

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

FRIDAY, THE SEVENTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT APPEAL No.423 of 2002

(Writ Appeal under Clause 15 of the Letters Patent against the
Order dated 06/12/2001 in W.P. No.17038 OF 1996 on the file of
the High Court.)

Between:

- 1 The State of Andhra Pradesh
Rep. by its Secretary, Revenue (AISN) Department
Secretariat Buildings, Hyderabad
- 2 The Collector,
Visakhapatnam District, Visakhapatnam.
- 3 The Mandal Revenue Officer
Bheemunipatnam, Visakhapatnam Dist.

..... APPELLANT(S)

AND

Bheemunipatnam Co-operative Building Society Limited,
Bheemunipatnam, Rep. by its President K.V. Harinath.

.....RESPONDENT

Counsel for the Appellants: THE ADVOCATE GENERAL

Counsel for the Respondent: Mr. E. Manohar

Mr. K. Goapla Krishna Murthy

The Court made the following :

JUDGMENT:(Per Hon'ble Sri Justice B. Sudershan Reddy)

The dispute in the instant case centres around the proposal to alienate huge extent of about Acs.400-00 of land situated at Nerellavalasa Village within the Urban Agglomeration of Visakhapatnam, one of the fast growing urban agglomerations in the State of Andhra Pradesh.

The tell-tale facts leading to filing of this writ appeal may have to be noticed:

The Bheemunipatnam Co-operative Building Society Limited (for short 'the Society') mainly consisting of Senior I.A.S, I.P.S. Officers and other employees including their near and distant relatives came into existence in the year 1970. It was registered under the provisions of the A.P. Co-operative Societies Act, 1964. It had applied for assignment/alienation of Acs.400-00 of Government land in Survey No.49/1 of Nerellavalasa village. The District Collector, Visakhapatnam, having received the request of the society very promptly requested the erstwhile Board of Revenue to accord

permission to alienate and handover the possession of the said land identified by the society itself at the market value of Rs.250/- per acre. The Board of Revenue expressed its reservation in the matter as regards the market value of the land and further desired the proposal to be reviewed after obtaining the view from the Vice Chairman, Visakhapatnam Urban Development Authority, Visakhapatnam. (for short 'VUDA').

The total extent of land in Survey No.49/1 of Nerellavalasa Village is Acs.1189-63 cents. It is classified as ISUKADIBBAPORAMBOKE. That an extent of about Acs.655-00 from out of the said land was set apart for a public purpose of making the land available to the Ministry of Defence for its purposes. It appears that the society had opted for northern portion of the land in Survey No.49/1, which is carved out and renumbered as R.S. No.118. On measurement the actual extent of the land in the northern part was found to be Acs.373-95 cents only.

The Flag Officer, Commanding-in-Chief, Eastern Naval Chief, Visakhapatnam, requested the District Collector, Visakhapatnam, to earmark the said land also for its purposes.

The procedure for assignment of the Government land in Andhra area is regulated by the A.P. Board Standing Orders.

Order 24 of the Standing Orders prescribes the procedure for disposal of the land belonging to the State Government for public purposes. The Board of Revenue is empowered to sanction the placing of State land at the disposal of person, an institution or a local body for any *bona fide* public purpose provided the market value does not exceed Rs.50,000/- in the case of local bodies and Rs.3,000/- in the case of private bodies, institutions and individuals. In every case of grant of land requiring the sanction of the Board of Revenue or the State Government, an application is required to be made to the Collector in the form prescribed. The order further provides that in cases where the previous sanction of the State Government is required, the same may have to be obtained and proposals be submitted to the Board of Revenue. The District Collector is authorised to make grant provided the value of the land sought to be alienated does not exceed Rs.3,000/-. There is no dispute that the competent authority to accord permission to alienate the land and grant assignment is the State Government.

The District Collector in his anxiety to favour the society through D.O. letter dated 31-08-1979 ordered delivery of advance possession of the land admeasuring Acs.400-00 to the society "pending finalisation of alienation proceedings". The District Collector is neither competent to sanction the grant nor

assignment of any government land whose value exceeds Rs.3,000/-. Only in cases of emergency, the authorities competent to sanction grants of any government land may permit entry upon the land, pending issue of formal orders sanctioning the grant. Even such sanctioning authority is required to obtain an undertaking from the grantee that they will abide by all the conditions, which will be imposed in the orders sanctioning the grant. The District Collector with impunity and contrary to A.P. Board Standing Orders directed delivery of advance possession of the said land to the society without any reason or justification. The Tahsildar, Bheemunipatnam Taluk, in obedience of the orders of the District Collector, Visakhapatnam, promptly delivered the possession of the land to the society on 29-02-1980.

That out of the same survey number, the Tahsildar granted provisional assignments of an extent of Acs.80-00 of land in favour of landless poor and weaker sections of the society for their personal cultivation. The Chairman of the society vide his letter dated 30-01-1981 requested the District Collector, Visakhapatnam, to cancel the provisional pattas and evict the assignees and make the same available to the society, as the assigned land granted in favour of the weaker sections was found to be situated just by the side of the main road obstructing the society to have free access and entry into the huge extent of land claimed by the society. The

society felt that the reclamation work undertaken by it to develop the land would not be possible unless the said assignments were cancelled and the landless poor were evicted therefrom. The Tahsildar vide order dated 07-02-1981 promptly complied with the requisition made by the society and accordingly cancelled the provisional assignments granted in favour of as many as 25 landless poor individuals even without putting them on notice. More about it later.

The District Collector vide his proceedings dated 21-09-1982 expressed his no objection for development of the land by the society in an extent of Acs.323-95 cents (excluding the land of Acs.50-00 covered by the assignment dispute) subject to the fixation of market value by the Government and the payment of the same by the Society. The Society was required to pay at the rate of Rs.1,000/- per acre immediately and difference of amount, if any, to be paid later after determination of the market value of the land by the Government. The society was directed to complete the work and development of the land within three months from the date of issue of the order. The Tahsildar, Bheemunipatnam, was requested to identify the extent of Acs.323-95 cents of the land excluding the Acs.50-00 of land covered by assignment dispute and clearly

show the same to the president of the society so as to enable the society to proceed with the development work.

Further, the Revenue Divisional Officer and Tahsildar were directed to finalise cancellation of pattas and handover the land to the society.

The analysis of the facts so far noticed reveal that the District Collector, Visakhapatnam, on his own accord and without any authority of law in anticipation of sanction by the Government, ordered handingover of Acs.400-00 of precious land belonging to the State to the society. The Tahsildar promptly complied with the directions and accordingly handedover the possession of the land on 29-02-1980.

The District Collector without any authority of law permitted the society to undertake development of the land even without any valid permission/sanction from the Visakhapatnam Urban Development Authority; further directed the Revenue Divisional Officer to cancel pattas covering an extent of Acs.50-00 of the land granted to landless poor for resumption and handingover the same to the society. The Tahsildar promptly cancelled the assignment on the direction of the District Collector and the orders received its affirmation at the hands of the same Collector who dismissed the appeals preferred by the assignees.

The Collector vide his proceedings dated 22-10-1982 while dismissing the appeals preferred by the assignees observed “the land is situated within the Urban agglomeration of Visakhapatnam and the assignment was made without obtaining the concurrence of Visakhapatnam Urban Development Authority. Further the land is very close to the Missile Centre of Defence Department and for security reasons it is not desirable to allow cultivation on this land”.(emphasis is of ours).

The District Collector in his enthusiasm to favour the society went to the extent of inventing grounds to displace the assignees belonging to the weaker sections of the society depriving them of their legitimate right to continue in occupation of the land. They were sought to be dispossessed on the precious ground that they were not residents of Nerellavalasa Village where the land is situated – as if the members of the society were the residents of that village. The facts speak for themselves.

The District Collector himself found that the lands could not have been assigned to the landless poor without obtaining the concurrence of the VUDA, since the land is situated within the urban agglomeration of Visakhapatnam. He also found that the lands are situated very close by to the Missile Centre of Defence Department and for security reasons, it is not desirable to allow

cultivation on the lands.

It had never occurred to the District Collector that on the very same grounds the application of the society was liable to be rejected summarily.

The Tahsildar proved himself to be more loyal to the king than the king himself. He promptly, not only dispossessed the assignees but also handedover the possession of the land to the society within one day of the Collector's order dated 22-10-1982.

It is not known on what basis and under what authority the District Collector tentatively fixed the market value of the land at Rs.1,000/- per acre, of course subject to fixation of market value by the Government. What were those factors that impelled the Collector to act with such speed in parting away with valuable government land estimated to be crores of value as on today are not evident from the record. The society deposited Rs.3,74,000/- on 08-06-1984.

That after a long lapse of almost about nine years, the District Collector issued show cause notice to the society dated 08-06-1991 requiring the society to show cause as to why the possession of the land in Survey No.118(Old Sy. No.49/1) of Nerellavalasa village should not be withdrawn as the society did

not complete the work of development of the land within the period stipulated in proceedings dated

21-09-1982. The society filed W.P. No.1147 of 1992 in this Court challenging show cause notice dated 08-06-1991 and obtained status-quo order. The society also filed

W.P. No.4262 of 1992 in this Court seeking appropriate directions directing the State Government as well as the District Collector “to issue a formal order of assignment of land of an extent of Acs.373-95 cents in Survey No.118 of Nerellavalasa village of Bheemunipatnam Taluk of Visakhapatnam District in favour of the society allotted and handedover to the society as early as on 1980 within a period to be specified by this Honourable Court”. The said writ petition was disposed of by a learned single Judge of this Court vide order dated 07-04-1993 directing the authorities “to complete the assignments within six months as any further delay in assignment is likely to cause great hardship to the members of the society.” That order for whatever reason has become final since no appeal was preferred. However, we have our own reservations about certain observations made in the said order stating that “the District Collector has acted as an agent of the Government and has desired that the land would be assigned to the Society and thereby induced the Society to incur the expenditure.” So the respondents are bound by the Doctrine of

Promissory Estoppel to complete the assignment by issuing formal orders of assignment. None of the contentions raised in the counter affidavit were noticed by the learned single Judge nor any finding was recorded on the question as to whether the District Collector at all could have parted away with the valuable land belonging to the State without any authority of law. The objections raised in the counter that "Indian Navy have established a secret Project adjacent to the land now applied for by the Society" also met the same fate. Since the said order is not under appeal, we wish to say no more on this aspect of the matter.

That pursuant to the orders of this Court dated 07-04-1993, the Government required the District Collector to submit proposals as regards the market value of the land. The District Collector submitted proposals duly recommending the fixation of the market value of the land at the rate of Rs.1,50,000/- per acre. In the meanwhile, the society filed contempt case in C.C. No.605 of 1993 on the ground that the authorities failed to pass orders within the time stipulated by the Court. The contempt case was disposed of by this Court directing the management of the society to submit its proposals before the Government within a period of four weeks and the Government to take a final decision after negotiation with the society and dispose of the assignment proposals within a period of three months keeping in view the

tentative rate of Rs.1,000/- per acre fixed by the Collector, Visakhapatnam, and the money deposited by the society.

That in terms of the directions of this Court, the Government required the District Collector to work out the land value based on the market value and the basic value as on 29-02-1980, the date on which the possession of the land was handedover to the society. The District Collector vide letter dated 19-01-1995 informed the Government that there was no sales from 01-04-1970 to 23-11-1981 in the vicinity of the land abutting Survey No.229 (Old S.No.49/1) and as per the basic value register the rate of adjoining cultivable land was at Rs.4,000/- per acre. But it was pointed out that the rate does not reflect the real value of the land in the vicinity and hence it was proposed to fix the market value of the land at Rs.1,50,000/- per acre.

Then the operation salvage began in which same personnel were the main actors. The benefactors and the beneficiaries were one and the same. The Government vide Memorandum dated 06-03-1995 informed the District Collector, Visakhapatnam, that the Government have "tentatively proposed to fix the land value at the rate of Rs.4,000/- per acre prevailing as on 28-06-1980 for the total extent of Acs.373-95 cents." The District Collector was accordingly requested to obtain and furnish consent of the society for payment of balance amount of Rs.11,27,800/- (from out of total

cost of Rs.14,95,800/-) with simple interest at 15% from 1980.

The society vide its letter dated

27-03-1995 accepted the proposal and agreed to pay the balance amount of Rs.11,27,800/- with simple interest at 15% from 1980.

It is required to notice that W.P. No.6857 of 1995 was filed by a former M.L.A. in this Court in purported public interest challenging assessment of the market value of the land by the Government at Rs.4,000/- per acre. The said writ petition was dismissed by a learned single Judge of this Court refusing to interfere with the exercise of discretion by the Government in fixing the market value of the acquired land vide order dated 31-01-1996.

That a news item was published in Eenadu Telugu Daily on 21-03-1995 raising several doubts and questions concerning the proposed assignment and fixing of the market value of the land at such low rate of Rs.4,000/- per acre.. The Government having taken note of the said news item called for a detailed report. That a report dated 22-03-1995 was submitted to the Government mainly dealing with the allegations levelled and doubts raised. The operative portion of the report submitted is:

“1. The allegation that the land is very valuable is correct. Present market value of the land would certainly be more than Rs.10 Crores.

2. Members of the Society are certainly from high income group and some of them are senior Government Officers and their relations.
3. A large number of the members are non-residents of Visakhapatnam City and District.
4. VUDA is willing to take the land at Rs.1.5 lakhs per acre if Government allots.
5. Possession of the land was given to the society earlier without proper authority i.e., without clearance from the Board of Revenue/Government.”

The record further discloses that the Government at every stage weighed pros and cons and kept its options open. It was considered at some stage to utilise the lands by reserving the same for promotion of tourism as the lands were situated in a strategic place abutting to the Arabian Sea, instead of alienating the same in favour of the society. The proposals for obvious reasons did not materialize. The anxiety on the part of some of the officers – if not all – to part away with the public property is writ large on the face of the record. It is a case of ‘fence eating the grass’.

The Government upon appreciation of the entire material available on record have provisionally decided that :

- “a) 75 acres, out of the land placed at the disposal of the Society shall be set apart for allotment to poor people free of market value at the rate of not more

than 75 Sq. yds. each.

b) The balance land may be alienated to the Bheemunipatnam Co-operative Building Society, Visakhapatnam on payment of present market value to be fixed.

c) The present market value may be determined on the basis of price fetched by auctioning one of the plots after due publicity.

d) The Society shall allot a plot to only one member in a family.

e) Each member shall be allotted not more than 500 Sq. yds.”

The Mandal Revenue Officer, Visakhapatnam, vide proceedings dated 12-07-1996 required the petitioner society to set apart Acs.75-00 of land to the weaker sections of the people from out of the extent already handedover to the society.

Both these proceedings were impugned in W.P. No.17038 of 1996 filed by the society and the same was disposed of with the following directions:

“(a) The respondents shall issue notice to the Petitioner-Society for payment of balance of Rs.11,22,800/- together with simple interest @ 15 per cent per annum as contained in Memo dated: 6.3.1995 within a period of three weeks from the date of receipt of a copy of this order. On receipt of such notice, Petitioner-Society shall deposit the same within a period of six weeks thereafter.

(b) The Government shall also fix the final market value as directed above prevailing as on 28.6.1980 and intimate the same to the Petitioner-Society within a period of six weeks thereafter and on such intimation, the Petitioner-Society shall deposit the same within a period of six weeks thereafter.

(c) On deposit of the sum by the Society as directed above, the respondents shall assign the land of Acs.373-95 cents in S.No.118 (old S.No.49/1) situated at Nerellavalasa village of Bheemunipatnam Mandal, Visakhapatnam District, in favour of the Petitioner-Society.

(d) In case the proposals to acquire the land for Naval Armament Depot are finalized, the same could be proceeded with in accordance with the provisions of Land Acquisition Act subject to the right of the Society. It is also open for the Government to offer alternative land to the Petitioner-Society in the event of acquisition by Government subject to acceptance by the Petitioner-Society.”

Learned single Judge took the view that the Government cannot be allowed to approbate and reprobate. The Society has acted upon the proceedings in Memo dated 06-03-1995 whereunder the Government fixed the land value at Rs.4,000/- per acre prevailing as on 28-06-1990 and spent huge amount of Rs.1.50 Crores and therefore it would not lie “in the mouth of the Government to contend that the Government is not under obligation to assign the land.” That the authorities are bound by the Doctrine of Promissory Estoppel and are under obligation to

complete the assignment after fixing the market value of the land. Learned single Judge mainly relied upon the order of this Court dated 07-04-1993. Hence, this appeal.

Learned Special Government Pleader appearing on behalf of the appellants strenuously contended that the judgment under appeal suffers from incurable legal infirmities. The Doctrine of Estoppel has no application whatsoever to the fact situation on hand. The society is bound to pay the market value of the land as fixed by the Government as on the date when the Government had taken decision to assign the land. The District Collector acted without any authority of law in handingover possession of the land and the Government is not bound by such illegal and unauthorized acts done by its officers. The jurisdiction to assign/allot/sanction the land vests in the State Government; the Government at no point of time committed itself to assign the land to the society. In the matters of this nature public interest is paramount consideration. Learned Special Government Pleader further contended that in the absence of any valid order of assignment, no rights accrued in favour of the society and in the absence of any legal right, a *Mandamus* does not lie. The State Government cannot be compelled to part away with its valuable lands by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

Sri E. Manohar, learned senior counsel, appearing on behalf of the society contended that the Government did not raise any objection whatsoever at any point of time and interdicted the action initiated by the District Collector in proposing assignment of the land to the society. The Government shall be deemed to have ratified the action of the District Collector. The averments made in the counter affidavit as if the land is required for the defence purpose is an after thought and pressed into service to non-suit the society.

The impugned proceedings do not reflect the requirement of any land in possession of the society for any defence purpose. No public interest as such is involved. The decision of the Government as is reflected in the impugned proceedings has to fall or stand on its own and no additional reasons can be pressed into service; reasons cannot be supplemented to sustain the impugned proceedings.

Before making an analysis of the submissions made by the learned Counsel, we must express our grave concern and reservation as to the manner in which the then District Collector dealt with the matter resulting in delivery of advance possession of huge extent of public property to the society mainly consisting of officers whose primary duty is to protect public interest. It is a

case where the game was played from both the ends by the same persons. Public properties are held in trust by the government for and on behalf of the people of this sovereign, democratic, socialist, republic. The State Government and its authorities are the guardians of public properties. The directive principles of the State policy command the State to promote the welfare of the people by securing and protecting a social order in which justice, social, economic and political shall inform all the institutions. The material resources of the community are so distributed as best to sub serve the common good. The material resources under the control of the State are not owned by the Government but by the community; they have to be utilised in a prudent and pragmatic manner to sub serve common good. The State and its instrumentalities cannot be permitted to act in any manner detrimental to the larger public interest. The legitimate claims of the Constitutional claimants are to be complied with by the State.

There is no dispute whatsoever that the power/jurisdiction to assign/alienate/sanction the lands possessed by the State vests in the State Government. The Collector has no authority to assign/sanction any extent of land whose value exceeds over and above Rs.3,000/-. His jurisdiction is confined only to process the application and forward the same to the Board of Revenue/Commissioner of Land Revenue for its onward journey to

the State Government for its consideration in accordance with law. The Board Standing Orders issued by the Government of A.P. are specific and clear in their nature. The District Collector with impunity acted contrary to law and decided for himself to part away with the lands by directing the possession to be handedover to the society even before the Government took any decision to assign the land in favour of the society. This action is the genesis and root cause of this unfortunate litigation pending for the last 30 years. The District Collector without any authority of law vide proceedings dated

21-09-1982 expressed his no objection for development of the land by the society subject to fixation of the market value of the land by the Government and the payment thereof by the society. He directed the society to pay at the rate of Rs.1,000/ per acre and the difference, if any, to be paid later. It is true the society deposited an amount of Rs.3,74,000/- into the Government account on 08-06-1984 after a period of more than one and half year of the proceedings of the District Collector. The society as well as the District Collector treated, as if, parting of huge extent of the public property was a private affair amongst themselves; both were acting at their own convenience. The District Collector had no authority in law either to handover the possession or to permit the society to develop the land even pending the proposals

of assignment before the Government.

It is also required to note that the land in question is situated within the urban agglomeration of Visakhapatnam. The VUDA at every stage raised its objections and refused to grant any permission enabling the society to undertake any developmental work. No layout plan was submitted nor was it sanctioned by the VUDA. The VUDA in clear and specific terms informed the society that in the absence of proof of title, its request for sanction of layout cannot be considered. But the District Administration including the District Collector for their own reasons facilitated the induction of the society into the land with permission to develop it, without any authority of law. The society under the patronage of the District Collector defied every norm and acted, as if, it is not bound by any law or norm. It is a clear case of usurpation of public property in collusion with the District Collector who is supposed to protect the public property.

In our considered opinion, the deposit of amount of Rs.3,84,000/- by the petitioner society itself is of no consequence and it does not confer any right, title and interest in the land.

Learned senior counsel appearing for the petitioner society, however, placed strong reliance upon the Government proceedings in Memo dated 06-03-1995 whereunder the District

Collector was informed about its tentative proposal to fix the market value of the land at Rs.4,000/- per acre prevailing as on 28-06-1980 for the total extent of Acs.373-95 cents and required him to obtain and furnish the consent of the society for payment of balance amount of Rs.11,27,800/- with simple interest at 15% from 1980. The society promptly, no doubt, gave its consent on 27-03-1995. Be it noted, it was not the final decision of the Government to fix the land value. The very memo suggests that the Government had tentatively proposed to fix the market value of the land at Rs.4,000/- per acre. Even after obtaining the consent of the society, it was perfectly open to the Government to revise its proposal and to fix the land value afresh.

The whole scheme executed with extraordinary finesse resulting in parting away with the huge extent of public property was conceived in sin. The decision of the District Collector to deliver advance possession of the land and further action in permitting the society to develop the land on payment of Rs.1,000/- per acre even before the assignment was sanctioned does not confer any right, title and interest in the land and much less any enforceable legal right upon the petitioner society. The District Collector was not authorized in law to take any such decision. The promise, if any, made by the District Collector does not bind the State Government.

It is fairly well settled and needs no restatement at our hands that the Doctrine of Promissory Estoppel cannot be used compelling public authority to carry out their representation or promise which is prohibited by law or it was devoid of the authority or power of the Officer of the Government or the public authority to make “Doctrine of Promissory Estoppel being an equitable doctrine, it must yield place to the equity, if larger public interest so requires, and if it can be shown by the Government or public authority for having regard to the facts as they have transpired that it would be inequitable to hold the Government or public authority to the promise or representation made by it. The Court on satisfaction would not, in those circumstances, raise the equity in favour of the persons to whom a promise or representation is made and enforce the promise or representation against the Government or the public authority” (**See: Sharma Transport v. Government of Andhra Pradesh & Others – (2002) 2 SCC 188**).

It is so well settled that to invoke the Doctrine of Promissory Estoppel, clear and specific foundation must be laid in the pleadings by the party invoking the doctrine and that bald expressions without any supporting material would not be sufficient to press into aid of the doctrine.

We shall examine the plea based on the Doctrine of

Promissory Estoppel.

By no stretch of imagination, the D.O. letter of the District Collector dated 31-08-1979 ordering delivery of advance possession of the land to the society pending finalisation of the alienation proceedings can be considered and treated as any valid promise in favour of the society; the District Collector had no authority in law to make any such promise. Likewise the proceedings dated 21-09-1982 of the District Collector cannot operate as any estoppel against the Government prohibiting it from determining the market value of the land. The action on the part of the District Collector was devoid of authority to make any promise whatsoever. The whole issue relating to eligibility and entitlement of the society to apply for and obtain sanction/assignment/alienation of the land was within the exclusive domain of the State Government. The promise/representation, if any, made by the State government alone may attract the Doctrine of Promissory Estoppel.

There cannot be estoppel against any provision of law. The A.P. Board Standing Orders, the applicability of which is not in dispute confers exclusive jurisdiction upon the State Government to sanction/assign/alienate the government land. The District Collector has the authority to sanction/assign the land whose

value does not exceed Rs.3,000/-. In all other cases, he is prohibited from making any such assignment or alienation. The representation/promise, if any, made by the District Collector being contrary to law cannot bind the State Government.

Promissory estoppel against the State cannot be applied when an officer of the State has acted directly contrary to the general instructions issued by the Government. In such cases, the plea of promissory estoppel is not available as the Doctrine of *ultra vires* becomes applicable. Promissory Estoppel cannot legitimise an *ultra vires* act of any governmental authority.

Unlawful representations do not create estoppel much less promissory estoppel. Unauthorised assurances by the public authorities are actually worthless and no person relying upon such unauthorized assurances can invoke and rely upon the concept of estoppel.

The promise made by an official agency, which had no power to fulfill the expectation arising out of such promise, cannot be equated to that of a promissory estoppel. Legal incapacity to fulfill the expectation is considered as an insuperable obstacle and has potentially damaging effects of enforcing such unauthorized representations.

The next question that falls for consideration is whether the proceeding in memo dated 06-03-1995 whereunder the Government tentatively proposed to fix the market value of the land at Rs.4,000/- per acre binds the Government? Is the Government prohibited to resile from its stand in public interest?

The very memo suggests that the Government had tentatively fixed the land value at Rs.4,000/- per acre prevailing as on 28-06-1990 and accordingly required the District Collector to obtain and furnish the consent of the Society. The mere fact that the society gave its consent on 27-03-1995 cannot preclude the Government from reviewing its decision. It is explained in the counter affidavit that a news item was published in Eenadu Telugu Daily on

21-03-1995 about the whole episode and as to how the valuable Government land was sought to be assigned in favour of the society without any justification. The Government with a view to ascertain the true and correct facts decided to keep the proposal dated

06-03-1995 in abeyance and accordingly it was kept in abeyance.

The District Collector was directed to submit a detailed report.

The report submitted pursuant to the directions revealed several disturbing facts, which we have noticed in the preceding paragraphs. The Government after taking those factors into

consideration, issued the impugned memo dated 04-02-1996, which, in our considered opinion, does not suffer from any legal infirmity. The fact remains that so far, there is no decision taken by the State Government as such to alienate the land in favour of the society prior to the impugned memo dated 04-02-1996. It was always open to the Government to determine the market value of the land after taking all the relevant factors and circumstances into consideration. The tentative proposal to fix the land value at Rs.4,000/- per acre shall not operate as any estoppel since it was not any final and irrevocable decision. There was no proposal and decision taken by the Government to assign the land at that stage. Situation was fluid engaging the attention of the State Government.

What is the effect and impact of the orders passed by this Court in W.P. Nos.4262 of 1992 and 6857 of 1995, dated 07-04-1993 and 31-01-1996 respectively.

The decision of this Court in W.P. No.4262 of 1992 in no manner prevents the Government in fixing the market value of the land. In fact this Court observed that it was open to the Government to negotiate with the society and fix a reasonable market value. That in pursuance of the directions of this Court, the proceedings in Memo dated 06-03-1995 were issued

tentatively proposing to fix the market value of the land at Rs.4,000/- per acre. The exercise was part of the process of negotiations. The memo dated 06-03-1995 never attained any finality whatsoever. The mere fact that the society gave its consent does not put any end to the process of negotiations.

Be it as it may, the order in W.P. No.17038 of 1996 in no manner determine the rights of the parties. The order of this Court did not confer any additional right, title and interest in the land apart from whatever the society derived, if any, under the *ultra vires* proceedings of the District Collector commencing right from handingover the possession to grant of permission enabling it to develop the land. The process initiated to complete the negotiation is intertwined with the determination of the market value, which cannot be separated. Thus the Government's decision in revising the market value of the land in no manner suffers from any legal infirmity.

Likewise the order in W.P. No.6857 of 1995 merely upheld the action of the Government in tentatively proposing to fix the market value of the land at Rs.4,000/- per acre. The Court merely refused to interfere with the discretion of the State Government in tentatively proposing to fix the market value of the land. The order in no manner prohibited the Government to revise its own

decision. It is clear that there has been no commitment on the part of the Government to allot/assign/sanction the land at the rate of Rs.4,000/- per acre. The question of resiling from the commitment does not arise. The statement, if any, made by the Collector in any of his proceedings that the Government agreed to allot the land is a self-serving one. The action of the District Collector in delivering possession of the land as well as granting permission to develop the land is contrary to A.P. Board Standing Orders. Thus, the action of the District Collector is not only *ultra vires* but also highly arbitrary.

Viewed from any angle, we find no infirmity in the impugned memo issued by the Government. The land in question is not being made available to any weaker sections of the society; no public purpose or public interest as such is involved. The land is not made available to give effect to any of the directive principles of the State policy; in which event, the market value of the land may not have any crucial bearing. The case is simple alienation of land in favour of the society on payment of present market value to be fixed.

However, the petitioner society filed affidavit expressing its no objection (a) to leave Acs.75-00 of land to the weaker sections; (b) that it shall allot plot to only one member of a family; and (c)

each member shall not be allotted an area of more than 500 square yards. That means the society had agreed for the conditions imposed in Clause (a), (d) & (e) and the same is made part of the record.

-

SUBSEQUENT EVENTS:

The airport at Visakhapatnam is being expanded to meet both civil and defence aviation requirements. Due to the proposed expansion and realignment of the runway, the land where the Naval Armament Depot is located and where the allied activities by the Naval Head Quarters are carried on is being squarely effected. The Head Quarters, Eastern Naval Command, Naval Base, Visakhapatnam, requested the State Government for providing alternate land to accommodate

2.5 lakh Kg. explosive storage facility, this requirement may involve of more than about Acs.400-00 of land. The land has been identified which is contiguous to INS Kalinga (Near Bheemunipatnam) to meet the need of relocating the ammunition of Naval Armament Depot. The Naval Head Quarters expressed its view that in view of the associated facilities being located in INS Kalinga, the ammunition would have to be shifted next to INS Kalinga by constructing appropriate storage place and workshops. The Head Quarter accordingly requested the Government to

provide land to the Navy before 31-07-2001. That many meetings have taken place between the Naval Head Quarters and the State Government and it was decided to allocate an extent of Acs.400-00 of land to the Naval Head Quarter in R.S. No.118(old S.No.49/1). That once this land is to be given to Naval Command, a safety zone of sufficient extent around the area is required to be provided all around the main installations.

We have perused the records, the minutes drawn in the meeting held between various authorities including the State Government confirm the averments made in the counter affidavit. Having regard to the nature of requirement, it may not be advisable to record further details in this regard. The Government having considered the entire issue carefully *prima facie* decided to allocate its land for defence purpose. That a large extent of the land adjoining the land in question is stated to have been already alienated in favour of the Eastern Naval Command; the remaining area cannot be permitted to be used for any other activity, as it would not be desirable to permit any such activity near the Naval installations.

We cannot shut our eyes to this reality and ignore the public interest concerns. We find no reason to compel the Government first to part away with its own land in favour of the society and

then acquire the same by paying compensation under the provisions of the Land Acquisition Act, 1894, and in turn handover the same to the defence department. There is no law, which prohibits the State Government from making available its property for utilisation by the Union of India and that too for defence purposes. We are not pressing these additional facts and subsequent events in order to sustain the impugned proceedings. These facts are not stated in the counter affidavit in support of the Government's decision and with a view to sustain it but the same are stated as additional material craving leave of this Court to keep the Government's options open to make the land available to Eastern Naval Command for its defence purposes.

In our considered opinion, nothing comes in the way of the Government to take such decision in public interest, which has to prevail over private interest.

For all the aforesaid reasons, we find no error to have been committed by the Government in issuing the impugned proceedings dated 06-03-1995 resulting in consequential proceedings, dated 12-07-1996 on the file of the Mandal Revenue Officer. We find no merit in the writ petition. The order under appeal is accordingly set aside.

We further made it clear that it shall be open to the

Government to make the land in question available to Head Quarters, Eastern Naval Command, Naval Base, Visakhapatnam, for its purposes in which event the Government may return the amounts already deposited by the society into the State Treasury together with actual amount, if any, spent for leveling of the land subject to production of actual audited accounts for which purposes the society shall make an application to the State Government to be disposed of within a period of two months from the date of filing of such application.

The Writ Appeal is accordingly allowed. No costs.

B. SUDERSHAN REDDY, J

Date: September, 2004

K.C. BHANU, J

PV

One Fair copy to the Honourable Sri Justice B. Sudershan Reddy
(for his Lordship's kind perusal)

One Fair copy to the Honourable Sri Justice K.C. Bhanu (for his
Lordship's kind perusal)

To

- 1 The Secretary,
State of A.P., Revenue (AISN) Department,
Secretariat Buildings, Hyderabad
- 2 The Collector,
Visakhapatnam District, Visakhapatnam.
- 3 The Mandal Revenue Officer
Bheemunipatnam, Visakhapatnam Dist.
4. K.V. Harinath
President of Bheemunipatnam Co-operative Building
Society Limited, Bheemunipatnam.
5. 8 L.R. Copies.
6. The Under Secretary, Union of India,
Ministry of law, Justice and Company Affairs, New Delhi.
7. The Secretary, Advocates' Association, Library,
High Court Buildings, Hyderabad.
8. Two C.Cs. to Two C.Ds.
9. Two C.Cs. to the Advocate General, High Court of A.P.,
Hyderabad (OUT).

10. Two C.D. copies.