

(2016) 05 KL CK 0010
In the High Court Of Kerala
Case No : WP(C). No. 18024 of 2013 (C)

R. Savithammal

APPELLANT

Vs

Tahsildar

RESPONDENT

Date of Decision : 20-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Revenue Recovery Act, 1968 — Section 50

Citation : (2016) 2 BankJ 734 : (2016) 3 ILRKerala 167 : (2016) 3 KerLJ 212 :
(2016) 3 KHC 335 : (2016) 3 KLT 251

Hon'ble Judges : Mr. A. Muhamed Mustaque, J.

Bench : Single Bench

Advocate : Sri A. Krishnan, Advocate, for the Appellant; Sri R. Ranjith,
Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Mr. A. Muhamed Mustaque, J.—The petitioner was an assessee for agricultural income tax and sales tax. Consequent to the default to pay the tax demanded, the petitioner's land was put in auction. The State purchased the land having an extent of 3.73 in Survey No.108/1 and 109/1 of Varanagad Village under Section 50 of Revenue Recovery Act as bought in land on 27.6.1985. The petitioner remitted the entire amount due under the Assessment order on 18.12.2003. The petitioner initiated proceedings for reconveyance of the land. The District Collector refused to the request of the petitioner and directed the petitioner to remit the current market value of the land as contemplated in Government Order No.(MS No.196/96 RD 22/91. The petitioner, aggrieved by the direction of the District Collector approached this Court in W.P. (C) No.34407/2003. This Court directed the petitioner to remit 50%. The petitioner withdrew the writ petition with liberty. The issue in this writ petition is whether the petitioner is entitled for re-conveyance of the land without paying the market value of the land.

2. The Government order regarding the re-conveyance of the bought in land dated 22.3.1996 is produced along with the memo by the Government order. The relevant Government Order reads as follows:

"In cases wherein the date of sale confirmation of bought-in-land is on or after 01.11.1983, the requests for re-conveyance from the Original owner or his undisputed heirs will be allowed provided the current market value of the land is also remitted. Six months time from the date of issue of this order will be allowed for submitting applications for the purpose and after that date no such applications will be entertained under any circumstances."

3. If the land is exclusively vested with the Government, certainly, the re-conveyance can be only based on the aforesaid Government Order. However, the question emerges in view of the fact that the petitioner was allowed to discharge the liability in the year 2003 by remitting the entire amount due under the Government Order. Therefore, the question, in such circumstances is whether the Government Order as such would apply or not.

4. The Government Order would apply if the petitioner seeks the re-conveyance of the land, which was purchased by the State in terms of Section 50 of the Revenue Recovery Act based on the conditions enumerated therein. The Government Order does not indicate the issue for re-conveyance of the land when the debtor has been allowed to discharge his debt, otherwise than in the mode as prescribed in the Government Order. Therefore, the only point, which has to be considered by this Court is the legal effect is of the payment effected by the debtor.

5. The restitutional claim would arise against the public authorities or State in numerous circumstances. One of such circumstances is on equitable ground. To allow any claim based on equitable ground, the Court has to look around the conduct of the parties in relation to the transaction. Therefore, the foremost point to consider is the reason for the Government to allow the debtor to discharge his liability.

6. When a sale would extinguish the liability of the debtor, any payment thereafter made towards the discharge of the liability and accepted by the creditor, certainly has to be treated as a separate transaction to determine the rights and liabilities of the parties.

7. Although there is a view that an estoppel can operate only as a shield not as a sword, there is an exceptional type, which is called equitable estoppel. This type of estoppel in fact was relied upon by the parties to prefer a claim. The extended version of the equitable estoppel is also known as promissory estoppel when a party has acted upon a promise of another.

House of Lord in Ramsden v. Dyson 1866 LR I HL 129, 170 explains the above Rules as follows:

" If a man, under a verbal agreement with a landlord for a certain interest in

land, or, what amounts to the same thing under an expectation, created or encouraged by the landlord that he shall have a certain interest, takes possession of such land, with the consent of the landlord, and upon the faith of such promise or expectation, with the knowledge of the landlord and without objection by him, lays out money upon the land, a court of equity will compel the landlord to give effect to such promise or expectation."

Honourable Supreme Court A.P. Transco v. Sai Renewable Power Pvt. Ltd. (2011) (11) SCC 34 referred to use of promissory estoppel as a basis of cause of action. In Paragraph 83 it was held as follows:

"It is a settled canon of law that doctrine of promissory estoppel is not really based on principle of estoppel but is a doctrine evolved by equity in order to prevent injustice. There is no reason why it should be given only a limited application by way of defence. It can also be the basis of a cause of action."

8. Section 2 (h) of the Indian contract defines a contract as an agreement enforceable by law. Under Section 2 (e) every promise and every set of promises, forming the consideration for each other, is an agreement.

Section 2(d) defines consideration as follows:

"When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise. "

9. Therefore, the contract is legally valid if a promise is made and consideration is paid pursuant to the promise.

10. Some of the text books define promissory estoppel as follows:

"Snell: Promissory estoppel: Where by his words or conduct one party to a transaction makes to the other a promise or assurance which is intended to affect the legal relations between them, and the other party acts upon it, altering his position to his detriment, the party making the promise or assurance will not be permitted to act inconsistently with it.

Like estoppel at common law, promissory estoppel may provide a defence but it can create no cause of action.

The difference between it and proprietary estoppel is that the effect of promissory estoppel may be only temporary whereas that of proprietary estoppel is not only permanent but is also capable of operating positively so as to confer a right of action.

Halsbury: When one party has, by his words or conduct, made to the other a clear and unequivocal promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the one who gave the

promise or assurance cannot afterwards be allowed to revert to their previous legal relations as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualifications which he himself has so introduced."

11. However, the question may arise, was there any representation on the part of the Government to direct payment. Nothing is seen from the record that any such representation has been made on behalf of the Government directing the petitioner to make payment. However, it is not necessary that there should be a representation on the part of the Government or promise to bind the Government to apply principles related to estoppel. As narrated as above, Principle of estoppel is a part of equity. The Court can resort to apply the estoppel to do substantial justice between the parties.

12. The doctrine of proprietary estoppel reinforces the equitable consideration as above. The Proprietary estoppel is defined as follows:

"It has recently become fashionable to use the term "proprietary estoppel" to signify the doctrine which we have been discussing above under the name of estoppel by encouragement or acquiesce, and so long as it is understood that this terminology does not produce a new estoppel, but is effective only to assign a new name to an old and well-established one, there can be no objection to the new term. It may easily enough come about, however, that a relaxation in the terminology of subject may induce a corresponding relaxation in the systematic thought of its philosophers; and it is already possible, in the estoppel cases, to find traces of a distinct tendency loosely to "lump together" the doctrines of acquiescence, or "proprietary estoppel", and of promissory estoppel, as if they were one, or took their origin from the same source, or were regulated by the same principles. It is for this reason that the term has not been adopted in this treatise; by keeping to the old terms this book has been able, it is hoped, to adhere more clearly to the presentation of these two doctrines as two and not one."

(see Estoppel by representation, Spencer Bower and Turner, 3rd Edition Page 306)

13. The text quoted as above would indicate that any type of encouragement or acquiescence would also result in equity being applied, when a right is infringed on account of another party's action. Though it can be separated from the promissory estoppel while expounding its doctrinal width and amplitude, nevertheless to give rise to a cause of action, the Court; need not separate it as a special form of estoppel for the purpose of granting any relief based on proprietary estoppel.

14. In this case the petitioner paid the amount. This was accepted without any demur. The sale was concluded in the year 1985. Therefore, the petitioner's payment cannot be considered as the payment effected in the light of the Government order referred as above. There is no case that the petitioner has

committed any fraud on the officials of the Government. No such case was espoused in the counter. Further, the official respondents also have no case that the petitioner made the payment by misrepresentation. It is to be noted that nobody has a case that remittance was under mistake or under compulsion. In such scenario, the only conclusion is possible is that the petitioner made the payment and he was encouraged to make such payment by the Government.

15. The stand in the counter that since the petitioner had cleared the entire liability, the Government can re-convey the land only if the petitioner remits the market value of the land. It is to be noted that the petitioner did not make any application. It is to be noted that the payment was not effected pursuant to the Government Order. The Government could not have entertained such application after the outer limit prescribed referred in the Government Order. Therefore, the only irresistible conclusion that can be drawn is that the Government encouraged the petitioner to make the payment or the Government remains acquiesced when payments have been effected to discharge the liability.

16. In such circumstances, certainly, the principle relating to the proprietary estoppel would come into play to the aid of the petitioner. Thus writ petition is to be allowed. Accordingly, the writ petition is allowed by directing competent among the respondents to re-convey the land at the expenses of the petitioner. Needful shall be done within a period of three months from the date of receipt of a copy of this judgment.