Vasantakumar Radhakisan Vora

Vs

Board of Trustees of the Port of Bombay

(K.N.Saikia, K.Ramaswamy JJ)

21.08.1990

JUDGMENT

K. RAMASWAMY J

1. The respondent is a statutory body corporate initially constituted under the Bombay Port Trust Act, 1879 (Bombay Act 6 of 1879), for short State Act. Under Section 26 thereof, the Board has power to acquire and hold, moveable and immovable property and also have power to. lease, to sell or otherwise convey moveable and immovable property, which may have become vested in or acquired by them. The respondent has appointed A. J. Mescarnas, Assistant Estate Manager as their power Of attorney holder to lease out its properties from time to time or terminate the leases and to lay action for ejectment, etc. The respondent owns the building bearing Old R.R. No. 941 known as "Frere Land Estate" in which room No. 2 admeasuring 28.27 sq. meters was leased out to Vasantkumar Raidhakisan Vora, for short 'Vasantkumar'. The appellants are his legal representatives. He was served with a notice under Section 106 read with Section 111(h) of the Transfer of Property Act terminating the tenancy in terms of the covenants of lease and was asked to deliver possession of the demised property giving one month's time from 22nd January, 1975.

2. It was served on Vasantkumar on January 28, 1975. The notice of termination thereby became effective from 28th February, 1975. In the meanwhile Major Port Trust Act, 1963 (Act No. 38 of 1963), for short the "Central Act," was made applicable to the Bombay Port Trust by operation of Section 1330(2A) with effect from February 1. 1975. After the expiry of one month, ejectment application was filed under Section 41 of the Bombay Presidency Small Cause Courts Act (Act 15 of 1882) as amended under 1963 Maharashtra Amendment Act, against Vasantkumar and another for delivery of possession. After 1976 Amendment Act 19 of 1976 came into force suits were laid against three other tenants. It was pleaded by the respondent that it is a successor in interest of the Board under the State Act and was entitled to eject the tenants and to the possession of the demised portions. The plea of Vasantkumar in his written statement elaborated by the learned counsel is that the suit is not maintainable. Since the State Act ceased to be operative with effect from February 1, 1975, the quit notice issued under Section 106 read with Section111 (h) of Transfer of Property Act became ineffective and without determining the tenancy afresh, the suit was not validly laid. It was also pleaded that the respondent had promised that on deposit of certain amount, which the tenant did, Vasantkumar would be given on lease of a portion in the reconstructed building. Thereby the respondent is esteemed by promissory estoppel to have the tenant ejected. It may be mentioned at this juncture that one suit was dismissed on the ground that the tenancy was not duly determined as per law. Other suits were decreed. No appellate forum has been prescribed under Amendment Act of 1963 but a substantive suit on original side provided was available. By Maharashtra Amendment Act 19 of 1976 to the principal such a right to appeal was incorporated. Vasantkumar filed writ

petition in the High Court under Articles 226 and 227 and others filed regular appeals to a Bench of two Judges of the Small Cause Court and are stated to be pending.

3. In the writ petition the petitioner challenged the vires of 1963 Amendment Provisions and also 1976 Amendment Provisions to the Presidency Small Cause Courts Act. When it came up for hearing before Masodkar, J., he referred to a Division Bench. The Division Bench by its judgment dated January 17/18, 1982 upheld the constitutional validity' of those sections and remitted to the learned single Judge to dispose of the writ petition on merits. The learned single Judge considered and negatived two points namely, validity of the notice terminating the tenancy, promissory estoppel and dismissed the writ petition. Vasantkumar had leave of this Court under Art. 136. The primary contention of Mr.Turana, learned counsel for the appellant, is that quit notice issued under Sec. 106 read with Sec. 111 (h) of the T. P. Act is invalid. By issue of quit notice no right had been accrued to the respondent. Termination of tenancy became operative only on expiry of one month given thereunder, i.e. February 28, 1975, by which date the State Act became inoperative as from February 1, 1975 the Central Act came into force. The respondent under the Central Act acquired, by statutory operation, the immoveable property including the demised one in Frere Land Estate and thereby became a new landlord. Termination of tenancy is an act inter vivos by operation of Sec. 106 read with Sec.111 (h) of T. P. Act. Under Sec. 109 thereof, the respondent, not being a living person is not entitled to the benefit of the quit notice, as its operation is not saved by Sec. 2(d) and Sec. 5 thereof. The suit, thereby, is not maintainable since admittedly no quit notice determining the tenancy was issued after February 1, 1975. The edifice of the argument was built up on shifting and when it is subjected to close scrutiny it crumbled down traceless. Let us first deal with the arguments on the foot of the provisions of T. P. Act. Section 2(d) of the Transfer of Property Act, 1882 provides saving of the previous operation of law. It states that,: -

> "... nothing herein contained shall be deemed to affect save as provided by Sec. 57 and Chapter IV of this Act, and transfer by operation of law or by, or in execution of, a decree or order of a Court of competent jurisdiction."

Section 106 empowers the landlord to terminate the contract of lease of. immoveable property, if it is for agricultural or manufacturing purpose by giving six months notice and terminable on the part either lessor or, lessees, by giving fifteen days notice expiring with the end of the month of the tenancy. Section 111(h) provides that, "on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other." Section 109 is Rights of lessor's transferee: -

> "If the lessor transfers the property leased, or any part thereof, or any of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it but the lessor shall not, by reason only of such transfer cease to be subject to any of the liabilities imposed upon him by the lease unless the lessee elects to treat the transferee as the person liable to him."

Provisos are not necessary, hence omitted.

4. Reading of these fascicule of provisions clearly demonstrates that a lessee of immoveable property from month to month is terminable by giving fifteen days notice or as per the terms of the contract of the lessee. (In this case the contract provides to give one month's notice). On expiry of

one month from the date of receipt of the notice the lease shall stand terminated. The lessor's right on transfer of the immoveable property including the leasehold rights created on the property sold, the transferee, in the absence of contract to the contrary, shall possess all the rights and if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part thereof so long as he is owner of it. But the mere transfer the lessor shall not cease to be subject to any liabilities imposed upon him by contract of lease unless the lessee elects to treat the transferee as the person liable to him.

5. Undoubtedly, by issuance of notice to quit automatically the right created thereunder, namely, cessation of the lease does not become effective till the period prescribed in the notice or in the statute i.e. Sec. 106 expires. On expiry thereof the lease becomes inoperative and the lessor acquires right to have the tenant ejected. When he fails to deliver vacant possession, the lessor would be entitled to have the tenant ejected and taken possession in due process of law. The successor in interest whether acquires these rights and the rights acquired by lessor would enure for his benefits is the crucial question.

6. In Halsbury's Laws of England, 4th Edition, Vol. 27, paragraph 193 discussed the right accrued to the transferee of the benefit of the notice to quit issued by the predecessor in title thus: -"The notice when once given enures for the benefit of the successors in title of the landlord or tenant giving it." Hill and Redman in "law of landlord and tenant," 17th Edition, Vol. 1, at page 488, paragraph 405 has stated to the similar fact thus: -

> "The notice when once given enures for the benefit of the successor in title of the landlord or tenant giving it."
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> "Hill and Redman in "law of landlord and tenant," 17th Edition, Vol.I, at page 488,paragraph 405 have stated to the similar fact thus: -
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> "The notice when once given enures for the benefit of the successor in title of the landlord or tenant giving it."
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> In Mulla's commentary on the Transfer of Property Act, 6th Edition, at page 676 it is also stated thus: -
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> "Notice enures for the benefit of the successor in title of the lessor or lessee giving it."
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> In Chitaley's Transfer of Property Act, 4th Edn., 1969, Vol. Ill, Note 35, it is stated thus: -
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> "Where the lessor gives notice to quit and then assigns his interest to another the assignee can take advantage of the notice."
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> In N.P.K. Raman Menon v. Collector of Malabar, AIR 1924 Madras 904 (at page 1758) a Division Bench of the Madras High Court held that: -
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> "English cases recognise that the person who is the landlord and entitled to possession, on the date of the notice to quit, is the proper person to give the notice and that an assignee within the currency of that notice can take advantage of the notice sent bv his assignor and rely upon it, when he brings a suit for recovering

possession... or single Judge... Ed.

7. No doubt Mr. Tunara placed strong reliance on the decision of Trimbak Damodhar Raipurkar v. Assaram Hiraman Patil, 1962 Suppl (1) SCR 700: (AIR 1966 SC 1758). The facts therein are that in 1943 a lease on agricultural land for five years was created. Before the expiry thereof Bombay Tenancy Act, 1939 was made applicable to the area where the land was situated and under See. 23(1)(b) of that Act the period of lease was statutorily extended to ten years. During the subsistence of the contractual tenancy it was statutorily extended and the Bombay Act 67 of 1948 came into force. In March, 1952 notice was given to the tenant that the tenancy expired on March 31, 1953 and called upon the tenant to deliver possession. In the meanwhile the Bombay Act 33 of 1952 came into force. Its effect was that the lease automatically stood extended for ten years from time to time, unless terminated by giving one year's notice averring that the land was required bona fide by the landlord for personal cultivation and that income would be the main source of income of the landlord. It was contended that since 1952 Amending Act was not retrospective, the technical requirements of notice to quit do not apply. The question was whether the landlord was entitled to eject the tenant without complying with the statutory requirement. In that context it was held by the Constitution Bench that by operation of the statutory provisions the period of lease of 10 years from time to time was automatically extended unless the tenancy was validly terminated by giving a notice of one year or surrender was made by the tenant as specified in the statute. The ratio therein has little application to the facts of this case. In Hitkarini Sabha v. The Corporation of City of Jabalpur, (1973) 1 SCR 493: (AIR 1972 SC 2017), the lease was granted by the Administrator without authority under the statute. Therefore, the lease was held to be void. The notice as required under T. P. Act was held to be mandatory, but was not done. Therefore the lease was subsisting and thereby as his land was acquired the tenant was entitled to compensation pro rata under Section 11 of the Land Acquisition Act. We are at a loss to understand, how the ratio there under will be of any assistance to the appellant. In Lower v. Sorrell. (1963) 1 QB 959 the question therein was whether the notice to quit was a valid notice. Admittedly, second notice was given before the expiry of the first notice. It was held that when such notice were issued withdrawing the first notice by issuance of the second notice, a new tenancy has been created for the tenant to remain in possession until the expiry of the later notice on September 29, 1961, to which the tenancy Sections 2(1) and 23(1) of the Agricultural Holdings Act, 1948 would apply. Accordingly it was held by the Court of Appeal that there was no valid notice to quit. The ratio therein also is of no avail to the appellant. No doubt in Gurumurthappa v. Chickmunisamappa, AIR 1953 Mysore 62 a Division Bench of Mysore High Court held that the successor in interest is not entitled to avail the notice to quit given by the original landlord. In the light of the above discussion this view is not good law.

8. It is no doubt true that per se Sec. 109 of T.P. Act does not apply to the facts of this case. It contemplates transfer of lessor's right inter vivos. But when right, title and interest in immoveable property stand transferred by operation of law, the spirit behind Sec. 109 per force would apply and successor in interest would be entitled to the rights of the predecessor. This is what the learned single Judge of the High Court in the impugned judgment has held and we approve of the view as correct. We, accordingly, hold that the notice terminating the tenancy of Vasantkumar would enure to the benefit of the respondent and it could be availed of by the respondent to lay the suit for ejectment.

9. The matter could also be gleaned through the statutory operation as well. By operation Sec. 26 of the State Act, the Board of Trustees acquired and held the demised property, which includes leasehold interest therein. Section 29(1) of the Central Act interposed and from February 1, 1975 the appointed date, in relation to Bombay Port all the moveable and immoveable property, assets

and funds of the predecessor Board shall vest in the Board, i.e. the respondent. By operation of Clause (b) thereof all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done, by, with or for the Central Govt., or as the case may be, the other authority (i.e. predecessor Board under State Act) immediately before such day, for or in connection with the purposes of the port, "shall be deemed to have been incurred, entered into and engaged to be done by, with or for the Board." It further postulates that all rates, fees, rents and other sums of money due to the Central Govt., or as the case may be, the other authority (i.e. the predecessor Board) in, relation to the port immediately before such day shall be deemed to be due to the Board, i.e. the respondent. Other clauses are not necessary. Hence omitted. Thereby by operation of Sec. 29(1)(b) the immoveable properties, i.e. demised rooms and all contracts in relation thereto including the lease and the right to ejectment pursuant to quit notice stood transferred to the respondent.

Sub. -section (2A) of Sec. 133'Repeal'of the Major Port Trusts Act, 1963 states that on the application of the Central Act to the Port of Bombay, except the provisions thereof relating to municipal assessment of the properties of the port of Bombay and matters connected therewith, shall cease to have force in relation to that port. But sub-clause (c) of sub-section (2D) of Section 133 provides that notwithstanding anything contained in sub-sections (2A), (2B) and (2C) anything done or any action taken or purposed to have been done or taken including notice issued shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken on the corresponding provisions of this Act. By operation of S.29 (1)(a) and (b) read with S. 133(2A) the quit notice concerning the vested immoveable property, i.e. the demised rooms vested in the respondent shall be deemed to have been done or taken under Sec. 29(1) and Sec. 133(2A)(C) of the Central Act. There is no inconsistency between the Central and the State Acts in this regard. Section 6 of the General Clauses Act, 1897 postulates the effect of repeal thus: -

> "Where this Act or any (Central Act) or regulation made after the commencement of this Act, repeals any enactment hitherto made hereafter to be made, then, unless a different intention appears, the repeal shall not -
>
> (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
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> (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or...
>
> any such investigation, legal proceedings or remedy may be instituted, continued or enforced... as if the repealing Act or Regulation had not been passed."

Section 17(1) provides thus: -

> "In any (Central Act) or Regulation made after the commencement of this Act, it shall be sufficient for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the functions of an office, or that of the officer by whom the functions are commonly executed.

Section 17 of the General Clauses Act substitutes the functionaries under the Central Act to those of the functionaries under the State Act. Section 6 gives effect to the previous operation of anything

done or subsists the right acquired or privilege accrued under the Repealed Act and the legal proceedings or remedy may be instituted, continued or enforced as if the repealing Act had not been passed. Therefore, the operation, efficacy and effectively of the quit notice issued by the power of attorney Agent of the respondent i.e. the Asst. Estate Manager has been acquired by the respondent Board. The rights and remedy accrued to the respondent under the State Act namely termination of tenancy by. issue of quit notice under Secs. 106 and 111(h) of T. P. Act and on expiry of thirty days i.e. on February 28, 1975 the respondent Board became entitled to institute the proceedings in the suits to have the tenants ejected under Sec. 41 of the Provincial Small Cause Courts Act.

10. The contention of Mr. Tunara that the Central Act and the General Clauses Act would apply only to the acts done under the Central Act or State Act, by exercise of the statutory power which alone have been validated and they have no application to bilateral acts under Central Act and the notice under Sec. 106 of T. P. Act is not the one either under the Central or the State Act and that the notice issued is not saved is devoid of force. The Board of Trustees under the State Act has merely changed their hats and stand transpired to be functionaries under the Central Act. The functionaries under both the Acts are the same. The notice was issued by the Asst. Estate Manager by virtue of his official function as power of attorney agent on behalf of the respondent. The Board of Trustees has the right to terminate the lease under Sec. 26 of the State Act and those rights stood transferred and vested under Sec. 29(1), of the Central Act. Therefore, the termination of tenancy and laying the action for ejectment are integrally connected with their official capacity. There is a reasonable connection between the impugned acts and official duty. Thereby, they are the acts done under the, Central Act. In Commr. for the Court of Calcutta v. Abdul Rahim Oosman and Co., (1964-68 Cal WN 814), See. 142 of the Calcutta Port Act came up for interpretation. Thereunder it was contended that short delivery of the goods was an omission and not an act done under the Act and though the suit was laid beyond three months, it was not barred by limitation. Section 142 enjoins that no suit shall be brought in for anything done or purported to have been done beyond three months. It was held that after the expiry of three months from the day on which the cause of action had arisen for short delivery, which was done or purported to have been done under the Act, the suit was barred by limitation. It was further held that in order to apply any bar under Sec. 142 it was first to determine whether the act which is complained of in the suit can be said to have been within the scope of the official duty of the person or persons who are sought to be made liable. This question can be answered in the affirmative where there is a reasonable connection between the act and the discharge of the official duty. Once the scope of official duty is determined, Sec. 142 will protect the defendant not only from a claim based on breach of the duty but also from a claim based upon an omission to perform such duty. The protection cannot be held to confine to act done in the exercise of a statutory power but also extends to acts done within the scope of an official duty. This view was upheld in Trustees of Port of Bombay v. The Premier Automobiles Ltd., (1974) 3 SCR 397: (AIR 1974 SC 923) where there was short delivery of one bundle out of 153 bundles consigned from Japan and omitted to be delivered and it was held to constitute an act done within the ambit of Sec. 87 of the Bombay Port Trust Act, 1879 and the bar of limitation prescribed thereunder would apply. Thus we have no hesitation to hold that the notice under See. 106 and Sec. 111(h) of the Transfer of Property Act is an act done or purported to have been done in the official capacity as Power of Attornev holder/Asstt. Estate Manager on behalf of the respondent, Board of Trustees; the right to lay the suit on expiry of one month's period prescribed in the notice, namely, on or after February 28, 1975 had accrued to the respondent. It is an act done or purported to have been done under the Central Act in exercise of the official function. The right to lay the suit on determination of the tenancy by notice dated January 20, 1975 under the State Act is a transfer of interest by operation of Sec. 29(1) of the Central Act, to the respondent under Sec. 109 of the Transfer of

Property Act. Thereby the quit notice is valid. The suit laid, pursuant thereto, is valid and legal. Accordingly order of ejectment passed by the Small Cause Court is perfectly legal and unassailable.

11. The next contention of Mr. Tunara is that the respondents are estopped from ejecting the appellant and other tenants who are similarly situated on the principle of promissory estoppel. His contention is founded upon the fact that the Estate Manager of the respondent in his letter dated April 3, 1972 directed the tenant to deposit Rs. 11,000/ -and odd for grant of tenancy after reconstruction of the flats therein. The tenants placing reliance thereon have deposited the amount demanded from them and acted upon the promise to their detriment. The respondent now shall be declared to be estopped from ejecting them from the demised respective portions leased out to them. The learned Solicitor General contended that the Estate Manager has no authority to give a promise. Even assuming that he has such a power, it is a conditional one, namely, approval by the Board. The Board in its meeting resolved to reject the claim and on reconstruction decided to allot to its own employees out of administrative necessity. Therefore, the promissory estoppel cannot be applied. The 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. The doctrine of promissory estoppel is now well established one in the field of administrative law. This principle has been evolved by equity to avoid injustice. It is neither in the realm of contract nor in the realm of estoppel. Its object is to interpose equity shorn of its form to mitigate the rigour of strict law. In Union of India v. Indo Afgan Agencies (AIR 1968 SC 718), Shah J., as he then was, speaking for the Division Bench of this Court while upholding the application of promissory estoppel to executive acts of the State negated the plea of executive necessity thus (at p. 723 of AIR):-

> "We are unable to accede to the contention that the executive necessity releases the Government from honouring its solemn promises relying on which citizens have acted to their detriment. Under our constitutional set up no person may be deprived of his authority of law; if a member of the Executive seeks to deprive a citizen of his right or liberty otherwise than in exercise of power derived from the law common or statute - the Courts will be competent to and indeed would be bound to protect the rights of the aggrieved citizens ."

It was further held in its summing up thus (at p.728 of AIR):-

> "Under our jurisprudence the Government is not exempt 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, not claim to be the Judge of its own obligation to the citizen on an ex parte appraisement of the circumstances in which the obligation has arisen."

In Century Spinning and Manufacturing Co. Ltd. v. Ulhasnagar Municipal Council, (1970) 3 SCR 854: (AIR 1971 SC 1021), Shah, J. again extended this doctrine of promissory estoppel against public authorities thus:-

> "This Court refused to make a distinction between a private individual and a public

body so far as the doctrine of promissory estoppel is concerned."

In Motilal Sugar Mills v. State of Uttar Pradesh, (1979) 2 SCR 641 : (AIR 1979 SC 62 1), Bhagwati, J., as he then was, applied the doctrine of promissory estoppel to the executive action of the State Government and also denied to the State of the doctrine of executive necessity as a valid defence. It was held that in a republic governed by rule of law, no one high or low is above the law. Everyone is subject to the law as fully and completely as any other and the Government is no exception. The Govt. cannot claim immunity from the doctrine of promissory estoppel. Equity will, in a given case where justice and fairness demands, prevent a person from exercising on strict legal rights even where they arise not in contract, but on his own title deed or in statute. It is not necessary that there should be some preexisting contractual relationship between the parties. The parties need not be in any count of legal relationship before the transaction from which the promissory estoppel takes its origin. The doctrine would apply even where there is no preexisting legal relationship between the parties, but the promise is intended to create legal relations or effect a legal relationship which will arise in future. It was further held that it is indeed pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned. The former is equally bound as the latter. Therefore, the Government cannot claim any immunity from the doctrine of promissory estoppel and it cannot say that it is under no obligation to act in a manner i.e. fair and just or that it is not bound by the considerations of honesty and good faith. In fact, the Government should be held a high standard of rectangular rectitude while dealing with its citizens. Since the doctrine of promissory estoppel is an equitable doctrine, it must yield where the equity so requires. If it can be shown by the Govt. that having regard to the facts as they have transpired, it would be inequitable to hold the Govt. or public authority to the promise or representation made by it, the Court would not raise an equity in favour of the promisee and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case, because on the facts, equity would not require that the Government should be held bound by the promise made by it. But the Govt. must be able to show that in view of the fact as have been transpired, public interest would not be prejudiced. Where the Govt. is required to carry out the promise the Court would have to balance, the public interest in the Government's carrying out the promise made to the citizens, which helps citizens to act upon and alter his position and the public interest likely to suffer if the promises were required to be carried out by the Government and determine which way the equity lies. It would not be enough just to say that the public interest requires that the Govt. would not be compelled to carry out the promise or that the public interest would suffer if the Govt. were required to honour it. In order to resist its liability the Govt. would disclose to the Court the various events insisting its claim to be exempt from liability and it would be for the Court to decide whether those events are such as to render it equitable and to enforce the liability against the Govt. Therefore, we are holding that the doctrine of promissory estoppel would equally apply to a private individual as well as a public body like a Municipal Council. It was held that it cannot be applied in the teeth of an obligation or liability imposed by law. It cannot be invoked to compell the Govt. to do an act prohibited by law. There may be no promissory estoppel against exercise of legislative functions. Legislature can never be precluded from exercise of its legislative functions by resorting to doctrine of promissory estoppel. The plea of executive necessity, though was rejected, its rigour was mellowed down to the above extent indicated above. The doctrine of promissory estoppel, though doubted in Jit. Ram v. State of Haryana, (1980) 3 SCR 689: (AIR 1980 SC 1285), was affirmed and reiterated by a Bench of three Judges in Union of India v. Godfrey Philips India Ltd., (1985) Supp 3 SCR 123 at 145-46 : (AIR 1986 SC 806 at pp. 815-816), Bhagwati, the Chief Justice, while reiterating the law laid down in Motilal 'P' Sugar Mills' case (AIR 1979 SC 621) (supra) made it

clear thus "

There can be no promissory estoppel against the legislature in the exercise of its legislative functions nor can the Govt. of public authority be debarred by promissory estoppel from enforcing a statutory prohibition. It is equally true that promissory estoppel cannot be used to compel the Government or a public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make. We may also point out that the doctrine of promissory estoppel being an equitable doctrine, it must yield when the equity so requires, it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be inequitable to hold the Government or public authority to the promise or representation made by it, the Court would not raise an equity in favour of the person to whom the promise or representation is made and enforce the promise or representation against the Government or public authority."

Doctrine of Promissory Estoppel was reiterated by another Bench of three Judges in State of Bihar v. Usha Martin Industries Ltd., (1987) 65 STC (Note) 430 (SC) and Asstt. Commissioner of Commercial Taxes, Dharwar v. Dharnendra Trading Co., (1988) 3 SCR 946: (AIR 1988 SC 1247).

12. It is equally settled law that the promissory estoppel cannot be used compelling 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 the public authority to make. We may also point out that the doctrine of promissory estoppel being an equitable doctrine, it must yield place to the 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 would be inequitable to hold the Government or public authority to the promise or representation made by it. The Court on satisfaction would not, in those circumstances raise the equity in favour of the persons to whom a promise or representation is made and enforce the promise or representation against Government or the public authority.Equally promissory estoppel should not be extended, though it may be founded on an express or implied promise stemmed from the conduct or representation by an office of the State or public authority when it was obtained to play fraud on the constitution and the enforcement would defeat or tend to defeat the constitutional goals. For instance a right to reservation either under Art. 15(4) or 16(4) in favour of the Scheduled Castes, Scheduled Tribes or Backward Classes was made with a view to ameliorate their status socially, economically and educationally so as to assimilate those sections into the main stream of the society. The persons who do not belong to those classes, but produce a certificate to mask their social status and secure an appointment to an office or post under the State or public employment or admission into an educational institution maintained by the State or receiving aid from the State, on later investigation, though belated, was found that the certificate produced was false and the candidate was dismissed from the post or office or debarred or sent out from the institution or from the balance course of the study, the plea of promissory estoppel would always be found favour with the Courts and being easily extended in favour of the candidate or party that played fraud on the Constitution. It would amount not only putting a premium on the fraud on the Constitution, but also a denial to a reserved candidate and the general candidate as well. Therefore, the plea of promissory estoppel should not be extended to such areas. Though Executive necessity is not always a good defence, this doctrine cannot be extended to legislative acts or to acts prohibited by the statute.

13. When it seeks to relieve itself from its application the Government or the public authority are bound to place before the Court the material, the circumstances or gounds on which it seeks to resile from the promise made or obligation undertaken by insistent of enforcing the promise, how the

public interest would be jeopardised as against the private interest. It is well settled legal proposition that the private interest would always yield place to the public interest. The question, therefore, is whether promise, in fact, was made by the Estate Manager on behalf of the respondent and whether the Estate Manager is competent to make such a promise and whether it binds the respondent. The letter dated April 3, 1972 written by the Estate Manager is a conditional one, namely, that on fulfilling certain conditions indicate in that letter he would make recommendation to the Board for grant of lease, condition precedent being that the tenant would deposit the required sum of about Rs. 11,000/- and odd with the respondent. Undoubtedly, the tenants completed that part of the obligation. Thereafter admittedly it was placed before the Board, who by resolution dated September 10, 1974 which is at pages 228 to 237 of the paper book, considered it, but was rejected on the ground that after reconstruction the building would be required to its staff. Therefore, the decision has been stemmed from its executive necessity, but that ground by itself would not be sufficient unless it is shown to the satisfaction of the Court that as against the interest of the private tenants the interest of its employees is of such absolute importance that without allotment of the quarters to the staff the work of the Port Trust cannot be carried out. No such material has been placed before us. But the crucial circumstance would be whether an unequivocal promise in fact was made and the Estate Manager was competent to make promise.

14. In Howell v. Falmouth Boat Construction Co. Let (1951) AC 837 the facts are that ship repairers in a naval vessel carried out certain work in contravention of para 1 of the Restriction of Repairs of Ships Order, 1940, the Admiralty, acting under Regulation 55 of the Defence (General) Regulations, 1939 directed that repairs or alteration of ships would not be carried out except under the authority of a licence granted by the Admiralty. The defence was that work was carried out with the oral permission of the licensing authority officer of the Admiralty. In the Court of Appeal Lord Denning, laid the rule of promissory estoppel that whenever Government Officers in the dealings with the subject, take on themselves to assume authority in a matter with which he is concerned the subject is under entitlement to rely on their having the authority which they assume. He does not know and cannot be expected to know the limits of their authority and he ought not to suffer if they exceed it. On further appeal the House of Lords while reversing the view, Lord Simonds states thus:-

> "I know of no such principle in our law nor was any authority for it cited. The illegality of an act is the same whether or not the actor has been misled by an assumption of authority on the part of a Government officer however high or low in the hierarchy. I do not doubt that in criminal proceedings it would be a material factor that the actor had been thus misled if knowledge was a necessary element of the offence, and in any case it would be a material factor that the actor had been thus misled if knowledge was a necessary element of the offence, and in any case it would have a bearing on the sentence to be imposed. But that is not the question. The question is whether the character of an act done in face of a statutory prohibition is affected by the fact that it has been induced by a misleading assumption of authority. In my opinion the answer is clearly No. Such an answer may make more difficult the task of the citizen who is anxious to walk in the narrow way, but that does not justify a different answer being given.

Lord Normand stated at page 849 thus:-

> "But it is certain that neither a minister nor any subordinate officer in the Crown can by any conduct or representation bar the Crown from enforcing a statutory prohibition or entitle the subject to maintain that there has been no. breach of it."

In Attorney General for Ceylon v. A. D. Silva, (1953) AC 461, the Privy Council was called upon to consider whether the Collector of Custom was authorised to create a promise as against the Crown. Considering that question at page 479 it was held that:-

> "All ostensible" authority involves a representation by the principal as to the extent of the agent's authority. No representation by the agent as to the extent of his authority can amount to a "holding out" by the principal. No public officer, unless he possesses some special power, can hold out on behalf of the Crown that he or some other public officer has the right to enter into a contract in respect of the property of the Crown when in fact no such right exists. Their Lordships think, therefore, that nothing done by the principal Collector or the Chief Secretary amounted to a holding out by the Crown that the principal Collector had the right to enter into a contract to seal the goods which are subject-matter of this action."

In Administrative Law by Wade, 6th Edition at page 385 it is stated thus:-

> "If the force of law is given to a ruling from an official merely because it is wrong, the official who has no legal power is in effect substituted for the proper authority, which is forced to accept what it considers a bad decision. To legitimate ultra vires acts in this way cannot be sound policy, being a negation of the fundamental canons of administrative law."

Thus we have no hesitation to hold that before making the public authority responsible for acts of its subordinate, it must be established that the subordinate officer did in fact make the representation and as a fact is competent to make a binding promise on behalf of the public authority or the Government, ultra vires acts do not bind the authority and insistence to abide by the said ultra vires promise would amount to putting premium and legitimacy to ultra vires acts of subordinate officers. It is seen from the record: that the Estate Manager is merely an intermediary to collect the material between the respondent Port Trust and its tenants and to place the material for consideration to the Board. Thereby the Estate Manager is not clothed with any authority much less even ostensible authority to create a promise so as to bind the respondent, that the respondent would allot the rooms on reconstruction to the tenants. The promise of him is an ultra vires act, though conditional and, therefore, it does not bind the respondent. Though the executive necessity has not been satisfactorily established, we hold that the doctrine of promissory estoppel in the light of the above facts cannot be extended in favour of the appellant and other tenants.

15. Sri Tunara further submitted that the tenant did not derive title, namely, leasehold right from the respondent Port Trust under the Central Act. That the tenant disputed the title and it is a sufficient defence under the explanation to Sec. 43 to non-suit the respondent in the summary proceeding. It was open to the respondent to file a regular suit. The Small Cause Court ought to have rejected the application on that ground and the High Court would have gone into the question. It being a pure question of law, this Court may permit the appellant to argue on the point for the first time in this Court. It is undoubtedly true as held by catena of decisions of this Court that a pure question of law, untrammeled by questions of fact, which goes to the roots of the jurisdiction, could be permitted to be raised for the first time in an appeal under Art. 136 of the Constitution.

16. We are afraid, we cannot permit the appellant to raise this point for the following reasons: - Firstly, except making a bold averment in the written statement that the "suit is not maintainable" nothing has been pleaded in detail in the written statement. Admittedly this point was neither taken

in the Writ petition nor argued into High Court. It is not even raised in the grounds of appeal in this Court nor even in points raised in the synopsis of the case. It is stated that remotely it was raised in the rejoinder. Since it is a mixed question of facts and law and not being a pure question of law, we cannot permit to raise the point for the first time, that too, when it would prejudice the respondent of their case at this stage. We accordingly decline to go into the question. We would also straighten the record and state that the appellants raised in the writ petition the vires of Ss. 2, 3 and 4 of the Maharashtra Amending Act, 1963, introducing Sec. 42(A) in Chapter VII of the Presidency Small Cause Courts Act and deleting Ss. 45 to 47 and from the principal Act and of an amended Sec. 49 thereof as well as See. 46(2) of the Presidency Small Cause Courts Act as amended by Maharashtra Amendment Act of 1976 offending Art. 14 of the Constitution, and unsuccessfully argued before the Division Bench of the High Court same point was raised in the grounds appeal in this Court. Though the appeal was argued for three days. Mr. Tunara did not argue this point across the Bar, nor we had the advantage of hearing the learned Solicitor General. Even in a written brief running into 44 pages submitted by the counsel, he did not deal with this point. The counsel, after arguing the two points dealt with earlier, has devoted his time on the question of jurisdiction of the trial Court under S.41, despite our repeatedly reminding him that this point was neither raised, nor argued in the High Court. At the end he stated that he had elaborately argued the point of vires before the single Judge and the Division Bench and except repetition of the same once over, he could do no better by further arguing here. Therefore, this Court could go through the judgment and deal with the point. We deprecate this practice. When a constitutional question has been raised and do arise for consideration, unless there is a full-dressed arguments addressed by either side before this Court no satisfactory resolution could be made. Mere paraphrasing the judgment of the High Court in particular when it relates to the local laws is no proper decision making. Therefore, after giving our anxious consideration we, with great anguish, decline to go into the point. Except those, no other points have been argued. Accordingly we do not find any merit in the appeal.

17. The appeal is dismissed, but in the circumstances without costs.

Appeal dismissed.

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