented it will not apply retrospectively. At best the right, if any, will accrue from 18/04/1979 that is the day the Dtc agreed principally and not from 1965-66. He further contended that the houses constructed under the scheme by the State Governments are only covered under the scheme. So far as houses of the employer are concerned that has been left to the discretion of the employer to transfer or not to transfer. Even if the houses are to be transferred, conditions stipulated in the Govt. Circular of 4/02/1979 have to be adhered to and that is prior approval of the Ministry of Shipping and Transport has to be obtained, furthermore the housing stock has to be replenished. The necessity to obtain the approval of the Ministry of Shipping and Transport is on account of the provisions stipulated u/s 19(B) of the Laws Amendment Act, 1971. The value of these tenements admittedly is more than 25 lacs of rupees hence permission is necessary. The Central Government u/s 19(B) would mean the Ministry of Shipping and Transport. The said Ministry has not given the approval so far, Therefore, the question of implementation of this scheme does not arise. An agreement was executed between the employees and the employer. Clause 2 of the said agreement shows that these employees were allottees as on rental basis or mere licenses. They are not eligible for the transfer of these tenements as they no longer remain employees of the DTC on the date resolution Ex P-7 was passed. Mr. Banerjee in order to strengthen his argument drew my attention to the statement of PW-1 who admitted that decision to dispose of these tenements was taken in 1979. Therefore, for this reason the plaintiffs have no vested right in these houses. It is yet to be determined as to what is the terminal date 1965-66 or 1978-79. Unless it is decided the benefit under the scheme cannot be given. So far letters dated 8/07/1975 and 19/02/1976 these stood withdrawn keeping in view the larger interest of the employees. Clause 20 Sub-clause (4)(II) of the scheme deals with the retention of houses by eligible workers. This shows that eligibility is a pre-condition for the transfer of the houses and to be eligible one has to be an employee of the employer and must not have crossed the wage limit of Rs.500.00 per month. Since the scheme can be modified and/or withdrawn as provided under para 23(8) hence no finality can be attached to it. All these plaintiffs had been drawing more than Rs. 500.00 as on 18/04/1979. Therefore also they are not eligible.

(32) Mr. Banerjee contended that similar provision like Section 19(B) exists under the Dmc Act. Those provision namely Section 200(d) of the DMC Act came up for consideration before this court and this court set-aside the resolution passed by the Corporation of transfer by sale the houses to its occupants. Section 200(d) of the Dmc act which deals with the proposal of property reads as under:

200. With respect to the disposal of property belonging to the Corporation, the following provisions shall have effect, namely :-(d) the consideration for which

any immovable property may be sold, leased or otherwise transferred shall not be less than the value at which such immovable property could be sold, leased, or otherwise transferred in normal and fair competition.

According to Mr Banerjee the Dtc cannot dispose of this property by sale by transfer because that would be against the provision of the Act and rules framed by the DTC. In fact the Board's decision of 18/04/1979 was illegal as it was beyond the scope of the statute. The cost of construction of these tenements in 1965 was Rs.3504 Lacs. An amount of Rs.625 lacs and Rs. 156 lacs were given by the Central Government as loan and subsidy respectively to cover the above cost of construction. The loan was repayable in 15 equal Installments subject to the interest @ 5-1/2 per annum. Corporation has paid back the loan to the extent of Rs.1,73,888.50 up to 20/03/1966 Further repayment could not be made by Dtc because of recurring losses and precarious financial position of the Corporation. Moreover, the Corporation will be losing the rent being paid by the employees. The cost of land and construction have increased manifold and replacement of an equal number of houses will cost not less than Three Crores of rupees. Whereas only a sum of Rs.14.00 to Rs.15.00 Lakhs approximately will be recovered by the sale of these tenements and that too in Installments spread over a long period, Therefore the transfer would be in violation of principle of natural justice and equity particularly keeping in view the financial position of the Dtc and the hardship which employees on the strength of the Dtc would face as they would be deprived of official accommodation.

(33) Section 32 sub-section (2) provides that no sum shall be incurred by or on behalf of the Corporation unless the expenditure of the same is covered by a current budget grant approved by the State Government. Mr. Banerjee contended that the State Government in this case would mean "Delhi Administration" and the Delhi Administration has not so far granted any approval for this expenditure. The provision of acquiring property and disposal by sale have been taken away by the Delhi Road Transport Authority Act. Section 25 of the Delhi Road Transport Authority Act gives power to the Dtc to alter or to extend the scheme. Therefore, even if the scheme is applicable or was adopted in 1979 the Board has the power to alter or amend the same as has been done in this case by a subsequent resolution withdrawing the earlier proposal of 1979. If the Dtc had the power to pass the resolution on 18/04/1979 it has the power to withdraw or to modify the same. Section 52 & 53 of the Delhi Road Transport Authority Act, 1950 empowers the Authority to frame Rules and Regulations which may not be in accordance with the scheme. Resolution dated 18/04/1979 was an internal decision of the employer. It was passed as a sheer gesture to think/consider in principle the demand of the employee. Therefore no finality can be attached to such a resolution. These houses were given on rental basis and this finds support from Ex.P-9 dated 7/02/1978, a letter issued by the Central Government. Reading of this letter shows that plaintiffs were only licensees and the houses were not to be sold to them. These houses were to be kept for serving officials which can be inferred from the bare reading of Ex. P-10 dated 14/02/1979, Ex.D-12 gives the

reason for the review of the earlier decision. The reading of Ex D-12 would show that the earlier decision taken was only in principal to consider the implementation of the scheme but in fact no final decision was taken vide the said resolution of 18/04/1979. Ex. D-10 dated 3/12/1979 would show that till 3/12/1979 no final decision was taken. The eligibility of the plaintiffs was also lacking as is apparent from Ex D-12. So much so. in answer to the Unstarred Questioning the Parliament vide ExP-14 the Dtc intimated that no final decision had been taken. Vide Ex DW-3/2 dated 28th February. 1286 Central Government did not grant the approval to the proposal sent by the DTC. Vide Ex.P-16 only applications were invited. This at best can be called invitation of offer. In fact no communication was sent to the plaintiffs by the Dtc that it intends to sell these tenements to them. Central Government has been given the power under the scheme itself to withdraw or to modify the scheme. The Central Government has not agreed to extend the benefit of the scheme to the employees of the DTC. The power has been rightly exercised by the DTC. It is at the discretion of the employer to implement the scheme or not do it, Therefore, no mandate can be issued against the defendants. The Resolution dated 18/04/1979 (Ex. P- 7) was only a loud thinking. It is an Administrative action and not a quasijudicial decision. Since the defendant Corporation found financial and other difficulties in the adoption and implementation of the scheme, it exercised its power to review the same. The review of earlier resolution was not arbitrary, but is based on sound financial aspects of the DTC. Even if for argument sake it is said that the resolution of 18/04/1979 is a quasi judicial decision, still the Dtc has the inherent powers to review and modify its earlier decision. The principle of estoppel or for that matter the principle of promissory estoppel will not apply to the facts of this case. In order to strengthen his argument he has placed reliance on the decision of Supreme Court in the case of Excise Commissioner, Uttar Pradesh, Allahabad and Others Vs. Ram Kumar and Others, . In that case condition was incorporated in the license of the respondents that they would lift the fixed minimum quantity of liquor and sell the same at their allotted shops. It was also the term of the license that in case of default or violation to lift the requisite quantity they would be liable to pay compensation equal to the amount of the excise duty livable on the unlifted quantity. In fact the U.P. Excise Act did not provide levy of amount of excise duty as compensation. Therefore, the demand made by the Excise Commissioner on the unlifted liquor was challenged. Estoppel against the Government was pleaded. The Supreme Court held that no estoppel can be pleaded against the act of the sovereign nor can an estoppel against the Government will apply when it exercises its executive powers. It was further observed that sales of country liquor exempted from sales tax at the time of auction of the liquor licenses the Government is not estopped from subjecting sales tax to such sales later. Relying on this decision Mr Banerjee contended that the Resolution of 18/04/1979 being executive decision cannot be challenged nor estoppel is attracted. The Authority which had the power to pass resolution also has the power to withdraw the same. To strengthen his argument further he has placed reliance on the decision of this court in the case of Indo Foreign

Commercial Agency (Produce) Pvt. Ltd. Vs. Union of India and Others, . The Division Bench of this High Court after considering the merits of the case held that the principle of promises or estoppels will not apply to policy actions of the Government, It was observed that while ordinary administrative action is fully subject to judicial review, the greater the element of policy involved in Government action the more difficult it is for the Courts to review such action. In that case the scheme was formulated under the Imports and Exports Control Act for cash assistance for a period of three years. But after one year the scheme was withdrawn. Validity of this action was challenged. The Court held that the promulgation and withdrawal of the policy of cash assistance were both policy actions and not ordinary administrative acts and whenever there is a question of policy decision of the GOVERNMENT of India the courts will not subject the same to judicial review. The Courts also found that the withdrawal of the scheme was justified in that case. Therefore, relying on this decision Mr. Banerjee contended that since the Corporation will suffer losses and taking into consideration the financial constraint, the Dtc has decided vide Resolution of 2/03/1981 (Ex.D-12) to withdraw the recommendation or the proposal of the adoption and implementation of scheme. In fact according to Mr. Banerjee no assurance was held out to the allottees of these tenements that these would be transferred in their favor. The estoppel as envisaged u/s 115 of the Evidence Act would not apply to the facts of this case. It is a well settled principle of law that the doctrine of promissory estoppels will not apply against the State in its governmental, public or sovereign capacity. The exception, however, arises where it is necessary to prevent fraud or manifest injustice. In this case neither any fraud has been imputed nor injustice is going to be caused to the plaintiffs. No estoppel can arise or operate to fetter the powers and discretion of the Dtc if its action is in the interest of administration and in the larger interest of its employees. The adoption and implementation of the scheme is in the discretion of the DTC. Mr. Banerjee Therefore contended that this court cannot sit in judgment on the governmental function and decide whether the scheme should be implemented or not. There cannot be any estoppel in respect of statutory acts of the Corporation which are made for the benefit of larger number of its employees, In this regard he has placed reliance on the decision of Supreme Court in the case of Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., . It was held in that case that there can be no promissory estoppel against the legislature in the exercise of its legislative functions nor can government or "public authority be debarred by promissory estoppel from enforcing a statutory prohibition. It is equally true that 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 or which was outside the authority or power of the officer of the Government or of the public authority to make. Attention was also drawn to another decision of the Supreme Court in the case of Jatinder Kumar and Others Vs. State of Punjab and Others, , Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, : G. Govinda Rajulu Vs. Andhra Pradesh State Construction Corporation Limited and Another, and in the case of Delhi Cloth and General Mills Ltd. Vs.

Union of India (UOI), . DTC at no stage held on any promise to the plaintiffs, Therefore, there is no question of promissory estoppel. Mr. Banerjee then relied on the decision of our own High Court in the case of Nirmal Kumar Jain and others v. Municipal Corporation of Delhi and another, reported in 1989(3) D L 379 where the Mcd tried to dispose off (transfer of ownership of staff quarters constructed by the Corporation to the employees). the said action was struck down by this court. It was observed that the provision of Section 200 had not been complied with Mr. Banerjee contended that the ratio of Nirmal Kumar Jain's case is applicable on all force to the facts of this case. As in that case, in this case also no personal communication to the plaintiffs was .made nor any assurance given. The Resolution dated 18/04/1979 cannot be regarded as promise. Moreover, there cannot be any estoppel against statute. As far as the plaintiffs are concerned these quarters were allotted to them in their capacities are employees. They had been paying license fee in respect thereof at the rate stipulated by the DTC. Being licensee On rental basis they cannot claim vested right in those tenements merely on the strength of the resolution of 18/04/1979 Ex P-4 stipulates that these houses can be transferred only when the housing stock is replenished. The word "stock" as defined in the Dictionary means "a corporate wealth, resources etc " The houses being already short with the Dtc, it would not be in the larger interest of the employees to transfer these houses to the plaintiffs. The scheme is a welfare scheme It has to be co-related with various aspects like availability of land, finances and resources. Dtc is already running losses. In these houses are transferred to the plaintiffs, other employees will be deprived of the benefits of the accommodation. It will work against the workers. Equity is in favor of Dtc, The Ministry of Shipping and Transport has Therefore rightly rejected the implementation of this scheme by the Dtc For these reasons Mr. Banerjee stressed that the suit be dismissed.

(34) I am afraid I cannot accept the reasonings of the defendant No. 3. Though the submissions of Mr. Banerjee on the face of it appears to be very attractive and forceful. But if one goes deep into the matter it is not difficult to see that the equity is not in favor of the defendant but it is in favor of the plaintiffs Dtc may be facing financial implications but that does not mean that the plaintiffs should be deprived of their right which has accrued in their favor on account of the statute. It is not for the first time that such like tenements have been asked to be transferred by sale to the employees Delhi Administration and for that matter MCD-predecessor of the Dtc have in fact transferred the tenements in so many colonies to their occupants Mr. Banerjee's contention that the plaintiff sought to have mitigated the losses by acquiring their own flats or lands is an argument in the wilderness. In fact this submission can be argued more forcefully against the defendant DTC. The Dtc instead of giving advantages of the scheme to its employees started controverting the rights of the plaintiffs. Under the scheme the Dtc would have been provided with the loan by the Central Government as well as the land on a subsidised rate. But that the Dtc did not do and, Therefore, it has no right to blame the plaintiffs It is no body's case that these tenements

be transferred to all the 103 plaintiffs. The question of eligibility of each individual will have to be gone into by the Dtc at the time of transfer of these tenements by sale. At this stage, this court is called upon to determine the validity of the two resolutions namely Ex. P-7 and Ex D-12 by virtue of which scheme is alleged to have been adopted and second by virtue of which the said resolution is decided to be withdrawn. The fallacy in the arguments of the defendant No. 3 is that it considers the resolution of 18/04/1979 (Ex.P-7) a mere loud thinking, a mere agreeing in principle. This argument though very tempting but has no substance. The resolution of 18/04/1979 came into existence because of its past history, which is very relevant to understand in order to appreciate the correct position. As already pointed out above, and as brought on record by the evidence of PW-I, the Employees of the Dtc submitted a Charter of demands to their employer. One of the Charter of demands was the implementation of the scheme. Negotiations took place and ultimately settlement (Ex P-15) dated 28/10/1978 was arrived at between the employee and employer before the Conciliation Officer. As per Memorandum of Settlement Ex. P-15 the Management and the Sangh discussed the matter and the Sangh withdrew their threat of strike. The individual hunger strike was called off with effect from 27th September. As a result of mutual discussions the Management and Delhi Parivahan Mazdoor Sangh agreed to enter into an agreement in full and final settlement of the demands. Para Xiii of the terms of settlement of Ex. P-15 provided as "under :-"XIII. The demand for transfer of houses built under subsidised housing scheme will be decided in six months". This settlement is covered under Sub-section (3) of Section 18 of the Industrial Disputes Act, Subsection (3) of Section 18 of the Industrial Disputes Act reads as under :-

(3) A settlement arrived at in the course of conciliation proceedings under this Act (for and arbitration award in a case where a notification has been issued under Sub-section (3-A) of Section 10-A) or (an award of a Labour Court, Tribunal or National Tribunal) which has become enforceable shall be binding on (a) all parties to the industrial dispute ; (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, (arbitrator, Labour Court, Tribunal or National Tribunal), as the case may be, records the opinion that they were summoned without proper cause.

(35) The bare reading of Section 18(3) of the Industrial Disputes Act makes it clear that a settlement arrived at in the course of conciliation proceedings is binding not only on the actual parties to the Industrial dispute but also on the heirs, successors or assigns of the employer on the one hand, and all the workmen in the establishment, present or future on the other. Sub-section (3) of Section 18 of the Industrial Disputes Act in fact departs from the ordinary law of contract and gives effect to the principle of collective bargaining as held by the Supreme Court in the case of *Jhaggrakhan Collieries v. G.C. Aggarwal*, reported in AIR 1975 SC 174. This settlement has a binding effect and is enforceable in law. Pursuant to this the Board of the defendant Dtc took the decision to implement the scheme and, Therefore, passed a resolution on 18/04/1979 i.e., prior to the

expiry of the period of six months. Hence it would not be appropriate for the Dtc now to lay that the resolution Ex P-7 was only a loud thinking and a mere "agreeing in principle". This contention is devoid of merit and against the settlement. If this resolution had not been the outcome of a binding settlement like (Ex P-15), the contention of Dtc could have been justified. But this settlement and subsequent conduct of the parties speaks otherwise. As observed above, the Board took decision to implement the scheme which was in pursuance to the lawful settlement arrived at between the parties. Therefore, it cannot be said that the resolution of 18/04/1979 was in the form of loud thinking or had no legal binding. The decision of the Delhi High Court in the case of Nirmal Kumar Jain and Another v. Municipal Corporation of Delhi and Another referred to above is in fact not applicable to the facts of this case. That decision is distinguishable on two grounds one in that case the resolution was passed by the Corporation without the concurrence or agreement of the Commissioner as required u/s 200 of the Dmc Act and secondly employees of the MCD were not held out any assurance that these quarters would be transferred to them by sale. In fact there was no such communication between employer and employee in that case. Whereas in the present case the resolution dated 18/04/1979 had been passed by a competent and appropriate authority i.e. the Board of the Dtc. It is not the case of the DTC that the Board had no authority to pass this resolution. This resolution was in pursuance to the settlement Ex P- 15 which has a binding force. It is also not disputed that these tenements had been constructed under the scheme and loan was received from the Central Government for this purpose. DTC had principally agreed to adopt the scheme and thereafter acted upon the same when it asked the plaintiffs to furnish the requisite details regarding their length of service, salary, dependents, whether any dependent own a house or not and verify the form filled for transfer of these tenements for sale as required by the Central Govt. Whereas in the case of Nirmal Kumar Jain and Another (supra) there was no communication regarding the acceptance of the scheme to its employees by the MCD.

(36) The required details were furnished by all the plaintiffs as admitted by Shri R.D. Mathur (PW 2). Therefore, in fact in the case in hand Dtc held out assurances to the occupants of these tenements that the statements are going to be transferred to them by sale. It is in fact this assurance and promise which the Dtc now wants to resile. Therefore, the principle of promissory estoppel would apply. Lord Denning in "High Trees Houses case" 1974 Kb 113 revived the doctrine of promissory estoppel. The principle formulated by Lord Denning was, "that a promise intended to be binding, intended to be acted on and in fact acted on, is binding so far as its term properly apply. Lord Denning rejected detriment as an essential ingredient of promissory estoppel. "In Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, Mr. Justice P.N. Bhagwati, who spoke for the Court, observed about promissory estoppel that it is a principle evolved by equity to avoid injustice, it is neither in the realm of contract nor in the realm of estoppel. The true principle of promissory estoppel" it has

been held, "seems to be that where one party has by his words or conduct made to the other party a clear legal relations or effect a legal relationship to arise in the future knowing or tending that 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" Whereas in the case of Nirmal Kumar Jain and Another (supra) there was no communication regarding the acceptance of the scheme to its employees by the MCD. Applying to above principle of law to the facts of this case it could safely be said that in this case the Dtc Board through its resolution Ex.P-7 and subsequently confirmed by resolution dated 31/08/1979 (Ex. P-8) held out assurance to the plaintiffs that they would be vested with ownership rights of these tenements. On the basis of that assurance these occupants waited for a long period to see that their cherished desire to own a house will be fulfilled. They submitted the particulars and complied with all the formalities. Therefore, now it does not lie in the mouth of the Dtc to say that there was no assurance given or that the communication of acceptance of the scheme and asking them to furnish the detail was only a loud thinking or merely agreeing in principle to consider their request. There is in fact no question of considering. Consideration took place prior to the settlement. After the settlement only implementation was left and that was done vide Ex. P-7. Hence principle of promissory estoppel squarely applies to the facts of this case. As already pointed out above, and even at the risk of repetition it would not be out of place to mention that in the case of Nirmal Kumar Jain (supra) the communication of the passing of the resolution by the Corporation which had no concurrence of the Commissioner as required u/s 200 of the Municipal Corporation Act, was never given to the employees. Therefore, in that case the court held that in the absence of assurance principle of promissory estoppel was not made applicable. But the facts of this case are otherwise. To that extent the ratio of Nirmal Kumar case would rather help to the plaintiffs. In the case in hand assurance was given, resolution was passed by the appropriate authority and the employees were duly asked to submit their particulars for the purposes of processing their cases in pursuance to that resolution. Numerous clarifications were obtained by the Dtc from the Government of India and ultimately it was finally confirmed on 31/08/1979. Various exceptions to the applicability of the doctrine of promissory estoppel can be enumerated and reference can be had to the case of State of Rajasthan Malu Khan Vs. State of Rajasthan and Another, . Those 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 or 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."

(37) The decision of the Dtc dated 2/03/1981 Ex. D-12 to withdraw the benefit of the scheme is not covered under any of the exception. Ex. D-12 is not in the nature of legislature function, nor was passed on account of any statutory prohibition. Nor the assurance or promise made vide resolution Ex. P-7 could be called contrary to law rather scheme of 1978 empowers the Dtc to take such a decision as Ex. P-7 and then implement is subject to certain conditions. It is also not the case of Dtc that resolution Ex. P-7 was not passed by any competent authority. Nor has DTC shown any subsequent event on account of which it has become inequitable for Dtc to implement the said resolution. In fact all action of the government and Government authorities should have a legal pedigree. The Dtc was aware of the financial implications and also the acute shortage of accommodation when it passed the resolution Ex P-7 and confirmed the same on 31/08/1979. In fact, the assurance or the promise given by the Dtc was meant to be performed in the future. To resile from it, the Dtc had to prove and disclose to this court as to what were the intervening events and circumstances which compelled it to change its earlier decision. The five reasons given in Ex. D-12 for reversal of the earlier decision had not arisen after the passing of the resolution nor they can be called subsequent events. Dtc is a State as defined under Article 12 of the Constitution of India and state must act fairly and equitably. Having given assurance and promise for the implementation of the scheme, if now it is permitted to withdraw the same, then the employees will suffer an irreparable loss. By permitting the State to withdraw the benefit it would amount to people losing faith in the Government as well as their employers. The example is not far to be found. According to PW-1 during the pendency of this case Dtc authority asked the plaintiffs to withdraw the suit so that DTC could implement the scheme. The same is mentioned in Ex. DW-3/1 which is reproduced as under :

C.L.Chhabra Delhi Transport Corporation Senior Personnel Officer-11. P. Estate Phone: 3315085 No. Do (107)/3/85/958 Dated : 18th October, 85 The deputy Secretary to the Govt. of India, Ministry of Transport, Department of Surface Transport, Transport Bhavan, New Delhi-110001. Sab.: Sale of houses at G.T. Road and Hari Nagar Colonies to the occupants thereof Approval of the Central Government. Sir, I am directed to refer to your letter No. TGD(60)/78 dated 16/05/1980 and also No. TGD(60)/78 dated 15/06/1981 on the above subject. The matter has remained under the consideration of the Dtc Board which vide its resolution No. 115/85 dated 4-9-1985, has again decided to refer the matter to Government for approval. The Resolution is reproduced below : "The Board, after detailed discussion, decided to refer the matter regarding transfer of quarters to the allottees on ownership basis at GT. Road and Hari Nagar Colonies to the Government for approval subject to the withdrawal of the case pending in the

High Court, Labour Commissioner or any other Court by the occupants.

To Ministry has already been provided complete information vide letter No. ADMI-107(3)/79 dated 17-9-1979 and a brief note about the scheme was also sent vide letter No. ADMI-107(3)/80 dated 3-3-1980. A copy of the Item No. 71/85 is enclosed here with. In pursuance of the above Resolution of the Board, the allottees through their Associations have been asked to withdraw the cases in the Courts. Their reply is awaited.

In view of the above, the approval of the Government of India is requested for sale of the houses to the occupants subject to the conditions laid down by the Ministry of Works and Housing and also the Dtc Board. Enclosure: As above
Yours faithfully, sd/- (CL. Chhabra) Sr. Personnel Officer-1

Nothing can be more appropriate than the laying once bitten twice shy. The employees did not fall for this offer of withdrawing the suit because they were aware that the Dtc was capable to resiling from the stand any time. Hence this offer was not believed nor accepted by the plaintiffs because of past experience. Unless it is a policy matter or an act against law or contrary law, any promise made by the State, people expect that it would be implemented and adhered to. It was not a mere proposal but an actual promise/assurance which was made after considering all the pros and cons of the problem and its ramifications.

(38) The reason given for the withdrawal of the earlier scheme vide Ex. D-12 dated 2/03/1981 cannot be considered exceptions to promise. So far as the first ground for reversal as mentioned in Ex. D-12 i.e. the absence of the government decision, it is against the record. The lengthy correspondence exchanged between Dtc and Government of India shows that this ground is an "off the cuff remark". Documents placed on record show Government of India had given the approval and left the discretion with DTC. So far as the second ground that no public under taking has sold the houses constructed under the scheme is in fact contrary to the evidence. Sh. R D. Mathur (DW-2) admitted in his cross-examination that quarters in colonies of Karampura, Nehru Nagar, Vishvakarma Nagar and girl Nagar constructed by the Delhi Administration under the scheme had been transferred to its allottees. This shows that the ground taken by the DTC is based on no evidence. Mr. Same Chand, DW-1 has in no uncertain words admitted that the quarters constructed by the State Government under the scheme had been allotted to its employees and this fact was brought to the notice of the Dtc by the plaintiffs much before the resolution Ex. D-12 was passed. This fact in itself proves that Dtc by raising this ground wanted to mislead and had in fact misrepresented the facts.

(39) As regarding the third ground the discretion was left with the employer and the Dtc in exercise of the discretion passed the resolution Ex. P-7 and thereafter confirmed the same on 31/08/1979 vide Ex. P-8. Not only it confirmed but the said resolutions were communicated and acted upon when plaintiffs were asked to submit the date and particulars regarding their service, dependents, wages etc

(40) As regard the grounds 4, 5 & 6, Dtc was aware of the lame and bad discussed the pros and cons of the scheme at length before taking decision and financial resources, acute shortage of land and demand by other employees were known to the employer, however, in spite of these constraints passed the resolution Ex. P-7 and confirmed the same on 31/08/1979 (Ex. P-8).

(41) Now dealing with the 7th ground regarding the eligibility of the employees that question will arise at the time of transfer of the houses. To my mind, the Dtc will be within its right to declare a person, ineligible. It is also for the Dtc to decide from which date the scheme would be applicable particularly in view of the fact that prior to modification of 1978 this scheme was not applicable to DTC. Constraints were removed only with the modification of this scheme in 1978 when discretion was left with the employer to adopt this scheme or not.

(42) Admittedly the discretion to transfer these houses rests slowly with the DTC. There is no constraint now attached to the same. Approval of the Ministry of Works and Housing is already there. Dtc cannot insist that this approval should be by the Ministry of Shipping and Transport, Section 19-B of the Delhi Road Transport Law (Amendment) Act of 1971 envisages prior approval of the Central Government. Government for the purposes of Union Territory of Delhi would mean Delhi Administration. From record it is apparent that Delhi Administration had been corresponding with Ministry of Works and Housing for clarification and for implementation of this Scheme. Mr. J.R. Kapoor, Desk Officer of the Ministry of Surface Transport, Government of India appearing as DW-3 stated that this Ministry was previously known as "Ministry of Shipping and Transport". He admitted on the basis of the record that there was no correspondence exchanged between Ministry of Works and Housing and his Ministry Shri Jagdish Sharma, Assistant Personnel Officer. Dtc appearing as DW-4 admitted that this matter was not referred to Ministry of Works and Housing by DTC Since Ministry of Works and Housing with the concurrence of Ministry of Finance has already given the approval, to my mind, separate approval of the Ministry of Shipping and Transport is not essential nor from the evidence of Shri J R. Kapoor Dtc has established that the said Ministry of its own rejected the scheme for DTC. Factual apart, "legally also Mr. Banerjee's contention that u/s 19-B of the Delhi Road Transport Law (Amendment) Act, 1971 prior approval of the Central Government is necessary in the case is without substance. The fallacy in his argument is that he is missing the significant words in Section 19-B i.e. "on any single work, service or scheme or if the capital expenditure is more than 25 lacs, the prior approval of the Central Government is required In this case the DTC is not going to incur the capital expenditure on any single work, service or scheme. Transfer of houses by sale cannot be covered under these words, It is not a single work to be carried out by defendant No. 3. Hence in the strict sense and on interpretation of Section 19-B it can be said for implementation of the Scheme prior approval of the Central Government is not required Even otherwise, Dtc having once exercised the discretion and passed the resolution which was subsequently confirmed cannot now take shelter under this provision in order to pull fast one on the

plaintiffs in order to reverse the earlier decision. The Ministry of Works and Housing having already accorded approval nothing remains to be the housing stock or not, approval of Central Government Is not necessary. It was for Dtc to decide before passing the resolution

(43) Supreme Court's decisions relied by Mr. Banerjee in the case of Jatinder Kumar, N. Ram Natha Pillai, Jit Ram Shiv Kumar and Excise Commissioner Up are distinguishable from the facts of this case. In the case of Jatinder Kumar the point involved was whether a person selected by the Public Service Commission had a right to ask for mandamus for his appointment. It was held that it is right of the Government to decide how many appointments are to be made and. Therefore the plea of promissory estoppel failed.

(44) In the case of N. Rama Natha Pillai the question was of the power of the Government to create, continue and abolish any civil post. This was a Sovereign function and, Therefore promissory estoppel could not apply.

(45) So far as Jit Ram Shiv Kumar case is concerned, in that case new Mandi was set up and promise was made to keep it immune from payment of octroi duty for all times. Subsequently, the orders were set aside. The action was upheld by the High Court as it was strictly in accordance with the power confirmed u/s 70(2)(c) of the Municipal Act. It was in this background that the Supreme Court held that there could not be estoppel against State-Legislature and Statutory function. In the case of Excise Commissioner Up, the plea of estoppel was not entertained because in that case when the liquor license was given at that point of time sales tax was not leviable. Later on it was levied. This was considered to be sovereign function hence the question of promissory estoppel failed.

(46) Mr. Banerjee had relied on Sections 16 and 21 of the General Clauses Act in order to justify the action of Defendant No. 3 to reverse the earlier decision. Section 16 of the General Clauses Act says that power to appoint includes power to suspend and dismiss. This section is not applicable to the facts of this case. A valid order of suspension or dismissal is possible only in accordance with the relevant provision of law.

(47) Section 21 of General Clauses Act reads as under :

Power to issue, to include power to add to, add to demand, vary or rescind, notifications, orders, rules or bye-laws where, by any (Central Act) or Regulation, a power to (issue notifications) orders, rules, or by-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any (notification), orders, rules or by-laws so (issued). (a) Cf. the interpretation Act, 1989 (52 and 53 Vict C. 63) Section 32(3), Ibid (1978 C. 30) S. 14. (b) Substituted for "Act of the Governor-General in Council" by A.O. 1937. (c) Substituted for "make" by the Amending Act. 1903 (1 of 1903), Section 3 and Schedule II. (d) Inserted, ibid. (e) Substituted for ""made", Ibid.

Section 21 came up for interpretation before the Supreme Court in the case of Lachmi Narain and Others Vs. Union of India (UOI) and Others, . The Supreme Court while interpreting Section 21 held that Section 21 embodies only a rule of construction and the nature and extent of its application must be governed by the relevant statute which confers the power to issue the notification. In The Scheduled Caste and Weaker Section Welfare Association (Regd.) and another Vs. State of Karnataka and others, , the Supreme Court discussed the scope of Section 21 at length vis-à-vis the principle of audi alteram partem in a case arising under the Karnataka Slum Areas (Improvement and Clearance) Act, 1973 and held :

The source of power to issuing the notification rescinding the earlier one could be traced u/s 21 of the General Clauses Act which is in pari materia with Section 10 of the Karnataka General Clauses Act u/s 21 a power to issue a notification includes a power to rescind it subject to the qualification that the power should be "exercisable in the like manner and subject to the like sanction and conditions (if any)". When a notification is made rescinding the earlier notifications without bearing the affected parties, it is a clear violation of the principle of natural justice. Such action in exercise of the implied power to rescind cannot then be said to have been exercised subject to the like conditions within the scope of Section 21 of the General Clauses Act

(48) It is not the case of defendant No. 3 that the reversal of the earlier decision to transfer the tenements was made in the "Like manner subject to the like sanction and conditions". The earlier decision contained in resolutions dated 18-4-79 and 31-8-79 (P-7 and P-8) was made pursuant to Settlement (Ex. P-15) which formed the origin and genesis of the agreement to sell the tenements by resolution dated 18/04/1979. The persons affected or their representatives were heard, their demands were discussed and deliberated upon before the Settlement was reached on 28/10/1978 and pursuant thereto the resolution dated 18/04/1979 (P-7) was passed. Nothing of that kind was done when the resolution dated 2/03/1981 (D-12) was passed.