Mangal Amusement Park(P) Ltd.& Anr vs State Of M.P.& Ors on 28 August, 2012

Equivalent citations: AIR 2012 SUPREME COURT 3325, 2012 (11) SCC 713, 2012 AIR SCW 4831, 2012 (4) AIR JHAR R 475, (2012) 2 CLR 773 (SC), (2012) 4 CIVILCOURTC 833, (2013) 118 REVDEC 773, (2012) 5 MAD LW 833, 2012 (8) SCALE 19, 2012 (2) CLR 773, AIR 2012 SC (CIVIL) 2579, (2012) 2 RENCR 275, (2012) 2 RENTLR 202, (2012) 4 ICC 14, (2012) 2 WLC(SC)CVL 617, (2012) 8 SCALE 19, (2012) 5 ALL WC 5186, (2012) 3 CURCC 157

Author: H.L. Gokhale

Bench: H.L. Gokhale

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 6105 OF 2012
(Arising out of SLP No. 16416 OF 2011)

Mangal Amusement Park (P) Ltd. & Anr. ... Appellants

Versus

State of Madhya Pradesh & Others ... Respondents

J U D G E M E N T

H.L. Gokhale J.

Leave granted.

2. This appeal by special leave seeks to challenge the judgment and order dated 19.5.2011 rendered by a Division Bench of the Madhya Pradesh High Court dismissing the Writ Petition bearing No.5698/2008 filed

by the appellants herein. The said petition sought to challenge the change of land-use from 'commercial' to a 'regional park' of a parcel of land which had been allotted to the appellants in the town planning scheme of Indore, and also the decision of the State Government that the concerned land be utilized only after inviting fresh tenders.

3. The first appellant herein is a Company registered under the provisions of the Companies Act, 1956, and the second appellant is its Managing Director. The respondent No.1 to this appeal is the State of Madhya Pradesh through its Principal Secretary, Department of Housing and Environment, Bhopal, whereas the respondent No.2 is the Director of Town and Country Planning of Madhya Pradesh. The third respondent to this appeal is Indore Development Authority ("IDA" for short) through its Chairman, whereas the fourth respondent is the same Authority through its Chief Executive Officer. Shri Ranjit Kumar, learned senior counsel has appeared for the appellants. Shri Vikas Singh, learned senior counsel has appeared for the first two respondents, and Ms. Vibha Datta-Makhija, learned counsel has appeared for respondent no.3 and 4.

Facts leading to this appeal:-

4. During November 1991 to February 1992, IDA floated tenders through advertisements for setting up of an amusement park on a parcel of land owned by it situated in village Bhamori-Dubey. The concerned land admeasured about seven acres comprising of survey nos. 91 part, 92/1, 93/1, 93/2, 94/1, 94/2, 95/1, 95/2, 96/1, 96/2, 152, 155 part, 157, 159, 160, 162, 163, 164 part, 165 part and 166 part and was situated within Scheme No.54. There is no dispute that under the then subsisting Development Plan the designated land-use of these survey nos. was 'commercial'. It is the case of the appellants that though they applied in pursuance to the advertisement, and though the appellants were the most eligible, IDA arbitrarily delayed the acceptance of their tender. This led the appellants to file an earlier writ petition in the High Court of Madhya Pradesh bearing M.P. No.313/1992 which was allowed by the High Court. Consequently, the appellants were allotted this parcel of land for the establishment of a Children's amusement park.

5. Accordingly, IDA granted a license to the appellants, the terms and conditions of which were as follows:-

"LICENSE

(FOR AMUSEMENT CENTRE)

Dated 6.5.1994

This license is granted to Shri Ramesh Mangal son of Shri Manikchand Mangal age 48 years, resident of 8/2, New Palasia, Indore, Managing Director, M/s Mangal Amusement Park Pvt. Ltd., Indore, by the Indore Development Authority Indore (M.P.). Terms and conditions of this license shall be as follows:-

TERMS AND CONDITIONS:-

The land measuring 7 acres is given to M/s Mangal Amusement Park Pvt. Ltd. (hereinafter called the 'Licensee vide letter No.4179

dated 4.4.1994 on license by the Indore Development Authority initially for a period of 15 years. The licensee will have to develop inside infrastructure such as path-ways, roads, boundary walls, land installation of rides and games etc. at his own cost as approved by the Authority. Construction of Food & Beverage's Centres, Kiosks, Shops, Administrative building, toilet shall also be permissible as per requirement.

2. The period of license shall commence from the date of activation of the park or 18 months from the date of giving possession, whichever is earlier.

3. The period of completion of the project shall be 24 months (inclusive of Monsoon season) from the date of handing over the possession of the said land. Failing which, the license may be terminated, forfeiting the Earnest Money and other payments, if any, by the Authority.

4. The advance license fee shall be payable annually before first of June. In case, the licensee fails to pay the fee on or before the due date, an interest at the rate of 18% per annum shall be charged for period defaulted. The interest shall be calculated on the license fee itself for full calendar month.

5. In addition to the license fee, an amount equal to 25% of the entry fee will be charged by the I.D.A. and has to be paid by the licensee by 10th of next month.

6. Earnest Money of Rs.1,00,000/- has been kept with I.D.A. and no interest shall be given on the amount of Earnest Money. This amount shall be adjusted towards license fee 1,81,000.00 (Rs. One Lac eighty thousand only) per year on commission of the project.

7. The Authority or an officer authorized in this behalf shall have the power to examine the accounts of collection of entry fee, as and when deemed fit. The Authority may further regulate the mode of collection of entry fee. The duty of collection of entry fee will rest on the licensee himself.

8. The license may be renewed for further period of 15 years by enhancing the license fee, maximum by 40% and thereafter at such a percentage as may be decided by the Authority.

9. Bank Guarantee of Rs.5,00,000/- (Rs. Five lacs only) given by the licensee shall be redeemed after three complete years from the date of activation of the amusement park.

10. The rides, games etc. should be bought from the suppliers manufacturing these in India indigenously.

11. At least one roller coaster, one ferries wheel and bay train, one set of merry cups, one Columbus and one telecombat

must be erected with other rides.

12. The complete amusement centre shall be operated and managed by the licensee himself at his own cost and responsibilities.

13. In the event of any increase or decrease in the area on physical measurement, the license fee shall be subject to the increase or decrease proportionately.

14. In the event of violation of any of the terms and conditions mentioned hereinabove, on the part of the licensee, the decision of the Chairman, Indore Development Authority shall be final.

15. Land for which licnese is granted is marked in green colour in……. plan.

SIGNATURE OF LICENSEE"

6. It is the case of the appellants that they submitted the plans, maps and drawings for necessary construction, and thereafter started using the concerned parcel of land as amusement park.

7. It so transpired that sometime in December 1999, respondent nos.1 and 2 i.e. the State and the Town Planning Dept. initiated the process of modification of the Development Plan. In that process it was proposed to change the user of this parcel of land from 'commercial' to 'regional park' (i.e. a green area). The Chairman of IDA however, wrote in that context to the respondent nos.1 and 2 on 7.12.1999 that such a change was not desirable, since the use of the concerned land was already secured for a specified purpose in the master plan. The State Govt. however proceeded to issue a notification on 9.3.2001 under Section 23-A (2) of Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (M.P. Act for short) proposing the change of the land-use from 'commercial' to 'regional park', and inviting objections thereto. The appellants did raise objections against the proposed modification which were heard by the Principal Secretary to the Govt. of Madhya Pradesh on 23.8.2001.

8. It is the case of the appellants that they wanted to put up a banquet hall and an amusement club on this parcel of land, and therefore sought the requisite permission from IDA. IDA in fact passed a resolution bearing No. 133 on 8.5.2003 recommending grant of such permission though subject to the conditions mentioned therein. The Chief Executive Officer of IDA accordingly wrote to the Principal Secretary of the Madhya Pradesh

Govt. on 27.5.2003 for grant of this permission, and consequently for the increase in the license fee. The State Govt. however wrote back on 23.9.2003 declining the request, and asking IDA to invite the tenders afresh for the re-allotment of the plot (the appellants however contend that there is a contrary note on the files of the respondents dated 29.9.2003 recommending the proposed use). That apart, ultimately the Madhya Pradesh Govt. issued the notification approving the change in the land-use from 'commercial' to a 'regional park' on 19.11.2003. It is this letter dated 23.9.2003 and notification dated 19.11.2003 which were challenged by the appellants by filing Writ Petition No.5698/2008 in the High Court of Madhya Pradesh.

9. This letter dated 23.9.2003 reads as follows:-

"M.P. Government
Housing and Environment Department
Ministry

Letter No.H-3-107/3/32 Bhopal Date 23.09.2003

To,
The Chief Executive Officer
Indore Development Authority
Indore, M.P.

Sub: Regarding grant of permission to Mangal Amusement Park Pvt. Ltd. for the construction of Amusement Club, Banquet Hall on the land allotted under plan No.54 of the Indore Development Authority.

Ref: Your letter No.6314 dated 23.05.03.

Please take reference of the letter referred above, by which Authority had sought permission from Govt. for proposal on land allotted by Authority on lease 1994.

2. It has been established from the documents made available by the Authority that proceedings by the Authority have not been in accordance with the rules and there has been lack of transparency. Therefore, it is not possible to give permission on this proposal of Authority.

3. It is directed to Authority that it utilize the land in question only after issuing fresh notification inviting tenders.

Sd/-
Illegible

23.09.03
(C.C. Padiyar)
Under Secretary
M.P. Govt.
Housing and Environmental Department"

10. The notification dated 19.11.2003 reads as follows:-

"HOUSING & ENVIRONMENT DEPARTMENT
Vallabh Bhawan, Bhopal.

Bhopal dated 19th November, 2003.

No.F-3-47-0000-32 – The State Government vide its Notification No.F-3-47-2000-32 dated 9th March, 2001 issued under Section 23(A) (2) of the Madhya Pradesh Urban and Rural Act, 1973 (Act No.23/1973) had proposed certain modifications in public interests. Thereafter notices to the above effect were also published in 2 leading newspapers on 15th ad 16th March, 2001. Through said notice, Objections were invited from the aggrieved persons and ultimately 4 objections were received jointly and individually. Thereafter objectors of the said objections were heard on 3.8.2001 and 23.8.2001 and their objections were considered and were finally rejected. Thereafter Department sought an opinion from the Municipal Corporation of Indore on the proposed modification and the Municipal Corporation has granted its No Objection vide letter dated 1st June, 2001.

(2) In the premises aforesaid, State Government hereby confirms modification of the following lands of Village Bhamori Dubey, Indore, as described in Schedule 'A' hereunder, according to user prescribed in the Indore Development scheme, 1991. It is further informed that this modification will be an integrated part of the Approved Indore Development Scheme, 1991 as well as Draft Development Scheme, 2011.

SCHEDULE 'A'

Land use modification of 18.222 Hectares and 17.931 Hectares situated in Village Bhamori Dubey under Indore Development Scheme, 1991-

Sr. No.	Survey No.	Area (In Hect).	Land user prescribed in the Indore Development Scheme	Change land use

(1)	(2)	(3)	(4)	(5)
1.	257 & 259	9.134	Regional Park	Commercial
2.	258 part	0.113	- " -	"
	260	1.000	- " -	"
3.	261	1.295	- " -	"
4.	262	1.474	- " -	"
5.	264	0.522	- " -	"
6.	265	2.429	- " -	"
7.	265 part	2.255	- " -	"
		18.222		
8.	91 part	0.713	Regional Park	Commercial
9.	92/1	0.429	- " -	"
10.	92/2	0.425	- " -	"
11.	93/1	1.060	- " -	"
12.	93/2	1.064	- " -	"
13.	94/1	0.235	- " -	"
14.	94/2	0.235	- " -	"
15.	95/1	0.219	- " -	"
16.	95/2	0.223	- " -	"
17.	96/1	0.117	- " -	"
18.	96/2	0.117	- " -	"
19.	152	0.174	- " -	"
20.	155 part	0.267	- " -	"
21.	157	0.186	- " -	"
22.	159	0.344	- " -	"
23.	160	0.360	- " -	"
24.	161	0.170	- " -	"
25.	162	8.259	Commercial	Regional Park
26.	163	1.967	- " -	"
27.	164 part	0.607	- " -	"
28.	165 part	0.534	- " -	"
29.	166 part	0.226	- " -	"
		17.931		

In the name of and by Order of Governor

Shivanand Dubey,
Deputy Secretary"

11. The appellants point out that thereafter also the stand of IDA was different from that of the concerned department as reflected in the Notesheet of IDA dated 3.2.2005. Yet, ultimately it accepted the view-point of the State Govt., and issued a show cause notice to the appellants on 8.1.2007 alleging various breaches of the terms and conditions of allotment. In para 7 and 8 thereof, it was alleged as follows:-

> "7. You have not taken action to establish Children's Amusement Park on the land allotted violating conditions of

license. Half of the land is still undeveloped, vacant and without any use given after 12 years of allotment.

8. Application for the construction of Amusement Club, Banquet Hall on the land allotted, given by you establishes that you do not want to run activities relating to Children's Amusement Park on the land allotted."

The appellants were, therefore, asked to show cause as to why the license of land allotted to them should not be cancelled.

12. It is the further case of the appellants that although this show cause notice was issued on 8.1.2007, the Chairman of IDA once again wrote to the Govt. on 29.11.2007 asking it to retain the land-use of this particular parcel of land as commercial. The State Govt. however proceeded to bring the modification into force with effect from 1.1.2008. It is at this stage that the above writ petition No. 5698 of 2008 was filed with the following prayers:-

(a) to strike down Section 23-A of Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam 1973 (which prayer was however not pressed),

(b) to quash the notification dated 19.11.2003, and

(c) to quash Govt.'s letter dated 23.9.2003 (which prayer was added later on).

13. Contentions of the rival parties

The principle submission of the appellants was three-fold:-

(a) the document of allotment of the concerned parcel of land to the appellants was a document of lease and not simply a license, and that the appellants were entitled to the renewal thereof,

(b) the appellants had made good investment onto the concerned parcel of land, and they had their legitimate expectations. Consequently, the respondents were bound by the doctrine of promissory estoppel to renew the allotment,

And

(c) the decision to change the land-use was a malafide one for the benefit of another party which had its parcel of land in the vicinity, where the land-use was changed from the previous one which was 'regional park', to 'commercial'. The change of use of land of the parcel allotted to the appellants was effected to set off the resultant reduction in green area, and to justify the change of land-use of the parcel of land allotted to the other party.

14. The petition was opposed by respondent nos. 1 and 2 on the one hand, and by respondents no.3 and 4 by filing their replies. They contended principally as follows:-

(a) the concerned document of allotment was clearly a document of license, and not that of lease. In any case, by that time the period of license having expired after the lapse of 15 years, the appellants did not have any case for renewal particularly when they had not put to use half of the land for the purpose for which it was allotted, and when in fact they wanted to use it for another purpose by putting up a banquet hall therein.

(b) Inasmuch as, the document of allotment was a license which was valid only for 15 years, there was no question of the appellants having a legitimate expectation for a renewal beyond 15 years. The respondents had not promised any such renewal to the appellants to enable them to avail of the doctrine of promissory estoppel.

(c) The modification in the development plan was effected after considering all relevant factors and not for obliging anybody. No material in support of their allegation had been produced by the appellants. The change was effected after following the due process of law, viz. inviting suggestions and objections, and hearing the concerned parties. The change cannot be faulted on that count either.

15. The petition was heard by a Division Bench of the Madhya Pradesh High Court which dismissed the same by its judgment and order dated 19.5.2011, after hearing the counsel for all the parties. This judgment is under challenge in the present appeal.

16. Consideration of the rival submissions

The principle question to be considered is as to whether the document of allotment of land dated 6.5.1994 was in any way a lease or a license. As far as a lease is concerned, Section 105 of the Transfer of Property Act, 1882, defines it as follows:-

> "105. Lease defined.- A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.
>
> Lessor, lessee, premium and rent defined. – The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent."

As far as a license is concerned, the same is defined under Section 52 of the Indian Easements Act, 1882, as follows:-

> "52. "License" defined. - Where one person grants to another, or to a definite number of other persons, a right to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is

called a license."

From these two definitions it is clear that a lease is not a mere contract but envisages and transfers an interest in the demised property creating a right in favour of the lessee in rem. As against that a license only makes an action lawful which without it would be unlawful, but does not transfer any interest in favour of the licensee in respect of the property.

17. The issue concerning the distinction between lease and license came up for consideration before this court in Associated Hotels of India vs. R.N. Kapoor reported in AIR 1959 SC 1262. In para 27 of his judgment, Subba Rao,J. (as he then was) observed therein as follows with respect to lease:-

> 27. There is a marked distinction between a lease and a license. Section 105 of the Transfer of Property Act defines a lease of immovable property as a transfer of a right to enjoy such property made for a certain time in consideration for a price paid or promised. Under Section 108 of the said Act, the lessee is entitled to be put in possession of the property. A lease is therefore a transfer of an interest in land. The interest transferred is called the leasehold interest. The lessor parts with his right to enjoy the property during the term of the lease, and it follows from it that the lessee gets that right to the exclusion of the lessor….."

Thereafter, the learned Judge referred to the definition of license, then observed as follows:-

> "Under the aforesaid section, if a document gives only a right to use the property in a particular way or under certain terms while it remains in possession and control of the owner thereof, it will be a license. The legal possession, therefore, continues to be with the owner of the property, but the licensee is permitted to make use of the premises for a particular purpose. But for the permission, his occupation would be unlawful. It does not create in his favour any estate or interest in the property. There is, therefore, clear distinction between the two concepts. The dividing line is clear though sometimes it becomes very thin or even blurred."

18. Subba Rao, J., thereafter referred to the judgments of Court of Appeal in Errington V. Errington, 1952-1 All ER 149, and Cobb V. Lane, 1952-1 All ER 1199, and then observed as follows:-

> "The following propositions may, therefore, be taken as well-established : (1) To ascertain whether a document creates a license or lease, the substance of the document must be preferred to the form; (2) the real test is the intention of the parties - whether they intended to create a lease or a license; (3) if the document creates an interest in the property, it is a lease; but, if it only permits another to make use of the property, of which the legal

possession continues with the owner, it is a license; and (4) if under the document a party gets exclusive possession of the property, prima facie, he is considered to be a tenant; but circumstances may be established which negative the intention to create a lease."

These propositions have been quoted with approval subsequently by a bench of three Judges in Konchanda Ramamurty Subudhi (dead) V. Gopinath Naik and Ors. reported in AIR 1968 SC 919, and in Capt. B.V. D'Souza V. Antonio Fausto Fernandes reported in AIR 1989 SC 1816.

19. (i) Having seen this legal position, we may now examine the submissions of the rival parties. It was submitted by Shri Ranjit Kumar, learned senior counsel that, it has to be noted that though the document of allotment states that the license is granted initially for a period of 15 years, clause 8 thereof adds that it may be renewed for a further period of 15 years by enhancing the license fee maximum by 40%, and thereafter at such a percentage as may be decided by the authority. This indicated the permission to the allottee to remain on the concerned parcel of land for a period of 30 years and more, and should therefore be construed as creating an interest in the parcel of land. Therefore, in his submission the document of allotment created a lease, and renewal thereof was a matter of formality, and the IDA was bound to renew the document. He referred to the judgment of this Court in Sudhir Kumar & Ors. vs. Baldev Krishna Thapar & Ors. reported in 1969 (3) SCC 611 to submit that a lessor cannot withhold his consent for renewal unreasonably.

(ii) Shri Vikas Singh, learned senior counsel appearing for IDA and Ms. Vibha Datta-Makhija, learned counsel for the State Govt. submitted on the other hand that the possession of the allottee was merely a permissive one, and that it was not exclusive to warrant an inference of creation of an interest. In their view, the document of allotment when read in the entirety makes it very clear that it was a license and not a lease.

20. In the instant case, if we peruse the document of allotment, the following facts are noticed:-

(i) The first clause does provide that the land is given on license initially for a period of 15 years, and clause 8 does lay down that the license may be renewed for a further period of 15 years by enhancing the license fee maximum by 40%, and thereafter at such a percentage as may be decided by the Authority. We must, however, as well note the other provisions in the document of allotment and their effect.

(ii) In the instant case, the document of allotment is called a 'license', and the allottee is called a 'licensee'. In the very first clause, it is stated that the concerned parcel of land is given on license, and clause 4 refers to the amount payable by the licensee as the license fee which is to

be paid annually before the first of June.

(iii) Clause 11 of the document requires the licensee to provide the specified games and rides in the amusement park. Not only that but clause 10 further requires that the rides, games etc. should be bought from the suppliers manufacturing them in India indigenously.

(iv) Clause 7 authorises IDA to regulate the mode of collection of entry fee, and clause 5 provides that the amount equal to 25% of the entry fee will be charged by the IDA in addition to the license fee. Clause 7 further provides that the Authority (i.e IDA) or the officer authorised by the Authority will have the power to examine the accounts of collection of entry fee, as and when deemed fit.

21. It must also be noted that the concerned document has to be read as a whole, and when we see the above clauses together, it becomes clear that IDA retained complete control over the concerned parcel of land. The manner in which the facilities in the amusement park were to be enjoyed was completely controlled by the IDA. The IDA decided as to what games and rides were to be provided. It also laid down as to from which suppliers these games and rides were to be purchased. IDA further regulated the mode of collection of entry fee, and had the right to examine the accounts of collection thereof as and when it deemed fit. Over and above, Clause 14 of the document specifically provided that in the event of violation of any of these terms and conditions on the part of the licensee, the decision of the Chairman of IDA will be final, indicating the right of IDA to terminate the license in the event of such a contingency. Obviously when all these clauses are seen together, it becomes clear that there was no exclusive possession handed over to the appellants. Thus, the document of allotment merely granted a permission to use the concerned parcel of land in a particular manner, and without creating any interest therein. Hence, if we apply the tests which have been laid down by this court way back in the year 1959 (and followed subsequently) the document will have to read as granting a license, and not a lease.

22. The appellants had challenged the legality of the letter/order dated 23.9.2003 issued by the State Government to the IDA. That letter/order while declining the proposal of IDA to permit the amusement club and Banquet Hall proposed by the appellant, directed the IDA to utilize the land in question after issuing fresh notification inviting tenders. It was submitted that the IDA was in fact, favourably inclined to consider the proposal of the appellants, and the said letter/order indicated mala fides on the part of the State Govt. It was further submitted that IDA was a body corporate under Section 39 of the M.P. Act, and though section 73 empowers the State Government to give directions in matters of policy, this power cannot be exercised to give the directions of the kind contained in the letter dated 23.9.2003. In this connection it was contended that assuming that the letter may not be found to be vitiated by reason of malice on fact, but still it can be held to be invalid if the same had been issued for unauthorized purpose as it would amount to malice in law. Reliance was placed in this behalf on the proposition in paragraph 40 of the judgment of this Court in Punjab State Electricity Board Ltd. Vs. Zora singh and Ors. Reported in 2005 (6) SCC 776.

23. In our view, the appellants have tried to make much ado about the stand which the IDA took on earlier occasions in favour of the appellants. One has to recognise that where different authorities are dealing with a particular subject, it is quite possible that on some occasions, they may take a stand different from each other, though ultimately it is the decision of the competent authority which matters, and it cannot be tainted with mala fides merely on that count. The following observations of this Court in para 35 of Jasbir Singh Chhabra & Ors. vs. State of Punjab reported in 2010 (4) SCC 192 are instructive in this behalf:-

> "35. It must always be remembered that in a democratic polity like ours, the functions of the Government are carried out by different individuals at different levels. The issues and policy matters which are required to be decided by the Government are dealt with by several functionaries some of whom may record notings on the files favouring a particular person or group of persons. Someone may suggest a particular line of action, which may not be conducive to public interest and others may suggest adoption of a different mode in larger public interest. However, the final decision is required to be taken by the designated authority keeping in view the larger public interest. The notings recorded in the files cannot be made basis for recording a finding that the ultimate decision taken by the Government is tainted by malafides or is influenced by extraneous considerations……"

24. The High Court has held in para 23 of the impugned judgment that in any case admittedly the license had come to an end by efflux of time in the month of the June 2010, and therefore the validity and legality of the letter/order dated 23.9.2003 had become academic, and it was no longer necessary to examine that issue. We cannot find fault with the High Court on that account, since quashing of this letter cannot in any way lead to the renewal of the license which had already expired. Besides, the respondents had valid reasons not to renew the license as indicated in the show cause notice dated 8.1.2007. The construction of Amusement Club or a Banquet Hall could certainly not be a part of a Children's Amusement Park. The parcel of land was allotted for setting up of a children's park with games and rides as indicated in the document of license. Additionally, what was permitted were the food and beverages centers, kiosks, shops, administrative building and toilets, which would be in furtherance of this objective. The Banquet Hall and an amusement club which would be used by adults would not fit in the purpose of Children's Amusement Park. As stated in clause 8 of the show cause notice, it clearly indicated that the appellants did not want to run the activity related to the Children's amusement park on the land allotted.

25. (i) It was submitted on behalf of the appellants that they had made good investment in the concerned parcel of land with legitimate expectations, and, therefore, the respondents were estopped from discontinuing their allotment on the basis of the doctrine of promissory estoppel. This submission was disputed by Shri Vikas Singh, learned senior counsel appearing for IDA. He ,firstly, pointed out that more than half of the land remained un-utilised even 12 years after the allotment, and, in

fact, the park was not functioning for quite sometime. The games and rides which were placed on this parcel of land were in the nature of fixtures, and not permanent additions as such, and could be removed therefrom when the appellants were required to vacate.

(ii) Having noted these submissions we are of the view that since the document of allotment was a license and not one creating any interest, the provision of renewal contained therein cannot be read as laying down a mandatory requirement. Besides, as stated above, clause 14 of the document of license clearly stated that in the event of violation of any of the terms and conditions on the part of the licensee, the decision of the Chairman of IDA was final. Para 7 of the show cause notice in fact stated that the necessary action to establish the Children's Amusement Park had not been taken since half of the land had remained undeveloped, and it amounted to violating the conditions of license. The doctrine of promissory estoppel can certainly not be permitted to be invoked on such a background.

26.(i) The appellants had made one more prayer namely to quash and set aside the notification dated 19.11.2003. Section 23-A of the M.P. Act permits the modification of the provisions in the development plan by following the due procedure of law as laid down therein. In the instant case, a notification had been issued earlier on 9.3.2001 inviting the objections to the proposed modification. The appellants were heard with respect to these objections, and thereafter the notification dated 19.11.2003 had been issued approving the proposed modification. It was contended on behalf of the appellants that the modification was a motivated one. The appellants submitted that under the modification, a parcel of land in nearby vicinity which was earlier reserved for a green area, was now being permitted for a commercial use, whereas the user of the land which was marked for the Children's Amusement Park, was being changed to a regional park. This was with a view to accommodate the constructions which had come up on the other parcel of land in the vicinity.

(ii) In this connection we must note that the appellants had not joined any of those parties for whose benefit this change had been allegedly made. As held in Girias Investment (P) Ltd. vs. State of Karnataka & Ors. reported in 2008 (7) SCC 53, in the absence of factual basis, the court is precluded from going into the plea of malafides. As far as the land meant for the Children's amusement park is concerned, the same was hardly put to the full use. In as much as this entire parcel of land of about 7 acres was not utilized, and since it was an open parcel of land, there was nothing wrong in the State Government deciding to retain it as an open parcel of land, and to change the land-use thereof from commercial to a regional park. The notification cannot be faulted on that count either.

27. In the circumstances, we do not find any error in the impugned judgment of the High Court. The appeal is therefore dismissed. Parties will bear their own costs.

……..……..J.
(Surinder Singh Nijjar)

……..J.
(H.L. Gokhale)

New Delhi
Dated: 28th August, 2012
