Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 13/09/2026

(2013) 06 GAU CK 0017

In the Gauhati High Court

Case No : Writ Petition (C) No. 2329 of 2011

M/s Kabir Tea Estate APPELLANT

Vs

The State of Assam and Others RESPONDENT

Date of Decision : 26-06-2013

Acts Referred:

Citation : (2013) 3 GLD 889

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : S. Shyam and Sri J. Patowary, for the Appellant; R. Bora and Shri B. Sarma, for the Respondent

Judgement

B.K. Sharma, J.—Both the writ petitions by and between the same parties relating to more or less the same issue have been heard together and are being disposed of by this common judgment and order. The writ petitions seek to enforce the principle of promissory estoppel against the respondents, more particularly the Indo-Tibetan Border Police Force (ITBF) in respect of the sale of land belonging to the petitioner Tea Estate. For a ready reference, the prayers made in both the writ petitions are quoted below:--

W.P. (C) 2329/2011: In the premises aforesaid it is therefore, humbly prayed that Your Lordships may be pleased to admit this petition, call for the records of the case and issue a Rule calling upon the respondents to show cause as to why a writ in the nature of--

A. Certiorari shall not be issued to set aside and quash the impugned letter No. RSS. 405/2007/104 dated 24.02.2010 issued by the Joint Secretary, Revenue Disaster Management Department, Government of Assam staying the sale permission for selling the petitioner''s land to 9th Bn. ITBP Force.

B. Mandamus directing the respondent Authorities to allow the petitioner to sale its land measuring 27-Bighas covered by Patta No. 2 and Dag Nos. 53, 4/124, 52, 19, 67, 75, 74, 22(part), 33/127(part), 18 and 17(part) of Mancotta

Khanikar Mouza under Dibrugarh, West Revenue Circle to 9th Bn. ITBP Force, C/o. 99 APO for establishing a new unit and, upon perusal of the records and hearing the parties be pleased to make the Rule absolute and/or pass any such further orders/directions as your Lordships may deem fit and proper.

****

W.P. (C) 1033/2013: Under the facts and circumstances stated herein above it is therefore humbly prayed that Your Lordships would be pleased to admit this petition, call for the records of the case and issue Rule calling upon the respondents to show-cause as to why a writ in the nature of--

A. Mandamus shall not be issued directed the ITBP authorities to take the officer/proposal made by them to the petitioner vide letter dated 04/05/2007 to its logical conclusion by completing the process of acquiring the petitioner''s land in accordance with law and,

B. Certiorari shall not be issued to set aside and quash the acquisition process of land belonging to Manohari Tea Estate for establishing an ITBP Unit and upon causes being shown be further pleased to make the Rule absolute and/or pass such other order (s) as Your Lordships may deem fit and proper to grant adequate relief to the petitioner.

The basis facts relating to filing of the writ petitions are as follows:--

2. The land measuring 270 Bighas covered by Patta No. 2 and Dag No. 53, 4/124, 52, 19, 67, 74, 75, 22 (part), 33/127 (part), 18 and 17 being the part of Mancotta Khanikar Mouza in the district of Dibrugarh under Dibrugarh West Revenue Circle belongs to the petitioner Tea Estate. The petitioner also owns some other land contiguous to the said plot of land covered by the same Patta No. 2. As stated in the writ petition, the petitioner Tea Estate is exempted from ceiling limit as per the provisions of Section, sub-section 2(a) of the Assam Fixation of Ceiling of Land Holdings Act, 1956.

3. The ITBP was in search of a suitable plot of land measuring 270 Bighas, equivalent to 90 acres for establishing its new unit at Dibrugarh. Accordingly, the Deputy Commissioner, Dibrugarh was requested by the ITBP officials to submit a report regarding availability of a compact Govt. plot of land under Dibrugarh (East/West) Revenue Circle for allotting the same to 9th Bn. ITBPF. Thereafter, the Additional Deputy Commissioner (R), Dibrugarh vide his letter dated 29/05/2007 informed the ITBPF officials about the non-availability of Govt. land.

4. After the aforesaid development, the Commandant, 9th Bn. ITBPF having come to know about the aforesaid plot of land belonging to the petitioner Tea Estate wrote the Annexure-1 letter dated 4.5.2007 to the proprietor of the Tea Estate requesting to apprise as to whether the petitioner Tea Estate is interested to sell the aforesaid plot of land as the same was found to be one of the suitable plots for the purpose of setting up the new unit of ITBPF.

5. In response to the said letter, the proprietor of the petitioner Tea Estate by his letter dated 5.5.2007 while giving the details of the land also expressed its intention to sell the land subject to the condition that it would get the prevailing market price + additional compensation thereon and also compensation for Tea bushes/trees standing on the said plot of land as per the provisions of Land Acquisition and Requisition Act, 1894.

6. Immediately after the aforesaid letter dated 5.5.2007, the Commandant of 9th Bn. ITBPF by his letter dated 7.5.2007 addressed to the Deputy Commissioner (Revenue) Dibrugarh sought for the permission to purchase the aforesaid plot of land belonging to the petitioner. Be it stated here that the copy of the said letter was not endorsed to the representative of the petitioner Tea Estate. The said letter was followed by the letter dated 29.5.2007 addressed to the Principal Secretary to the Govt. of Assam in the Revenue Department (Settlement) by the Deputy Commissioner, Dibrugarh. By the said letter, a request was made to accord necessary permission for sale and purchase of the said plot of land. Copy of this letter was also not endorsed to the petitioner. Thereafter, the Govt. of Assam in the Revenue and Disaster Management Department by its letter dated 21.01.2008 conveyed the permission of the Government in the said department to sell the plot of land subject to clearance of all necessary dues to the Govt. and payment of admissible stamp duty and registration fee of sale deeds as per valuation fixed at Rs. 2.5 lakhs per bigha. The copy of the said letter was endorsed to the petitioner and also the Commandant 9th Bn. ITBPF.

7. When the matter rested thus and nothing happened thereafter for almost 3 years the Assam Chah Mazdoor Sangha (respondent No. 4 in W.P. (C) No. 2329/2011, by its letter dated 30.09.2010 addressed to the Revenue Minister, Assam conveyed its decision to withdraw its earlier objection in respect of the sale of the land by the petitioner to the ITBPF. It appears that the respondent No. 4 was apprehensive of retrenchment of the workers and accordingly objected to the sale of the land. In the mean time, the Govt. of Assam in the Revenue and Disaster Management Department by its letter dated 02.02.2008 apprised the Deputy Commissioner, Dibrugarh that for the documents executed by or in favour of the Govt., no stamp duty was leviable under the law as per Section 3 Provision 1 of the Stamp Act. By the said letter, it was further intimated that the ITBPF being a Central Government organisation, there is no question of payment of registration fee and stamp duty. Thereafter by Annexure-11 letter dated 24.2.2010, the Govt. of Assam in the said department intimated the Deputy Commissioner, Dibrugarh about the stay of the sale permission by the Governor of Assam.

8. Amidst the aforesaid happening, the authority in the office of the Directorate of ITBPF, Ministry of Home Affairs, new Delhi by its Annexure-12 letter dated 23/11/2009 requested the Deputy Commissioner, Dibrugarh to apprise as to which one of the two plots of land, one belonging to the petitioner and other belonging to another Tea Estate, namely, Ghooronia Tea Estate would be suitable

for the purpose of establishing the Unit. By the said letter it was clearly indicated that the ITBPF would like to avoid unnecessary litigation or any opposition.

9. Responding to the said letter, the Deputy Commissioner, Dibrugarh by his letter dated 5.4.2010 furnished the intimation that the Govt. of Assam in the Revenue Department had stayed the permission for sale of the land belonging to the petitioner Tea Estate. By the said letter, the authority in the ITBPF was requested to pursue another option.

10. The aforesaid development was followed by a discussion that was held among the petitioner Tea Estate, the aforesaid Ghooronia Tea Estate, Khanikar G.P., Secretaries of Chah Mazdoor Sangha and ATTSA, Dibrugarh. In the said meeting, the authorities of both the tea gardens assured that the interest of the workers of the Tea Estate would be protected. In the said meeting discussion was made regarding the proposal for setting up the ITBP Unit at tea garden and the efforts made by both the Tea Gardens.

11. It is in the aforesaid back drop, it is the case of the petitioner that since there was promise made out to it by the ITBPF to purchase the land belonging to it, they are now precluded from purchasing another plot of land belonging to the respondent No. 5 in W.P. (C) No. 1033/2013. Be it stated here that in the mean time, the ITBP has mooted a proposal for purchasing the required land from another Tea Estate, namely the respondent No. 5. Be it also stated here that its proposal with the other Tea Estate, namely, Ghooronia TE has also failed.

12. Mr. S. Shyam, learned counsel representing the petitioner in his elaborate argument referring to the aforesaid facts involved in the case, submitted that the respondent ITBPF cannot at its sweet will abandon the promise made out to the petitioner in the manner and method in which the same has been done. Referring to the decisions reported in Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., and 2006 (3) GLT 586, Union of India and Ors. v. Sree Ganapati Rolling Mills (P) Ltd. and Ors. he submitted that the proposed action of the ITBPF to go for another land belonging to the respondent No. 5 in W.P. (C) No. 1033/2013 is illegal, arbitrary and hit by the principles of Promissory Estoppel. He also submitted that as per the provisions of the Indian Contract Act, the offer made by the ITBPF to the petitioner having been accepted, it was a concluded contract required to be implemented by the ITBPF. He also submitted that the land now proposed to be purchased from the other Tea Estate i.e. the respondent No. 5 is not conducive for the purpose of setting up of the ITBPF Unit and that the same will also involve much more expenditure than the expenditure the ITBPF would have incurred by purchasing the land from the petitioner. Emphasising the purported element of public interest involved in such transactions, he also submitted that considering all the aspects of the matter, proposed action of the ITBPF to abandon the petitioner''s land is required to be interfered with exercising writ jurisdiction.

13. Countering the above argument, Ms. R. Bora, learned CGC submitted that

the writ petitions are misconceived. Referring to the aforesaid documents she submitted that there was no promise made out to the petitioner entitling it to invoke the principle of Promissory Estoppel. She submitted that it is for the ITBPF authorities to decide as to which plot of land is suitable for setting up of the Unit and not for the petitioner to dictate the terms. She has also placed reliance on two decisions of the Apex Court reported in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, and State of Punjab Vs. Nestle India Ltd. and Another,

14. Mr. B. Sarma, learned counsel representing the newly impleaded respondent No. 6 in W.P. (C) No. 1033/2013, in his argument submitted that in case of materializing the proposal for purchasing the land belonging to the respondent No. 5, the interest of the workers will have to be protected.

15. I have given my anxious consideration to the submissions made by the learned counsel for the parties and have also perused the entire materials on records.

16. Needless to say that to invoke the doctrine of Promissory Estoppel, clear foundation must be laid in the petition itself by the party invoking the said doctrine. In Sharma Transport Rep. by D.P. Sharma Vs. Government of Andhra Pradesh and Others, the Supreme Court held, "there is preponderance of judicial opinion that to invoke the doctrine of promissory estoppel, clear, sound and positive foundation must be laid in the petition itself by the party invoking the doctrine and that bald expression, without any supporting material, to the effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the Government would not be sufficient to press into aid the doctrine. The same principle has been reiterated in Bannari Amman Sugars Ltd. Vs. Commercial Tax Officer and Others, "

17. In the instant case, the whole basis of foundation of the petitioner to invoke the principle of promissory estoppel so as to bind the ITBPF to perform its purported promise made out to it is the Annexures-1, 2 and 3 letters dated 4.5.2007, 5.5.2007 and 7.5.2007, referred to above. By the first letter dated 4.5.2007, the Commandant 9th Bn. ITBPF only wanted to know as to whether the petitioner was interested in selling the land to the ITBPF. No promise was made out to purchase the land. In response to the said letter, the petitioner Tea Estate while conveying its intention to sell the land, had furnished the details of the land and as to how the same would be convenient for setting up of the particular unit. Thereafter, the Commandant, 9th Bn. ITBPF requested the Deputy Commissioner, Dibrugarh to allow permission to purchase the land. That by itself cannot be said to be a concluded contract by and between the petitioner and the ITBPF, more so, whether further action in the matter including the approval of the Government in the Revenue Department was to be conveyed and materialized. Although, certain correspondences had been made regarding granting of approval but it appears that there was some disputes regarding payment of dues to the Govt. by way of stamp duty and registration fee.

18. It was conveyed that since the ITBPF is a Govt. of India entity, it is not required to pay stamp duty and registration fee. In the mean time, dispute arose by and between the petitioner and the respondent No. 4 in W.P. (C) No. 2329/2011 and it appears that the Govt. itself had stayed the said sale permission. Prior to that the Directorate General, ITBPF, New Delhi by its Annexure-12 letter dated 23.11.2009 wanted to know from the Deputy Commissioner, Dibrugarh as to the suitability of the plots of land offered by the petitioner Tea Estate and Ghooronia Tea Estate. In the letter, it was clearly spelt out that the ITBPF would not like unnecessary litigation or opposition from any quarter. The said letter was written in view of the objection raised by the respondent No. 4. Even the Annexure-14 minutes of the meeting held on 10/02/2010 with the participation of the proprietors of both the Tea Estates i.e. the petitioner''s Tea Estate and Ghooronia Tea Estate, it was agreed that in the event of purchase being materialized, the rights of employees of both the Tea Estates would be protected. Thus, it was even at that stage, the proposal was not materialized so as to bind the ITBPF to purchase the land belonging to the petitioner invoking the provisions of Principles of Promissory Estoppel. It was only on 30.9.2010, the respondent No. 4 had withdrawn its objection in respect of sale of land by the petitioner to the ITBPF and that too writing a letter to the Revenue Minister without endorsing any copy to any one.

19. This being the position, there is no element of any promise being made out to the petitioner to purchase its land so as to invoke the principles of Promissory Estoppel. In the counter affidavit filed by the respondents, this aspect of the matter has been specifically dealt with.

20. In Sree Ganapati Rolling Mills (P) Ltd. (supra), the particular decision of the Cabinet was bound to be implemented by each and every wing of the Government and was not open to any individual department either to modify or act contrary to the decision so taken by the Cabinet. It was in that context, the principles of promissory estoppel was invoked. As has been discussed in the said decision to invoke the doctrine of promissory estoppel, clear, sound positive expression must be laid in the petition itself by the party invoking the said doctrine. As discussed above, apart from the said 3 letters which cannot be said to be the foundation towards invoking the doctrine of promissory estoppel, nothing could be found in the writ petition so as to constitute, not to speak of a basic foundation but a minimum foundation to invoke the doctrine of promissory estoppel. Thus, this case is of no help to the petitioner.

21. In Godfrey Philips India Ltd. (supra), the apex Court was concerned with exemption from Excise Duty to assesses. In this regard, representation was made out by the Central Board of Excise and Customs with approval of the Central Government. When the said representation was within the competence of the Govt./Board and the assesses acted upon such representation, it was held that on facts, Government and the Board were bound by the promissory estoppel to grant the exemption until its revocation. It was held that the Government was

not exempted from its liability to carry out the particular representation made by its. While there is no doubt that the proposition of the doctrine equally bind the Government but the present case cannot be said to be a case of making out a definite representation, acting on it and changing of position by the petitioner based on the promise made out by the ITBPF.

22. The doctrine of promissory estoppel is well established in the administrative law of India. It represents a principle evolved by equity to avoid injustice and, though commonly named promissory estoppel, it is neither in the realm of contract or in the realm of estoppel. The basis of this doctrine is the interposition of equity which has always, true to its form, stepped in to mitigate the rigour of strict law. The principle of promissory estoppel is that when one party has by his conduct made to the other a clear and unequivocal promise or representation which is intended to create legal relation or effect a legal relationship arise in the future knowing or intending that it would be acted upon by the other party to whom the promise or representation is made out and it is in fact so acted upon by the other party, the promise or representation would be binding on other parties 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. These factors so as to constitute promissory estoppel are absent in the instant case.

23. In M/s. Motilal Padampat Sugar Mills (supra), the Apex Court while holding that the doctrine of promissory estoppel also applies to Government or State in whichever capacity it acts, also held that the Government will not be bound if it can show that equity lies in its favour. In the given facts and circumstances of the case, the following observations made in the said judgment is significant to note. "......The doctrine of promissory estoppel is a significant judicial contribution in that direction. But it is necessary to point out that since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. If it can be shown by then Government that having regard to the facts as they have transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promise and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because, on the facts, equity would not require that the Government should be held bound by the promise made by it.......".

24. In Nestle India Ltd. (supra), the Apex Court dealing with the doctrine of promissory estoppel observed that since the same is an equitable doctrine, it must yield when the equity so requires. But it is only if the Court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government. No representation can be enforced which is prohibited by law in the sense that the person or authority making the

representation or promise must have the power to carry out the promise. Even assuming that the 9th Bn. ITBFP had made a semblance promise to the petitioner, it is not the final authority in the matter, the same cannot bind the Government of India in the Ministry of Home Affairs. This is not say that the said Commandant has made out any promise to purchase the land and that acting on the said promise, the petitioner has altered his position.

25. As noted above, even in the meeting held on 10/02/2010, which included the present petitioner and the representative of Ghooronia Tea Estate, no finality to the matter was indicated, not to speak of any promise made out to the petitioner. There being no clear and unequivocal promise knowing and intending that it would be acted upon by the promise i.e. by the petitioner requiring to act upon the promisee, so that it would be inequitable to allow the ITBPF to go back of the promise, it cannot be said to be a case of forming well known pre-conditions for the operation of the doctrine of promissory estoppel.

26. So far as the claim of the newly added respondent No. 6 for protection of the interest of its members is concerned, same cannot be gone into collaterally in this proceeding. We are not concerned in this proceeding as to whether the ITBPF should be permitted to purchase the land belonging to the respondent No. 5 or not. This proceeding is only in respect of the claim of the petitioner that the ITBPF is estopped on the doctrine of promissory estoppel to abandon the promise made out to the petitioner in respect of purchase of its land about which detailed discussions have been made above.

27. For all the aforesaid reasons I do not find any merit in the writ petitions and accordingly they are dismissed. Interim order stands vacated. There shall be no order as to costs.

