Narsi Creation Private Limited And ... vs State Of U.P. And Others on 2 March, 2012

Bench: Ashok Bhushan, Sunita Agarwal

HIGH COURT OF JUDICATURE AT ALLAHABAD

Reserved on 1.2.2012

Delivered on 2.3.2012

Case :- WRIT - C No. - 55867 of 2007

Petitioner :- Narsi Creation Private Limited And Another

Respondent :- State Of U.P. And Others

Petitioner Counsel :- Ashish Mishra,Kaushlendra Nath Singh,Shashi Nandan,Tejbhan Singh

Respondent Counsel :- C.S.C.,A.S. Rana,Shashi Kant,Vivek Verma

WITH

Case :- WRIT - C No. - 10501 of 2008

Petitioner :- Narsi Creation Pvt Ltd And Another

Respondent :- State Of U.P. & Others

Petitioner Counsel :- Tej Bhan Singh,Kaushlendra Nath Singh,Rajesh Ranjan,Shashi Nandan

Respondent Counsel :- C.S.C.,A.S. Rana,Sanjay Kumar Om

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Hon'ble Ashok Bhushan,J.

Hon'ble Mrs. Sunita Agarwal,J.

(DELIVERED BY HON'BLE ASHOK BHUSHAN, J.) These two writ petitions filed by the same petitioner raising similar issues have been heard together and are being decided by this common judgment.

Facts of the case giving rise to these writ petitions briefly noted are; the petitioner no. 1 is a company duly incorporated under the Companies Act whereas the petitioner no. 2 is consortium of petitioner no. 1, and two other registered companies. The State of U.P. issued the Government Order dated 22.11.2003 delineating the policy guidelines for developing Hi-tech townships by participation of private investments. State emphasised on promotion of private investments in the housing sector in urban areas. The Government Order stated that in context of economic liberalisation and privatisation, role of State has become as a facilitator in place of provider. For inviting private investment of minimum Rs. 750 crores and for development of about 1500 acres land in five years certain proposals were laid down in the said Government Order. The Government Order further provided that for development of Hi-tech townships, the land be acquired in favour of the State Government by Development Authorities or U.P. Avas Evam Vikas Parishad, and the compensation be determined as far as possible through agreement with the land owners under the Karar Niyamawali. It was further provided that developers can also directly purchase the land. Agra Development Authority issued notice inviting proposals for developing Hi-tech townships in District Agra. One of the conditions in the notice was that the land already declared by any competent authority for public purpose or for public utility will not be made available to the developer company for the development of Hi-tech townships. The petitioner submitted its proposal in pursuance of the notice. The petitioner was informed that it has been selected as second developer company in district Agra. The petitioner submitted letter dated 28.5.2005 to the Vice Chairman of the Agra Development Authority informing that the land situate in front of Shastri Nagar Yojna at 175 feet road may be made available. A memorandum of understanding between the Agra Development Authority and the petitioner was entered on 30.11.2005 laying down terms and conditions to initiate further action for the development of Hi-tech townships at Agra. One of the conditions was that second party shall submit proposal for acquisition of land along with key plan, site plan and Sajra plan of the site identified for the proposed township and after receiving the land acquisition proposal from the second party (the petitioner), the first party (Agra Development Authority) shall initiate the land acquisition proceedings. Total costs of the land acquisition was to be borne by the second party. The second party was further required to submit a detailed project report which after examination was required to be approved and thereafter the second party was to enter into a development agreement with the first party for implementation of the project. Out of 1500 acres land which was identified by the petitioner, 1180 acres of the land was already notified by the U.P. Avas Evam Vikas Parishad vide notification dated 29.7.2002 under section 28 of the U.P. Avas Evam Vikas Parishad Adhiniyam, 1965 for its Artauni Bhumi Vikas Evam Grih Sthan Yojna No. -5. The petitioner wrote to the State Government as well as to the Agra Development Authority to get the aforesaid land released from U.P. Avas Evam Vikas Parishad and the same may be made available to the petitioner. With regard to 697.82 acres land, the proposal was submitted by the Agra

Development Authority to the Collector for acquisition. Letter dated 13.2.2007 was written by the Agra Development Authority to the petitioner to deposit amount of Rs. 9,84,00,387/-i.e. 10% of the estimated costs of the compensation within three days. The petitioner deposited an amount of Rs. 5 crores by Bank draft on 14.2.2007. The Vice Chairman Agra Development Authority also wrote to the U.P. Avas Evam Vikas Parishad to issue no objection with regard to 1152.75 acres of land which is included in Artauni Bhumi Vikas Evam Grih Sthan Yojna No. -5 for making it available for development to the petitioner. U.P. Avas Evam Vikas Parishad in its meeting dated 21.7.2007 passed a resolution that there is no justification for releasing 1152.75 acres land in favour of the petitioner. The Board also resolved that State Government be requested to issue appropriate direction to continue Artauni Bhumi Vikas Evam Grih Sthan Yojna No. -5 . On 15.8.2007, the petitioner wrote to the Agra Development Authority to take action with regard to making available 1152.75 acres land to the petitioner from U.P. Avas Evam Vikas Parishad. The petitioner also stated that the petitioner is ready to deposit balance amount of Rs. 4.82 lacs. On 16.8.2007, the State Government issued Hi-tech townships Policy-2007 by modifying the earlier Hi-tech townships Policy issued by Government Order dated 22.11.2003 and 18.5.2006 in public interest. One of the conditions which was mentioned in the Government Order was that acquisition of land as far as possible be done with the agreement of the farmers for which purpose, the developer has to directly purchase about 60% of the land and for rest 40% land developer shall take all steps for its purchase and in event of any difficulty the said shall be acquired by Government agency under Land Acquisition Act, 1894. It further provided that the land acquired by the Government agency or the land within the acquisition proceedings for which notification under section 4 of the Land Acquisition Act, 1894 or under section 28 of the U.P. Avas Evam Vikas Parishad Adhiniyam, 1965 has been issued, shall not be released in favour of the developers. Clause 39 of the Government Order further provided that developers who have been selected under the Hi-tech townships Policy 2003, shall develop the Hi-tech townships as per Hi-tech townships Policy 2007 and according to 2007 Policy, revised memorandum of understanding is to be executed by the developers with the Government agency. The State Government issued a further Government Order dated 17.9.2007 by which in supersession of Hi-tech townships Policy 2007 an amended Hi-tech townships Policy 2007 was issued. A news item was published in the newspaper 'Amar Ujala' on 28.10.2007 quoting Vice Chairman of the Development authority that in the event 25% land is not made available by 15.11.2007, the licence and registration of the developer company shall be cancelled. The petitioner filed writ petition No. 55867 of 2007 in this Court on 12.11.2007 praying for following reliefs:

> "1. issue a writ, order or direction in the nature of certiorari quashing the notice dated 28/10/2007-issued by respondent no. 3 published in Daily News Paper 'Amar Ujala' Agra dated 28.10.2007 (contained as Annexure No. 21 to the writ petition).
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> 2. issue a writ, order or direction in the nature of certiorari quashing the clause 39 of the Hi-Tech township Policy, 2007, which requires that fresh MOUs have to be signed by the developer company in terms of the new policy.
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> 3. issue a writ, order or direction in the nature of mandamus commanding the respondent to execute the contract of the petitioner in terms of the MOU entered on 30/11/2005.

> 4. issue a writ, order or direction in the nature of mandamus commanding the respondent no. 4 to release the land in favour of the petitioner as per the High Tech Policy of 2003 and various government orders issued pursuant thereto for the purposes of development of the high-tech township in accordance with the approved Detailed Project Report dated 11/8/2007."

In the said writ petition, Division Bench of this Court passed following interim order on 21.11.2007:

> " Learned Standing Counsel accepts notice on behalf of respondents no. 1 and 2. Shri Shashi Kant has accepted notice on behalf of respondent no. 3. Shri A.S. Rana has accepted notice on behalf of respondent no. 4. All the respondents pray for and are granted three weeks' time to file counter affidavit. Rejoinder affidavit, if any may be filed within one week thereafter.
>
> List this matter after four week.
>
> Meanwhile no third party right shall be created."

U.P. Avas Evam Vikas Parishad after passing resolution dated 21.7.2007 refusing to release 1152 acres of land identified by the petitioner for development of Hi-tech township in favour of the petitioner, wrote to the State Government to permit it to continue with the Artauni Bhumi Vikas Evam Grih Sthan Yojna No. -5. The State Government issued a letter dated 14.1.2008 to the Housing Commissioner,U.P. Avas Evam Vikas Parishad informing that restraint order issued by the State Government on Artauni Bhumi Vikas Evam Grih Sthan Yojna No.-5, is withdrawn and the permission is accorded for continuing the said scheme. After the order dated 14.1.2008, the Executive Engineer of U.P. Avas Evam Vikas Parishad issued a public notice dated 10.2.2008 fixing date for hearing of the objections under section 29 of the U.P. Avas Evam Vikas Parishad Adhiniyam,1965 with regard to Artauni Bhoomi Vikas Grih Yojna No. 5. The petitioner filed writ petition No. 10501 of 2008 praying for the following reliefs:

> "1. Issue a writ, order or direction in the nature of certiorari quashing the order dated 14.1.2008 whereby the respondent no. 1 has revived the Artauni Land Development and Housing Scheme No. 5.
>
> 2.Issue a writ, order or direction in the nature of certiorari quashing the proceedings under section 29 of the Avas Vikas Adhiniyam for Artauni Land Development and Housing Scheme No. 5 of the respondent No. 4.
>
> 3.Issue a writ, order or direction in the nature of mandamus commanding the respondent to execute the contract of the petitioner in terms of the MoU entered on 30/11/2005.
>
> 4. Issue a writ, order or direction in the nature of mandamus commanding the respondent no. 4 to release the land in favour of the petitioner as per its own stand on

> the matter and the High Tech Policy of 2003 and various government orders issued pursuant thereto for the purposes of development of the high-tech township in accordance with the approved Detailed Project Report dated 11/8/2007."

The State as well as Agra Development Authority filed counter affidavit in writ petition No. 55867 of 2007 to which rejoinder affidavit has also been filed. The petitioner also filed Supplementary affidavits and rejoinder affidavits. The pleadings in writ petition No. 55867 of 2007 being complete, the said writ petition is being treated as the leading writ petition.

The petitioner's case as set up in the writ petition is that in pursuance of the Hi-tech townships Policy issued vide Government Order dated 22.11.2003, which provided that for the purpose of development of townships Development Authority and U.P. Avas Evam Vikas Parishad shall acquire the land, the petitioner submitted application along with earnest money of 50 lacs. The petitioner after being selected as developer, informed about the proposed land on which development was to be carried out and a memorandum of understanding between Agra Development Authority and the petitioner was executed on 30.11.2005. A detailed proposal for acquisition of land was submitted on 2.1.2006. The petitioner wrote on 29.4.2006 praying for expediting the acquisition of land. It was also stated that as per the Government Order dated 30.12.2005, the land notified by Development Authority and U.P. Avas Evam Vikas Parishad can be made available after necessary approval from the Board. The Agra Development Authority also wrote to the State Government to take appropriate steps for getting the land released from U.P. Avas Evam Vikas Parishad. Reference of the meting dated 13.4.2006 of High Power Committee has also been made, which noticed that the land identified by the petitioner for Hi-tech township included the land which has been notified by the U.P. Avas Evam Vikas Parishad under section 28 of the U.P. Avas Evam Vikas Parishad Adhiniyam, 1965. The petitioner's case is that relying on the Government Order dated 22.11.2003, the petitioner made detailed survey of the area, engaged reputed town planners and submitted a detailed project report for development of Hi-tech township. The petitioner in pursuance of the letter of the Agra Development Authority demanding deposit of Rs. 9.84 crores as 10% of the estimated compensation, deposited Rs. 5 crores on 15.2.2007. The petitioner's case is that in the meantime, due to change of the Government, the earlier policy issued by Government Order dated 22.11.2003 was changed by issuance of Hi-tech townships policy-2007 by Government Order dated 16.8.2007 which contains several offending clauses. The petitioner's case is that clause 39 of the Government Order dated 16.8.2007 provides that developers who have been selected under the Hi-tech townships Policy 2003 has to carry on development according to Hi-tech townships Policy-2007 and have to execute a revised memorandum of understanding, which is arbitrary. The petitioner having been selected as a developer under the 2003 policy and memorandum of understanding having already been executed, he could not have been asked to execute a revised memorandum of understanding. The petitioner's case further is that under the Government Order dated 16.8.2007, now it is required that 60% of the land shall be directly purchased by developers and only 40% land shall be acquired through land acquisition proceedings, whereas under the 2003 policy, entire land was required to be arranged by the State by acquiring the land. It is further submitted that clause 7.6 of the notice inviting proposals only provided that land already acquired by any competent authority shall not be made available to the developers, whereas there is no prohibition with regard to the land in respect of which only notice under section 28 of the 1965 Act has been issued. It is submitted

that according to the Government Order dated 30.12.2005, the land for which notification under section 28 was issued, could have been very well released in favour of the petitioner, whereas according to clause 16 of the Government Order dated 16.8.2007, the land for which notification under section 28 has been issued, shall not be released in favour of the developers. The petitioner's case is that the State Government is estopped from applying the Hi-tech townships Policy- 2007 on the petitioner since it was selected as developer under the Hi-tech townships Policy-2003. The doctrine of promissory estoppell is fully applicable in the present case and the State cannot be allowed to back out from its promise to provide 100% land by land acquisition proceedings to the petitioner. The petitioner on the aforesaid pleadings have prayed for quashing the clause 39 of the Hi-tech townships 2007 and prayed for issuance of mandamus directing the respondent no. 4 to release the land in favour of the petitioner. A further mandamus has also been prayed for commanding the respondents to execute the contract in terms of memorandum of understanding entered on 30.11.2005.

The petitioner's case further is that U.P. Avas Evam Vikas Parishad without any valid reason has refused to release the land vide its resolution dated 21.7.2007. It is submitted that under the Government Order dated 30.12.2005, the land for which notice under section 28 has been issued could have been released with the permission of the Board and only certain specified categories of land were not required to be released and the land identified by the petitioner was not of those categories. It is submitted that State Government being authority competent under the 1965 Act could have very well directed the U.P. Avas Evam Vikas Parishad to release the land to the petitioner and the decision of the State Government dated 14.1.2008, directing the U.P. Avas Evam Vikas Parishad to continue the Artauni Bhumi Vikas Evam Grih Sthan Yojna No. -5 is not in accordance with law. The State was required to provide land to the petitioner and its refusal to provide such land is arbitrary hence, the order dated 14.1.2008 be set aside and the subsequent further proceedings under section 29 of the 1965 Act be quashed and the respondent U.P. Avas Evam Vikas Parishad be directed to release the land in favour of the petitioner.

In the counter affidavit filed by the State, it has been stated that as per Hi-tech townships Policy-2003 as well as per the conditions of notice inviting proposals, the developers were also entitled to purchase the land directly from the land owners. It has been further pleaded that as per Section III para 7.6 of the notice inviting proposal, the land which has been acquired by the competent authority, cannot be given to the developers and the petitioner has identified a land for which notice under section 28 of the 1965 Act has already issued. In view of the aforesaid, the land identified by the petitioner having already been notified by the U.P. Avas Evam Vikas Parishad, could not have been made available to the petitioner. The memorandum of understanding dated 30.11.2005 specifically refers to the policy guidelines 2003 as well as the terms and conditions of the proposal document. Identification of the land made by the petitioner was contrary to the guidelines as contained in the proposal document. No assurance whatsoever was given by the State authorities to the petitioner regarding acquisition of land as proposed by it including the land which has already been notified by the Government agency. In the minutes of the meeting dated 13.4.2006 no such assurance was given to the petitioner. The land which was notified under section 28 of the 1965 Act could not have been released, even as per the Government Order dated 30.12.2005, it can be released only after approval of the U.P. Avas Evam Vikas Parishad. U.P. Avas Evam Vikas Parishad

having rejected the proposal for release vide resolution dated 21.7.2007, no land could have been made available to the petitioner. In the minutes of the High Power Committee held on 13.4.2006 it has been clearly stated that developer should obtain no objection certificate from U.P. Avas Evam Vikas Parishad for due notification of the land. The DPR submitted by the petitioner was recommended for approval in principal subject to certain conditions. The petitioners themselves are to be blamed inasmuch as they have chosen to identify the land, which has been already notified by the U.P. Avas Evam Vikas Parishad. Even in respect of acquisition proceedings initiated for 431.275 acres of land the petitioner has not deposited 10% of the estimated compensation and committed default. The developer company selected under Hi-tech townships Policy 2003 was to be governed by Hi-tech townships Policy 2007 as regards land assembly is concerned. Other conditions for developer company selected under Hi-tech townships Policy 2003 has not been changed except the procedure for land assembly. The petitioner has not made not any serious efforts to choose the alternative land. The Agra Development Authority in its counter affidavit has also taken the similar pleas as raised by the State.

We have heard Sri Shashi Nandan, learned Senior Advocate assisted by Sri Rajesh Ranjan and Sri Ashish Misra for the petitioner, Sri Zafar Naiyer, learned Additional Advocate General assisted by Sri M.C. Tripathi for the State, Sri R.N. Singh, learned Senior Advocate assisted by Sri A.S. Rana, for the U.P. Avas Evam Vikas Parishad, respondent No. 4 and Sri Vivek Verma, learned counsel for the respondent no. 3.

Learned Counsel for the petitioner submitted that in view of the Hi-tech townships Policy dated 22.11.2003, it was obligatory for the State to acquire entire 1500 acres of land for the petitioner under the Land Acquisition Act and the State cannot be permitted to resile from its obligation on the basis of subsequent Hi-tech townships policy dated 16.8.2007 requiring that 60% of the land has to be directly purchased by the developers, if necessary only 40% of the land shall be acquired by the State. It is submitted that the doctrine of promissory estoppel is attracted in the facts of the present case, which does not permit the State to change its stand since the petitioner after being selected as developer has made investment in survey and preparation of the project report and has also deposited Rs. 5 crores in pursuance of letter dated 13.2.2007 of Agra Development Authority requiring the petitioner to deposit 10% of the estimated cost for the acquisition of land measuring 431.275 acres to the extent of Rs. 9,84,03,387/-. The petitioner having altered its position, the State cannot be allowed to go back from its promise of providing 100% land by land acquisition. The State cannot be allowed to change its Hi-tech townships Policy dated 22.11.2003 by sequent Government Order dated 16.8.2007 in sofar as it applies the amended policy on the developers, who have been selected in pursuance of the earlier policy dated 22.11.2003. Challenging the clause 39 of the Government Order dated 16.8.2007, it is submitted that applying the Hi-tech townships Policy 2007 on the developers selected under 2003 policy, is arbitrary and the State is not entitled to apply the changed policy 2007 on the petitioner nor it can ask the petitioner to execute a revised memorandum of understanding with the Agra Development Authority, the respondent no. 3. Even though 1152 acres land identified by the petitioner on 28.5.2005 for carrying out development was already notified by the U.P. Avas Evam Vikas Parishad under section 28 of the 1965 Act, but it was required to be released by U.P. Avas Evam Vikas Parishad to make it available to the petitioner. It is submitted that the State Government issued the Government Order dated 30.12.2005, which clearly

provided that the land which has been notified by any Government agency can be released in favour of a developer provided it does not fall in the categories of land as enumerated in paragraph 2 (1) (Kha) of the said Government Order. It is submitted that the land which was notified by U.P. Avas Evam Vikas Parishad on 29.7.2002 did not belong to above category hence, it ought to have been released by the Board in favour of the petitioner. It is further submitted that the State Government having jurisdiction and power under 1965 Act can very well itself pass an order for release of the land and the State having not released the aforesaid land in favour of the petitioner, acted arbitrarily and against the promise it had already made. It is submitted that Hi-tech townships Policy 2007 issued by the Government Order dated 16.8.2007 at best could have application prospectively and it should not apply on the developers, who have already been selected. It is submitted that the conditions in the Hi-tech townships policy dated 16.8.2007 that the land which has already been notified under section 28 of the 1965 Act shall not be released in favour of the developer company was not applicable to the petitioner and could not have been enforced on the petitioner. The Government which came into power after enforcement of Hi-tech townships Policy-2003 had no jurisdiction or authority to change the policy and change of policy is without any reason. The State has not given any reason as to why the Artauni Bhumi Vikas Evam Grih Sthan Yojna No. -5 which was notified by the U.P. Avas Evam Vikas Parishad in the year 2002 was stayed and why it has been permitted to be continued by order dated 14.1.2008. The order dated 14.1.2008 permitting Artauni Bhumi Vikas Evam Grih Sthan Yojna No. -5 by U.P. Avas Evam Vikas Parishad to go on is nothing but creating hindrances on the project of the petitioner. The resolution of U.P. Avas Evam Vikas Parishad passed on 21.7.2007 refusing to release 1152 acres of land in favour of the petitioner was also not justified. Notice inviting proposals issued in the year 2004 in pursuance of which petitioner submitted the application did not contain a condition that the land which has been notified under section 28 of 1965 Act cannot be identified by the developer. It is submitted that the only condition which was contained in the notice was that developer should not identify a land which has already been acquired by any competent authority. 1152 acres of land having not yet been acquired since no further steps were taken after issuance of notification under section 28 of the 1965 Act, the land was not hit by any such condition and the plea taken by the State in the affidavit that due to the aforesaid conditions being condition no. 7.6 of section III of the notice, is incorrect. Learned Counsel for the petitioner submitted that in view of the above submissions, the petitioner has made out a case for issuance of a writ of mandamus commanding the respondent no. 4 to release 1152 acres of land in favour of the petitioner as per Hi-tech townships Policy 2003 and a further mandamus be issued to the respondents to execute the contract (development agreement) in favour of the petitioner. It has been further prayed that clause 39 of the Hi-tech townships Policy dated 16.8.2007 be struck off.

Sri Zafar Naiyer, learned Additional Advocate General refuting the contentions of learned Counsel for the petitioner, contended that Hi-tech townships Policy 2003 has not been abandoned by the State and the policy is still being continued with slight changes and modification in its implementation. It is submitted that the State which has framed Hi-tech townships Policy 2003 has every authority and jurisdiction to change the policy from time to time to suit the best public interest and clause 39 of the Government Order dated 16.8.2007 does not deserve to be quashed. It is submitted that as per the Government Order dated 16.8.2007, the petitioner was obliged to arrange 60% land through direct purchase from farmers and petitioner having not purchased the 60% land, he could not carry on the project. It is submitted that by Government Order dated

30.12.2005 also it was provided that atleast 60% land is to be arranged by developers of Hi-tech townships. It is further submitted that the State has never gave any assurance to the petitioner that 1152 acres land which has been notified by the U.P. Avas Evam Vikas Parishad in the year 2002 shall be released in favour of the petitioner. It is submitted that the condition no. 7.6 in Section III of the notice inviting proposal clearly prohibited the petitioner to identify any land, which has already been acquired by any competent authority and the said clause is fully applicable in the facts of the present case. No right has been created in favour of the petitioner. It is not a case of invoking doctrine of promissory estoppel and case of the petitioner is based only on some imaginary estoppel. U.P. Avas Evam Vikas Parishad having passed a resolution on 21.7.2007 not to release the land and no other alternative land having been identified by the petitioner, the petitioner is not entitled for any relief in the present writ petition. It is submitted that by just entering into a memorandum of understanding no right is created or accrued in favour of the petitioner. The development agreement has not yet been executed.

Sri R.N. Singh, learned Senior Advocate appearing for the U.P. Avas Evam Vikas Parishad refuting the submissions of learned Counsel for the petitioner, contended that no principle of promissory estoppel can be invoked against U.P. Avas Evam Vikas Parishad. U.P. Avas Evam Vikas Parishad has notified 1152 acres of land under section 28 of the 1965 Act for Artauni Bhumi Vikas Evam Grih Sthan Yojna No. -5, which has been identified by the petitioner on 29.7.2002, which could not be proceeded further due to restraint order of the State Government. Board of U.P. Avas Evam Vikas Parishad considered the request for release of the land which having been declined on 21.7.2007, the petitioner cannot claim any right over the aforesaid 1152 acres of land. It is submitted that there is no material to show that the petitioner has altered its position. The amount of Rs. 5 crores deposited by the petitioner can always be refunded. The decision taken by the Board on 21.7.2007 is in public interest and is in accordance with the 1965 Act. The State having decided to continue with the Artauni Bhumi Vikas Evam Grih Sthan Yojna No. -5, the petitioner cannot claim any right over the land nor the said land can be released in favour of the petitioner for carrying out development of Hi-tech townships. The petitioner cannot insist on any particular land and against the private interest of the petitioner, public interest has to be given precedence. No malafide has been alleged against the Board or against the State Government. The petitioner has not yet purchased any land to carry on its development.

From the pleadings of the parties as noted above, and the submissions made by learned counsel for the parties, following issues emerged for consideration in these writ petitions:

> (1)Whether clause 39 of the Hi-tech townships Policy-2007, issued by the Government Order dated 16.8.2007 insofar as it applies the Hi-tech townships Policy 2007 on the developers selected under the Hi-tech townships Policy 2003 is arbitrary and deserves to be set aside?
>
> (2)Whether the petitioner is entitled for release of the 1052 acres of land identified by the petitioner on 28.5.2005 for carrying out the development which was earlier notified by the U.P. Avas Evam Vikas Parishad on 29.7.2002 under section 28; and the U.P. Avas Evam Vikas Parishad as well as the State were obliged to release the

land in favour of the petitioner as per Hi-tech townships Policy 2003 and the Government Order dated 30.12.2005?

(3)Whether as per Hi-tech townships Policy-2003 the State was obliged to make available to the petitioner the entire (1500 acres) land identified by the petitioner for carrying out development by resorting to provisions of Land Acquisition Act, 1894 and the petitioner is entitled to invoke the doctrine of promissory estoppel?

(4) Whether the petitioner has altered its position after having been selected as developers under the Hi-tech townships Policy 2003 to the extent that it is now irreversible?

Before we proceed to consider the issues as noted above, it is useful to recaptulate certain relevant facts, which emerged from pleadings of the parties.

Hi-tech townships Policy dated 22.11.2003 was issued with intent to carry on all round urban development in important towns and inviting private investments was felt necessary. It was stated in the scheme that there are limited resources of development authorities and Government agencies. In paragraph 3 of the scheme, it was clearly spelt out that the role of the State in view of economic liberalisation and privatisation has become as only facilitator in place of provider. One of the main disputes which has cropped up between the parties is with regard to providing land to the petitioner for development of Hi-tech township. Paragraph 4 (3) of the Government Order is with regard to providing land to the developer. The said clause provides that for development of township, development authorities and U.P. Avas Evam Vikas Parishad or any other nominated agency shall acquire the land in favour of the State under the Land Acquisition Act, 1894 or 1965 Act and compensation be determined by agreement with the land owners according to Karar Niyamawali and in the negotiation, the developers shall also be allowed to participate. The developers shall also be entitled to purchase the land directly in pursuance of the Hi-tech townships Policy-2003. The petitioner was selected as developer for carrying on the project and a memorandum of understanding was entered between the petitioner and Agra Development Authority, which memorandum of understanding also contained a similar condition as condition No. 4.

From the Government Order dated 22.11.2003 and clause 4 of the memorandum of understanding, it is clear that the policy clearly contemplated two methods for providing land I.e (I) by resorting to land acquisition proceedings under the Land Acquisition Act or U.P. Avas Evam Vikas Parishad, 1965; and (ii) by purchases made directly by the developers ie. the petitioner. One more condition, which is relevant with regard to providing land to the developers needs to be noticed is condition no. 7.6 of Section III of the notice inviting proposals on the basis of which proposal the petitioner was selected as developer. The condition no. 7.6 is to the following effect:

"7.6 Land already acquired by any CA for public purpose or public utility, will not be made available to the DC for the development of Hi-tech townships."

Thus, the policy never represented that the land shall be provided only by resorting to Land Acquisition proceedings. A welfare State is obliged to take steps by resorting to legislation or by executive action to carry out various welfare schemes for the benefit of the people of the State. Present is a case where the State came up with a new Hi-tech townships Policy in the year 2003, which is being implemented. The State which frames a policy is fully entitled to take all measures to implement the same. In implementation of any policy, several road blocks and stumbling blocks are bound to come . The State is fully entitled to suitably modify and change its policy from time to time to suit its objective. The apex Court in Dhampur Sugar (Kashipur) Vs. State of Uttaranchal and others (2007) 8 SCC 418 has laid down that the State has not only the power to frame a particular policy but It has untrammelled power to change, rechange, adjust and readjust the policy. Following was laid down in paragraph 75:

> "The State and its instrumentality has also power to change policy. The executive power is not limited to frame a particular policy. It has untrammelled power to change, rechange, adjust and readjust the policy taking into account the relevant and germane considerations. It is entirely in the discretion of the Government how a policy should be shaped. It should not, however, be arbitrary, capricious or unreasonable."

The policy which was framed in the year 2003 was amended from time to time. Reference of the Government Order dated 18.5.2006 has also been made in this context in the Government Order dated 16.8.2007. By Government Order dated 16.8.2007, Hi-tech townships Policy 2007 was issued. Hi-tech townships policy 2007 reiterates and continues the Hi-tech townships policy 2003 of the State with certain amendments in the policy. Certain clauses of the amended policy dated 16.8.2007 which needs to be noted are as follows;

(I) (15)- which provides that land acquisition for Hi-tech townships shall be made on the basis of mutual agreement with the farmers as far as possible. The notification for the entire area of township shall be issued under section 4 of the Land Acquisition Act or Section 28 of 1965 Act and the developer has to directly purchase the atleast 60% of the land, for rest 40% also the developer shall make its full efforts for purchase and in the event there is any difficulty in such purchase (40% of the land), the Government agency shall acquire the land under the Karar Niyamawali.

(ii) (16)- The land acquired by Government agency or the land under the land acquisition proceedings and the land which has been notified under section 4 of the Land Acquisition Act, 1894 or Section 28 of the 1965 Act shall not be released in favour of the developer company.

(iii) (39)- The developer selected under the Hi-tech townships Policy 2003 shall develop the Hi-tech townships in accordance with Hi-tech townships Policy 2007 for which purpose, the developer shall enter into revised memorandum of understanding with the Government agency.

It has also come on the record that the petitioner on 28.5.2008 has submitted a letter to the Agra Development Authority informing about the land identified by the petitioner. Out of the land identified by the petitioner, 1152 acres of the land was already notified under section 28 of the 1965

Act vide notification dated 29.7.2002. The petitioner as well as Agra Development Authority wrote to the State Government to get released the aforesaid 1152 acres of the land in favour of the petitioner. With regard to other part of the land, the Agra Development Authority submitted proposal for acquisition of land under the Land Acquisition Act, 1894. The Collector initiated proceedings for acquisition of 431.275 acres of land under the Land Acquisition Act, 1894 with regard to which the petitioner was asked vide letter dated 13.2.2007 of the secretary Agra Development Authority to deposit Rs. 9,84,03,337/- which was 10% of the estimated cost of compensation in pursuance of which the petitioner deposited only Rs. 5 crores on 15.2.2007. With regard to rest of the amount, the petitioner wrote on 16.8.2007 to the Agra Development Authority that immediate action be taken for denotifying/release of the 1152 acres of land in favour of the petitioner and the petitioner showed also his willingness to deposit balance amount of Rs. 4.84 crores.

The petitioner in support of writ petition has relied on doctrine of promissory estoppel. Before we proceed further to consider the submissions of learned Counsel for the petitioner and the issues raised, it is necessary to recaptualate the basic ingredients of doctrine of promissory estoppel and to find out as to when the doctrine of promissory estoppel is to be invoked.

The promissory estoppel is not strictly the estoppel as contemplated under section 115 of the Evidence Act but is an equitable doctrine enforced against the Government or its instrumentalities estopping it resiling from its promise or representation on the basis of which promisee has altered his position. The doctrine was enunciated and explained in Union of India Vs. Anglo Afghan Agencies, AIR 1968 SC 718 in which case following was laid down in paragraph 23:

> "23. 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, nor 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."

The doctrine has been elaborated and firmly recognised by the apex Court in the celebrated judgment of Moti Lal Padampat Sugar Mills Co. Ltd. Vs. State of U.P. (1979) 2 SCC 409. It was held that since doctrine of promissory estoppel was an equitable doctrine, it must yield when the equity so requires. It was also held that if it can be shown by Government that having regard to the facts as they have transpired, it would be inequitable to hold the Government to the promise made by it. The Court would not raise an equity in favour of the promisee. Following was laid down in paragraph 24:

> " 24. But it is necessary to point out that since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. 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 to the promise 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. When the Government is able to show that in view of the facts as have transpired since the making of the promise, public interest would be prejudiced if the Government were required to carry out the promise, the Court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and alter his position and the public interest likely to suffer if the promise were required to be carried out by the Government and determine which way the equity lies. It would not be enough for the Government just to say that public interest requires that the Government should not be compelled to carry out the promise or that the public interest would suffer if the Government were required to honour it."

In the same paragraph it is further observed that:-

> " ....The Government cannot, as Shah,J., pointed out in the Indo-Afghan Agencies case, claim to be exempt from the liability to carry out the promise 'on some indefinite and undisclosed ground of necessity or expediency', nor can the Government claim to be the sole judge of its liability and repudiate it 'on an ex parte appraisement of the circumstances'. If the Government wants to resist the liability, it will have to disclose to the Court what are the facts and circumstances on account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether those facts and circumstances are such as to render it inequitable to enforce the liability against the Government. Mere claim of change of policy would not be sufficient to exonerate the Government from the liability: the Government would have to show what precisely is the changed policy and also its reason and justification so that the Court can judge for itself which way the public interest lies and what the equity of the case demands. It is only if the Court is satisfied, on proper interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the court would not act on the mere ipse dixit of the Government, for it is the Court which has to decide and not the Government whether the Government should be held exempt from liability. This is the essence of the rule of law. The burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the Court would insist on a highly rigorous standard of proof in the discharge of this burden"

The same proposition was again reiterated in Union of India & Ors. v. Godfrey Philips India Ltd.etc.etc. (1985) 4 SCC 369. Following was laid down in paragraph 12:

> " 12. There can therefore be no doubt that the doctrine of promissory estoppel is applicable against the Government in the exercise of its governmental, public or executive functions and the doctrine of executive necessity or freedom of future executive action cannot be invoked to defeat the applicability of the doctrine of

promissory estoppel"

The question again came for consideration before the apex Court in (1995) 1 SCC 274 Kasinka Trading and another Vs. Union of India and another. In the said case, the action of the Union of India for withdrawing a time bound exemption notification for import of PVC resin was under challenge. The exemption was to continue in force up to 31.3.1981 but before the expiry of the time period in the notification, the withdrawal notification was issued on 16.10.1980. It was contended before the High Court as well as before the apex Court that Government must be held bound by the representation it had made in the exemption notification and it was estopped on the basis of promissory estoppel to go back on its promise. Elaborating the doctrine of promissory estoppel it was held that withdrawal of exemption in public interest was justified and the appellant could not invoke the doctrine of promissory estoppel. Following was laid down in paragraphs 11,12,21 and 24.

> "11. The doctrine of promissory estoppel or equitable estoppel is well established in the administrative law of the country. To put it simply, the doctrine represents a principle evolved by equity to avoid injustice. The basis of the doctrine is that where any party has by his word or conduct made to the other party an unequivocal promise or representation by word or conduct, which is intended to create legal relations or effect a legal relationship to arise in the future, knowing as well as intending that the representation, assurance or the promise would be acted upon by the other party to whom it has been made and has in fact been so acted upon by the other party, the promise, assurance or representation should be binding on the party making it and that party should not be permitted 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 or are intended to take place between the parties.
>
> 12.It has been settled by this Court that the doctrine of promissory estoppel is applicable against the Government also particularly where it is necessary to prevent fraud or manifest injustice. The doctrine, however, cannot be pressed into aid to compel the Government or the 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". There is preponderance of judicial opinion that 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 that 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. In our opinion, the doctrine of promissory estoppel cannot be invoked in the abstract and 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 to the mind of the court, while considering the applicability of the doctrine. The doctrine must yield when the equity so demands if it can be shown having regard to the facts and

circumstances of the case that it would be inequitable to hold the Government or the public authority to its promise, assurance or representation.

21. The power to grant exemption from payment of duty, additional duty etc. under the Act, as already noticed, flows from the provisions of Section 25(1) of the Act. The power to exempt includes the power to modify or withdraw the same. The liability to pay customs duty or additional duty under the Act arises when the taxable event occurs. They are then subject to the payment of duty as prevalent on the date of the entry of the goods. An exemption notification issued under Section 25 of the Act had the effect of suspending the collection of customs duty. It does not make items which are subject to levy of customs duty etc. as items not leviable to such duty. It only suspends the levy and collection of customs duty, etc., wholly or partially and subject to such conditions as may be laid down in the notification by the Government in "public interest". Such an exemption by its very nature is susceptible of being revoked or modified or subjected to other conditions. The supersession or revocation of an exemption notification in the "public interest" is an exercise of the statutory power of the State under the law itself as is obvious from the language of Section 25 of the Act. Under the General Clauses Act an authority which has the power to issue a notification has the undoubted power to rescind or modify the notification in a like manner. From the very nature of power of exemption granted to the Government under Section 25 of the Act, it follows that the same is with a view to enabling the Government to regulate, control and promote the industries and industrial production in the country. Notification No. 66 of 1979 in our opinion, was not designed or issued to induce the appellants to import PVC resin. Admittedly, the said notification was not even intended as an incentive for import. The notification on the plain language of it was conceived and issued on the Central Government "being satisfied that it is necessary in the public interest so to do". Strictly speaking, therefore, the notification cannot be said to have extended any 'representation' much less a 'promise' to a party getting the benefit of it to enable it to invoke the doctrine of promissory estoppel against the State. It would bear repetition that in order to invoke the doctrine of promissory estoppel, it is necessary that the promise which is sought to be enforced must be shown to be an unequivocal promise to the other party intended to create a legal relationship and that it was acted upon as such by the party to whom the same was made. A notification issued under Section 25 of the Act cannot be said to be holding out of any such unequivocal promise by the Government which was intended to create any legal relationship between the Government and the party drawing benefit flowing from of the said notification. It is, therefore, futile to contend that even if the public interest so demanded and the Central Government was satisfied that the exemption did not require to be extended any further, it could still not withdraw the exemption.

24. It needs no emphasis that the power of exemption under Section 25(1) of the Act has been granted to the Government by the Legislature with a view to enabling it to regulate, control and promote the industries and industrial productions in the

> country. Where the Government on the basis of the material available before it, bona fide, is satisfied that the "public interest" would be served by either granting exemption or by withdrawing, modifying or rescinding an exemption already granted, it should be allowed a free hand to do so. We are unable to agree with the learned counsel for the appellants that Notification No. 66 of 1979 could not be withdrawn before 31-3-1981. First, because the exemption notification having been issued under Section 25(1) of the Act, it was implicit in it that it could be rescinded or modified at any time if the public interest so demands and secondly it is not permissible to postpone the compulsions of "public interest" till after 31-3-1981 if the Government is satisfied as to the change in the circumstances before that date. Since, the Government in the instant case was satisfied that the very public interest which had demanded a total exemption from payment of customs duty now demanded that the exemption should be withdrawn it was free to act in the manner it did. It would bear a notice that though Notification No. 66 of 1979 was initially valid only up to 31-3-1979 but that date was extended in "public interest", we see no reason why it could not be curtailed in public interest. Individual interest must yield in favour of societal interest."

To the same effect are the judgements of the apex Court in (1995) 6 SCC 53, Arvind Industries and others Vs. State of Gujrat & others and (1996) 5 SCC 468 D.C.M. Ltd. Vs. Union of India and others. In D.C.M. Ltd. (supra), the Central Government sanctioned a scheme in November, 1975 providing incentive to new sugar factories and also to those sugar factories who had applied for and completed their expansion projects during the period 1.11.75 to 20.10.80. The incentives consisted partly of higher percentage of levy-free sugar quota and partly of concessions in the excise duty. The Central Government w.e.f. 17.12.1979 again modified the sugar policy to provide for partial control with dual pricing as was the situation prior to August 16, 1978. The Government after examining the various altered parameters for revising the scheme announced a revised scheme to provide incentives to the new sugar factories and expansion projects. This revised scheme came into effect from the sugar year 1980-81. The new scheme of the year 1980 was made applicable even to those industries who were otherwise entitled to the benefit of the scheme announced in the year 1975. The appellants after completing the expansion projects at the two places, on 6.8.80 and 13.8.80 applied for necessary eligibility certificate for additional free-sale sugar entitlements as per the 'incentives announced. The respondents allowed the incentives as per the revised 1980 scheme. However, the appellants asserted that the incentives as per the scheme announced in the year 1975 must be given to them. A writ petition was filed by the appellant which was dismissed by the High Court and an appeal was filed in the apex Court which too was dismissed. The apex Court laid down following in paragraphs 6,7 and 9:

> "6. We have considered the rival submissions. It is well- settled that the doctrine of promissory estoppel represents 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. The basis of this doctrine is the inter--position of equity which has always, proved to its form, stepped in to mitigate the rigour of strict law. It is equally true that the doctrine of promissory estoppel is not limited in its

application only to defence but it can also found a cause of action. This doctrine is applicable against the Government in the exercise of its governmental public or executive functions and the doctrine of executive necessity or freedom of future executive action, cannot be invoked to defeat the applicability of this doctrine. It is further well- established that the doctrine of promissory estoppel must yield when the equity so require. If it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be unequitable 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. The doctrine of promissory estoppel would be displaced in such a case because on the facts, equity would not require that the Government or public authority should be held bound by the promise or representation made by it (vide Godfrey Philips case)

7. In this case we have found that the Government before refusing the incentive scheme of the year 1975 have taken into account various factors including the decontrol of sale of sugar for the period from 16.8.78 to 17.12.79. Further if the prayer of the appellants were to be allowed, several lakhs of quintals of sugar will have to be released as incentive levy-free sugar which otherwise meant for public distribution system. We agree with the learned Judges of the High Court when they observed that the 'petitioners who availed of the resulting benefit due to decontrol cannot in all fairness lay claim to be restored the benefit of the incentives in full now over again though the basic premise became non-existent. The benefit under the subsequent scheme in force from November 15, 1980 has already been accorded to them in full measure'.

9.Taking all these factors into consideration, we have no doubt that on the facts of this case, the Principle of Promissory Estoppel has no application at all. The judgment relied on by the learned Senior counsel for the appellants, namely, Godfrey Philips case supports the case of the respondents on facts. In the result the appeal fails and is accordingly dismissed. No costs."

In (1998) 1 SCC 572 Sales Tax Officer and another Vs. Shree Durga Oil Mills and another, the claim was made by the respondent mill on the basis of Industrial Policy Resolution dated 18.7.1979 of the Government of Orissa to the effect that sales tax was not payable by a new industry on the purchase of raw materials for the period prescribed in the industrial policy resolution. The case of the writ petitioner before the High Court was that it set up its industry pursuant to industrial policy resolution. It obtained huge loans from United Bank of India hence, it was entitled for tax exemption in terms of the IPR. The High Court allowed the writ petition on the ground that in the IPR, a clear and unequivocal promise had been made. The appeal was filed, wherein the apex court reversed the judgment of the High Court and laid down following in paragraphs 14,17,22 and 24.

"14. Moreover, the Government may change its industrial policy if the situation so warrants. merely because, the I.P.R. as announced for the period 1979-1983, it does not mean that the Government cannot amend or change the policy under any circumstance. As a matter of fact, in this case the Government had published another I.P.R. on 31.7.1980 modifying the earlier I.P.R. The vires of the Second I.P.R. has not been challenged. The two I.P.Rs. have not been issued under any particular statute. A general announcement was made by the Government that certain economic policy would be pursued for the acceleration of the growth of the industrial sector in the State of Orissa. For that purpose, a package of measures for stimulating the growth of industries were announced. It was specifically made clear in the I.P.R. dated 18.7.1979 that:

"Government orders will issue laying down the mode of administering the concessions and incentives by departments concerned."

17.Moreover, it is well settled that any I.P.R. can be changed if there is an overriding public interest involved. it has been stated on affidavit by the State of Orissa that after a package of incentives was given to the industries, the Government was faced with severe resource crunch. On a review of its financial position, it was felt that for the sake of the economy of the State, it was necessary to limit the scope of exemption granted to various industries. Accordingly, further notifications were issued under Section 6 of the Orissa Sales Tax Act from time to time. Because of this new perception of the economic scenario, the scope of the earlier notifications was restricted by subsequent notifications issued under Section 6. This also led to issuance of the second I.P.R. dated 31.7.1980.

22. The view taken by its Court in Kasinka's case was reiterated by a Bench of three-judges in the case of Shrijee Sales Corporation & Anr. Vs. Union of India (1997) 3 SCC 398. It was laid down in that case that the determination of applicability of promissory estoppel against the Government hinges upon balance of equity or public interest. In case there is a supervening public equity, the Government would be allowed to change its stand; it would then be able 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. Once public interest was accepted as the superior equity which can override individual equity, the aforesaid principle should be applicable even in cases where a period had been indicated for operation of the promise. In that case, a notification was issued exempting customs duty on PVC. By a second notification the exemption was withdrawn. The Court held that the facts of the case revealed that there was a supervening public interest and the Government was competent to withdraw the first notification without giving any prior notice to the respondent.

24.In our opinion, the plea of change of policy trade on the basis of resource crunch should have been sufficient for dismissing the respondent's case based on the doctrine of promissory estoppel. Public interest demanded modification of the earlier I.P.R."

The principles were again reiterated in (2005) 1 SCC 625 Bannari Amman Sugars Ltd. Vs. Commercial Tax Officer and others. The appellants questioned legality of the order dated 1.9.1988

directing discontinuance of purchase tax exemption in case of mills which exceeded the ceiling of Rs. 300 lakhs during the period of five years, and Government letter dated 28.12.1988 which made the order dated 1.9.1988 operative retrospectively from 1.4.1988. The writ petition was dismissed by the High Court negativing the plea of promissory estoppel against which an appeal was filed. The apex Court laid down in the said case that there is a discretion to change the policy in exercise of the executive powers. However, the change in policy must be made fairly and not arbitrarily. Following was laid down in paragraphs 9 and 20:

> "9. While the discretion to change the policy in exercise of the executive power, when not trammelled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heart beat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for discernible reasons, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualized than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness.
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> 20. In Shrijee Sales Corporation and Anr. v. Union of India (1897 (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. Meerut etc. etc. v. P.P. State Electricity Board and Ors. (AIR 1997 SC 3810) and in Sales Tax officer and Anr. v. Shree Durga Oil Mills and Anr. (1998 (1) SCC 573), it was further held that the Government could change its industrial policy if the situation so warranted and merely because the 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."

A Bench of three Judges in 2011(3) SCC 193 Shree Sidhbali Steels Limited and others Vs. State of U.P. And others after considering all relevant decisions on the subject, had laid down following in paragraphs 32 and 33:

> "32. The doctrine of promissory estoppel is by now well recognized and well defined by catena of decisions of this Court. Where the Government makes a promise knowing or intending that it would be acted on by the promise and, in fact, the promise, 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 promise 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 molded 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 doctrine of promissory estoppel the promise must establish that he suffered in detriment or altered his position by reliance on the promise.
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> 33. Normally, the doctrine of promissory estoppel is being applied against the Government and defense based on executive necessity would not be accepted by the Court. However, if it can be shown by the Government that having regard to the facts as they have subsequently transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promise and enforce the promise against the Government. Where public interest warrants, the principles of promissory estoppel cannot be invoked. Government can change the policy in public interest. However, it is well settled that taking cue from this doctrine, the authority cannot be compelled to do something which is not allowed by law or prohibited by law. There is no promissory estoppel against the settled proposition of law. Doctrine of promissory estoppel cannot be invoked for enforcement of a promise made contrary to law, because none can be compelled to act against the statute. Thus, the Government or public authority cannot be compelled to make a provision which is contrary to law."

After having noticed the law laid down by the apex Court in the aforesaid cases explaining the doctrine of promissory estoppel, the facts of the present case is to be considered and looked into to find out as to whether the petitioner is entitled to invoke the said doctrine.

The petitioner in leading writ petition has challenged the clause 39 of the Government Order dated 16.8.2007 by which the Hi-tech townships Policy 2007 has been made applicable even for those developers, who were selected under the Hi-tech townships Policy 2003. As noticed above, the apex Court has laid down in Dhampur Sugar (Kashipur) Vs. State of Uttaranchal and others (supra) that State has untrammelled power to frame a policy, change, rechange the same in exercise of its power

to frame policy. However, the policy or change of policy has to conform to Article 14 of the Constitution of India. The petitioner has attacked the clause 39 of the Government Order on the ground that it was not open for the State to apply the Hi-tech townships Policy 2007 on those developers, who have been already selected in pursuance of the Hi-tech townships Policy 2003. We have already noted the salient features of Hi-tech townships Policy 2007 as delineated in clauses 15,16,19 and 39. There cannot be any dispute that it is in the domain of the State to frame Housing Policy and to modify it as and when such need arises. Judicial review of policy decisions of the State is permissible on very limited ground. The apex Court in 2002 (2) SCC 333 Balco Employees' Union (Regd.) Vs. Union of India and others laid down that in the policy matter of the State, the Court would hesitate to intervene and strike down the policy unless it appears to plainly arbitrary, irrational or malafide. Following was laid down in paragraphs 39,41,42 and 46:

> "39. In Premium Granites and Another vs. State of T.N. and Others, (1994) 2 SCC 691 while considering the Court's powers in interfering with the policy decision, it was observed at page 715 as under :-
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> "54. It is not the domain of the Court to embark upon unchartered ocean of public policy in an exercise to consider as to whether the particular public policy is wise or a better, public policy can be evolved. Such exercise must be left to the discretion of the executive and legislative authorities as the case may be.."

41. The Court then referred to an earlier decision in the case of R.K. Garg vs. Union of India and Others, (1981) 4 SCC 675 where there was an unsuccessful challenge to a law enacted by Parliament and held at page 413 as follows :-

> "What has been said in respect of legislations is applicable even in respect of policies which have been adopted by Parliament. They cannot be tested in Court of Law. The courts cannot express their opinion as to whether at a particular juncture or under a particular situation prevailing in the country any such national policy should have been adopted or not. There may be views and views, opinions and opinions which may be shared and believed by citizens of the country including the representatives of the people in Parliament. But that has to be sorted out in Parliament which has to approve such policies. Privatisation is a fundamental concept underlying the questions about the power to make economic decisions. What should be the role of the State in the economic development of the nation? How the resources of the country shall be used? How the goals fixed shall be attained? What are to be the safeguards to prevent the abuse of the economic power? What is the mechanism of accountability to ensure that the decision regarding privatisation is in public interest? All these questions have to be answered by a vigilant Parliament. Courts have their limitations because these issues rest with the policy-makers for the nation. No direction can be given or is expected from the courts unless while implementing such policies, there is violation or infringement of any of the constitutional or statutory provision. The new Telecom policy was placed before Parliament and it shall be deemed that Parliament has approved the same. This Court cannot review and

examine as to whether the said policy should have been adopted. Of course, whether there is any legal or constitutional bar in adopting such policy can certainly be examined by the Court".

42. While considering the validity of the industrial policy of the State of Madhya Pradesh relating to the agreements entered into for supply of sal seeds for extracting oil in M.P. Oil Extraction and Another vs. State of M.P. and Others, (1997) 7 SCC 592, the Court at page 610 held as follows :-

"41. After giving our careful consideration to the facts and circumstances of the case and to the submissions made by the learned counsel for the parties, it appears to us that the Industrial Policy of 1979 which was subsequently revised from time to time cannot be held to be arbitrary and based on no reason whatsoever but founded on mere ipse dixit of the State Government of M.P. The executive authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the Court cannot and should not outstep its limit and tinker with the policy decision of the executive functionary of the State. This Court, in no uncertain terms, has sounded a note of caution by indicating that policy decision is in the domain of the executive authority of the State and the Court should not embark on the unchartered ocean of public policy and should not question the efficacy or otherwise of such policy so long the same does not offend any provision of the stature or the Constitution of India. The supremacy of each of the three organs of the State i.e. legislature, executive and judiciary in their respective fields of operation needs to be emphasised. The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in outstepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic set-up to which the polity is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective fields.

46.It is evident from the above that it is neither within the domain of the Courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are our Courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical."

In De Smith's Judicial Review Sixth South Asian Edition 2009 while considering the limit of judicial review in the policy decision of the Government following has been stated in paragraph 1-039:

> " In India, courts will not interfere with policy decisions of the government merely because it feels that another policy decision could have been fairer or wiser or more scientific or logical. It is not the function of the courts to sit in judgment in matters of economic policy and that must necessarily be left to the expert bodies. However, it has been firmly held that there is no unfettered discretion in public law, and that no decision which operates prejudicially to the rights and interests of a person is beyond judicial review. Even in relation to policy decisions or those of experts, therefore, the courts will interfere if the decision is "patently arbitrary", discriminatory or malafide."

The main grievance to the Hi-tech townships Policy 2007 is with regard to applying clauses 15 and 16 of Government Order dated 16.8.2007 by which now it has been provided that in Hi-tech townships 60% land is to be directly purchased by the developer company and further the land which has been acquired or is under process of acquisition shall not be released in favour of the developer company.

From the facts of the case as noticed above, the petitioner has identified 1500 acres land on which it proposes to carry on development of Hi-tech townships, out of which 1052 acres land had already been notified under section 28 by the U.P. Avas Evam Vikas Parishad on 29.7.2002. The petitioner has not purchased any land directly and in view of Clauses 15 and 16 of the Government Order dated 16.8.2007, the land which was identified by the petitioner, could not have been provided by the State for carrying out the development hence, the petitioner attacked clause 39 which made Hi-tech townships Policy 2007 applicable on the petitioner. As noticed above, even in Hi-tech townships Policy 2003 there were two modes for providing land for carrying out development i.e. by resorting to proceedings under the Land Acquisition Act, 1894 or 1965 Act or purchase of land directly by the developers. Thus, the submissions of learned Counsel for the petitioner that providing the land to a developer by acquisition proceeding was only mode contemplated under Hi-tech townships Policy 2003, is not acceptable. The Government order and clause 4 of the terms and conditions of memorandum of understanding as noted above was to the following effect:

> "4. That the land for the development of the township shall be acquired by the first party under the provision of land acquisition act, 1894 or purchased by the second party directly & as far as possible, compensation shall be determine through negotiation. The second party shall also be involved in the process of negotiation. In such cases where compensation could not be settled through negotiation, the same shall be determined by the Collector of the district under the provisions of land acquisition act, 1894."

Clause 4 of the memorandum of understanding thus, clearly provided that land for development of township shall be acquired by first party under the provisions of the Land Acquisition Act, 1894 or purchase by second party directly. By the Government Order dated 30.12.2005 the procedure for acquisition of land/land assembly for the purposes of Hi-tech townships and for integrated housing scheme was laid down providing for purchase of land to the extent of 60% by developers both for Hi-tech townships and for integrated housing scheme, which requirement was again clearly spelt

out in the Hi-tech townships Policy 2007 by Government Order dated 16.8.2007. As observed above, the Government is free to modify its housing policy. Both the mode of providing land for development being already contemplated under the Hi-tech townships Policy 2003 specification of particular percentage of land which is to be directly purchased, cannot be said to be contrary to Hi-tech townships policy-2003. Looking to the fact that large scale acquisition of agricultural land is involved in providing land for Hi-tech townships or integrated housing scheme, providing for developers to directly purchase 60% land, cannot be said to be arbitrary or unreasonable. There cannot be denial that need of housing in metro town is increasing day by day but for fulfilling the housing need, all agricultural land available near the city cannot be compulsory acquire. To maintain a balance between requirement of land for housing purpose or for development of Hi-tech townships and need of not uprooting agriculturists and farmers from their agricultural land altogether, the Government is best Judge to modify its housing policy. The Government which is entitled to implement its policy is also entitled to make suitable amendments and adjustment in the policy, which amendments are felt while implementing a particular policy. The merely because the petitioner was selected in pursuance of the Hi-tech townships 2003 is not sufficient to hold that housing policy as amended from time to time should not be enforced on the petitioner. In the present case, as noted above, neither land for development has been given to the petitioner nor even any development agreement has been executed as was contemplated by memorandum of understanding. The petitioner has not even started any project of development of Hi-tech townships. Hence, the contention of the petitioner that Hi-tech townships Policy 2007 shall not be applied and clause 39 of the Government Order be struck down, cannot be accepted.

Now the second issue to be considered is as to whether the petitioner was entitled for release of 1052 acres of land which was identified by the petitioner for carrying out development. As noted above, 1052 acres of land identified by the petitioner for development was the same land which was notified by the U.P. Avas Evam Vikas Parishad under section 28 of the 1965 Act for its Artauni Bhumi Vikas Evam Grih Sthan Yojna No. -5. It is true that in the notice inviting proposal under clause 7.6 as quoted above, the condition was that land already acquired by the competent authority for public purpose will not be made available to the developers company for development of Hi-tech townships. Although 1052 acres land was not acquired on the date when the petitioner identified the land but acquisition proceedings had already been initiated. Learned Counsel for the petitioner has placed reliance on the Government Order dated 30.12.2005, which provided that in the event the notification under section 28 has been issued for land bank, the said land can be released with the approval of the Board. It is further submitted that according to the Government Order, land which was sought to be acquired for specific purpose like stadium, institutional buildings, public and semi public utilities was not to be released and the land in question did not fall in the said categories. A perusal of clause 2(1) (Ka) and (Kha) of the Government Order dated 30.12.2005 indicate that the Government Order contemplates release of the land for which notification under section 28 was issued with the approval of the Board. In the present case, Board has not approved the release of the said land in favour of the petitioner vide its resolution dated 21.7.2007. The Board has taken a decision to continue its Artauni Bhumi Vikas Evam Grih Sthan Yojna No. -5 and not to release the land in favour of the petitioner. Thus the case of the petitioner that he was entitled for release of 1052 acres of the land, cannot be accepted. The release of the land in favour of the petitioner was not the right of the petitioner rather it was dependent on approval of the Board for such release.

Approval having not been granted, the petitioner cannot claim release of the land.

From the materials brought on the record including the proceeding of High Power Committee meeting dated 13.4.2006, it is clear that the State has not extended any promise to the petitioner to release the land which has been notified by the U.P. Avas Evam Vikas Parishad under section 28 of the 1965 Act rather the State Government has written to the Board to consider the request of the petitioner as well as Agra Development Authority for release. The said request has been considered and turned down by the Board. Learned Counsel for the petitioner has contended that the State being fully empowered to issue appropriate direction under the 1965 Act to the Board to release the land has failed to exercise such jurisdiction. There cannot be any dispute that the State is entitled to issue appropriate direction under the 1965 Act for continuance/abandonment of any scheme but in the present case, State has chosen to direct the Board to consider the matter, which had framed the scheme and initiated proceedings for acquisition under the 1965 Act. The Government order dated 16.8.2007 having clearly provided that those land which have been notified under section 28 of the 1965 Act shall not be released in favour of the developer company, the petitioner has no case to claim any direction to the State to release the land which has already been notified by the U.P. Avas Evam Vikas Parishad under section 28 of the 1965 Act.

In second writ petition, the petitioner has brought on record the copy of the order issued by the State Government dated 14.1.2008, directing the Avas Ayukta to continue with the Artauni Bhumi Vikas Evam Grih Sthan Yojna No. -5 and the restraint order issued by the State Government with regard to the said scheme was withdrawn. The U.P. Avas Evam Vikas Parishad has been constituted to frame and execute housing and improvement schemes and other projects. The Housing Scheme was framed by the Board, for which proceedings have already been initiated vide notification dated 29.7.2002 and the Board having decided not to release the land, no fault can be found with the decision of the Board to continue its housing scheme. The State has committed no error in permitting the U.P. Avas Evam Vikas Parishad to continue its housing scheme and no fault can be found with the order of the State Government dated 14.1.2008.

Thus, we are of the view that the state was under no obligation to release 1052 acres of land in favour of the petitioner for Hi-tech townships.

The issue to be next considered is as to whether the State was obliged to make available the entire 1500 acres land identified by the petitioner by resorting to the provisions of Land Acquisition Act, 1894 and the State cannot back out from its representation made by Hi-tech townships Policy 2003 to provide the entire land by resorting to the land acquisition proceedings. We have already held that no error was committed in not releasing 1052 acres of land in favour of the petitioner, which was already notified by the U.P. Avas Evam Vikas Parishad for its Artauni Bhumi Vikas Evam Grih Sthan Yojna No. -5. The petitioner had identified 1500 acres land, which included 1052 acres land notified by the U.P. Avas Evam Vikas Parishad and for the rest 431.275 acres of land proceedings under the Land Acquisition Act, 1894 were initiated by Agra Development Authority by submitting proposal before the Collector. As noted above, even under the Hi-tech townships Policy 2003 two modes for providing land were contemplated i.e. by resorting to land acquisition proceedings and by resorting to direct purchase of land by developers. The Hi-tech townships Policy 2003 which

contained the aforesaid two modes were subsequently amply modified by the Government Orders dated 30.12.2005 and 16.8.2007, wherein requirement of direct purchase made by developers was made up to 60%. In view of the scheme as modified, it was not obligatory for the State to make available entire 1500 acres land to the petitioner by resorting to land acquisition proceedings under the Land Acquisition Act, 1894. It is further relevant to note that with regard to 431.275 acres of land for which proposal was submitted by the Agra Development Authority to the Collector for issuing notification under section 4 of the Land Acquisition Act, 1894, the petitioner was asked by the Agra Development Authority to deposit 10% of the estimated compensation amounting to Rs. 9,84,03,387/- by letter dated 13.2.2007 (Annexure-14 to the writ petition), the petitioner has deposited only five crores by bank draft dated 14.2.2007 and the rest of the amount was never deposited. The petitioner himself has annexed the letter dated 16.8.2007 Annexure-19 to the writ petition, in which the petitioner has stated that he is ready and willing to deposit balance amount of Rs. 4.84 crores and the Agra Development Authority was requested to take immediate action for denotifying /release of 1152 acres of land in favour of the petitioner. The petitioner having not deposited even 10% of the estimated amount of compensation as required by the Agra Development Authority, no notification under section 4 of the Land Acquisition Act, 1894 was issued even for land measuring 431.275 acres. The petitioner thus, has himself to be blamed for even non initiation of proceedings under the Land Acquisition Act, 1894 for the aforesaid 431.275 acres land. The petitioner, therefore, cannot be said to have any cause of action against the State Government on the doctrine of promissory estoppel to require the State to make available 1500 acres land identified by the petitioner for the reasons as noted above.

The petitioner cannot also to be held to have altered its position to such extent that it is now irreversible. The petitioner claims to have only surveyed the area and prepared the project report. The petitioner had also deposited Rs. 5 crores in pursuance of the demand of 10% of the estimated costs of 9 crores and odd. No land has been made available to the petitioner to carry on any development, the petitioner can always pray for refund of the amount of Rs. 5 crores deposited by it through bank draft and it cannot be said that the petitioner has altered its position to such an extent that it has now become irreversible. In Bannari Amman Sugars Ltd. vs Commercial Tax Officer And Ors. (supra), the apex Court had laid down that the Government is also competent to resile 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. The present is thus, not a case where even if it is assumed for the argument sake that any promise to provide the entire land was made by the State, it cannot resile from the said promise.

Learned Counsel for the petitioner has placed much reliance on the judgment of the apex Court in State Of Bihar & Ors. vs Kalyanpur Cements Ltd. (2010) 3 SCC 274. In the aforesaid case, the respondent Kalyanpur Cement Ltd had submitted an application to the State Government on 21.11.1997 for grant of sales tax exemption under the Bihar Industrial Policy 1995 for a period of five years w.e.f. 1.1.1998. Under the Industrial Policy 1995 exemption from sales tax was to be granted to sick units and clause 22 referred to various measures for revival of sick units. After the submission of the application by the petitioner, series of joint meetings of the Government, financial institutions and company took place in which categorical assurance was given that the necessary Sales Tax exemption notification would be issued shortly. However, no such notification was issued which

compelled the company to file writ petition in the High Court. In the High Court affidavit was filed on behalf of the Government stating that the Hon'ble Minister, Department of Commercial Taxes has approved the proposal along with draft notification regarding extension of Sales Tax related incentives to sick industrial units, which was to be issued after approval of the proposal by Hon'ble Chief (Finance) Minister of the Cabinet. Considering the materials brought on record, the Court took the view that failure of State to issue necessary notifications within a reasonable period was held arbitrary. The Court took the view that the State cannot be permitted to rely on its own lapses in implementing the policy. Following was laid down in paragraphs 85,86 and 87:

> "85. Even if we are to accept the submissions of Dr. Dhawan and Mr. Dwivedi that the provisions contained in Clause 24 was mandatory the time of one month for issuing the notification could only have been extended for a reasonable period. It is inconceivable that it could have taken the Government 3 years to issue the follow up notification. We are of the considered opinion that failure of the appellants to issue the necessary notification within a reasonable period of the enforcement of the Industrial Policy, 1995 has rendered the decisions dated 06.01.2001 and 05.03.2001 wholly arbitrary. The appellant cannot be permitted to rely on its own lapses in implementing its policy to defeat the just and valid claim of the Company.
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> 72. For the same reason we are unable to accept the submissions of the learned senior counsel for the appellant that no relief can be granted to the Company as the Policy has lapsed on 31.08.2000. Accepting such a submission would be to put a premium and accord a justification to the wholly 79 arbitrary action of the appellant, in not issuing the notification in accordance with the provisions contained in Clause 24 of the Industrial Policy, 1995.
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> 86. The entire sequence of meetings adverted to above would clearly indicate that rehabilitation package for the Company was considered by the financial institutions keeping in view the provisions contained in the Industrial Policy, 1995. The two Committees constituted under the aforesaid policy had duly recommended granting of exemptions. This was much before the policy lapsed on 31.08.2000.
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> 87. The assurances given in various meetings were reiterated before the High Court in the Affidavit dated 05.12.2000. It was clearly stated that the draft notification was being prepared and being approved. It was thus obvious that the notification merely had to be published in the Official Gazette. After making the aforesaid statements in the affidavit, order dated 06.01.2001 was issued."

In view of the facts and circumstances of the aforesaid case as noted in detail in the judgment, doctrine of promissory estoppel was invoked. The judgment of the apex Court in Kalyanpur Cement (supra) is thus, clearly distinguishable and does not help the petitioner in the present case. Another case relied by learned Counsel for the petitioner is (2006) 4 SCC 683 State of Karnataka and another Vs. All India Manufacturers Organisation and others. In the aforesaid case, a project of express highway liking Banglore and Mysore for developing Infrastructure along with the Corridor was

approved by the cabinet and a Government Order dated 20.11.1995 was issued in that regard. Frame work agreement was also signed under which obligation of the State was to make available land. A public interest writ petition was filed in the year 1997 challenging the frame work agreement in the High Court, which writ petition was dismissed recording finding in favour of developer. Against the order of the High Court dismissing the writ petition, Special Leave petition was also filed which too was dismissed on 26.3.1999. After seven years of the implementation of the project in the year 2004 writ petitions were again filed as a Public Interest Litigation directing for CBI inquiry and restraining the State Government from continuing with the project or acquiring any further land thereunder. In the aforesaid context following was laid down in paragraph 57:

> "57. Considering the facts as a whole, the High Court came to the conclusion that since the Project had been implemented and Nandi had invested a large amount of money and work had been carried out for more than seven years, the State Government could not be permitted to change its stand and to contend that the land allotted for the Project was in excess of what was required. Having perused the impugned judgment of the High Court, we are satisfied that there is no need for us to interfere therewith. Thus, there is no merit in this contention, which must consequently fail."

The aforesaid case is clearly distinguishable since in the said case, the Government had approved the project and the project was being implemented for seven years and in the first round of litigation when the project was challenged, the Government defended the project and supported all its action of granting project and carrying on the project. Thus, the said case does not help the petitioner in the present case.

Another judgment relied by Learned Counsel for the petitioner is 2007 (5) SCC 447 Southern Petrochemical Industries Co. Ltd. Vs. Electricity Inspector & ETIO and others. In the said judgment, the apex court held that even a right can be preserved by reason of invocation of doctrine of promissory estoppel. There cannot be any dispute to the proposition as laid down in the aforesaid case. In the aforesaid case, the appellant had been enjoying the benefit of exemption from payment of tax. The apex Court in the said case held that the right of the appellant was not destroyed and it was held to be existing. The said interpretation was put by the apex court after considering the provisions of Tamil Nadu Electricity Taxation on Consumption Act, 1962 and the Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003 as well as Tamil Nadu Electricity Duty Act, 1939. Following was laid down in paragraphs 130 and 131:

> "130. We, therefore, are of the opinion that doctrine of promissory estoppel also preserves a right. A right would be preserved when it is not expressly taken away but in fact has expressly been preserved.
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> 131. In view of the application of doctrine of promissory estoppel in the case of the appellants, their right is not destroyed and in that view of the matter although the Scheme under the impugned Act is different from the 1939 Act and the 1962 Act and furthermore in view of the phraseology used in Section 20(1) of the 2003 Act, right of

> the appellants cannot be said to have been destroyed. The legislature in fact has acknowledged that right to be existing in the appellants."

The above judgment was also on its own facts, in which petitioner's right of exemption was held to be subsisting. Another judgment relied by learned Counsel for the petitioner is (2008) 2 SCC 777 U.P. Power Corporation Ltd. And another Vs. Sant Steels & Alloys (P) Ltd. And others, in which it was held that benefit of hill development rebate as was extended to new industrial unit for a period of five years was entitled to continue till coming into force of U.P. Electricity Reforms Act, 1999. It is sufficient to note that the above two Judges' judgment has not been approved by subsequent three Judges' judgment in Shree Sidhbali Steels Limited and others Vs. State of U.P. And others (supra) in which following was laid down in paragraphs 49 and 50:

> "49. Again in Arvind Industries and Ors. v. State of Gujarat and Ors., MANU/SC/0499/1995 : AIR 1995 SC 2477, Government had withdrawn a concession given to a new industry. The claim of the industry was that such a course was not open to the Government. It was claimed by the Government that notification giving concession did not contain any promise that the benefits given to new industry would not be altered from time to time. While rejecting the claim of the industry as not tenable, this Court has held that Government is entitled to grant exemption to industries having regard to the industrial policy of the Government, but it is equally free to modify its industrial policy and grant, modify or withdraw fiscal benefits from time to time. What is important to notice is that this Court has held that in such circumstances the principle of promissory estoppel would not be attracted.
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> 50.What this Court finds is that several reported decisions some of which are rendered by the larger Bench were not considered by Division Bench of this Court while delivering judgment dated 10.12.2007 in Civil Appeal No. 1215 to 1216 of 2001. The legal effect would be that the finding recorded by the Division Bench of this Court, in the above mentioned case that the notification dated 18.6.1998 and 25.1.1999 reducing the rate of rebate from 33.33% to 17% were bad in law will have to be regarded as not laying down correct proposition of law. Thus, the Petitioners in the present writ petition are not entitled to claim promissory estoppel against the Government and would not be entitled to any benefit on the basis of two Judge Bench judgment of this Court referred to earlier."

Last case relied by learned Counsel for the petitioner is (2011) 8 SCC 737 State of Tamil Nadu and others Vs. K. Shyam Sunder and others. The apex Court in the said case had laid down that the State should not change its stand merely because the other political party has come into power. It was held that the Government has to rise above the nexus of vested interest. There cannot be any dispute to the proposition that State should not change its stand merely because other political party has come into power. Present is not a case where Hi-tech townships policy which was issued in 2003 has been reversed or annulled by subsequent Government. Hi-tech townships policy has been continued with certain modifications and changes which were found necessary for implementation of the policy to serve a public interest. Present is not a case of change of policy on change of Government.

No allegations of malafide has either been pleaded or proved against the State Government. The said judgment also does not help the petitioner.

In view of the foregoing discussions, we are of the view that the petitioner has neither made out any ground to quash the clause 39 of the Government Order dated 16.8.2007 nor to issue any mandamus to the respondents to execute a contract in favour of the petitioner in terms of memorandum of understanding dated 30.11.2005 or to issue any direction to the respondents to release 1142 acres of land in favour of the petitioner. The Government decision dated 14.1.2008 permitting the respondent no. 4 to continue with the Artauni Bhumi Vikas Evam Grih Sthan Yojna No. -5 also cannot be faulted. The scheme having been allowed to continue, the prayer of the petitioner to quash the proceedings of the 1965 Act consequent to Section 28 notification, also cannot be granted. The petitioner is not entitled for any of the reliefs as claimed in both the writ petitions.

Both the writ petitions are dismissed. Parties shall bear their own cost.

Order Date :- 2.3.2012 LA/--