

A

M/S. MALWA OIL MILLS AND ANR.

v.

STATE OF M.P. AND ORS.

JULY 25, 1996

B

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

*M.P. Town Improvement Trust Act, 1960 : Section 71.*

C

*Issue of notification under Section 71 by Improvement Trust for Housing Scheme—Subsequently appellant—Mill purchasing the land from erstwhile owners—Notice issued to the appellant calling upon them to remove sign Board put up by appellants—Writ challenging notice—Dismissal—High Court held that appellants were not in possession and only sign Board was put up in the property—High Court also held that there was no promise made by the respondent to convert the Housing scheme into non-residential—Appeal—Held on issue of notification the right title and interest of erstwhile owners stood vested in trust free from all encumbrances—Sale made by erstwhile owners to appellants held therefore void—Appellants did not acquire any right in property—Question of estoppel does not arise.*

D

E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 179 of 1981.

From the Judgment and Order dated 21.11.81 of the Madhya Pradesh High Court in Misc. Petition No. 44 of 1979.

F

A.K. Chitale and Sushil Kumar Jain for the Appellants.

Niraj Sharma and S.K. Agnihotri for the Respondent Nos. 1-3.

The following Order of the Court was delivered :

G

This appeal by special leave arises from the judgment and order of the Division Bench of the Madhya Pradesh High Court, Indore Bench made on November 21, 1980 in Misc. Petition No. 44/79. The respondents issued a notice to the appellants calling upon them to remove the sign-board put up by the appellants in the property in question. Calling that notice in question, the appellants filed writ petition in the High Court

H

admitting that pursuant to a notification issued under Section 71 of the

M.P. Town Improvement Trust Act 1960, a housing scheme was evolved and pursuant to that notification the land stood vested in the Housing Board. It is their further case that thereafter since possession could not be secured by the Housing Board, the appellants' association was requested by a letter to have the possession secured from the illegal occupants and subsequent thereto industrial scheme was formulated since the mills were burnt out in a fire. On the basis thereof, they secured the possession and entered into an agreement with the erstwhile owners in respect of plot Nos. 4 and 5 in the said land of an extent of 19338 sq. ft. and subsequently, they obtained sale deed on 21.8.1972 for a consideration of Rs. 27,073-20. Since the respondents had promised that they would convert the scheme into non-residential scheme, they were stopped to take action to have them ejected. The High Court has rejected the contentions. The finding of the High Court is that there was no promise made by the Government and the appellants had not suffered any detriment in furtherance of any promise made. The impugned order is only a direction to remove the sign-board. The appellants were in possession of the land and that, therefore, the relief sought for could not be granted. Thus, this appeal by special leave.

*Shri Chitale*, learned senior counsel for the appellants, contended that in view of the agreement, Annex. B, dated 15.11.1972 and revised agreement dated 17.11.73, the Government are estopped from acting to the detriment of the appellants and, therefore, on the basis of those agreements, the appellants came to purchase the land from the erstwhile owners. The view of the High Court, therefore, is not correct in law. We find no force in the contention. Section 71 of the Act reads as under :

"71. Notification of acquisition and vesting of Land in trust, (1) after the acquisition of land is sanctioned by the State Government under Section 70 the Trust may acquire such land by publishing in the Gazette a notice stating that it had decided to acquire the land and has obtained the sanction of the State Government for the acquisition thereof.

(2) When a notice under sub-section (1) is published in the Gazette the land shall, on and from the date of such publication, vest absolutely in the Trust free from all encumbrances.

(3) Where any land is vested in the Trust under sub-section (2), the Trust may by notice in writing, order any person who may be

A in possession of the land to surrender or deliver possession thereof to the Trust or any person duly authorised by it in this behalf within thirty days of the service of the notice.

B (4) If any person refuses or fails to comply with an order made under sub-section (3), the Trust may take possession of the land and may for that purpose cause to be used such force as may be necessary."

C A reading thereof would clearly indicate that on publication of the notification, the right, title and interest of the erstwhile owners stood divested and the land stood vested in the trust free from all encumbrances. As a consequence, the previous owners have no right title to alienate the property to any third party. The sale made to the appellants in the aforesaid sale deed, therefore, is a void sale. It does not confer any right. It is also not in dispute that the scheme envisaged was for housing purpose. D Unless the scheme is modified and duly published, no non-residential scheme can be brought up. The appellants came to be in possession of the land. It can at best be only illegal possession. The High Court gave a categorical finding that the appellants were not in possession and only sign board was put up in the property. Under these circumstances, they did not acquire any right to the property.

E The question then is : Whether any promise was made by the Government ? The High Court has recorded a finding, and in our view quoted rightly, that there is no promise made to the appellants. What all can be called out from those two agreements relied on by the appellants, is that there was some thinking of converting the residential scheme into F non-residential scheme. As stated earlier, unless the scheme is actually converted, it does not give any right much less a vested right in plot Nos. 4 and 5 as claimed by them. The appellants had not acted to their detriment pursuant to the alleged promise. So the question of estoppel does not arise.

G The appeal is accordingly dismissed. No costs.

T.N.A.

Appeal dismissed.