(1973) 1 Supreme Court Cases 294

(From Allahabad High Court)

[BEFORE J. M. SHELAT AND Y. V. CHANDRACHUD, JJ.]

BANWARI LAL AND OTHERS ... Appellants;

Versus

SUKHDARSHAN DAYAL ... Respondent.

Civil Appeal No. 2141(N) of 1968, decided on December 12, 1972

Contract Act, 1872—Sections 2(a) and 3—Promises made over loudspeakers—Persons purchasing plots of land on basis of the promise—Whether such promises have legal binding.

Transfer of Property Act, 1882—Sections 54 and 55—Persons purchasing plots on the representation that a particular plot was reserved for "Dharmshala"—Maps annexed to some of the sale-deeds describing the plot as "Dharmshala" but sale-deeds not containing any such stipulation—Whether the description in the maps shows that plot was "more or less in trust"—Sale of the plot in question to a third party under registered deed—Validity of the sale—Whether subsequent purchasers had notice of the sale.

Evidence Act, 1872—Section 115—Estoppel—Applicability—Whether operates to create interest in property regarding which representation is made.

An extensive area of land was sub-divided by the co-owners into small plots as a part of a housing scheme. The case of the purchasers of the plots (the plaintiff-appellants) was that on the basis of a representation made to them that a particular plot (Plot No. 19) will be reserved for being used in common as "Dharmshala", they paid high prices for their plots and yet the plot No. 19 was sold to a third party who in turn sold it to the defendant. The plaintiff contended that the co-owners had no right to sell the plot No. 19 to anyone because it was anaounced over a loudspeaker, while the housing scheme was being advertised, that a plot will be reserved for "Dharmshala" and also because in the map, which was annexed to some of the sale-deeds, plot No. 19 was described as "Dharmshala". The plaintiff-appellants also took the plea of estoppel and claimed that the co-owners were estopped from disputing the right of the purchasers to ask that plot No. 19 shall remain reserved for "Dharmshala".

Held:

(i) Though modern contrivances like microphones are useful aids in propagation of views of dissemination of information, they have not yet acquired notoriety as carriers of binding representations. Promises held out over loudspeakers are often claptraps of politics.

In the instant case, the announcement was, if at all, a puffing up of property put up for sale. (Para 5)

(ii) None of the sale-deeds on record contains a stipulation that plot No. 19 would be reserved for common use as a Dharmshala. If plot No. 19 was truly earmarked for a specific purpose, it is impossible that a suitable term in that behalf would not be included in the various sale-deeds. (Para 7)

It cannot be stated that the description of plot No. 19 in the map as "Dharmshala" would show that the plot was "more or less in trust" for general benefit. That shows like saying, if the issue be whether there is a binding agreement between the parties, that the agreement is "more or less a contract". Such fluid phrases cannot give rise to legal rights. (Para 8)

The transfer in favour of the third party was effected by a registered deed of sale

and therefore, subsequent purchasers of the other plots in the area had notice, constructive at any rate, that plot No. 19 was not subject to any restraining covenant. It seems clear that, in fact, the co-owners had at no time created fetters on their disposing power. (Paras 6)

K. S. Hanji & Co. v. *Jatashankar Doss*, (1962) 1 SCR 492 : AIR 1961 SC 1474, *distinguished*.

(*iii*) Estoppel is but a rule of evidence and except in cases like those under Section 43 of the Transfer of Property Act, when a grant is fed by estoppel, the rule does not operate to create interest in property regarding which the representation is made.

Accordingly, plaintiffs cannot claim that possession of plot No. 19 be given to them so as to enable them to construct a Dharmshala. (Para 8)

Appeal *dismissed*.

The Judgment of the Court was delivered by

Chandrachud, J.—This appeal by special leave is directed against a judgment, dated December 7, 1967 of a learned single Judge of the High Court of Allahabad, setting aside a decree of affirmance passed by the III Additional Civil Judge, Meerut.

2. An extensive area comprised in Plot No. 765 of Mauza Bhaunjar, Tehsil Ghaziabad, was sub-divided by the co-owners into small plots, as a part of a housing scheme called "Chandrapuri Colony". The case of the plaintiffs who on behalf of the various purchasers of the sub-plots, brought the present suit under Order 1, Rule 8 of the Code of Civil Procedure is that a representation was made to them that plot No. 19 will be reserved for being used in common as a Dharmshala and yet it was sold to one Manohari Devi who in turn sold it to the defendant. The defendant constructed a boundary wall around the plot, rendering impossible the use of the plot for common benefit. Plaintiffs therefore asked for a declaration that plot No. 19 was earmarked for a Dharmshala, for a permanent injunction restraining the defendant from interfering with the construction of a Dharmshala and for possession of the plot after demolition of the boundary wall.

3. Defendant denied that plot No. 19 was reserved for the use of a Dharmshala and contended that Manohari Devi who, under the sale in her favour had become an absolute owner of the plot was entitled to sell it to him.

4. While decreeing the suit, the trial court and the 1st appellate court held that plot No. 19 was set apart for the construction of a Dharmshala, that the co-owners had lost their ownership over that plot and therefore they had no right to sell it. The High Court having reversed those findings and dismissed the suit, plaintiffs have filed this appeal.

5. The principal contention of the plaintiffs is that a representation was made to the purchasers by or on behalf of the co-owners that plot No. 19 would be reserved for a Dharmshala, that the purchasers paid high prices for the plots by reason of that representation and therefore the co-owners had no right to sell the plot to Manohari Devi who, in turn, had no right to sell it to the defendant. There are numerous difficulties in accepting this contention. There is no evidence as to who, on behalf of the co-owners, made the particular representation. It is said that it was announced over a loudspeaker, while the housing scheme was being advertised, that a plot

will be reserved for a Dharmshala. Who made the announcement and under whose authority, are matters on which plaintiffs have been unable to shed any light. Thus, the argument lacks basis. Besides, though modern contrivances like microphones are useful aids in propagation of views or dissemination of information, they have not yet acquired notoriety as carriers of binding representations. Promises held out over loudspeakers are often claptraps of politics. In the instant case, the announcement, was if at all, a puffing up of property put up for sale.

6. It would appear that in the maps which were annexed to some of the sale-deeds, plot No. 19 was described as "Dharmshala". But, in the context, that circumstance cannot be construed as containing a representation that the particular plot will in perpetuity remain unbuilt upon. It was on September 21, 1946 that the plot was sold to Manohari Devi. And yet, maps annexed to subsequent sale-deeds described the plot as "Dharmshala". The transfer in favour of Manohari Devi was affected by a registered deed of sale and therefore, subsequent purchasers of the other plots in Chandrapuri Colony had notice, constructive at any rate, that plot No 19 was not subject to any restraining covenant. It seems clear that, in fact, the co-owners had at no time created fetters on their disposing power. The decision in *K. S. Nanji and Co.* v. *Jatashankar Dossa and Others*,[1] on which plaintiffs rely proceeded on different facts for, there the map was annexed to the deed of lease in order to delineate the boundary line between the holdings of the parties. The maps in the instant case are not annexed to the sale-deeds and cannot therefore be deemed to be a part of the sale-deeds by incorporation or otherwise. In fact no sale-deed refers to any map in the context of the use of plot No. 19.

7. It is significant that none of the sale-deeds on record contains a stipulation that plot No. 19 would be reserved for common use as a Dharmshala. For the matter of that, no reservation is made in any of the sale-deeds as regards the use to which the plot may be put. Most of the sale-deeds contain an express recital that the co-owners will lay out roads and drains. If plot No. 19 was truly earmarked for a specific purpose it is impossible that a suitable term in that behalf would not be included in the various sale-deeds.

8. In the first two courts, arguments revolved round a plea of estoppel. Learned counsel for the plaintiff put the same plea in the forefront before us contending that the co-owners were estopped from disputing the right of the plaintiffs to ask that plot No. 19 shall remain reserved for the use of a Dharmshala. There is no merit in this contention. Evidence regarding the representation is vague and true facts were known to those who purchased the sub-plots after plot No. 19 was sold to Manohari Devi in 1946. Besides, estoppel is but a rule of evidence and except is cases like those under Section 43 of the Transfer of Propert Act, when a grant is fed by estoppel, the rule does not operate to create interest in property regarding which the representation is made. Accordingly, plaintiff cannot claim that possession of plot No. 19 be given to them so as to enable them to construct a Dharmshala. The learned Additional Civil Judge in First Appeal observes that the description of plot No. 19 in the map as "Dharmshala" would show that the plot was "more or less in trust" for general benefit. That shows like saying, if the issue be whether there is a binding agreement between the parties, that the agreement is "more or less a contract". Such fluid phrases cannot give rise to legal rights.

1. (1962) 1 SCR 492 : AIR 1961 SC 1474.

9. The High Court was therefore right in concluding that the title of the co-owners to plot No. 19 was not divested and that the plaintiffs had no cause of action to bring the suit. Accordingly, we confirm that judgment and dismiss the appeal with costs.

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(Original Jurisdiction)

[BEFORE J. M. SHELAT, Y. V. CHANDRACHUD AND I. D. DUA, JJ.]

AKSHOY KONAI ... Petitioner;

Versus

STATE OF WEST BENGAL ... Respondent.

Writ Petition No. 261 of 1972, decided on October 27, 1972

Constitution of India—Articles 32 and 22(4)—Maintenance of Internal Security Act, 1971—Section 9—Whether Advisory Board obliged to communicate with the detenu—Whether Advisory Board's opinion subject to judicial scrutiny.

Preventive Detention—Maintenance of Internal Security Act, 26 of 1971—Section 3(a) ii) and West Bengal (Prevention of Violent Activities) Act, 1970—Section 3(2)—Difference—Order made with n view to preventing the detenu "from acting in any manner prejudicial to the security of the etate or the maintenance of public order"—Such disjunctive erder valid only under the latter Act.

***Held*:**

(*i*) The Advisory Board has no obligation to communicate with the detenu after hearing him so as to unable him to subject the opinion of the Advisory Board to Judicial scrutiny. Such omission to communicate cannot invalidate the detention.

The Advisory Board constituted under Section 9 of the Act, as its name connotes, is only required to function in an Advisory Board capacity. Its opinion is merely an advice. The advisory opinion of the Board is merely intended to assist the appropriate Government in determining the question of confirming the detention order and continuing the detention. Such advisory opinion can scarcely be an appropriate subject-matter of review or scrutiny by the judicial courts or tribunals. Also the proceedings of the Board and its report are expressly declared hy Section 11(4) of the Act to be confidential except that part of the report in which its opinion is specified. This provision clearly indicates that the advisory opinion is never intended to be open to challenge on the merits before any tribunal. So far as the final opinion of the Board is concerned the communication of the confirmation of the detention order by the State Government clearly informed the petitioner that the opinion of the Board was against him.

The opinion is binding on the appropriate Government only when it favours the detenu and not when it goes against him. Such advisory opinion can scarcely to be an appropriate subject-matter of review or scrutiny by the judicial courts or tribunals. (Para 5)

(*ii*) The use of the disjunctive "or" in that order indicates that the District Magistrate was not sure in his mind about the precise ground for detaining the petitioner and that he had mechanically reproduced the language used in Section 3(*a*)(*ii*) of the Act. Therefore, the detention is invalid. Such disjunctive order was held vaild under the Presidents Act 19 of 1970. (Para 6)