
(1991) 02 MAD CK 0005
In the Madras High Court

S. Shanmughanathan

APPELLANT

Vs

The Executive Engineer and Administrative Officer, Tamil
Nadu Housing Board

RESPONDENT

Date of Decision : 14-02-1991

Acts Referred:

Citation : (1991) 2 LW 499 : (1991) 1 MLJ 339

Hon'ble Judges : Bakthavatsalam, J

Bench : Division Bench

Judgement

Bakthavatsalam, J.—The prayer in the writ petition is as follows:

For the reasons stated in the accompanying affidavit, it is prayed that this Hon'ble Court may be pleased to issue a writ of mandamus or

appropriate writ, order or direction, directing the respondent herein to execute the sale deed in favour of the petitioner in respect of Plot 591/A-2

situate in Anna Nagar Division, Madras-40.

2. On application from the petitioner for allotment of a residential plot in the City of Madras, the Government passed an order in G.O.Ms. No.

1429, dated 15.9.1987 allotting one residential plot in Anna Nagar, Madras-40 to the petitioner on Hire Purchase basis subject to the approval of

the M.M.D.A. and subject to the terms and conditions prescribed by the Tamil Nadu Housing Board. In pursuance of the allotment order the

respondent allotted Plot No. 591/A2 in Anna Nagar measuring 1 ground and 2,236 sq.ft. subject to certain conditions. The important conditions

are that the total cost of the plot would be Rs. 1,54,334.00 at the rate of Rs. 80,000 per ground and 1/3rd of the cost of the plot i.e., Rs. 51,112,

should be paid at the first instance as initial deposit within three weeks from the

date of receipt of the allotment order and the balance of the amount should be paid in monthly instalments at Rs. 2,422 for a period spread over for five years with interest at 13 per cent per annum. The petitioner was requested to apply in the prescribed application. The Regular allotment order was issued on 29.9.1987. The petitioner paid a sum of Rs. 51,112 on 29.9.1987 itself. The plot was handed over to the petitioner on 8.10.1987. It seems the petitioner made an application to the respondent for a "No objection certificate" for permission to put up a residential building in the plot, complying with all the building regulations and the Development Control Rules of the M.M.D.A. On 28.1.1988 the respondent granted the "No objection certificates" permitting the petitioner to put up one residential building in the site allotted to him and directed the petitioner to apply for the licence for the building from the local body and planning permission from the M.M.D.A. A planning permit was issued by the Corporation of Madras on 21.4.1989 permitting the petitioner to construct the building according to the plan. On the strength of the proceedings it seems the petitioner put up a building in the plot in accordance with the approved plan and is also paying property tax to the Corporation of Madras from 9.12.1989 onwards. At this stage the respondent issued a notice dated 28.11.1989 cancelling the allotment and ordering resumption of possession of the plot. The ground taken in the order of cancellation of the plot was that originally the plot was earmarked for Market complex as per the lay-out approved by the Planning Authorities and it was converted irregularly into one for residential purpose. The Government cancelled the allotment of plots by G.O.Ms. No. 1048, Housing and Urban Development Department, dated 31.10.1989, one of which is offered to the petitioner in view of the aforesaid reasons. This was challenged in W.P. No. 15597 of 1989. Srinivasan, J. by a common order in a batch of writ petitions, dated 29.1.1990 set aside the order of cancellation on the ground that the learned Advocate-General appearing for the Tamil Nadu Housing Board conceded that no notice was issued to the writ petitioners and such orders of cancellation were not sustainable. The learned Judge, however, made it clear that it is open to the Housing Board to issue notices to the writ petitioners and after giving sufficient opportunity to the petitioners pass final orders. The learned Judge observed thus:

All the contentions raised by the petitioners will be available to them if and when they are obliged to challenge any orders which may be passed by the Housing Board ultimately against them.

Subsequently a show cause notice was issued to the petitioner on 4.5.1990 calling upon the petitioner to give his explanation. The petitioner was

requested to show cause as to why the allotment obtained by the petitioner by an irregular allotment should not be resumed so as to put it to its

originally earmarked use. It is stated in the notice that it is proposed to resume the plot allotted to the petitioner and put it to the original use for

which it is earmarked for the benefit of the public, as the site originally earmarked for market complex was converted into residential plot before

allotment. It is alleged in the affidavit that the petitioner submitted his explanation and also filed O.S. No. 6006 of 1990 before the City Civil Court,

Madras, and by proceedings dated 13.8.1990 the respondent withdrew the show cause notice issued on 4.5.1990. It is alleged in the affidavit that

since the respondent has withdrawn the show-cause notice, the petitioner requested the respondent to inform the balance amount payable by him

and also execute the sale deed in his favour. It is stated that the petitioner has not received any information and out of the total cost of the plot at

Rs. 1,54,334-00, the petitioner has paid a sum of Rs. 1,01,324 and according to the petitioner, the balance is only Rs. 53,000. Since the planning

permit issued by the Corporation of Madras is valid for three years and the petitioner has to complete the construction within that period, it is

stated that he approached the financial institutions to avail the loan facility and he was given to understand that he has to submit the sale deed along

with other documents. It seems the petitioner wrote a letter to the respondent on 16.10.1990. Since the petitioner has not received any reply from

the respondent, he wrote another letter dated 14.11.1990 requesting him to inform the balance amount or accept the balance amount of Rs.

53,000 and execute the sale deed in his favour. It is alleged in the affidavit that he has not received any information from the respondent for his

letters dated 16.10.90, 14.11.90 and 5.12.90. The petitioner alleges in his affidavit that in so far as the plot of the petitioner is concerned, he has

complied with all the conditions for the issue of the sale deed and it is the duty of the Housing Board to execute a sale deed in his favour. It is also

stated that as per conditions, the respondent is bound to execute the sale deed in favour of the allottees. It is also alleged that the respondent

cannot withhold the execution of the sale deed for a long period without any valid reasons. With these allegations the petitioner has come up before

this Court with the prayer stated supra.

3. Notice of motion has been ordered by me on 18.12.1990.

4. The respondent has filed a counter affidavit. It is stated in the counter that as per G.O.Ms. No. 1429, dated 15.9.1987 Plot No. 591/A2 was

allotted to the petitioner and handed over to the petitioner on 8.10.1987. It is also stated that out of the total cost of the plot Le. Rs. 1,54,334 the

petitioner has initially deposited a sum of Rs. 51,112. It is also stated in the counter that the respondent has issued a "No objection certificate" to

the petitioner on 28.1.1988 for putting up a new construction in the plot in question, and as on today there is a building in the above said plot. It is

stated that the Government issued an order in G.O.Ms. No. 1048, dated 31.10.1989 directing the respondent to cancel some of the allotments

already made and which are kept vacant on the ground that these plots are all vacant and have been originally allotted for a public purpose. It is

admitted in the counter that on the basis of the Government order, the allotment of the plot to the petitioner was cancelled, and the petitioner has

filed the W.P. No. 15597 of 1989 challenging the cancellation order. It is also admitted in the counter that after the said writ petition was allowed,

the respondent issued a show cause notice on 4.5.1990. Subsequently the petitioner filed a suit in Q.S. No. 6006 of 1990 against the show cause

notice, and thereafter the show cause notice dated 4.5.1990 was withdrawn. It is stated that the request of the petitioner for the issue of the sale

deed cannot be complied with since the Government have ordered to cancel the allotment of the abovesaid plot. The respondent has not executed

any sale deed for the plot covered under the G.O.Ms. No. 1048, dated 31.10.1989. It is stated that before issuing the G.O.Ms. No. 1048 an

inspection was made and at that time it was found that the plot was vacant. Accordingly, a report was sent to the Government stating that the

abovesaid plot was vacant, and in the meanwhile the petitioner has put up the construction before issuance of the abovesaid G.O. It is stated that

the respondent is not responsible for the construction put up by the petitioner

after the inspection was made and before the issue of the abovesaid

G.O.

5. Mr. G. Rajagopalan, learned Counsel appearing for the petitioner, contends that once a valid allotment has been made and it is in existence and

so far it has not been cancelled by the respondent, assuming it can be done the respondent is bound to execute the sale deed. The learned Counsel

states that the petitioner after obtaining the allotment order and a "No objection certificate" and the planning permit, has constructed the building.

The learned Counsel further states that once a major portion of the sale price has been paid and when the petitioner is prepared to pay the balance

also, a duty is cast upon the respondent to receive the amount and execute the sale deed as per the allotment order. The learned Counsel further

states that it is not open to the respondent to rely upon the order passed by the Government behind his back, and it is open to the petitioner to

ignore the order passed by the Government cancelling the allotment. The learned Counsel points out that the cancellation of the allotment of the

plot was set aside earlier by this Court by Srinivasan, J. in W.P. Nos. 14948 of 1989 etc. remitting the matter back to decide the issue after giving

notice to the petitioner, and when notice was given, a suit was filed by the petitioner and subsequently the notice was withdrawn. Based on these

Mr. G. Rajagopalan, learned Counsel contends that as on date there is no order of cancellation or a show-cause notice issued by the respondent

and the respondent cannot deny the execution of the sale deed and they are bound by the order of allotment issued to the petitioner. The petitioner

being a practising advocate has spent lot of money for constructing the building based upon the order of allotment made and it is not open to the

respondent to go back on the assurance given by the respondent. Virtually the argument of Mr. G. Rajagopalan, in my view, is based on the

doctrine of promissory estoppel.

6. On the other hand, Mr. S. Doraisamy, learned Counsel appearing for the respondent, is not able to answer the contentions raised by Mr. G.

Rajagopalan effectively except pointing out the order of cancellation of the Government. G.O.Ms. No. 1048, dated 30.10.1989 has cancelled the

allotment of 243 plots measuring a total extent of 302 grounds. The copy of the G.O. has been produced before me by Mr. S. Doraisamy. A

reading of the G.O., shows that certain irregularities have been found in the allotment of plots by converting the plots into house sites, and on the

basis of the report of the Tamil Nadu Housing Board, the Government have cancelled the allotment of 112 plots indicated in Annexure-I without

issuing a show cause notice and under category II various directions are issued. The plot in question comes under category I within 112 plots. The

Government have cancelled the allotment on the ground that the plots are vacant without construction. Except repeating the contentions in

paragraph 6 of the counter affidavit which is to the following effect:

I state that before issuing the G.O.Ms. No. 1048, an inspection was made and at that time it was found that the plot was vacant. Accordingly a

report was sent to the Government stating that the above plot was vacant. In the meanwhile the petitioner has put up the construction before

issuance of the above Government order. I state that this respondent is not responsible for the construction put up by the petitioner after the

inspection was taken up and before the issue of the above Government order.

The learned Counsel for the respondent is not able to make any further argument.

7. I have considered the arguments of Mr. G. Rajagopalan, learned Counsel for the petitioner, and Mr. S. Doraisamy, learned Counsel for the

respondent. The short point which falls for consideration in this case is as to whether the respondent is to be directed to execute the sale deed and

whether a writ of mandamus to issue. The facts as narrated above are not in dispute. As on date, the allotment made by the respondent is in force,

except the general order of cancellation made by the Government behind the back of the petitioner in October, 1989. On an earlier occasion

relying upon the Government order passed in October, 1989 the allotment was cancelled and Srinivasan, J. set aside the order of cancellation and

directed the respondent after giving an opportunity to the petitioner, to decide the issue. Subsequently the show cause notice, as stated above, has

been withdrawn. So as matters stand today, the petitioner having obtained an order of allotment from the respondent has constructed a residential

building after complying with all the formalities with the Corporation of Madras as well as M.M.D.A. The petitioner has also paid 2/3rd of the

consideration and has to pay the balance of a sum of Rs. 53,000 and the

petitioner is willing to pay the amount in accordance with the conditions of allotment. So inspite of many repeated requests made by the petitioner the respondent is keeping mum. Whether it is right is the question? In my view, the respondent cannot drag on for ever like this. It is the bounden duty of the respondent to receive the balance of the amount from the petitioner and execute the sale deed in accordance with the order of allotment. The order cancelling the allotment by the Government in October, 1989 has been done without issue of notice to the petitioner and others. As such I am not able to agree with Mr. Doraisamy, learned Counsel for the respondent, that the order passed in October, 1989 by the Government is preventing the respondents from executing the sale deed. That is an order which has got to be ignored as it has been passed in violation of principles of natural justice. Even otherwise, once the allotment order has been made by the respondent and on the basis of the allotment the petitioner has constructed the building, it is not correct to cancel the order of allotment. Even in the counter affidavit it is not clear when an inspection was made and what was the condition of the site at the time when inspection was made. The contentions raised in the counter with regard to construction of the building by the petitioner are very vague and I am not able to agree with the contentions raised in the counter affidavit with regard to conditions of the site when inspection was made. But that is not the point here. Here is a case where the building has been constructed and the petitioner wants the sale deed from the respondent, a Statutory body and the Tamil Nadu Housing Board is bound to execute the sale deed. It is not fair on the part of the instrumentality of the State to delay the execution of the sale deed when the petitioner has complied with the conditions of the order of allotment of the plot. I do not think the respondent can have any objection to execute the sale deed in law as well as on merits. In my view, it is enough to refer to the decision of the Supreme Court reported in Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, . The Supreme Court in that case was considering the construction of the building complex by the Express Newspapers Private Limited. Acting upon the grant of permission by Sikandar Bakht, the then Minister for Works and Housing, the petitioner constructed the New Express Building with an increased F.A.R. of 360 and a double

basement in conformity with the permission granted by the lessor i.e. Union of India, Ministry of Works and Housing with the concurrence of the

Vice-Chairman, Delhi Development Authority on the amalgamation of Plots Nos.9 and 10 as ordered by the Vice-Chairman by his order dated

October 21, 1978 as on "Special Appeal" as envisaged in the Master Plan having been directed, the lessor is clearly precluded from contending

that the order of the Master was illegal, improper or invalid by application of the doctrine of promissory estoppel.

8. In that case the Supreme Court applied the principle of Doctrine of Promissory estoppel and observed as follows:

In the present case, admittedly the then Minister for Works & Housing acted within the scope of his authority in granting permission of the lessor

i.e., the Union of India, Ministry of Works and Housing to the Express Newspapers Pvt. Ltd. to construct new Express Building with an increased

F.A.R. of 360 within a double basement for installation of a printing press for publication of a Hindi newspaper under the Rules of Business framed

by the President under Article 77(3). Therefore, the doctrine of ultra vires does not come into operation. In view of this, respondent No. 1 the

Union of India is precluded by the Doctrine of promissory estoppel from questioning the authority of the Minister in granting such permission. In

that view the successor Government was clearly bound by the decision taken by the Minister particularly when it had been acted upon.

9. Prof. De Smith in his Judicial Review of Administrative Action, 4th edition at Page 103 observes thus:

There is a growing body of authority, attributable in large part to the efforts of Lord Denning, to the effect that in some circumstances when public

bodies and officers, in their dealings with a citizen, take it upon themselves to assume authority on a matter concerning him, the citizen is entitled to

rely on their having the authority that they have asserted if he cannot reasonably be expected to know the limits of that authority; and he should not

be required to suffer for his reliance if they lack the necessary authority.

10. Professor H.W.R. Wade in Administrative Law 5th edition, at page -232 observes that "the basic principle of estoppel is that a person who by

some statement or representation of fact causes another to act to his detriment in reliance on the truth of it is not allowed to deny it later, even

though it is wrong. Justice prevails over truth. Estoppel is often described as a rule of evidence, but more correctly it is a principle of law.

As a principle of common law it applies only to representations about past or present facts." But there is also an equitable principle of promissory

estoppel" which can apply to public authorities. The facts in Robertsons's case were these. The War Office wrote to Robertson, an Army Officer,

who had claimed a disablement pension on account of the War injury, that his disability had been accepted as attributable to military service. But

for this injury the responsible department was the Ministry of Pensions which the War Officer had not consulted. The Ministry later decided that

the disability was not attributable and the Pension Appeal Tribunal upheld that decision. In relying on the War Officer letter the claimant had

refrained from getting a medical opinion and adducing the other evidence which might have strengthened his case for such disability pension against

the Ministry. On appeal to the Court, Denning, J. reversed the decisions of the Ministry and the Tribunal holding that the Crown was bound by the

War Office letter "... and observed:

The Crown cannot escape by saying that estoppels do not bind the Crown, for that doctrine has long been exploded. Nor can the Crown escape

by praying in aid the doctrine of executive necessity, that is, the doctrine that the Crown cannot bind itself so as to fetter its future executive action.

11. In the decision reported in *The Delhi Cloth and General Mills Ltd. v. Union of India* AIR 1987 S.C. 2417, when considering the doctrine of

promissory estoppel, the Supreme Court has observed as follows:

It is true that in the formative period, it was generally said that the doctrine of promissory estoppel cannot be invoked by the promisee unless he

has suffered detriment" or prejudice". It was often said simply, that the party asserting the estoppel must have been induced to act to his detriment.

But this has now been explained in so many decisions all over. All that is now required is that the party asserting the estoppel must have acted upon

the assurance given to him. Must have relied upon the representation made to him. It means, the party has changed or altered the position by

relying on the assurance or the representation. The alteration of position by the party is the only indispensable requirement of the doctrine. It is not

necessary to prove further any damage, detriment or prejudice to asserting the

estoppel. The Court, however, would compel the opposite party to adhere to the representation acted upon or abstained from acting. The entire doctrine proceeds on the promise that it is reliance based and nothing more.

12. At Page 2420 again the Supreme Court quoted with approval the dictum laid down by Lord Denning in *Central Newbury Car Auctions Ltd.*

v. Unity Finance Ltd. (1963) 3 All E.K 909 and referred to the decision reported in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar*

Pradesh and Others, at 695, wherein Bhagwati, J. observed as follows:

We do not think in order to invoke the doctrine of promissory estoppel it is necessary for the promisee to show that he suffered detriment as a

result of acting in reliance on the promise. But we may make it clear that if by detriment we mean injustice to the promisee which could result if the

promisor were to recede from his promise then detriment would certainly come in as a necessary ingredient. The detriment in such a case is not

some prejudice suffered by the promisee by acting on the promise, but the prejudice which would be caused to the promisee, if the promisor were

allowed to go back on the promise.

13. The very same view has been expressed in the decision reported in *Union of India (UOI) and Others Vs. Godfrey Philips India Ltd.*, the

Supreme Court has observed that 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 nor 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. This doctrine, though of ancient vintage, was rescued from obscurity by the decision

of Mr. Justice Denning as he then was, in his celebrated judgment in *Central London Property Trust Ltd. v. High Trees House Ltd.* (1956) 1 All

E.R. 256 . The true principle of promissory estoppel is that where one party has by his word or conduct made to the other a clear and unequivocal

promise or representation which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it

would be acted upon by the other party to whom the promise or representation is made and it is in fact so acted upon by the other party, the

promise or representation would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to

allow him to do so, having regard to the dealings which have taken place between the parties. It has often been said in England that the doctrine of

promissory estoppel cannot itself be the basis of an action it can only be a shield and not a sword, but the law in India has gone far ahead of the

narrow position adopted in England and as a result of the decision of this Court in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar

Pradesh and Others, , it is now well settled that the doctrine of promissory estoppel is not limited in its application only to defence but it can also

found a cause of action. The decision of this Court in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , contains an

exhaustive discussion of the doctrine of promissory estoppel and we find ourselves wholly in agreement with the various parameters of this doctrine

outlined in that decision.

14. In view of the principles laid down by the Supreme Court with regard to the doctrine of promissory estoppel, I am of the view that the

principle applies to the facts of the present case in all fours. The petitioner having acted upon the promise of the respondent has constructed a

residential building and it is not open to the respondent to rescind from the promise and refuse to execute the sale deed at this stage. It is no answer

to say that the order of the Government passed in October, 1989 prevents the respondent from executing the sale deed. As already stated, the

order of cancellation was passed behind the back of the petitioner and it is a nullity. As such the writ petition will stand allowed. Writ of mandamus

to issue to the respondent to execute the sale deed in favour of the petitioner in respect of Plot No. 591/A2 after receiving the balance amount of

Rs. 53,000 which is said to be due from the petitioner, within twelve weeks from the date of receipt of copy of this order. There will be no order

as to costs.