

Sahajanand Technologies Pvt.Ltd vs State on 15 July, 2013

Author: Rajesh H.Shukla

Bench: Rajesh H.Shukla

SAHAJANAND TECHNOLOGIES PVT.LTD.....Petitioner(s)V/SSTATE OF GUJARAT

C/SCA/5775/2004

JUDGMENT

IN

THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL
CIVIL APPLICATION NO. 5775 of 2004

FOR
APPROVAL AND SIGNATURE:

HONOURABLE
MR.JUSTICE RAJESH H.SHUKLA : Sd/-

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1

Whether

Reporters of Local Papers may be allowed to see the judgment ?

NO

2

To

be referred to the Reporter or not ?

NO

3

Whether

their Lordships wish to see the fair copy of the judgment ?

NO

4

Whether

this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

NO

5

Whether

it is to be circulated to the civil judge ?

NO

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SAHAJANAND
TECHNOLOGIES PVT.LTD.....Petitioner(s)

Versus

STATE
OF GUJARAT & 5....Respondent(s)

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Appearance:

MR
SS IYER, ADVOCATE for the Petitioner(s) No. 1

MR
BHARAT VYAS AGP for the Respondent(s) No.1-2,4-6

RULE
SERVED BY DS for the Respondent(s) No. 3

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CORAM:

HONOURABLE

MR.JUSTICE RAJESH H.SHUKLA

Date
: 15/07/2013

ORAL
JUDGMENT

The present petition has been filed by the petitioner under Articles 14, 19(1)(g) and 226 of the Constitution of India as well as under the provisions of the Gujarat Municipality Act, 1963 read with Gujarat Special Economic Zone Ordinance, 2004 on the grounds mentioned in the petition on the following prayer :-

A. Your Lordship be pleased to issue a writ of mandamus or a writ in nature of mandamus or any other appropriate writ, order or direction declaring the collection of the stamp duty on the land-lease transaction between the petitioner and the respondent no.3 being illegal, arbitrary and without any authority of law.

B. Your Lordship be pleased to issue a writ of mandamus or a writ in nature of mandamus or any other appropriate writ, order or direction commanding the respondent no.1 to refund the stamp duty and the registration fees paid by the petitioner on the land-lease deed with the respondent no.3 forthwith alongwith interest thereupon.

C. Pending notice, admission and final hearing of this petition, Your Lordship be pleased to direct the respondent no.1 to refund the stamp duty and the registration fees paid by the petitioner on the land-lease deed with the respondent no.3 on appropriate conditions/security as deemed fit to Your Lordship.

D. Ex parte ad interim relief in terms of prayer C be granted.

E. Such other relief(s) as deemed fit may be granted to the petitioner Heard learned counsel, Shri S.S. Iyer for the petitioner and learned AGP Shri Bharat Vyas for the respondent.

Learned counsel, Shri Iyer referred to the policy regarding the establishment of Special Economic Zone in Gujarat produced at Annexure-A and submitted that as

provided in this policy, the State Government formed a scheme to offer a special facilities and concession for the promotion of the units in Special Economic Zone as provided in detail in this policy. Learned counsel, Shri Iyer pointedly referred to Clause 6, which provides as under :-

6. SALES TAX AND OTHER LEVIES:

(a) xxx xxx xxx

(b) Complete exemption on payment of stamp duty and registration fees for loan agreements, credit deeds, mortgages etc. pertaining to SEZ unit on which will be executed within the SEZ area.

Learned counsel, Shri Iyer has also referred to the Government Notification being Gujarat Ordinance No.1 of 2004 regarding the Special Economic Zone and submitted that the Gujarat Special Economic Zone especially providing for various intensives, concession and fiscal benefits. Learned counsel, Shri Iyer referred to Chapter VIII of the said notification, which provides as under :-

21. State Taxes and Levies:- (1) All sales and transactions within the processing area of the Zone shall be exempt from all taxes, cess, duties, fees or any other levies under any State law to the extent specified below :-

(a) Stamp duty and registration fees payable on transfer of land meant for approved Units in the Zone.

(b) Levy of Stamp duty and registration fees on loan agreements, credit deeds and mortgages executed by the Unit or establishment set up in the processing area of the Zone.

(c) Sales Tax, Purchase Tax, Motor Spirit Tax, Luxury Tax, Entertainment Tax and other taxes and cess payable on sales and transactions.

Learned counsel, Shri Iyer has therefore submitted that as provided, all the sales and transactions within the area of zone shall be exempted from the taxes and there is a specific reference that stamp duty and registration fee payable on transfer of land meant for the approved units in zone and it further provides that levy of stamp duty and registration fee of such loan agreement, mortgages etc. executed by the units established and set up in such area of zone shall be exempted. He therefore submitted that the petitioner would be entitled to such exemption from the stamp duty in respect of the land transaction. Learned counsel, Shri Iyer has referred to and relied upon the lease deed produced on record at Annexure-G and submitted that the lease was made in the year 2003. He also submitted that the lease deed is dated 04.12.2003 and, therefore in view of the policy regarding SEZ and notification about the exemption from the stamp duty in respect of the assets in such SEZ, benefit should have been granted and, therefore, the present petition has been filed.

Learned counsel, Shri Iyer has also submitted that on the principles of promissory estoppel when the Ordinance categorically provides for exemption on the stamp duty on any document executed by the units in the area of SEZ, the respondent-State cannot deny such benefit. It was submitted that the Government has declared the policy regarding the SEZ to achieve object and on the basis of such promise and the policy, when the petitioner-unit has taken further steps, the benefit cannot be denied. Learned counsel, Shri Iyer therefore submitted that on the principles of promissory estoppel, such benefit cannot be denied and the justice equity and fairness require that such right accrued cannot be denied on some technicality. He submitted that it is not necessary that there has to be a contractual relationship between the parties and the parties need not be in any kind of any legal relationship before the transaction. Learned counsel, Shri Iyer has also referred to and relied upon the judgments of the Hon ble Apex Court in case of Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P., reported in (1979) 2 SCC 409 and also in case of Union of India (UOI) & Ors. Vs. Godfrey Philips India Ltd., reported in AIR 1986 SC 806 and pointed referred to the observations made in para nos.11 and 13, which read as under :-

11. The resultant position summarised by this Court in Motilal Sugar Mills case (supra) in the following words:

The law may therefore now be taken to be settled as a result of this decision that where the Government makes a promise knowing or intending that it would be acted on by the promises and, in fact, the promisee, acting in reliance on it, alters his position the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promises, 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 299 of the Constitution. It is elementary that in Republic governed by the rule of law, on one, howsoever high or low, is above the law. Everyone is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the government stands on the same footing as a private individual so far as the obligation of the law is concerned: the former is equally bound as the latter. It is indeed difficult to see on what principle can a government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel. Can the government say that it is under no obligation to act in a manner i.e. fair and just or that it is not bound by the considerations of honesty and good faith? Why should the government not be held to a high standard of rectangular rectitude while dealing with its citizens? There was a time when the doctrine of executive necessity was regarded as sufficient justification for the government to repudiate even its contractual obligations, but let it be said to the eternal glory of this court, this doctrine was emphatically negated in the Indo-Afghan agencies case and the supremacy of the rule of law was established. It was laid down by this court that the government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action.

The doctrine of promissory estoppel as explained above was also held to be applicable against public authorities as pointed out in Motilal Sugar Mills case. This court in Motilal Sugar Mills case quoted with approval the observations of Shah, J. in Century Spinning and Manufacturing Company limited v. Ulhasnagar Municipal Council [1970] 3 S.C.R. 854, where the learned Judge said:

Public bodies are as much bound as private individuals to carry out representations of facts and premises made by them, relying on which other persons have altered their position to their prejudice.

If our nascent democracy is to thrive different standards of conduct for the people and the public bodies cannot ordinarily be permitted. A public body is, in our judgment, not exempt from liability to carry out, its obligation arising out of representations made by it relying upon which a citizen has altered his position to his prejudice."

The Court refused to make a distinction between a private individual and a public body so far as the doctrine of promissory estoppel is concerned.

12. XXX XXX XXX

13. Of course we must make it clear and that is also laid down in Motilal Sugar Mills case (supra), that there can be no promissory estoppel against the legislature in the exercise of its legislative functions nor can the Government or public authority be debarred by promissory estoppel from enforcing a statutory prohibition. It is equally true that promissory estoppel cannot be used to compel the Government or a public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make. We may also point out that the doctrine of promissory estoppel being an equitable doctrine it must yield when the equity so requires, if it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be inequitable to hold the Government or public authority to the promise or representation made by it, the Court would not raise an equity in favour of the person to whom the promise or representation is made and enforce the promise or representation against the Government or public authority. 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. This aspect has been dealt with fully in Motilal Sugar Mills case (supra) and we find ourselves wholly in agreement with what has been said in that decision on this point.

Therefore learned counsel, Shri Iyer has submitted that the present petition may be allowed particularly when the averments in the petition are not controverted by filing any reply.

Learned AGP Shri Bharat Vyas submitted that since the issue involved with regard to the interpretation of the provisions referring to the policy of the Government, same may be considered. Learned AGP Shri Vyas referred to the policy at Annexure-H and also Ordinance and submitted that the Ordinance bearing Gujarat Ordinance No.1/2004 came into force w.e.f. 10.02.2004 and, therefore, any such benefit claimed on the basis of such Ordinance could be claimed after the Ordinance has been made and the petitioner is claiming the benefit in respect of the transaction which has taken place prior thereto i.e. the transaction of lease which has been executed on 04.12.2003, which is not permissible. Further learned AGP Shri Vyas has referred to affidavit-in-reply and submitted that the document is lease deed and there is no transfer of land in the present case. Learned AGP Shri Vyas submitted that as per the provisions of the Ordinance, exemption from the stamp duty is available only when there is a transfer of land, whereas in the present case, the petitioner has executed lease deed and, therefore, there is no transfer of land and, therefore, benefit under the Ordinance cannot be claimed.

In view of the rival submissions, it is required to be considered whether the present petition can be allowed or not and whether the grievance made by the petitioner is justified or not.

As could be seen from the Government policy at Annexure-H regarding the establishment of Special Economic Zone in Gujarat dated 19.07.2003, it provides for the complete exemption and the Ordinance issued pursuant to such policy dated 10.02.2004 produced at Annexure-H which is required to be considered. Chapter VIII of the Ordinance referred to fiscal benefit and it is provided under Article 21, State Taxes and Levies :- (a) Stamp duty and registration fees payable on transfer of land meant for approved Units in the Zone. Therefore for the purpose of this Ordinance, underlying object is required to be considered. The Ordinance has been issued by the Government pursuant to the broad policy of the Government of India, which is required to be considered, which reads as under :-

The Government of India has announced EXIM Policy relating to Special Economic Zone with a view to augmenting infrastructural facilities for export production. The Central Government has also offered various incentives and facilities to the Developer of the Zone as well as the industrial unit to be set up in the Zone. The concept of Special Economic Zone is to bring large dividends to the State in terms of economic and industrial development and the generation of new employment opportunities. The State Government has already declared its policy regarding the establishment of such Zones in the State. In order to achieve rapid economic growth to attract investment and to ensure systematic and integrated development of the industry in the State, it is considered necessary to enact a law for the establishment of the Special Economic Zone in the State.

xxx xxx xxx xxx xxx xxx xxx xxx With a view to attract the Industrialists and entrepreneur to establish industrial units in the Zone, the State Government has proposed to grant the various fiscal benefits. The unit which intends to set up captive power plant in the Zone has been exempt from payment of electricity duty for a period of ten years. The stamp duty and registration fee payable on transfer of land in

the Zone has been exempted and there would be no registration fee or stamp duty leviable on loan agreement, credit deeds, mortgages executed by the unit in the processing area of Zone.

Therefore first contention which is sought to be raised by the respondent-State that it is not a transfer since it is a lease agreement and therefore there is no transfer of land and therefore it is not leviable for the benefit of exemption is required to be considered. The Transfer of Property Act refers to the transfer of property and manner in which the right, title and interest in the property could be transferred. Section 5 of the Transfer of Property Act provides that Transfer of property defined.- transfer of property means an act by which a living person conveys property, in present or in future, to another. Further the mortgaged which referred to transfer of an interest in an immoveable property is also provided and, therefore, lease by which the right, title or interest in the land is sought to be transferred would also amount to a transfer but may not be a sell as provided in Section 54. However, Section 105 of the Transfer of Property Act refers to a lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms . Therefore any such agreement between the parties with regard to the intention to create interest in favour of the grantee or licensee is entitled to an interest for enjoyment of the property. The Legislature has provided that the lease of immoveable property for a period of more than one year should be made by the registered sale deed suggesting that the interest in the property is created. It is in this background, the provisions of the Ordinance dated 10.02.2004 are required to be considered vis-a-vis the policy of the Government at Annexure-H dated 10.02.2004. Thus it appears that the policy has been made by the Government earlier which culminated into Ordinance subsequently and, therefore, when there is a specific provision to give benefit, can such benefit be denied on the ground that there is no transfer of land. As stated above, the transfer of land does not necessarily mean by transfer of sale only and it can have a different form or there could be a transfer of interest for a long term, which can be termed as transfer of interest in the land. Therefore, the submission made by learned AGP Shri Vyas that since it is a lease deed, it is not a transfer of land cannot be accepted. The interpretation of the clause in the Ordinance or the policy has to be made with reference to the ultimate object for which it is created. Therefore when the policy is made and the Ordinance for the Special Economic Zone has been made for giving a boost to the industries and invite the people for setting up the industries holding out to give the benefit including the fiscal benefit as stated above, same cannot be denied by such narrow interpretation that the transfer of land by way of lease is not covered as there is no transfer of land. As discussed above, the transfer of land does not necessarily mean that it should be by way of sell only and such a transfer of sell could be by other mode including the lease of agreement, by which, the interest in the land is transferred for the purpose of

enjoyment for a duration. Therefore while interpreting the provision of the Ordinance vis-a-vis the policy and underlying object, submission with regard to narrow interpretation that it is not a transfer and lease is not a transfer of land cannot be accepted. By way of lease agreement, there is a transfer of an interest in the land for a duration. It is well accepted that even institution like GIDC which have been set up for the purpose of permitting the industrialization, encouraging and facilitating an entrepreneur to put up and set up the industries, plots/shades are given by such Government Corporation by GIDC by way of lease. It is on the basis of such allotment of the plot by way of lease, the industrial units get necessary power connection as well as finance from the financial institution like banks. Further it is well accepted rule of interpretation that there has to be purposive interpretation which has consonance with the purpose and which is sought to be achieved by the Legislature or the Ordinance or the policy. Therefore once it is accepted that the submission that it is not a transfer of land as provided in the Ordinance and, therefore, the lease agreement is covered cannot be accepted.

Therefore once it is accepted that even limited transfer of interest in the land by way of lease agreement would also amount to transfer of land for the purpose of fiscal benefits as provided in the Ordinance, which would make the units like the petitioner for the entitle for the benefit.

Another facet of argument that the Ordinance was issued on 10.02.2004 and the policy has been made in 2007 and the lease agreement is dated 04.12.2003 and, therefore, the agreement is prior to date of Ordinance and the benefit under the Ordinance could be availed from the date on which Ordinance is brought into force is required to be considered on principles of promissory estoppel. It is well accepted that normally when such policies are drawn which is suggestive of the probable road map or broad guidelines for the proposed development and such policy then, it can shape in the form of notification, Ordinance or the registration. However the moot question which is required to be considered is whether there was any such policy floated by the Government for the purpose of attracting the investment for the purpose of industrial development. If such policy has been made for establishment of Special Economic Zone in Gujarat with an object of attracting investment and development of the industries and pursuant thereto subsequently, it has been culminated into an Ordinance dated 10.02.2004, it is like giving the final shape to the policy. The broad preamble of the Ordinance referred to these aspects and, therefore, such argument made that lease agreement is prior to the date of Ordinance and, therefore, is not covered also cannot be accepted on the ground of promissory estoppel. It is on the basis of the promise as per the policy of the Government at Annexure-A dated 19.07.2002, person like the petitioner has moved in that direction seeking to establish the industrial unit, for which, as stated in letter dated 19.04.2004 at Annexure-J by Special Economic Zone clearly suggesting that such a policy decision for the SEZ was taken on 19.07.2002 and the actual Ordinance came to be issued on 10.02.2004 which took time in processing of the papers and getting

clearance. However the intention and promise of the Government which has led to such establishment of Special Economic Zone and the investment in such economic zone would certainly have a bearing. It is required to be stated that the Rules or the By-laws for observations of the allottees and the preamble state that they were framed in the year 2003. All these would lead to establish that the policy and the promise of the Government for attracting the investment for the purpose of industries in such Special Economic Zone to be set up was already there. Therefore merely because such a policy culminated into an Ordinance in the year 2004 by itself may not be a ground to deny the benefits under the Ordinance to the investors like the petitioner on the ground of promissory estoppel. Law regarding promissory estoppel is well settled and useful reference can be made to the judgment of the Hon ble Apex Court in case of Mahabir Vegetable Oils (P) Ltd. & Anr. Vs. State of Haryana & Ors., reported in (2006) 3 SCC 620. Therefore, when the promise has been held out on the ground of policy to provide fiscal benefit and the purposes were altered by making their investment, it cannot be declined on the ground of promissory estoppel. Further in case of Bannari Amman Sugars Ltd. Vs. Commercial Tax Officer & Ors., reported in (2005) 1 SCC 625, the Hon ble Apex Court has made observation as under :-

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

Therefore even considering these aspects that promissory estoppel mere assertion or claim itself would not be a ground but it has to be considered with reference to the circumstances, which are the basis for the equal and fair play. Therefore considering the aforesaid broad observations and the facts, the present petition deserves to be allowed.

In the circumstances, the present petition stands allowed. Prayer in terms of Para No.10B is granted. The respondents are directed to refund the stamp duty and registration fee paid by the petitioner on the lease deed without interest within a period of four weeks. Rule is made absolute to the aforesaid extent.

Sd/-

(RAJESH H.SHUKLA, J.) Gautam Page of 22