

Ernakulam Mills Ltd

Vs

State of Kerala

Civil Appeal No. 628 of 1971

(A. Alagiriswami, N.L. Untwalia, Syed M. Fazal Ali, JJ)

19.08.1975

JUDGMENT

FAZAL ALI, J. -

1. This is an appeal against the judgment of the High Court of Kerala by certificate of fitness granted by the said High Court under Article 133(1)(a) of the Constitution as it stood at the relevant time. The facts leading to the present appeal may be succinctly stated as follows :

2. The appellant is an owner of 69 5/8 cents of land comprised in survey Nos. 1178/2, 1195/2 and 1103/4 of Ernakulam village. The government acquired a large tract of land including the land in dispute for the formation of the Foreshore Road at Ernakulam. The appellant's land was also acquired and the sheet-anchor of the case of the appellant has been the correspondence between it and the officers of the Government by which some sort of assurance is said to have been given to the appellant that the land would be returned to it if it was not required by the Government. A series of letters which will be dealt with hereafter between the appellant and the Government of its officers followed during the course of about 17 years culminating in the final refusal by the Government to return the land to the appellant on the ground that it was required by it for some public purpose. The appellant has based his claim on the promissory estoppel which, according to i, is spelt out from the letters to the Government, incorporating the alleged agreement between the appellant and the Government for return of its land. It was argued by the appellant that it was in view of the clear assurance given by the Government that the land would be returned to it that the appellant did not choose to file an application before the Collector for making a reference to the Court for enhancing the compensation awarded, which, according to the appellant, was wholly inadequate.

3. In view of the refusal by the Government to return the land to the appellant, the appellant filed a petition for a writ of mandamus in the High Court of Kerala praying that a direction or a writ may be issued commanding the Government to reconvey the land to the appellant. The Government resisted the writ petition before the High Court mainly on the ground that there was absolutely no assurance or promise held out by the Government although the correspondence showed that there was some thinking in the mind of the Government regarding the possibility of derequisitioning the land. The High Court considered the legal aspect of the promissory estoppel and held that not writ could be granted. On facts also the High Court negatived the case of the appellant and held that from the evidence produced before it no solemn promise or agreement to return the land to the appellant was proved.

4. In support of the appeal Dr. V. A. Seyid Muhammad appearing for the appellant submitted two points before us. In the first place he contended that from the correspondence produced by the

appellant there was a solemn promise by the Government to return the land to the appellant and it was on the basis of this representation that the appellant did not move the Collector for making a reference to the Court for determining the compensation which was grossly low. Having gone through the various letters placed before us by the learned Counsel for the appellant, we are unable to hold that these letters make out a case of any agreement or a promise on the part of the Government to reconvey the land acquired by it to the appellant.

5. To begin with reliance was placed on Ext. P-1 which is the starting point of the correspondence between the appellant and the Government. This document is a letter dated January 13, 1947 and appears at p. 5 of the printed Paper Book. The relevant part of this letter may be quoted thus :

The proposal to acquire all the lands in the area involved has been confirmed. But, portions of high level parambas not required for the road, footpaths, drains, etc. to be constructed, are proposed to be returned to the present owners after the reclamation is over, after realising from them the compensation which will be paid to them for the acquisition of the land, inclusive of 15 per cent solatium and the proportionate costs of reclamation and any other items of expenditure which may have to be incurred in the course of reclamation. This will not, however, apply to lands which Government consider, are marshy or paddy fields for portions laying to the west of the road. The Diwan Peishkar has been instructed to inform the owners of the high level parambas accordingly.

A perusal of this letter would clearly reveal the fact that the letter is nothing more than a mere proposal or a hint thrown by the Government to the appellant that in case the Government did not require the land the same be returned to the owners. Dr. Seyid Muhammad laid great stress on the two statements made in this letter. In the first place he submitted that it was clearly stated that portions of high level parambas would not be required for the roads and secondly that the Diwan Peishkar had been instructed to inform the owners of high level parambas accordingly, from which it could be spelt out that the Government had made up its mind to return the lands situated on a higher level such as the land of the appellant. We are, however, unable to agree with the contention put forward by the learned Counsel for the appellant. The first part of the letter makes the stand of the Government clear namely that the final orders of the Government regarding the procedure for acquisition had been passed. A hint was, however, thrown that if the high level parambas, etc. were not required they might be returned. We are unable to find any promise or commitment on the part of the Government to recover the lands acquired by it.

6. Another letter on which reliance was placed on Ext. P-6 which is at p. 18 of the printed Paper Book. This letter was written by the appellant to the District Collector, Ernakulam. Reliance was placed on the third paragraph of this letter which runs thus :

It was agreed at the time of acquisition that the area acquired from us would be returned to us soon after the work of the road was over. So, even though the compensation paid was very low, we did not appeal against the award.

This was undoubtedly a statement made by the appellant in his own favour and was actually based on the letter Ext. P-1 which was constructed by the appellant to be an agreement. This letter, however, cannot bind the Government unless there was a clear or solemn promise on the part of the Government to reconvey the lands acquired by it.

7. Exhibit P-2 which is a letter written by the Collector, Ernakulam, to the appellant clearly shows that the Government had made no commitment to reconvey the land at any time. This letter which

was sent in reply to Ext. P-6 runs thus :

I am to inform you that your request can be considered only after the completion of the work of the Foreshore area. I, therefore, request you to renew the request in June, 1960.

The Collector has carefully chosen the words to indicate that the request of the appellant would be considered after the completion of the work of the Foreshore area. There was thus neither any promise nor any representation.

8. Another letter on which reliance was placed is Ext. P-7 a letter written by the appellant to the District Collect, Ernakulam, in which the appellant itself renewed its request to arrange for the return of the land acquired. One important feature of this letter is that is that the appellant itself understood the correspondence between it and the Government as a bare proposal. The words used by the appellant, namely, "He replied to us saying that the matter was only receiving the attention of the Government and there was no promise made by the Government regarding reconveyancing of the land.

9. This is all the evidence that was relied upon by the learned Counsel for the appellant in support of his plea that a promissory estoppel was made out in this case. We are, however, unable to accept the contention of the appellant that there was at any time any promise or agreement made between the appellant and the Government for reconveying the land. Thus the position is that the land was acquired by the Government as far back as 1947. The award was made by the Collector but the appellant for some reason or the other imagined that there was an express promise or an implied agreement to reconvey the land and did not move the Collector for making a reference to the Court for determining the compensation. If the appellant did not move in this matter it was because he suffered from groundless misconception of fact which was of the appellant's own making and therefore it could not be allowed to take advantage of its own lapse. Thus that would be no ground for holding that any promise was made by the Government. The Government never prevented the appellant from approaching the Collector for making a reference to the Court for determining the compensation and if the appellant appeared to be overconscious of his rights he is to blame himself if he fails.

10. In the view that we take in the case, it is not necessary for us to examine the legal position whether in a case of promissory estoppel a writ of mandamus will lie.

11. The result is that the appeal fails and is dismissed but in the peculiar circumstances of this case we make no order as to costs.

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