
(2003) 03 BOM CK 0110

In the Bombay High Court

Case No : Letters Patent Appeal No. 8 of 1993 in Writ Petition No. 286 of 1991

State of Maharashtra and Others

APPELLANT

Vs

Sureshchandra Khushalchand Bakliwal and Another

RESPONDENT

Date of Decision : 10-03-2003

Acts Referred:

Maharashtra Housing and Area Development Board (Estate Management, Sale, Transfer and Exchange of Tenements) Regulations, 1981 — Regulation 6

Citation : (2003) 3 ALLMR 501 : (2003) 6 BomCR 778

Hon'ble Judges : V.G. Munshi, J; B.H. Marlapalle, J

Bench : Division Bench

Advocate : P.M. Shinde, A.G.P, for the Appellant; R.S. Deshmukh, for the Respondent

Judgement

B.H. Marlapalle, J.—This is a letters patent appeal by the State Government, feeling aggrieved by the decision dated 25th January, 1993, of this Court (Single Bench) in Writ Petition No. 286/991 (Old No. 269/1983). Facts leading to this appeal are required to be stated.

2. Writ Petition No. 286/1991 came to be filed by two brothers, by name, Sureshchandra and Ashokchand Bakliwal, contending that, they were originally residents of village Pravara Sangam in Newasa Taluka of Ahmednagar District, located on the banks of Godavari river. Their family owned ancestral properties, including houses and agricultural land in the said village and the said property came to be acquired by the Government of Maharashtra for the Jayakwadi Project. Consequently, the petitioners shifted to Ahmednagar and purchased jointly a plot of land in Survey No. 109 situated at Sawedi to have their own residential house. The petitioner No. 1 had 1 Ana and 6 paise share whereas, petitioner No. 2 had 2 Anas and 6 paise share in the said joint plot at Sawedi along with their brother Kailaschand with 2 Anas and 6 paise share in the said plot. The lay out plans were sanctioned by the Municipal Council, Ahmednagar, but the Government of Maharashtra issued a notification u/s 4 of the Land

Acquisition Act, 1894, on 30th July, 1970, for acquiring total land of 4H. 98R. in Survey No. 109 of Sawedi for construction of the tenements by Maharashtra Housing and Area Development Authority, (in short, "MHADA"). On 16th November, 1977, MHADA invited, by way of public notice, applications for allotment of the tenements on the subject land and, out of the 744 proposed plots, 36 were reserved for the middle income group. The petitioners along with their brother Kailaschand submitted an application separately to the Estate Manager of MHADA on 22-11-1977 for a separate tenement under the Middle Income Group (for short, "MIG") category. The said applications were forwarded to the Head Office of MHADA at Mumbai on 12-2-1978. Lots were drawn on 28-4-1978 and Kailaschand was successful whereas the petitioners were not successful in getting allotment of any tenement out of the said 36 tenements in MIG category. They submitted a representation on 27th of March, 1980, pointing out that MHADA, Pune, had passed a resolution on 20-4-1978, and decided to allot tenements to the petitioners without processing their applications in the general lots. However, by a letter dated 23rd May, 1980, the Chief Officer of MHADA, Pune, informed the petitioners that their applications in the general lots were not successful and, out of the three brothers, only Kailaschand was successful in allocation of one tenement at Sr. No. 6. They also contended that, out of the 36 tenements in the MIG category, 32 were built and allotted whereas, the remaining 4 were yet to be constructed and allotted, in the petition filed sometimes in January 1983, before the Principal Bench at Mumbai. The petition was admitted and interim relief in terms of prayer Clause C was granted on 23rd February, 1983. The said prayer read thus:

"That the pending the hearing and final disposal of this petition, the respondents be restrained by an order of injunction from allotting the said 4 tenements to any other persons."

3. On 12th of March, 1984, the respondents were directed to keep two tenements in the subsequent scheme advertised on 25-7-1983 by recording the statement made by the learned Counsel for the MHADA that the said advertisement was given only to assess the demand and there was no firm scheme evolved. A notice of this statement was taken accordingly. Writ Petition No. 269/1983 came to be transferred to this Bench and re-numbered as Writ Petition No. 286/1991. The same was allowed by judgment dated 25th January, 1993, and respondent Nos. 1 to 3 were jointly and severally directed to pay Rs. One lac to each of the two brothers by way of compensation, on or before 31st of March, 1993, failing which it was directed that the amount shall carry interest at the rate of 18 per cent on or after 1st of April, 1993.

4. It would be relevant to reproduce some of the averments on which is based the view taken by this Court, while deciding the said writ petition.

"..... Concerned authorities of the State Government also represented to the petitioners and all the joint owners of the said survey numbers that those who were without any houses from amongst the joint owners would also be given

preference in the allotment of the tenements."

"That the Bhumi Pujan ceremony of the said tenements came to be held at Ahmednagar on the said acquired land on 20-4-1978 at the hand of the then Minister of Housing Shri Sudhakar Rajiv Naik and under the Presidentship of the then Chairman of the Pune Housing and Area Development Board. Shri Navnitbhai Barshikar the then President of the Ahmednagar Municipal Council was the Chairman of the respondent Committee of the said function. The petitioners attended to the said function. In the said function itself Shri Navnitbhai Barshikar the then President of the Ahmednagar Municipal Council praised the attitude of the petitioners in not taking any objection for the acquisition of their lands in his speech. Shri Ravindra More, the then Chairman of the Pune Housing and Area Development Board taking into consideration the attitude of the petitioners and the facts that the petitioners are the project affected persons and also the further fact that they were also promised the preferential allotment in the tenements confirmed that the petitioners and their brother Shri Kailaschand would be allotted tenements out of the tenements to be constructed on the said lands on the preferential basis. It was also represented and promised that their applications for allotment of the tenements would not be treated at par with the applications of other persons. In that it was represented that their applications could not be considered on the basis of the drawing lots for the allotment of the tenements but they would be allotted the tenements certainly without putting their applications in the lots. The petitioners state and submit that on 20-4-1978 there was meeting of the members of the Board. A Resolution, in the meeting dated 20-4-1978, was passed to the effect that the petitioners and their brother Kailaschand should be allotted the tenements as required by them without taking their applications for the lots. The petitioners crave leave to rely on the said resolution when produced."

The Administrative Officer of MHADA, Pune filed return on or about 20-2-1984, and submitted that out of the 36 tenements in the MIG category, 27 were for the general public, 2 were reserved for persons who died or missing during the conflict with China and Pakistan in 1962 and 1971, and remaining 7 tenements were reserved for Scheduled Caste/Scheduled Tribes. It was further stated that the lots for all these 36 tenements were drawn on 28-4-1978 and allotment was finalized. Shri K.K. Bakliwal (brother of the present petitioners) was successful in the lots at Sr. No. 6 and he was already allotted a tenement. Whereas, petitioner No. 2 was declared successful in the lots at Sr. No. 50 and the petitioner No. 1 was unsuccessful in the said lots. As there were only 36 tenements and 27 of them were reserved for general public, there was no chance for the successful applicant at Sr. No. 50 and thus both the petitioners could not get an allotment. So far as the resolution dated 20-4-1978 is concerned, it was admitted that Resolution No. 5, as alleged by the petitioners, was passed, recommending allotment of tenements on priority basis to the Project Affected persons, such as the petitioners. The said resolution was submitted to MHADA, Mumbai, and the Government of Maharashtra. However, the same was turned down by both the

higher authorities on the ground that there was no reservation of the tenements for "Project Affected Persons". It was further submitted that the allegation made by the petitioners that 32 tenements were allotted and 4 were remaining to be allotted was not correct and all the 36 tenements were already allotted.

5. The learned A.G.P. submitted before us that the doctrine of promissory estoppel was not applicable in the instant case inasmuch as the promise made through public speeches by a Minister or by a political party leader or President of the Municipal Council or Chairman of MHADA cannot be treated to be as the policy decisions/resolutions of the State Government or MHADA and a claim based on doctrine of promissory estoppel, in such cases, cannot be entertained. The resolution dated 20-4-1978 was passed but it was not approved by the MHADA, Mumbai, as well as the State Government and, more so, because of the provisions of Regulation 6 of the Maharashtra Housing and Area Development (Estate Management, Sale, Transfer and Exchange of Tenements) Regulations, 1981 (for short, Regulations of 1981). In support of these contentions, Shri Shinde, learned A.G.P. relied upon following decisions:

- (1) Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, .
- (2) Vasantkumar Radhakisan Vora Vs. The Board of Trustees of the Port of Bombay, .

On the other hand, Shri Deshmukh, learned Counsel appearing for the original petitioners, has supported the view taken by the learned Single Judge in Writ Petition No. 286/1991 and submitted that, in the facts and circumstances, as elaborated in the said decision, of the Single Bench, the final directions given cannot be held to be unreasonable or illegal. He has referred to the interlocutory orders passed by this Court and submitted that the behaviour of MHADA was not befitting to a public sector undertaking and, in obedience of the interlocutory orders passed by this Court, the respondents ought to have allotted 2 tenements to the original petitioners. He has relied upon the Full Bench of this Court in the case of Tapti Oil Industries and another v. State of Maharashtra and others 1984(1) Bom.C.R. 485 : 1984 Mh.L.J. 321 and recent decision of the Apex Court in the case of Sharma Transport represented by Sharma Transport Rep. by D.P. Sharma Vs. Government of Andhra Pradesh and Others, .

6. So far as interlocutory orders are concerned, first such order was dated 23rd February, 1983, and it was regarding the unallotted 4 tenements. However the affidavit in reply submitted by MHADA, Pune, clearly indicated that all the 36 tenements were already allotted and there was not a single tenement remaining unallotted from MIG category. The second interlocutory order was passed on 12th of March, 1984, and it was made clear by the Counsel appearing for MHADA that the advertisement dated 25-7-1983 was given only to assess the demand and there was no firm scheme evolved at the relevant time.

7. The doctrine of promissory estoppel is said to have been evolved originally by the House of Lords in Hughes v. Metropolitan Railway Co., 1877(2) A.C. 439. So

far as India is concerned, the said doctrine was enunciated, may be for the first time, by the Calcutta High Court, as early as in 1880 in *The Ganges Manufacturing Company v. Sourjmul* ILR 1880 Cal 669 and later, by this Court, in the case of *The Municipal Corporation of the City of Bombay v. The Secretary of State* ILR 1905 Bom 580 in the year 1905. In the case of *Thakur Amar Singhji Vs. State of Rajasthan*, a Constitution Bench of the Apex Court has dealt with the doctrine of promissory estoppel. On 28-11-1953, the Secretary to the Government had written to the Collector of Tonk that the petitioner was not to be disturbed in her enjoyment of the Jagir for her lifetime. However, subsequently, in the communication dated 24-11-1954, addressed to the petitioner, the Government expressed its inability to stay resumption. This communication came to be challenged on the ground of promissory estoppel, on the ground that the respondent was estopped from going back on the assurances and undertaking given in the letter dated 28-11-1953. Their Lordships observed, while disagreeing with the said contentions, as under:

"..... We are unable on these facts to see any basis for a plea of estoppel. The letter dated 28-11-1953, was not addressed to the petitioner, nor does it amount to an assurance or undertaking not to resume the Jagir. And even if such assurance had been given, it would certainly not have been binding on the Government, because its powers of resumption are regulated by the State and must be exercised in accordance with its provisions. The Act forces no authority on the Government to grant exemption from resumption and an undertaking not to resume will be invalid, and there can be no estoppel against a statute."

8. In the case of *M/s. Motilal Padampat Sugar Mills Co. Ltd.* (supra) the Supreme Court while dealing with the doctrine of promissory estoppel, stated thus:

"There can be no promissory estoppel against the legislature, in the exercise of its legislative functions nor can the Government or the public authority be debarred by promissory estoppel from enforcing a statutory prescription. It is equally true that promissory estoppel cannot be used to compel the Government or a public authority to carry out the representation or promise, which is contrary to law or which was the decided authority or power of the officer of the Government or of the public authority to make."

In the case of *Assistant Commissioner of Commercial Taxes (Asst.) Dharwar and Others Vs. Dharmendra Trading Company and Others*, the Supreme Court stated,

"It is equally settled law that the promissory estoppel cannot be used compelling the Government or a public authority to carry out representation or promise which is prohibited by law or which was devoid of authority or power of the officer of the Government or the public authority to make."

In the case of *Tapti Oil Industries* (supra) a reference was made to a Full Bench decision of this Court, regarding enforcement of the scheme of incentives framed by the Government of Maharashtra for Industrial Development in the year 1979. A Division Bench of this Court, in the case of *S.K. Oil and Pulses Mill Vs. State of*

Maharashtra and Others, had held that no right was created in favour of any industrial unit under the Package Scheme of Incentives unless the letter of intent/eligibility certificate was issued to it under the scheme of 1979 and, therefore, such units could not claim incentives under it as a matter of right. The Full Bench disagreed with the view taken by the Division Bench in *M/s. S.K. Oil and Pulse Mill (supra)* and held that the decision of the Supreme Court in the case of *Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others*, was not properly appreciated. The Full Bench held that the Package of Incentive Scheme framed in 1979 by the State Government was a promise made to the industries and the industrial houses/entrepreneurs had changed their position by investing the resources on the basis of the said scheme.

In the case of *Sharma Transport (supra)*, a three Judge Bench stated,

"It is equally a settled law that the promissory estoppel cannot be used to compel the Government or a public authority to carry out a representation or promise which is prohibited by law or which was devoid of the authority or power of the officer of the Government or of the public authority to make. Doctrine of promissory estoppel being an equitable doctrine, it must yield place to equity, if larger public interest so requires, and if it can be shown by the Government or public authority for having regard to the facts as they have transpired that it was be inequitable to hold the Government or public authority to the promise or representation made by it."

9. Regulation 6 of the Regulations of 1981 under Part III lays down the procedure for allotment of tenements of MHADA and sub-rule (1) states that subject to the provisions of these Regulations and except as directed by the Government, all tenements shall be allotted in accordance with the provisions of these Regulations. This provision clearly spells out that if any allotment otherwise than the procedure prescribed under Regulation 6 was to be made, it was required to be approved by the Government of Maharashtra. Its Resolution dated 20-4-1978, clearly made out a case for allotment not only on preferential basis but on the basis that the petitioners applications would not go in the general lots to be drawn. This resolution was, therefore, rightly submitted to the Government for its approval, as required u/s 6(1) and the Government of Maharashtra, in the reply, informed the MHADA that there was no such reservation for the Project Affected Persons. The speeches made by the Chairman of MHADA or any Minister, for that matter, could not be a basis to exercise a right of seeking mandamus from this Court, on the basis of doctrine of promissory estoppel. There was nothing else on record in support of the contentions of the petitioners that they were promised by any officer of MHADA or the Government of Maharashtra that they would allot a tenement from MIG category on priority or preferential basis without going through the general system of lots by draw. The allotment procedure followed by MHADA of drawing lots was most transparent and the notification on the basis of which the petitioners had submitted applications did not convey to anyone, leave alone the petitioners, that there

would be some preferential allotment, except, of course, to the reserved categories and that too on the basis of lots. There was no vested right created in favour of the petitioners or any other persons who were owning part of the land acquired by the State Government from Sawedi (Survey No. 109). Even if it is admitted that the petitioners could be treated as Project Affected Persons, there is no reservation provided under the Regulations of 1981 or by way of any policy decision taken by the Government of Maharashtra or MHADA, Mumbai, and the resolution passed on 20-4-1978, by MHADA, Pune, could not create a right in favour of the petitioners to seek a writ from this Court. We have also noted that their representation was turned down way back in May, 1980, and they approached this Court sometimes in January 1983. The cumulative effect of all this would be that the claim made by the petitioners in Writ Petition No. 268/1991 was unenforceable and the petition deserved to be dismissed. With great respect and humility, we do not find ourselves in agreement with the view taken by the learned Single Judge.

10. In the result, this letters patent appeal succeeds and the same is hereby allowed. Writ Petition No. 286/1991 is resultantly dismissed but without any orders as to costs. The appellants are at liberty to withdraw the amount deposited with interest, if any.