SUPREME COURT OF INDIA

M. P. Mathur

Vs.

D.T.C.

C.A.No.5281 of 2005

(A. Pasayat and S. H. Kapadia, JJ.)

24.11.2006

JUDGEMENT

KAPADIA, J.:-

1. This civil appeal is filed by the original plaintiffs and is directed against the judgment and order passed by the Division Bench of the Delhi High Court dated 19.2.2003 in RFA(OS)No.4/1992 reversing the decision of the Ld. Single Judge in Suit No.308 of 1983.

2. In this civil appeal we are required to consider the scope of Resolution No.55/79 dated 18.4.1979 and Resolution No.139/79 dated 31.8.1979 passed by the Board of Delhi Transport Corporation. Plaintiffs contended that a legal right was created in their favour under the above Resolution dated 31.8.79 by itself and that Delhi Transport Corporation was estopped from recalling its decision vide subsequent Resolution No.179/79 dated 3.12.79 read with Resolution No.35/81 dated 2.3.81.

3. The undisputed facts are as follows :

Between 1962-63 and 1965-66, 5144 tenements were constructed by Municipal Corporation of Delhi in six colonies of the Delhi Administration, namely, Karampura, Nehru Nagar, Giri Nagar, Vishwakarma Nagar, Hari Nagar and G.T. Road under Integrated Subsidised Housing Scheme for Industrial Workers and Economically Weaker Sections of the Community, 1952 (for short, 'the Scheme'). Appellants herein are industrial workers and they were allotted service quarters in Hari Nagar and G.T. Road colonies. They have retired from service. However, they have continued to reside in these quarters till today. According to the appellants, 300 quarters were constructed by Delhi Transport Undertaking at Hari Nagar and G.T. Road under the above Scheme. In 1971 Delhi Transport Undertaking was converted into Delhi Transport Corporation (for short, 'DTC'), taking 300 tenements out of the quota of Delhi Administration. In 1978 the above Scheme was amended allowing DTC to transfer the allotted houses on ownership basis to the occupants (plaintiffs). The said Scheme was sponsored by the Government of India. According to the appellants, out of 5144 tenements, 4844 tenements were transferred by the Delhi Administration in favour of the occupants. This was done in 1979. The balance was 300 tenements belonging to DTC in the two colonies of Hari Nagar and G.T. Road which remained untransferred. DTC Workers Union protested when DTC did not take steps to transfer the 300 tenements to the occupants. They threatened to proceed on strike. On 28.10.1978 a Settlement was signed under Industrial Disputes Act between DTC and the Union of workers under which DTC was given six months time to take decision on the workers' demand for transferring of the tenements to the occupants. Before expiry of six months, DTC, by way of Resolution dated 18.4.1979, decided in principle to sell the service quarters to the occupants. The occupants were asked to fill up certain forms. They were asked to furnish certain information to DTC. This was done by the appellants. By another Resolution dated 31.8.1979 DTC approved the Scheme to sell the tenements to the occupants subject to certain conditions being satisfied by each of the occupants. Even in the Annual Administration Report, DTC stated that action has been taken to transfer ownership of 300 service quarters constructed under the above Scheme. According to the appellants, DTC took the above steps in line with the decision of the Delhi Administration dated 9.2.1979 to transfer 4844 tenements out of 5144 tenements in four colonies, namely, Karampura, Nehru Nagar, Giri Nagar, Vishwakarma Nagar in favour of their occupants and, therefore, the appellants herein were sure that in their case the decision to transfer the tenements on ownership basis would be implemented. However, on 3.12.1979 the Chairman of DTC requested the Board to reconsider its decision to sell in the light of increased replacement cost of about Rs.3 crores, particularly when DTC had huge accumulated losses. By letter dated 16.5.1980 the Government of India invited DTC to implement its decision to sell the tenements to the occupants. Ultimately, vide Resolution dated 2.3.1981 the DTC Board rescinded its decision to sell and stated that it will not implement the policy decision of the Government of India. Aggrieved by the said Resolution, the appellants herein filed Suit No.308/83 in the Delhi High Court seeking a declaration of entitlement to the transfer of these properties. The suit was decreed by the learned Single Judge on 11.9.1991. However, the appeal preferred by DTC was allowed by the impugned judgment. Hence this civil appeal.

4-5. Mr. K. K. Venugopal, learned senior counsel appearing on behalf of the appellants (plaintiffs), submitted that Resolution of DTC dated 2.3.1981 was flawed and baseless. According to the learned counsel, the representation made to the appellants by DTC stood withdrawn without cogent and

sufficient reasons. In this connection, it was urged that the above Scheme was formulated by the Central Government. It was reviewed by the Central Government on 9.2.1978. Therefore, it was not open to DTC to question the decision of the Central Government to sell the tenements to the occupants. Learned Counsel further contented that except 300 tenements every other tenement under the Scheme has been sold. Only 300 tenements belonging to DTC were not transferred. In the circumstances, it was contended that DTC had erred in stating that no public sector undertaking had decided to sell the houses as mentioned in the above Resolution. In the above Resolution one of the grounds taken by DTC was that the direction of the Government of India to DTC to implement its policy decision to sell the tenements was recommendatory. Learned counsel submitted that even assuming without admitting that the instructions given by the Government of India were recommendatory even then DTC had by way of Resolutions dated 18.4.1979 and 31.8.1979 had represented to the appellants that it had taken the decision to sell the tenements to the occupants and, therefore, DTC was estopped from resiling from its decision to sell. Learned counsel further urged that in Resolution dated 2.3.1981 it is stated that DTC had 24000 employees who were required to be accommodated. It was urged that this was a false excuse. It was urged that the Scheme was meant for industrial workers. It was urged that 24000 employees, at the relevant time, was the total workforce. The employees who were not industrial employees were not eligible under the Scheme to buy the tenements. Moreover, DTC Union had no objection to the said tenements being transferred to the appellants and, therefore, there was no reason for DTC to withdraw its earlier decision to sell the tenements to the occupants. Learned counsel urged that it was never the case of DTC that these service quarters were required to accommodate the in-service employees. It was urged that these tenements were constructed with the contributions of the Central Government and, therefore, DTC was not entitled to utilize these tenements to house employees not covered by the Scheme. Learned counsel urged that as late as in 1985 DTC Board had offered to transfer ownership to the occupants. Therefore, the decision to withdraw the earlier decision to sell the tenements was without any basis. Learned counsel submitted that there is no merit in the argument of DTC that DTC was incurring accumulated losses and it was unable to meet the replacement cost.

6. According to the appellants hundred acres of land belonging to DTC for residential accommodation situated at Rohini Terminals, Vinod Nagar, Okhla III, Partap Nagar, Punjabi Bagh and Kanjhawala, were not being utilized by DTC. In 1986 land was also allotted to DTC at Kondli for construction of 500 tenements. Even today, according to the appellants, a few tenements were lying vacant in Hari Nagar and G.T. Road colonies. On behalf of the appellants it was further pointed out that DTC colony at Shadipur was not even covered by the Scheme and therefore to say that the occupants of Shadipur Colony would also raise a similar demand, had no merit.

7. Learned counsel further submitted that the impugned judgment was erroneous. It was urged that the suit is based on promissory estoppel which is a principle based on equity and which principle requires no contractual or statutory basis. Learned counsel urged that there was a distinction between the obligation of the State based on a promise and an obligation based on a contract. In the present case, according to the learned counsel, the suit was founded on the promise made by DTC to the appellants. It was not based on the contract. Therefore, according to the learned counsel, the High Court erred in holding that no legal right was shown in the tenements. Learned counsel urged that the appellants had changed their position to their detriment relying on the promise made by DTC. They acted to their prejudice by not applying for and obtaining alternate accommodation.

They acted to their prejudice by not availing of any other scheme for Low Income Group. Therefore, according to the learned counsel, the High Court had erred in holding that the appellants have not changed their position to their detriment. Learned counsel urged that the High Court had erred in holding that larger interest of employees precluded the invocation of promissory estoppel. According to the learned counsel, the only reason shown by DTC in Resolution dated 2.3.1981 was that other employees may make similar demands. However, as stated above, according to the learned counsel, the Workers Union had made it clear that they would not object to allotment to the sale of the tenements by DTC to the appellants and, therefore, it was not open to DTC to say that they expected other employees to make similar demands. Learned counsel urged that Resolutions dated 18.4.1979 and 31.8.1979 constituted a promise or representation made by the Board to the appellants. It was contended that DTC had agreed to decide the matter within six months. They sought information from the appellants regarding terms and conditions of transfer; they wrote letters in which details of the occupants were sought; the Annual Report of DTC also indicates decision to transfer and, therefore, it was incumbent on DTC to act on promise/representation made to the appellants who had altered their position to their prejudice by not resorting to strike, maintaining industrial peace, not applying for alternate accommodation and by not availing of any other Scheme. In the circumstances, learned counsel, therefore, urged that Resolution dated 2.3.1981 withdrawing the representation made to the appellants should be set aside and that DTC should be asked to implement its promise/representation to sell the tenements to the appellants.

8. Mr. T.L.V. Iyer, learned senior counsel appearing on behalf of DTC, submitted that the question of transfer of the buildings in the above two colonies to the occupants came for consideration before the DTC Board on 30.8.1978 when the consideration was postponed for further examination due to the increased cost of the land which had risen manifold and also for other reasons, namely, similar demands from other workmen, huge replacement costs, and the fact that the Government of India did not fund DTC with the entire costs of construction amounting to Rs.35.04 lacs. Learned counsel pointed out that only an amount of Rs.6.25 lacs was given by the Central Government which was given as a loan. Rs.1.56 lacs was paid as subsidy. DTC had to pay back the loan with interest. In fact, the balance could not be paid because of recurring losses. These were reasons for postponing the decision to sell the tenements. It was further pointed out that the matter again came for consideration before the DTC Board on 8.3.1979 pursuant to the Memorandum of settlement under the Industrial Disputes Act. In the said meeting of the DTC Board they considered the letter of the Government of India dated 14.2.1979 to permit employers (DTC) to sell the houses. However, according to the learned counsel, the Scheme was an enabling scheme which did not create any obligation on DTC to sell their houses. Learned counsel submitted that similarly the matter was again placed before DTC on 18.4.1979 when DTC Board agreed in principle to sell the houses to the occupants. However, the details had to be worked out. The matter was required to be considered with the lessor, namely, DDA. Learned counsel submitted that the decision dated 18.4.1979 was tentative decision which required further examination of details with DDA and Government of India.

9. Learned counsel for DTC submitted that passing of Resolution was never communicated to any of the appellants; that, no letter of allotment were ever issued; that, various clarifications were sought from Government of India; that, the decision approving proposal of sale on 31.8.1979 was again subject to certain clarifications from the Central Government; that, since the Chairman of

DTC had reservations, the matter was placed before DTC for further consideration on 3.12.1979 when the matter was discussed at length and ultimately the Board decided that it would not be possible to implement the policy decision of the Government of India to sell the flats to the occupants on ownership basis for the reasons indicated above. Thus ultimately, according to the learned counsel, on 2.3.1981 the DTC Board took the decision that the tenements could not be sold to the appellants. This decision was particularly taken because DTC had only 480 tenements allotted to it which were inadequate for housing 5254 industrial workers in April 1979. In March 1981 there were 5839 industrial workers. In the circumstances, the decision was taken on 2.3.1981 stating that there was no ground for sale of tenements to the appellants.

10. Learned counsel submitted that there is no merit in the argument advanced on behalf of the appellants that Resolution dated 18.4.1979 conferred a right on the appellants to have the houses transferred to them. Learned counsel pointed out that the suit was filed under Section 34 of the Specific Relief Act, 1963 in which there was no prayer for an industrial relief directing DTC to transfer the tenements to the plaintiffs. It was further pointed out that in the suit there was no prayer for specific performance and that the entire suit was based on the plea of the promissory estoppel. In the circumstances, learned counsel submitted that there was no merit in the suit filed by the appellants.

11. As stated above, two contentions have been raised on behalf of the plaintiffs. Firstly, the appellants contended that a legal right was created in their favour vide Resolution No.55/79 dated 18.4.1979 read with Resolution No.139/79 dated 31.8.1979 by itself. Secondly, they contended that even if there was no legal right, an estoppel was created in their favour by the conduct of DTC and, therefore, it was not open to DTC to resile from their earlier decision vide Resolution No.179/79 dated 3.12.1979.

12. We do not find any merit in the above two contentions.

13. As regards the first contention, we may observe that promissory estoppel is based on equity or obligations. It is not based on vested right. In equity the court has to strike a balance between individual rights on one hand and the larger public interest on the other hand. Freedom to contract is a common law civil liberty enjoyed by all persons. But when the Government is contracting with private parties this common law freedom is circumscribed by the principles of administrative law which requires larger public interest to be taken into account. We must remember that larger public interest is not only for accommodating retiree workmen but also to accommodate in-service workmen. Even applying the principles enshrined in Article 39 (b) and (c) of the Constitution, egalitarian equality requires the Government to strike a balance between competing claims. Even in the realm of social justice, on which our Constitution is founded, the administration has to strike a balance between the competing claims. In the present case, DTC, in principle, had agreed to transfer the tenements on ownership basis to the industrial workers. However, when DTC examined the ground reality, it found acute shortage of resources coupled with increased costs of replacement

running into Rs.3 crores. The Central Government also did not fund the full cost of construction. DTC had to accommodate approximately 5000 in-service employees in 480 tenements. DTC at the relevant time was a loss-making public sector enterprise. Despite these difficulties, DTC did try to accommodate the claims of the plaintiffs. However, they could not. In the circumstances, ultimately DTC informed Government of India that under the above circumstances it was not possible for it to implement the scheme. Therefore, in our view the conduct of DTC cannot be faulted. Moreover, as stated above, the decision to allot the tenements on ownership basis vide Resolution No.139/79 dated 31.8.1979 was a tentative decision. There was no contract entered into by DTC with any individual workman. DTC was a lessee. DDA was a lessor. DTC had to work out the cost-benefit ratios with DDA. That exercise was never undertaken. Not a single communication was ever sent by DTC to the plaintiffs. No formal sale-conditions were ever fixed or communicated by DTC to the plaintiffs. None of the plaintiffs was ever asked to pay to DTC the final sale consideration amount. In the circumstances, Resolution dated 31.8.1979 bearing no.139/79 was a tentative decision and not a final and binding decision as alleged. Therefore, it cannot be said that the said Resolution created a legal right by itself. We do not find any bias, discrimination or arbitrariness in Resolution of DTC bearing no.179/79 dated 3.12.1979 by which DTC recalled its earlier decision. DTC used to make losses. The replacement cost had shot up to Rs.3 crores. The number of industrial workers to be accommodated had risen drastically. Against 480 tenements DTC had industrial workforce of 5000 employees (in-service). They had to be accommodated. Even the Central Government concurred with DTC in its decision not to implement the Scheme. The Scheme was an enabling scheme. It was not mandatory. DTC was not obliged to sell the tenements under the Scheme. The Government of India had funded DTC to a very small extent. DTC was in fact required to repay the loan taken from the Government of India with interest. In the circumstances, it was open to DTC to recall its decision of allotting the two colonies by way of sale to the occupants. Under the circumstances, it cannot be said that impugned Resolution No.35/81 dated 2.3.1981 passed by DTC of not selling the tenements was in any way arbitrary, biased or discriminatory. We also do not find any merit in the contention advanced on behalf of the appellants that relying on the promise of DTC they altered their position to their prejudice by not opting for purchase under some other housing schemes. That, they did not buy the flat elsewhere all these years. There is no merit in the above contention. Resolution dated 31.8.1979 approving the sale was deferred on 3.12.1979 by the Chairman pointing out the above difficulties. Moreover no communication was ever sent to appellants individually calling upon them to make payment. Hence there was no representation as alleged.

14. Coming to the second contention advanced on behalf of the plaintiffs, the question we have to ask is: whether, on the facts and circumstances of this case, the plaintiffs could compel transfer of tenements in their favour on the basis of promissory estoppel.

15. The present suit is based on equity. The term "equity" has four different meanings, according to the context in which it is used. Usually it means "an equitable interest in property". Sometimes, it means "a mere equity", which is a procedural right ancillary to some right of property, for example, an equitable right to have a conveyance rectified. Thirdly, it may mean "floating equity", a term which may be used to describe the interest of a beneficiary under a will. Fourthly, "the right to obtain an injunction or other equitable remedy". In the present case, the plaintiffs have sought a remedy which is discretionary. They have instituted the suit under Section 34 of the 1963 Act. The discretion which the Court has to exercise is a judicial discretion. That discretion has to be exercised

on well-settled principles. Therefore, the Court has to consider - the nature of obligation in respect of which performance is sought, circumstances under which the decision came to be made, the conduct of the parties and the effect of the Court granting the decree. In such cases, the Court has to look at the contract. The Court has to ascertain whether there exists an element of mutuality in the contract. If there is absence of mutuality the Court will not exercise discretion in favour of the plaintiffs. Even if, want of mutuality is regarded as discretionary and not as an absolute bar to specific performance, the Court has to consider the entire conduct of the parties in relation to the subject-matter and in case of any disqualifying circumstances the Court will not grant the relief prayed for [Snell's Equity, 31st Edn., page366]. In the present case, applying the above test, we do not find an iota of mutuality. There is no contract between DTC and the plaintiffs. There is no communication at any point of time between DTC and the plaintiffs. No sale-consideration was ever fixed. The plaintiffs were never called upon to make payment. The decision to allot remained tentative. In the circumstances, neither contract nor equity existed at any point of time so as to compel DTC to convey the tenements to the plaintiffs.

16. In the case of Sales Tax Officer and another v. Shree Durga Oil Mills and another (1998) 1 SCC 572, this Court held that even an Industrial Policy Resolution can be changed if there is an overriding public interest involved. In that case it was contended on behalf of the State that various notifications granting sales tax exemptions to the dealers resulted in severe resource crunch. On reconsideration of the financial position, it was decided to limit the scope of the exemption notifications issued under Section 6 of the Orissa Sales Tax Act. This Court held that withdrawal of notification was done in public interest and that this Court will not interfere with any action taken by the Government in public interest. It was further observed that public interest must override any consideration of private loss or gain and, therefore, the plea of change of policy on the basis of resource crunch was sufficient for dismissing the case of the assessee under the Sales Tax Act of Orissa based on the doctrine of promissory estoppel.   1998 AIR SCW 186

17. In the case of Sharma Transport v. Government of A.P. and others - (2002) 2 SCC 188, this Court speaking through one of us, Pasayat, J., vide para 23 observed as follows: 2001 AIR SCW 4958, Para 21

"If it can be shown by the Government 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 promise 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 Government must be able to show that in view of the fact as has been transpired, public interest would not be prejudiced. Where the Government 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 their 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 Government would not be compelled to carry out the promise or that the public

interest would suffer if the Government were required to honour it. In order to resist its liability the Government 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 inequitable to enforce the liability against the Government."

18. Similarly, in the case of Bannari Amman Sugars Ltd. v. Commercial Tax Officer and others (2005) 1 SCC 625, the Division Bench of this Court speaking through one of us, Pasayat, J., vide paras 19 and 20 observed as follows:

"19. In order to invoke the doctrine of promissory estoppel clear, sound and positive foundation must be laid in the petition itself by the party invoking the doctrine and bald expressions without any supporting material to the effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the Government would not be sufficient to press into aid the doctrine. The Courts are bound to consider all aspects including the results sought to be achieved and the public good at large, because while considering the applicability of the doctrine, the Courts have to do equity and the fundamental principles of equity must for ever be present in the mind of the Court.

20. In Shrijee Sales Corporation and Anr. v. Union of India (1997 (3) SCC 398) it was observed that once public interest is accepted as the superior equity which can override individual equity the principle would be applicable even in cases where a period has been indicated for operation of the promise. If there is a supervening public equity, the Government would be allowed to change its stand and has the power to withdraw from representation made by it which induced persons to take certain steps which may have gone adverse to the interest of such persons on account of such withdrawal. Moreover, the Government is competent to rescind from the promise even if there is no manifest public interest involved, provided no one is put in any adverse situation which cannot be rectified. Similar view was expressed in Pawan Alloys and Casting Pvt. Ltd. v. U.P. State Electricity Board and Ors. (AIR 1997 SC 3910) and in Sales Tax officer and Anr. v. Shree Durga Oil Mills and Anr. (1998 (1) SCC 572) and it was further held that the Government could change its industrial policy if the situation so warranted and merely because Resolution was announced for a particular period, it did not mean that the government could not amend and change the policy under any circumstances. If the party claiming application of the doctrine acted on the basis of a notification it should have known that such notification was liable to be amended or rescinded at any point of time, if the Government felt that it was necessary to do so in public interest." 1997 AIR SCW 3839

1998 AIR SCW 186

19. Applying the above tests to the facts of the present case, we find that in the present case the doctrine of promissory estoppel had no application. On balancing of equities we are of the view that DTC which is a public sector undertaking had to act in public interest in the sense that had to keep the transport service running for which they had to accommodate in-service industrial workers

which they could not have done if it had to sell the existing service quarters to the retirees. In the circumstances, the Division Bench was right in setting aside the decree passed by the learned Single Judge.

20. We do not find any merit in the civil appeal and the same is accordingly dismissed with no order as to costs.

Appeal dismissed.