



**HIGH COURT OF ANDHRA PRADESH**  
FRIDAY ,THE FIFTH DAY OF MARCH  
TWO THOUSAND AND TWENTY ONE

**PRSENT**

**THE HONOURABLE SRI JUSTICE D.V.S.S.SOMAYAJULU**

**WRIT PETITION NO: 12779 OF 2019**

**Between:**

1. M/s.Sai Aditya Assets, Rep. by its Managing Partner, Sri Seshagiri Rao,  
APSEB Colony, Seethammadhara, Visakhapatnam.

**...PETITIONER(S)**

**AND:**

1. The State of Andhra Pradesh, Rep. by its Principal Secretary  
Municipal Administration and Urban development, Secretariat,  
Velagapudi, Guntur District
2. The Greater Visakhapatnam Municipal Corporation, Rep.by its  
Commissioner, Visakhapatnam.
3. Visakhapatnam Metropolitan Regions Development Authority, Rep.by its  
Vice Chairman, Visakhapatnam.

**...RESPONDENTS**

**Counsel for the Petitioner(s): C RAGHU**

**Counsel for the Respondents: GP FOR MUNICIPAL ADMN URBAN DEV**

**The Court made the following: ORDER**



**\*HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU**

**+ WRIT PETITION No.12779 of 2019**

**% 5<sup>TH</sup> MARCH, 2021**

# M/s Sai Aditya Assets,  
Rep. by its Managing Partner, Sri Seshagiri Rao,  
APSEB Colony, Seethammadhara, Visakhapatnam.

... Petitioner

AND

\$ The State of A.P. rep. by its Principal  
Secretary, Municipal Administration and  
Urban Development, Secretariat,  
Velagapudi, Guntur District and two  
others.

... Respondents.

! Counsel for the Petitioner : Sri C. Raghu

^ Counsel for the 1<sup>st</sup>respondent : Government Pleader for  
Municipal Administration

^ Counsel for the 2<sup>nd</sup>respondent: Sri S. Lakshmi Narayana Reddy  
Standing counsel for GVMC

^ Counsel for the 3<sup>rd</sup>respondent: Sri V. Surya Kiran Kumar  
Standing counsel for VMRDA.

< Gist:

> Head Note:

? Cases referred:

- 1) AIR 1986 SC 806
- 2) AIR 2020 SC 2954
- 3) (1990) 3 SCC 280

**HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU****WRIT PETITION No.12779 of 2019****ORDER:**

The prayer in the Writ Petition is as follows:

“.....to issue a writ order or Order more in the nature of Writ of Mandamus or any other appropriate writ, order or direction, declaring the action of the 1<sup>st</sup> respondent in issuing G.O.Ms.No.93, MA & UD, dated 01.03.2019 allotting only 91 cents (4404 Sq.yards) in Sy.No.350/2, Madhurawada village out of the total land to the extent of Ac.1-95 cents agreed to be allotted to the petitioner firm and also not providing the benefit of Tourism Policy 2015-20 and five years lease rental waiver which was agreed vide Memo No.3808/M2/2014, dated 11.05.2018 and Letter Rc.No.2340/2018/Estate/F1, dated 01.05.2018 of the 3<sup>rd</sup> respondent as illegal and arbitrary and further direct the 1<sup>st</sup> respondent to comply with the conditions contained in the Memo No.3808/M2/2014, dated 11.05.2018 of the 1<sup>st</sup> respondent by issuing appropriate orders and pass such other order or orders as may deem fit and proper in the circumstances of the case.”

The petitioner before this Court is the successful tenderer in a tender that was notified in the year 2012 for development of plots of a land in MVP Colony, Visakhapatnam. The tender was floated by the 2<sup>nd</sup> respondent. This tender was floated for the development of the site under the Public Private Participation Mode (P.P.P. Mode). The site measures Ac.0-91 cents in MVP Colony / ChinnaWalatair. For various reasons the allotment of the site and the physical development of the same was delayed and ultimately the petitioner filed a Writ Petition No.41619 of 2017 followed by W.P.No.5543 of 2018 challenging the decision taken by the State. An interim order



was granted by the Court in W.P.No.5543 of 2018 restraining the State and others from allotting the site of Ac.0-91 cents in Sy.No.21/1P of MVP Colony to the third parties. Thereafter the authorities entered into a dialogue and according to the petitioner an alternative site measuring Ac.1-95 cents in Sy.No.350/2 of Madhurawada village was agreed to be allotted to the petitioner on the condition that he withdraws the Writ Petition and accepts the site. The petitioner submits that consequent on the representations made by the respondents, they have withdrawn the Writ Petition and after the Writ Petition was withdrawn the petitioner was allotted only Ac.0-91 cents in Madhurawada instead of entire Ac.1-95 cents. This is the sum and substance of the dispute. According to the petitioner the rule of promissory estoppel clearly applies and that the Writ Petition was withdrawn on the representation made that he would be allotted alternative site of Ac.1-95 cents in Sy.No.350/2 of Madhurawada in lieu of Ac.0-91 cents in Sy.No.21/1P of ChinnaWaltair/ MVP Colony (Land in Sy.No.21/P of ChinnaWaltair / MVP Colony, Visakhapatnam is hereinafter called the “Original” site and the land in Sy.No.350/2 of Madhurawada is called the “alternative” site).

Learned counsel for the petitioner Sri C. Raghu argues that this is clear case of promissory estoppel. According to him a representation was made by the 2<sup>nd</sup> and 3<sup>rd</sup> respondents, pursuant to which the petitioner has changed his position / stand and withdrew the Writ Petition. After the Writ



Petition was withdrawn, according to the learned counsel for the petitioner, the respondents have gone back on their promise. He points out that from a reading of the correspondence at more than one place the State had agreed that the alternative land for Ac.1-95 cents in Madhurawada is to be allotted since the petitioner was surrendering the original land of Ac.0-91 cents in ChinnaWaltair / MVP Colony. He draws the attention of this Court to the Memo dated 15.05.2018 issued by the Principal Secretary to the Government, wherein the petitioner was directed to withdraw the Writ Petition and notes that the Vice Chairman of the 3<sup>rd</sup> respondent-Visakhapatnam Metropolitan Region Development Authority has identified an alternative land measuring Ac.1-95 cents for allotment. He also draws the attention of this Court to the Memo dated 07.05.2018 wherein in paragraphs 4 and 5 this proposal has been noted and reiterated. Learned counsel for the petitioner states that the Government gave its “in principle” approval in paragraph 4 of this Memo dated 07.05.2018 for giving Ac.1-95 cents of land situated in Sy.No.350/2 of Madhurawada village as alternative land for the Ac.0-90 cents in ChinnaWaltair (original site). In paragraph 5 learned counsel points out that they were directed to take necessary steps to withdraw the case and submit a detailed proposal to the State for processing the same. Learned counsel argues that based on these representations of the State / the respondents, the petitioner withdrew the case.



Unfortunately, learned counsel submits that the petitioner was not given the entire Ac.1-95 cents in Madhurawada and it was only allotted Ac.0-91 cents. This is the order that is being questioned.

Relying upon the judgments of the Hon'ble Supreme Court of India reported in ***Union of India and Ors., v Godfrey Philips India Ltd.***<sup>1</sup>; ***Union of India and Another v V.V.V. Limited and Another***<sup>2</sup> and ***M/s Star Enterprises and Others v City and Industrial Development Corporation of Maharashtra Ltd., and Others***<sup>3</sup> learned counsel for the petitioner argues that this is an absolutely fit case where the principle of promissory estoppel should be applied and an order should be given in favour of the petitioner.

Sri V. Surya Kiran Kumar, the learned standing counsel for the VMRDA took the lead and argued the matter on behalf of the respondents. Sri S. Lakshmi Narayana Reddy, learned standing counsel for the 2<sup>nd</sup> respondent and the learned Government Pleader for Municipal Administration supported the case set up by the 3<sup>rd</sup> respondent and argued on the same lines.

The sum and substance of the respondents' argument is that there is no enforceable right in the petitioner to seek a Writ of Mandamus and that there is no concluded contract between the petitioner and the 3<sup>rd</sup> respondent, in particular

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<sup>1</sup> AIR 1986 SC 806

<sup>2</sup> AIR 2020 SC 2954

<sup>3</sup> (1990) 3 SCC 280



VMRDA. Sri V. Surya Kiran Kumar also submits that the petitioner has been regularly filing writ petitions and that the repeated filing of the Writ Petitions is not permissible as per the judgments of the Hon'ble Supreme Court of India. He also argues that the Government Memos do not confer any enforceable rights on the petitioner and that they are mere executive instructions which cannot be enforced under law. It is again reiterated that as there is no letter of intent or letter of award there is no enforceable right available with the petitioner. He also relies upon a judgment of the Hon'ble supreme Court of India, which is also relied upon by the petitioner, in **VVF Limited case** to argue that principles of promissory estoppel do not apply and that the petitioner does not have right to claim Mandamus.

This Court after hearing all the learned counsel and perusing the records notices that there is no dispute about the essential facts. The fact that the petitioner filed a tender in 2012 and that he filed the Writ Petition, which was withdrawn as there was a proposal for allotting alternative bit of land which reached the highest hierarchy in the State Government etc., is not really in dispute. The only question is whether the petitioner is entitled to the reliefs prayed for.

The primary objections of the learned standing counsel for the 3<sup>rd</sup> and 2<sup>nd</sup> respondents is that in the absence of a concluded contract or /and as the petitioner is relying upon a memo he is not entitled to Writ of Mandamus. It is not out of



place to mention that the principal of promissory estoppel is a principle of equity. It is not necessarily based upon a contract and there is no need for a written contract to be in place before a person can base his claim on the principle of promissory estoppel. In page 30, para 32 of the judgment in **VVF Ltd., case** it was held as follows:

“32. The doctrine of promissory estoppel is by now well recognized and well defined by a catena of decisions of this Court. Where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 229 of the Constitution. The rule of promissory estoppel being an equitable doctrine has to be moulded to suit the particular situation. It is not a hard-and-fast rule but an elastic one, the objective of which is to do justice between the parties and to extend an equitable treatment to them. This doctrine is a principle evolved by equity, to avoid injustice and though commonly named promissory estoppel, it is neither in the realm of contract nor in the realm of estoppel. For application of the doctrine of promissory estoppel the promisee must establish that he suffered in detriment or altered his position by reliance on the promise.”

A reading of this passage would make it very clear that when the State or a party makes a promise and the petitioner or the other party changes its stand, the State or the party is bound by the same. It is a doctrine based upon equity for which there is no hard and fast rule. The ultimate objective of





this rule is to do justice between the parties and to extend equitable treatment. In this judgment the Hon'ble Supreme Court of India clearly held that what is necessary is that there should be a promise, action upon the said promise and that the petitioner should change his position. If these conditions are satisfied the respondent can be compelled to honour its promise and that there is no need for a formal contract and / or for consideration. In the opinion of this Court this passage of the Hon'ble Supreme Court of India which reproduces the law on the subject is a sufficient answer for the entire defense that has been raised by the respondents including the aspect of reliance on memos etc. In the opinion of this Court there is no need for a formal contract nor is there a need for consideration. If the Government makes a promise, whether it is in the form of a letter, memo or otherwise and the party acted upon it, the equitable rule of promissory estoppel will come into play. Although the case law mentioned by the learned counsel for the respondents in his counter is not in doubt, the fact remains that in this case there was a promise / representation and a change of the position by the petitioner to his detriment. In the opinion of this Court, this change in the position of the petitioner based upon the representation of the State/respondents through memos / letters etc., is enough for him to seek a Mandamus. The equitable doctrine of promissory estoppel gives him the right to approach this Court and to claim the relief. It is the "promise" and the change / alteration



in the stand that is material and not whether it is in a letter / contract or even a mere memo.

If the facts of the case are examined in detail, the letter dated 01.05.2018 is addressed by the 3<sup>rd</sup> respondent which was earlier known as the Visakhapatnam Urban Development Authority. In this letter dated 01.05.2018 the Vice Chairman of the 3<sup>rd</sup> respondent clearly spelt out that an alternative land has been identified and that the request of the petitioner for allotment of equivalent alternative land on lease basis and also the lease terms and conditions submitted to the Government for orders. It is equally important to note that the value of the original land of Ac.0-91 cents is mentioned as Rs.45,000 per Sq.yardequivalent to Rs.45,000 x 4404 Sq.yardsi.e., Rs.19.81 crores. The value of the proposed alternative land of Ac.1.95 cents equivalent to 9,438 Sq.yards is also exactly the same. (9,438 x 21,000 per Sq.yards equals to Rs.19,81,80,000/-). Therefore, a reading of this letter makes it clear that the alternative land that was identified in Madhurawada village measuring Ac.1-95 cents is exactly equal in value to the land which the petitioner has bid for i.e., Ac.0-91 cents in MVP Colony. This letter dated 01.05.2018 is replied by the Government on 15.05.2018, whereunder it is mentioned that the proposal has been processed. Paragraphs 5 to 7 of this letter make it very clear that what was processed was the proposal of the 3<sup>rd</sup> respondent in the letter mentioned above. The 2<sup>nd</sup> respondent was also directed to identify the suitable



land parcel against the land in Sy.No.21/1P in China Waltair to an extent of Ac.0-91 cents (original land) and handover the existing site to the Collector, Visakhapatnam for handing over to a third party. The reply to this is the letter dated 07.05.2018 addressed to the 3<sup>rd</sup> respondent by the State in paragraph 4 shows the “in principle” approval of the alternative land measuring Ac.1-95 cents is conveyed along with the direction to the petitioner to withdraw the Court case and to submit a proposal to the Government for allotment of Ac.1-95 cents (9438 Sq.yards) in Madhurawada village. This is followed by a letter dated 11.05.2018 containing the same contents. The next letter is dated 15.05.2018. In this letter also it is mentioned that the Government wanted to allot this land of Ac.0-90 cents in China Waltair, MVP to a third party for another project including a Mega Convention Centre etc., and that the 2<sup>nd</sup> respondent has identified the land measuring Ac.1-95 cents in Madhurawada. This letter was also marked to the petitioner with a request to withdraw all his cases. Ultimately, after the case was withdrawn the impugned order came to be passed, by which only Ac.0-90 cents out of Ac.1-95 cents allotted in Madhurawada.

This Court notices that the reason why the State pursued this course is because, as a part of their policy they have decided to allot certain lands to another entity for development of shopping mall, convention Centre etc. Vide G.O.Ms.No.5 dated 16.02.2018 these proposals were adopted. Therefore,



the original land of Ac.0-91cents, which was allotted to the petitioner was taken over by the State and handed over to some other parties in terms of the abovementioned G.O. The Petitioner on the other hand was to be given the alternate land identified in Sy.No.350/2 of Madhurawada village.

The State and the respondents are supporting their arguments by stating that the original Ac.0-91 cents of land which was allotted to the petitioner is equal to the alternate Ac.0-91 cents of land which is now proposed to be allotted in Madhurawada village. However, the fact remains that very reading of the letter of the 3<sup>rd</sup> respondent itself which is mentioned the market value of Ac.0-90 cents of land in MVP colony, China Waltair (originally allotted to the petitioner) is equal to the market value of Ac.1-95 cents of land in Sy.No.350/2A, Madhurawada(the alternative land). For a businessman or a business entity like the petitioner the value of the land is as important as it's extent. Financial viability and other factors for the project depend on the value also. The State in the opinion of this Court cannot advance this argument because basing on the representation made by the State and the correspondence, which is detailed above, the petitioner has changed his stand and acted upon the representations and has withdrawn his Writ Petition. The action of the petitioner in withdrawing his case has facilitated the State in handing over the lands to another party in terms of G.O.Ms.No.5, dated 16.02.2018 and the State has also



benefited from the same. This case, in the opinion of this Court, is a classic case for applying the principle of promissory estoppel. The correspondence exchanged between the parties clearly shows that the proposal was mooted at the District level and it went upon to highest echelons of the State / the Head Quarters and thereafter the petitioner withdrew his case.

The matter was also reopened to enable the learned counsels to argue if on the ground of larger public interest etc., the principle of promissory estoppel will not apply. The case law on the subject makes it clear that if there is a larger public interest the doctrine of promissory estoppels must yield. The learned counsels argued this issue also. This Court after hearing the submissions notices that there is no supervening / larger public interest which would enable the respondents to resile from their commitment. The land that was allotted to the petitioner was required by the State because they wanted to transfer the same to another entity. This is visible from para-3 of the impugned order itself. The same can also be seen in the letters dated 01.05.2018, 07.05.2018, 11.05.2018 and 15.05.2018. In all these letters exchanged between the respondents, copies of which were marked to the petitioner, it is clear that all the respondents wanted to allot this original land Ac.0-90 cents in Chinna Waltair / MVP to another entity for the purpose of development of Mega Convention shopping center by CMR group / Lulu International Shopping Mall Ltd. Therefore, this Court finds that in fact there is only a



commercial interest of the State to develop this parcel of the land along with other parcels of land and there is no supervening “public” interest to hold that the doctrine of promissory estoppel will not apply.

In that view of the matter, there shall be an order of Mandamus directing the respondents to allot Ac.1-95 cents of land in Sy.No.350/2 of Madhurawada village (alternative land) to the petitioner along with all the other prayers made in the Writ Petition. The petitioner has set out these conditions, which were accepted in principle by the State, and in view of the considerable delay this order has to be passed in line with the same.

With the above observations the Writ Petition is allowed in its totality. There shall be no order as to costs.

Consequently, the Miscellaneous Applications pending, if any, in this writ petition is stands closed.

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**D.V.S.S.SOMAYAJULU, J**

Date:05.03.2021.

Note: LR copy to be marked

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