

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 3RD DAY OF JANUARY, 2023

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S. DIXIT

WRIT PETITION NO.58854 OF 2014(BDA)

BETWEEN:

SUCHITRA CINEMA AND CULTURAL ACADEMY.,
A TRUST REGISTERED UNDER THE
INDIAN TRUSTS ACT, 1882
HAVING ITS PRINCIPAL OFFICE AT
C.A. NO.36, BANASHANKARI II STAGE,
BANGALORE-560 070,
REPRESENTED BY ITS CHARIMAN,
MR. K.V. RAVINDARANATH TAGORE,

(BY SMT. BHAVANA G K, ADVOCATE)

...PETITIONER

AND:

1. THE COMMISSIONER,
BANGALORE DEVELOPMENT AUTHORITY,
BANGALORE-560 020.
2. STATE OF KARNATAKA,
REPRESENTED BY SECRETARY,
URBAN DEVELOPMENT, VIDHANA SOUDHA,
BENGALURU - 560 001.
AMENDED V.C.O DATED 08.08.2019

... RESPONDENTS

(BY SRI. K KRISHNA, ADVOCATE FOR R1;
SMT. N ANITHA, HCGP FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE IMPUGNED LETTER DATED 19.11.2014 ISSUED BY THE RESPONDENT TO THE PETITIONER VIDE ANN-M.

THIS PETITION COMING ON FOR FINAL HEARING THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

This judgment needs to be prefaced with what more than a century ago, a great Judge of US Supreme Court **Justice Oliver Wendell Holmes** in **TOWNE vs. EISNER**¹ had observed:

"A word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in color and content according to the circumstances and time in which it is used.."

The difficulty which the petitioner is put to arose because of BDA's employment of a wrong English word namely, '*donation*' in a lease transaction and the same having been literally construed by the statutory auditing party, the concession given to the lessee was sought to be revoked.

¹ 245 U.S. 418 (1918)

2. The Petitioner, a private Trust registered under the provisions of Indian Trusts Act, 1882 is grieving before the Writ Court against the BDA's Letter dated 19.11.2014 (Annexure-M) whereby it is asked to pay back a sum of Rs.50 Lakh on the ground that such a 'donation' could not have been made by the BDA - an authority constituted under the Bangalore Development Authority Act, 1976 whilst renewing lease of the sites in question.

3. The impugned letter reads as under:

“ಇವರಿಗೆ,
ಅಧ್ಯಕ್ಷರು,
ಸುಚಿತ್ರಾ ಸಿನಿಮಾ ಆಕಾಡೆಮಿ ಟ್ರಸ್ಟ್,
ಸಿವಿ ಸಂ.36, ಬನಶಂಕರಿ 2ನೇ ಹಂತ,
ಬೆಂಗಳೂರು - 560 070.

ಮಾನ್ಯರೇ,

ವಿಷಯ: ಸಿವಿ ಸಂ 36, ಬನಶಂಕರಿ 2ನೇ ಹಂತದ
ನಿವೇಶನ ಮೌಲ್ಯದ ಬಾಬು ರೂ.50.00
ಲಕ್ಷಗಳನ್ನು ಪಾವತಿಸುವ ಬಗ್ಗೆ.
ಉಲ್ಲೇಖ: ಮಹಾಲೇಖಪಾಲರ ಆಕ್ಷೇಪಣಾ ಸಂ 07
ಮತ್ತು 2012 ರ ವರದಿ ಸಂ.17.4.2

ಮೇಲ್ಕಂಡ ಸಿಎ ನಿವೇಶನ ಸಂ 36, ಬನಶಂಕರಿ 2ನೇ ಹಂತಕ್ಕೆ ಪಾವತಿಸಬೇಕಾದ ಒಟ್ಟಾರೆ ಗುತ್ತಿಗೆ ಮೌಲ್ಯದಲ್ಲಿ ರೂ.50.00 ಲಕ್ಷಗಳನ್ನು ಪ್ರಾಧಿಕಾರದ ವತಿಯಿಂದ ದೇಣಿಗೆ ಎಂದು ಪರಿಗಣಿಸಿರುವುದನ್ನು ಮಹಾಲೇಖಪಾಲಕರು ತೀವ್ರವಾಗಿ ಆಕ್ಷೇಪಣೆ ವ್ಯಕ್ತಪಡಿಸಿರುವುದರಿಂದ ಮತ್ತು ಈ ವಿಷಯವು ಸಾರ್ವಜನಿಕ ಲೆಕ್ಕಪತ್ರ ಸಮಿತಿ ಮುಂದೆ ಮಂಡಿಸಿರುವುದರಿಂದ ತಾವುಗಳು ಸದರಿ ಸಿಎ ನಿವೇಶನಕ್ಕೆ ನೀಡಲಾದ ರೂ.50.00 ಲಕ್ಷಗಳ ದೇಣಿಗೆ ಹಣವನ್ನು ಪ್ರಾಧಿಕಾರಕ್ಕೆ ತಕ್ಷಣ ಪಾವತಿಸಲು ಈ ಮೂಲಕ ತಿಳಿಸಿದೆ.

ತಮ್ಮ ವಿಶ್ವಾಸಿ,
ಆಯುಕ್ತರು,
ಬೆಂಗಳೂರು ಅಭಿವೃದ್ಧಿ ಪ್ರಾಧಿಕಾರ,
ಬೆಂಗಳೂರು.”

4. Learned counsel for the Petitioner vehemently argues that 30 year lease initially granted having been renewed for the same tenure with the concession consciously given in a sum of Rs.50 Lakh, the BDA an instrumentality of the State under Article 12 of the Constitution of India, could not have turned around and asked the Petitioner to return the concession, whatever be the nomenclature adopted in the impugned letter. She vociferously presses into service both the *doctrine of estoppel* under section 115 of the Indian Evidence Act, 1872 and the *doctrine of promissory estoppel* vide Apex Court decision in UNION OF INDIA vs INDO AFGHAN AGENCIES, AIR 1968 SC 718, in support of her case.

5. The Respondent – BDA having entered appearance through its Sr. Panel Counsel has filed its Statement of Objections dated 26.02.2015 resisting the Writ Petition. Learned Panel Counsel contends that the BDA being the statutory authority has to function under the provisions of 1976 Act and therefore it cannot undertake any charitable activity like making donation that are not authorized by the statutory scheme. In support of this, he relies on the Calcutta High Court decision in **SATIBHUSAN MUKHARJEE Vs. CORPORATION OF CALCUTTA**, AIR 1949 Calcutta 20. He also points out the audit objections to the concession granted to the petitioner-lessee in the matter of premium/rentals. So contending, he seeks dismissal of the writ petition.

6. Having heard the learned counsel for the parties and having perused the Petition papers, this Court is inclined to grant indulgence in the matter as under and for the following reasons:

a) Petitioner is a registered Trust and not a profit making entity is apparent from the registered Trust Deed dated 05.03.1979 at Annexure-A. Initially, it had secured a 30 year lease of the subject sites vide registered deed dated 28.12.1979 from the Respondent – BDA. The BDA on request has accorded the renewal of this lease on 16.06.2010 for the same tenure, the original tenure having expired on 28.12.2009, along with the concession of Rs.50 lakh as instructed by the Hon'ble Chief Minister of the State presumably u/s.65 of the 1976 Act. It hardly needs to be stated that the Act and the Rules promulgated thereunder provide for entering into lease transactions as well. It hardly needs to be stated that the power to enter into transactions of the kind includes the incidental power to grant some concessions keeping in view a host of factors, as may be directed by the Government u/s.65. Further, the concession of the kind by no stretch of imagination can be treated as illegal. That being the position, the counsel

for the petitioner is more than justified in submitting that the BDA now cannot turn around and rescind the concession. Law abhors approbation & reprobation, inasmuch as the BDA being a statutory authority answers the description of State under Article 12 of the Constitution of India. The instrumentalities of the State have to conduct themselves with a measure of fairness and justice, in all their actions. However, impugned action falls short of reasonable fairness standards.

b) It is not in dispute that the request of the Petitioner for certain concessions having been favoured on the basis of the letter of the Chief Minister of the State, a concession in a sum of Rs.50 Lakh was accorded vide Endorsement dated 27.11.2011 at Annexure-J. This concession was founded on the request made in terms of Petitioner's representations dated 05.07.2011 & 10.06.2011. The grant of said concession was acted upon by the Petitioner, is also not in dispute. It has been a

settled position of law that where a person acts on that representation of another to his prejudice, whatever be the arguable prejudice, ordinarily it is not open to the representer to contend or conduct to the contrary, *vide estoppel* enacted in section 115 of the 1872 Act. Concessions of the kind are not alien to the law of landlord and tenant. Had the concession been given contrary to law, it would have been a different matter.

c) Counsel for the petitioner is more than justified in pressing into service the doctrine of *promissory estoppel* too, for invalidation of the impugned recovery banking upon the decision of the Apex Court in INDO AFGHAN AGENCIES *supra*. Enormity of importance that our system attaches to this doctrine, can be seen by the stand taken by the country in Bhopal Gas Tragedy case that was launched in a District Court in New York i.e., “Un *IN RE: UNION CARBIDE CORPORATION GAS LEAK DISASTER AT BHOPAL, INDIA IN DECEMBER 1984*”. The tort-feasor company was

pressing for adjudication of the claims of injured Indians only in American Court alleging that Indian legal system was inadequate. A great jurist of yester decades Mr. N.A. Palkhivala in his personal Affidavit dated 18.12.1985 filed in the said court extolled the efficacy & greatness of our Judiciary as under:

"In Motilal Padampat Sagar Mills v. Uttar Pradesh (AIR 1979 SC 621) the Supreme Court took the doctrine of Promissory estoppel (which estops the government from pleading executive necessity and going back on its earlier promise) an important step further, and held that it was not merely available as a defence but could supply a cause of action for institution of legal proceedings."

"I have seen the Memoranda and Affidavits filed in opposition to Union Carbide's Motion regarding Forum Non Conveniens. In those papers it has been stated that the Indian legal system is "deficient: and "inadequate". I am constrained to say that it is gratuitous denigration to call the Indian system deficient or inadequate."

"The Indian judiciary is wholly competent to deal with any dispute in any field of law, in the 35 years of the history of our Republic, ably dealt with far more complex issues than those arising from the gas plant disaster at Bhopal."

("Mass Disasters and Multinational Liability" by Upendra Baxi and Thomas Paul, Indian Law Institute, pages 223-225)

d) The above apart, it needs to be mentioned that that the so called 'audit objections' at the hands of the statutory auditing party appear to have arisen because of wrong terminology employed by the BDA whilst granting concession to the Petitioner by calling the same as '*donation*', grossly unmindful of the meaning of the word, to say the least. The term '*donation*' has been defined in the Corpus Juris Secundum (Vol.28 page 53) to mean "*an act by which the owner of a thing voluntarily transfers title and possession of the same from himself to another without any consideration; a gift or grant of gratuity...*". There was nothing that the BDA had given to the petitioner by way of donation. What it did was only the granting of some concession to the lessee that too on the suggestive direction of the Chief Minister of the State. By no stretch of

imagination such a concession could have been termed by the BDA as '*donation*', in the fact matrix of the case. Even the auditing party was swayed away by this English word without ascertaining the substantial nature of the transaction in question. A concession of the kind given by the *lessor* to the *lessee*, is not alien to the law of leases. This is a classic instance of wrong terminology employed by the officials of the respondent BDA, whilst interacting with the petitioner-lessee. The letter correspondence between the BDA and the Chief Minister which led to grant of said concession did not use this word at all.

(e) The wrong employment of this one single word of English language has played havoc in the matter to a great prejudice of the petitioner-Trust. It was Bertrand Russell who decades ago had said that, *if language is not properly used, what is said is not what is meant; if what is said is not what is meant, then what needs to be done would remain undone or misdome.* What Justice Holmes

said about the words need not be repeated. The BDA could have offered a proper explanation to the auditing party as to what it meant by the word '*donation*' in the light of transaction in question. However, it did not choose to do that. The auditing party did not solicit explanation from the petitioner, either. Therefore, the contention of BDA Panel Counsel that his client being a statutory authority cannot give any donation to anyone since it has to act as the trustee of the public funds, does not impress the Court, even in the least.

In the above circumstances, this writ petition succeeds; a Writ of Certiorari issues quashing the impugned letter. As a consequence, Petitioner-Trust is relieved of the obligation to pay the subject amount claimed by the BDA.

Costs made easy.

**Sd/-
JUDGE**