
(1968) 04 BOM CK 0015

In the Bombay High Court

Case No : Special Civil Application No's. 1838 and 2656 of 1966

The Belapur Company Ltd.

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 26-04-1968

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 115

Citation : (1969) 71 BOMLR 856

Hon'ble Judges : Patel, J;Nain, J

Bench : Division Bench

Judgement

Nain, J.—This is a petition under Article 226 of the Constitution of India. It arises from an order dated September 30, 1966, passed by the Special Deputy Collector (Land Ceilings), taluka Shairampur, district Ahmednagar, under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (hereinafter for the sake of brevity referred to as the Act). The order has been made under Rule 8(1) of the Maharashtra Agricultural Lands (Ceiling on Holdings) Rules, 1962. The order is for taking possession of the land delimited as surplus land under Notification No. Ceiling 83/68 dated March 1, 1963, issued u/s 21(2) of the Act. The petitioner prays for a writ of mandamus or other appropriate writ or direction for withdrawing or cancelling the said order and calling upon the respondents to forbear from taking possession of the lands covered by the said order and for a writ of mandamus directing respondent No. 1 to notify the said lands as exempt lands u/s 47(1)(fe) of the Act and for other reliefs.

2. The petitioner is a public limited Company. It has its registered office in Bombay, It is an industrial undertaking engaged in the manufacture of sugar and has its factory at Harigaon in taluka Shrirampur, district Ahmednagar. Respondent No. 1 is the State of Maharashtra and respondent No. 2 is the Special Deputy Collector, Shrirampur, who passed the order dated September 30, 1966.

3. The facts leading to the present petition briefly stated are that, in connection With its factory at Harigaon the petitioner owned certain lands. On June 28, 1920, by a lease between the Secretary of State for India in Council and the petitioner, the latter obtained 7377 acres 12 gunthas of land for a term of thirty years from April 1, 1920, renewable from time to time upto a period of ninety-nine years. The petitioner also held other lands under several leases from private parties and some freehold lands. On February 28, 1963, they held in all 11298 acres, 17 gunthas of land. On that day, pursuant to the Act an area of 11190 acres, 17 gunthas was declared to be surplus lands leaving an area of 108 acres still available to the petitioner. On April 17, 1963, the petitioner filed Special Civil Application No. 800 of 1963 for declaration that its lands declared surplus were exempt u/s 4-7(1)(a) or (k) of the Act. It also impugned the validity of the Act and prayed for other reliefs. On April 29, 1963, the petitioner also filed an appeal from the order dated February 28, 1963, to the Maharashtra Revenue Tribunal under the said Act contesting the findings of fact in the said order. The Special Civil Application was dismissed by this Court on October 25, 1963. The petitioner, however, obtained leave to appeal to the Supreme Court and preferred an appeal pursuant to the said leave.

4. On May 10, 1965, pursuant to the negotiations between the parties a composite agreement was arrived at between the petitioner, the Gangapur Sugar Mills Ltd., whose lands were also affected by the Act, and respondent No. 1. We are not concerned in the present matter with Gangapur Sugar Mills Ltd. So far as the petitioner is concerned, it agreed to withdraw the appeal pending in the Supreme Court; the appeal pending before the Maharashtra Revenue Tribunal and to give possession to respondent No. 1 of all lands except the area of 108 acres, which were originally not declared as surplus lands, and also an area of 301 acres for which Clause (5) of the agreement provided that that would be allowed to be retained by the petitioner and for that purpose those lands would be notified as exempt u/s 47(1)(K) of the Act.

5. Clause (5) of the agreement dated May 10, 1965, reads as under:

The Belapur Company Ltd. has in its appeal before the Maharashtra Revenue Tribunal Inter alia contended that the following lands are outside the purview of the Land Ceiling Act and should have therefore been declared-

(a) Industrial area admeasuring 38S acres from Block "C" of village Harigaon; and

(b) certain lands admeasuring 801 acres from Blocks "A" , "B" and "C" of village Harigaon under Wadi Buildings and roads and on which non-agricultural assessment has been levied. It was agreed that these lands should be allowed to be retained by the Company and for that purpose they should be notified as exempted land u/s 47(1)(k) of the Maharashtra Lands (Ceiling on Holdings) Act 1961.

6. Pursuant to the agreement dated May 20, 1965, the petitioner withdrew its

appeal in the Supreme Court; its application for stay pending in this Court and the appeal filed by it before the Maharashtra Revenue Tribunal. On May 25, 1965, it also gave possession to respondent No. 1 of the remaining- lands declared as surplus.

7. On February 11, 1966, the Assistant Secretary to the Government of Maharashtra addressed a letter to the petitioner stating that according to Clause (5) of the agreement, the Government had agreed to grant exemption u/s 47(1) (ii) of the Act in respect of 301 acres of lands which were covered by Wadi buildings and roads "on the assumption that non-agricultural assessment has been levied on those lands". The letter stated, that on inquiries it had been found that no non-agricultural assessment had been levied on these lands and that, therefore, these 301 acres of lands would not be notified u/s 47 (1)(&) of the Act. It must here be noted that it was not the contention of the Government that these 301 acres of lands were not held bona fide for industrial or other non-agricultural use. Its contention was that no non-agricultural assessment was levied on those lands. The petitioner replied by a letter dated March 30, 1966, stating" that the Government appeared wrongly to have come to the conclusion not to notify the said lands on two grounds; viz. firstly, that a condition precedent to the exemption was that non-agricultural assessment was levied on these lands and secondly that the Government believed that non-agricultural assessment had not been levied. The attention of the Government was drawn to Clause (5) of the agreement and to the memo of appeal before the Maharashtra Revenue Tribunal where the petitioner had not contended that the lands were assessed to non-agricultural assessment but its contention had been that the lands were not affected by the Act and therefore they could not be declared surplus, it was also pointed out to the Government that the agreement provided that these lands would be allowed to be retained by the petitioner for non-agricultural use and that they should, therefore, be notified as exempt and that the agreement did not provide that it was subject to later verification by the Government or was subject to any condition precedent. The petitioner denied that these lands were agricultural lands. On September 20, 1966, the Government wrote to the petitioner stating that instructions were being" issued to respondent No. 2 to take over possession of 301 acres of lands "covered by Roads and Wadi Buildings". On September 30, 1966, respondent No. 2 issued the impugned order, which is exh. C to the petition, wherein it was" stated that one S. J. Sthalnaik was being deputed to take possession of the lands which were delimited as surplus lands viz. these 301 acres in dispute. The present petition has been filed against the said order.

8. Before dealing with the contentious of the parties, it might be better to discuss the provisions of the Act.

9. The preamble of the Act provides that for securing the distribution of agricultural land as best to subserve the common good, it was expedient in the public interest to impose a maximum limit (or ceiling) oil the holding of

agricultural land in the State of Maharashtra; to provide for the acquisition of land held in excess of the ceiling, and for the distribution thereof to landless and other persons, the Act was being passed. Section 2 of the Act contains certain definitions. Sub-section () defines "agriculture". Sub-section (1) defines "land". Section 3 provides that on the commencement of the Act there shall be imposed to the extent and in the manner provided for in the Act a maximum limit or ceiling 011 the holding of agricultural land throughout the State. Section 4 prohibits holding land in excess of the ceiling area and provides that all land held by a person in excess of the ceiling area shall be declared as surplus land. Sections 12 to 20 provide for making a return of the total area held by a person affected by the Act; inquiry into the surplus lands and matters to be considered in the inquiry. Section 21 provides that after the necessary inquiry had been made, the Collector shall make a declaration regarding the surplus lands. Consequence of such declaration is provided for in Sub-section (2) i.e. the right, title and interest in the surplus land would be forfeited to the State Government; a notification declaring the surplus land would be published and thereupon the surplus land would vest in the State Government. Subsection (4) provides for taking possession of the surplus land. The impugned order dated September 30, 1966, has been made pursuant to this sub-section. Section 27 provides for distribution of surplus land. Section 28 makes special provision in respect of land taken over from industrial undertaking to ensure efficient cultivation and continued supply of raw material. Section 47(1)(k) of the Act reads as under:

(1) The following lands shall be exempt from the provisions of this Act, that is to say...

(k) such land as is notified by the State Government in the Official Gazette, being land which is held, or to be acquired in any manner, by an industrial undertaking for a bona fide industrial or other non-agricultural use. In considering whether such land is so held or to be acquired, the State Government shall have regard to the following consideration, that is to say-

(i) the extent and location of the land, if any, already held by the undertaking (including any land which it may already hold for industrial or non-agricultural use);

(ii) the extent of land held by the person from whom it is to be acquired.

10. We might here mention that two kinds of land is liable to be notified by the State Government as exempt u/s 47(1)(k) of the Act. Firstly, land which is held by an industrial undertaking for a bona fide industrial or other non-agricultural use, and secondly, land which is to be acquired in any manner by an industrial undertaking for a bona fide industrial or non-agricultural use. The first relates to past user of the land and the second provides for intended user of the land.

11. At the outset, Mr. Setalvad, for the respondents, raised certain preliminary objections. The first objection is that the petition is based on the alleged breach of contract between the petitioner and the Government and the relief sought is in

effect to obtain specific performance of the contract, the proper remedy for the petitioner is to file a suit, as specific relief cannot be granted under Article 226 of the Constitution of India. However, even before the preliminary objections were taken, in his opening Mr. Sorabji, for the petitioner, made it clear that he was not seeking specific performance of the contract dated May 10, 1965. He also made it clear that he was not primarily asking for a writ of mandamus directing the respondents to issue a notification u/s 47(1)(k) of the Act exempting the lands in dispute. But he would be content with protecting the petitioner's possession of the disputed lands on the ground that it was firstly held for non-agricultural use and in any case, it was being acquired for non-agricultural use. He stated that he was not concerned with the issuing of the notification of exemption but with establishing the fact that the lands were either held for non-agricultural use or were being acquired for intended non-agricultural use and that the lands were not affected by the Act and the respondents were not entitled to take possession of the lands under the Act.

12. The next preliminary objection of the respondents is that the petition involves disputed question of a material fact viz. whether the lands in question are or are not agricultural lands and such question should not be decided in the proceedings under Article 226 of the Constitution. He also stated, and rightly, that during the proceedings an opportunity had been given to the petitioner for making a further affidavit and also to put in a sketch map of the site of the lands showing that the lands were situated in a separate place and not in the midst of agricultural lands and the petitioner had not availed itself of this opportunity and, therefore, this Court should not go into the disputed question of fact as to the user of the lands. Before us, however, the matter has not been agitated on the basis of fact that the lands had in fact been held in, the past for non-agricultural use or they had been put to non-agricultural use. The contentions of the petitioner were restricted to estoppel as to user. It contended that the respondents were stopped from contending that the lands were not held for non-agricultural use by virtue of representations and declarations made by them. It also relied upon promissory estoppel, to which we shall advert later. We, therefore, do not propose to go into the disputed questions of fact as to the actual user of these lands in the past, Mr. Sorabji made it clear that the petitioner was merely defending its possession of these 301 acres of lands on the ground that if it is established that the respondents were estopped from contending that the lands were held for non-agricultural use the respondents should merely be prohibited from taking possession of them under the order dated September 30, 1966. He contended that in any event if the Court comes to the conclusion that the petitioner had entered into the agreement of May 10, 1965, acquiring the said lands for non-agricultural use, it would be entitled to defend its possession of the lands. He invited our attention to the judgment of the Supreme "Court in Union of India v. Hariram Shamji Thakkar (1968) Appeal No. 794 of 1967, decided on February 5, 1968 (Supreme Court) where the petitioners were seeking to obtain delivery from a public authority of certain

goods under a contract of sale. It ,was observed by Shah J.:

...The petitioner was not seeking to enforce the terms of any contract: he was enforcing his right to the goods on payment of the price... A public authority refusing to deliver goods belonging to a citizen must, if called upon, show some adequate ground for his refusal and must set up adequate grounds for his claim that the citizen be driven to a long and costly litigation by filing a suit for the value of the goods or damages for non-delivery.

These observations apply with equal force to the facts of the present case, and if we come to the conclusion that the petitioner is seeking to enforce its right to retention of the lands and not specific performance of the contract, we would be justified in interfering with the impugned order under Article 226 of the Constitution. We, therefore, find no substance in the preliminary objections and proceed to deal with the, matter on merits.

13. The first contention of the petitioner is that by Clause (5) of the agreement dated May 10, 1965, the respondents represented and intentionally caused or permitted the petitioner to believe that the respondents accepted the correctness of the petitioner's contention that the disputed lands were held by the petitioner for a bona fide industrial and non-agricultural use. It further contended that in any event the respondents accepted that these lands were to be acquired by the petitioner for a bona fide industrial or other non-agricultural use and were consequently entitled to be exempted u/s 47(1)(k) of the Act. Acting on the said representation and the belief so induced in the petitioner by the respondents, the petitioner not only agreed to the terms of the agreement but in performance thereof withdrew its appeal pending in the Supreme Court; the application pending before the High Court and the appeal pending before the Maharashtra Revenue Tribunal and also gave possession of the remaining lands in respect of which its contention had all along been that the said lands were not liable to be taken possession of under the Act. The petitioner contended that it accepted the assurance of the respondents and acted thereon and, therefore, the respondents were estopped and precluded from contending that the said 301 acres of lands were not held by the petitioner for a bona fide industrial and non-agricultural use or that the said lands were not being acquired by the petitioner for a bona fide industrial or other non-agricultural use. It further contended that these representations and the promises to notify the lands created an equity in favour of the petitioner which must be enforced by the Court. It also says that on a true construction of the agreement dated May 10, 1965, the said lands were to be acquired by the petitioner for a bona fide industrial or other non-agricultural use within the meaning of Section 47(1)(k) of the Act and, therefore, the threatened action of the Government to recover possession of the said lands was ultra vires and without jurisdiction.

14. The petitioner submits that the said lands along with other lands were held by it under an Indenture of Lease dated June 28, 1920, between the Secretary of State for India in Council and the petitioner as the lessee and that under Clause

(5) of the said lease the petitioner was entitled to hold certain pieces or parcels of land for buildings and arterial and service roads required for development of the estate. It further contended that Clause (5) of the agreement dated May 10, 1965, provided that the petitioner's contention before the Maharashtra Revenue Tribunal was that these 301 acres of lands under Wadi Buildings and roads were those on which non-agricultural assessment had been levied. The Government which had all the records and materials in its possession had been satisfied as to the user of the said lands and had, therefore, agreed that these lands should be allowed to be retained by the petitioner and should be notified as exempt. With regard to the intended use of the said lands one of the contentions of the petitioner is that after the land was delimited and declared as surplus land u/s 21 of the Act it stood forfeited and vested in the State Government under Sub-section (2) of Section 21 of the said Act. The agreement of May 10, 1965, provided that the lands would be notified as exempt and, therefore, fell in that part of Section 47(1)(k) of the Act which provides that the State Government would notify the land which was to be acquired in any manner by an industrial undertaking for a bona fide industrial or other non-agricultural use. It contended that the agreement to notify the lands as exempt was an admission as to the acquisition of the lands for intended non-agricultural use.

15. Section 115 of the Indian Evidence Act provides that when one person has by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative to deny the truth of that thing. Under the provisions of this section, estoppel could be created not merely by an act or omission but also by declaration or representation. Such representation must necessarily be a representation of an existing fact. Clause (5) of the agreement dated May 10, 1965, did not contain any representation of an "existing fact. The estoppel relied upon by Mr. Sorabji is, therefore, not estoppel created by Section 115 of the Evidence Act but estoppel by assurance or promise popularly called promissory estoppel. It was observed by the Privy Council in the judgment by Lord Russell in *Dawsons Bank Limited Vs. Nippon Menkwa Kabushiki Kaisha* (Japan Cotton Trading Company Limited), that

estoppel if established would assist the plaintiff by preventing the defendant from denying the existence of some fact essential to establish the cause of action or by preventing the defendant from asserting the existence of some fact the existence of which would destroy the cause of action, It is a rule of evidence which comes into operation if (a) a statement of the existence of a fact has been made by the defendant or an authorised agent of his to the plaintiff or some one on his behalf, (b) with the intention that the plaintiff should act upon the faith of the statement, and (c) the plaintiff does act upon the faith of the statement.

16. In *Municipal Corporation of Bombay v. Secretary of State* 1904) ILR 29 Bom. 580 7 Bom. L.R. 27 it has been observed by Jenkins C. J. at page 610 as under:

Under these circumstances has any equity arisen in favour of the Municipality, and, if so, what is it?

It is (in my opinion) the reasonable, and the only reasonable inference that the Municipality gave up the old stables, levelled the ground, and erected the moveable stables in 1866 in the belief that they had against the Government an absolute right not to be turned out until not only the expiration of six months notice, but also other suitable ground was furnished: that this belief is referable to an expectation created by the Government that their enjoyment of the land would be in accordance with this belief : and that the Government knew that the Municipality were acting in this belief so created.

We have, therefore, in the case the conditions which create an equity entitling the Municipality to appeal to the court for its aid in assisting them to resist the Secretary of State's claim that they shall be ejected from the ground; for (in my opinion) it is not in the circumstances of this case destructive of the equity, which thus arose in 1866 to point to the fact that the moveable stables were in 1885 converted to stables of permanent masonry, and that workshops and other buildings have been erected.

We might perhaps observe that in this case also there are conditions which create an equity which entitles the petitioner to come to this Court for its aid in assisting it to resist the respondents' claim to the possession of the disputed lands.

17. This brings us to the equities created in favour, of the petitioner. The doctrine of promissory estoppel has been set out in Halsbitry's Laws of England, third edn., Vol. 15, para. 344 at pp. 175-176 and reads as under:

When one party has, by his words or conduct, made to the other a 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 qualification which he himself has so introduced. This doctrine, which is derived from a principle of equity enunciated in 1877, has been the subject of considerable recent development. It differs from estoppel properly so called in that the presentation relied upon need not be one of present fact.

The doctrine may have been too widely stated in recent cases and its limits are not yet finally settled. The doctrine cannot create any new cause of action where none existed before, and it would seem that the person who has made the representation may once again enforce his legal rights after the other party has had an opportunity of regaining the position he held before the representation was made, if that is possible. The doctrine is known variously as "equitable" or "promissory" or "quasi" estoppel.

This doctrine has been followed in India by the Supreme Court in *Collector of Bombay Vs. Municipal Corporation of The City of Bombay and Others*, . A passage from the judgment of Chandrasekhara Aiyar J. reads as under (p. 136) :

The accident that the grant was invalid does not wipe out the existence of the representation of the fact that it was acted upon by the Corporation. Even if the suit had been brought within 60 years for ejectment and the Corporation had no answer to such a claim, the right to levy assessment might have conceivably stood on a different footing. In any event, there can be no doubt that it would have been competent for a Court of equity to give compensation for the expenditure and protect the possession in the meantime. Lord Kingsdown refers to this aspect of the matter in *Ramsden v. Dyson* (1866) L.R. 1 H.L. 129. In the present case, the Corporation stands on much firmer ground. They have acquired a title to the land which the Government cannot upset or challenge. This acquisition of title is as a result of the law of limitation. It has nothing to do with any conduct on the part of the Corporation which can be said to have rendered the representation about non-liability to assessment of no legal effect or consequence. The invalidity of the grant does not lead to the obliteration of the representation.

Can the Government be now allowed to go back on the representation, and, if we do so, would it not amount to our countenancing the perpetration of what can be compendiously described as legal fraud which a Court of equity must prevent being committed? If the resolution can be read as meaning that the grant was of rent free land, the case would come strictly within the doctrine of estoppel enunciated in Section 115 of the Indian Evidence Act, But even otherwise, that is, if there was merely the holding out of a promise that no rent will be charged in the future, the Government must be deemed in the circumstances of this case to have bound themselves to fulfil it. Whether it is the equity recognised in *Ramsden's* case, or it is some other form of equity, is not of much importance. Courts must do justice by the promotion of honesty and good faith, as far as it lies in their power. As pointed out by Jenkins C.J, in *Dadoba v. Collector of Bombay* ILR (1901) 25 Bom. 714 3 Bom. L.R. 603 a different conclusion would be "opposed to what is reasonable, to what is probable, and to what is fair".

If we disallow this petition and allow the Government to go back on the representation it made in the agreement dated May 10, 1965, we shall have to ask ourselves the question, would this not amount to countenancing the perpetration of what can be compendiously described as legal fraud which a Court of equity must prevent being committed by permitting the Government to resile from the promise that it itself was bound to fulfil.

18. In the *Union of India v. Indo-Afghan Agencies* (1967) Civil Appeals Nos. 885 to 898 of 1967, decided on November 22, 1967 (Supreme Court) a question arose as to the binding nature of import and export policy set out in the *Bed Books* periodically issued by the Government of India and as to the scheme framed by the Government of India which contained a representation that in lieu

of exports made by a trader corresponding import licence would be issued to him. Shah J. in delivering the judgment of the Court stated as follows:

We hold that the claim of the respondents is appropriately founded upon the equity which arises in their favour as a result of the representation made on behalf of the Union of India in the Export Promotion Scheme, and the action taken by the respondents acting upon that representation under the belief...the respondents believing that the Government would carry out the representation.... This principle has been recognised by the Courts in India and by the Judicial Committee of the Privy Council in several cases. In the *Municipal Corporation of the City of Bombay v. The Secretary of State for India in Council* it was held by the Bombay High Court that even though there is no formal contract as required by the statute, the Government may be bound by a representation made by it.

In that case, after" referring to the *Municipal Corporation of "the City of Bombay"s case*, *Bamsden"s case* and other cases decided by the Privy Council the Supreme Court of India and Indian High Courts, the judgment observed as under:

Under our jurisprudence the Government is not exempted from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an ex parte appraisalment of the circumstances in which the obligation has arisen is claimed not to be enforceable.

In *Seth Satnarain v. Dominion of India* (1967) Civil Appeal No. 646 of 1964, decided on September 27, 1967 (Supreme Court) Mitter J. delivering the judgment of the Court observed that the most common form of estoppel is codified in Section 115 of the Indian Evidence Act and that section however only deals with one aspect of the law of estoppel. The other form of estoppel is now popularly known as promissory estoppel. This has been discussed at length in some of the pronouncements of Lord Denning (first as Denning J. and later as Denning L. J.). After referring to the judgment of Denning L. J. in *Gombe v. Combe* [1951] 2 K.B. 215 the judgment reproduces a part of the passage from *Halsbury"s Laws of England*, Third Ed., Vol. 15 at page 175, which has been reproduced here-inabove. The judgment observes that in the decisions reviewed in the said judgment, there was either a promise or an assurance intended to be acted upon and only when the same was in fact acted upon the question of the binding nature thereof or of an estoppel against the person making the promise or giving the assurance arose. In the said case the doctrine of promissory estoppel was applied.

19. In this case, in the affidavit in reply to the petition, the respondents contended that the lands in question were not put to non-agricultural use, whereas in the letter of February 11, 1966, when the Government wrote to the

petitioner that the lands in question would not be notified u/s 47(1)(k) of the Act, it stated that clause 5(&) of the agreement dated May 10, 1965, was inserted on the assumption that non-agricultural assessment was levied on those lands and that on inquiry it had been found that no non-agricultural assessment had been levied on those lands. On February 11, 1966, the user of the lands was not disputed. It was merely the levy of non-agricultural assessment that was in dispute. "We are of the view that the Government, who had access to its own records, had knowledge of the actual user as well as the nature of assessment of the lands in question and either it knew at the, time of entering into the agreement of May 10, 1965, the nature of user and assessment or it shut its eyes to it and without any inquiry entered into the agreement containing the clause that these lands would be notified as exempt. In any event, it would be wrong- to allow the Government to resile from its contract after the petitioner has carried out its part of it.

20. Mr. Setalvad has argued that, if in fact the lands were not held for non-agricultural use and the Government notified it as exempt u/s 47 (1)(k) of the Act, it would be acting contrary to the statute. On the doctrine of promissory estoppel he argued that there could be no estoppel against a statute. Immediately after para. 344 pertaining to promissory estoppel in Halsbury's Laws of England, third edn., Vol. 15, para. 345 relating to estoppel against statute occurs at page 176 and it reads thus:

The doctrine of estoppel cannot be evoked to render valid a transaction which the legislature has, on grounds of general public policy, enacted shall be invalid, or to give the court a jurisdiction which is denied to it by statute , or to oust the statutory jurisdiction of the court under an enactment which precludes the parties contracting out of its provisions. Where a statute, enacted for the benefit of a section of the public, imposes a duty of a positive kind, the person charged with the performance of this duty cannot by estoppel be prevented from exercising his statutory powers. A petitioner in a divorce suit cannot get relief simply because the respondent is estopped from denying the charges, as the court has a statutory duty to inquire into the truth of a petition.

Mr. Setalvad also referred to the decisions in *Maritime Electric Co. v. General Dairies, Ltd.* [1937] A.C. 610, P.C., *Thakur Amar Singhji Vs. State of Rajasthan*, and *Southend-On-Sea Corporation v. Hodgson (Wickford) Ltd.* [1962] I.Q.B. 416. Now, the principle that there can be no estoppel against a statute cannot be seriously disputed. But, in this case, even a notification u/s 47(1)(k) of the Act is not necessary. The respondents having represented that the lands would be notified as exempt have in fact admitted or in any case they are estopped from denying that the lands were held for non-agricultural use. They cannot be permitted to enter into the discussion of this question of fact, but must be held bound by the representation, and there was no question of estoppel against the statute, the misrepresentation not being to the knowledge of the petitioner to defeat the statute. Mr. Sorabji referred us to the decision in *Dhanu Pathak v.*

Sona Koeri ILR (1936) 15 Patna 589. In that case the plaintiffs had brought a suit to eject the defendant on the ground that they were raiyats and the defendant was an under -raiyyat and the defence inter alia was that the plaintiffs having represented themselves as tenure-holders were estopped from pleading that they were raiyate and the Courts below found that the plaintiffs; had in fact made such a representation. It was held that the plaintiffs having represented themselves as tenure-holders could not be permitted to enter into a discussion of that question of fact but must be held bound by their own representation and there was: no question of defeating Section 46 of the "Chota Nagpur Tenancy Act.

21. Coming to the application of the doctrine of promissory, equitable or quasi-stoppel to the facts of the present case, we find that there is an agreement of May 10, 1965 which after reciting the petitioner's contention with regard to 301 acres of land that these lands were outside the purview of the Act and should not have been declared surplus, provides that the respondents agreed that these lands should be allowed to be retained by the petitioner and for that purpose they should be notified as exempt. This in fact was a representation that these lands were of such a nature that they would be exempted by virtue of the provisions of Section 47 (1)(&) of the Act and that they were either held for non-agricultural use or were intended for non-agricultural use by the petitioner, which was an industrial undertaking. After the said agreement, the respondents have accepted the performance of the agreement from the petitioner, the latter having withdrawn all proceedings in the Supreme Court, this Court and the Maharashtra Revenue Tribunal, The agreement of lease under which some of these lands were held by the petitioner itself provided that the petitioner was to use some of these lands covered by the lease with the Secretary of State for India in Council for non-agricultural use and the assessment would be on the basis of agricultural assessment. The assessment was not to be for agricultural use but on the basis of agricultural tise. The passage in the lease provides that the petitioner shall hold such portions of the demised land as it shall from time to time require for buildings and arterial and service roads required for the development of the estate at the fixed annual rental of a sum equal to the current annual agricultural assessment." In other words, this fixes for lands put to non-agricultural use rent equivalent to what would have been charged for lands put to agricultural use. Agricultural assessment has been provided merely as a mode of calculation of non-agricultural rent. The respondents had means- of verifying the actual user of these lands before entering into the agreement of May 10, 1965. They either knew the actual user or failed to verify the same. In the correspondence before the order dated September 30, 1966, was passed, the Government never disputed that the lands were held for non-agricultural use. All that it claimed was that in, promising to exempt the said lands; it had proceeded on the assumption that non-agricultural assessment had been levied.

22. In these circumstances, we are of the opinion that the respondents cannot now be allowed to revert to their previous legal relations as if no promise or assurance to exempt the lands had been made or given by them. We think that

they must accept their legal relations according to their promises. Equities have been created in favour of the petitioners. We accordingly hold that by virtue of the equitable, promissory or quasi-stopple so created, the respondents are estopped from denying that 301 acres of lands, which were the subject-matter of the dispute, were held by the petitioner, which was an industrial undertaking, for a bona fide industrial or other non-agricultural use. They are also estopped from denying that in any case the said lands were to be acquired by the petitioner for a bona fide industrial or other non-agricultural use. In view- of this finding, the respondents are not entitled to execute the order for possession dated September 30, 1966 (exh. C to the petition). To hold otherwise and to allow the respondents to go back on their representation, and promise would amount to our countenancing the perpetration of what can be compendiously described as legal fraud which a Court of equity must prevent from being committed, to put it in the words of Chandrasekhara Aiyar J. in Collector of Bombay's case. Courts must do justice by promotion of honesty and good faith as far as it lies in their power. A different conclusion than the one arrived at would be opposed to what is reasonable and fair.

23. The next contention on behalf of the petitioner is that the. agreement dated May 10, 1965, would be valid and subsisting until set aside under the provisions of the Specific Belief Act, and until so set aside, its terms would be binding. In view of what we have held on the question of estoppel, it is really not .necessary to decide this point. But, we might in passing observe that the validity of an agreement can always be pleaded in defence and it would not be necessary to have it set aside in separate proceedings. Moreover, in a writ petition, we would have the right to refuse its specific enforcement. Apart from this, the petitioner's contention would also amount to asking for specific performance of the agreement, which at the outset Mr. Sorabji stated was not what he was asking for.

24. The next contention of the petitioner is that the lands in dispute do not fall within the definition of the word "land" contained in Section 2(16) of the Act. We, however, do not think that it is necessary to decide this contention of the petitioner.

25. Mr. Setalvad invited our attention to the passage in Halsbury's Laws of England, third edn., Vol. 15, para. 344, p. 175 reproduced hereinabove which states

...That the person who has made the representation may once again enforce his legal rights after the other party has had an opportunity of regaining the position he held before the representation was made, if that is possible.

He said that the Government was prepared that the appeal of the petitioner to the Maharashtra Revenue Tribunal be restored and to that extent restoration could be made to the petitioner. He also stated that at one stage the petitioner was prepared to sign an agreement and leave this question to be decided by the Revenue Tribunal in appeal pending before it. This argument is based on a letter

written by the petitioner to the Government. However, we are not told and there is nothing on the record to show what were the negotiations then going on between the parties and what was the actual agreement which the petitioner was prepared to sign after leaving this question to be decided upon by the Revenue Tribunal. In the circumstances, it would not be doing equity by merely restoring the appeal before the Revenue Tribunal. Apart from the said letter, we might say that at this stage it is not possible that the petitioner could regain the position it held before the agreement of May 10, 1965, inasmuch as its appeal before the Supreme Court could not be restored and there is no offer to restore to the petitioner the lands of which it has given possession to the respondents.

26. In the premises, we issue a writ in terms of prayer (a) of the petition. The petition is allowed to that extent with costs, which are quantified at Rs. 250. No order in the Civil Application.