deemed to have been served with a notice under section 22(2) or section 34 of the Act.

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Gosain, J.

The facts of the present case are clearly distinguishable from those of the case decided by their Lordships of the Supreme Court and we are definitely of the opinion that an agent of a non-resident cannot be called upon to pay any penalty under section 28 of the Act for non-compliance with the provisions of sub-section (3) of section 18-A. We would, therefore, answer the question referred to us in the negative. The Commissioner shall pay the costs of this reference. Counsel's fee Rs. 200.

MEHAR SINGH, J.—I agree.

Mehar Singh, J.

B.R.T.

APPELLATE CIVIL

Before G. D. Khosla, C.J., and Tek Chand, J.

SETH SAT NARAIN AND OTHERS,—*Appellants.*

versus

UNION OF INDIA AND OTHERS,—*Respondents.*

Regular First Appeal No. 34 of 1951.

Limitation Act (IX of 1908)—Articles 115 and 120—Applicability of to a suit for compensatoin in respect of requisition property—Ex contract *relationship—Essence of—Defence of India Act (XXXV of 1939)—Section 19—Scope of—Civil Courts—Whether entitled to decide suit for compensation in which plea taken by defendant is that the plaintiff is estopped from claiming compensation—Evidence Act (I of 1872)—Section 115—Estoppel—When can be pleaded—Various kinds of estoppel explained.*

1961

Jan., 2nd

Held, that the essence of an *ex contractu* relationship, apart from other requirements, is free consent of parties entering into it. Free consent is *sine qua non* of a contract. A contract is a deliberate engagement between competent parties, who undertake to do or abstain from doing some act. Free consent means a voluntary concurrence in the proposal made by another after the exercise of an intelligent choice. It is not a neutral but an affiirmative attitude. A mere non-resistance, passiveness, or submission is not equal to a free consent or voluntary agreement. Coercion, undue influence, fraud are antitheses of

contract relationship, which rests upon freedom to agree and implies an option or a choice to decline to accept a proposal made by another. The requisitioning of the premises by the Central or the State Government in the exercise of a statutory compulsion, even where the other party is non-protesting or non-resisting, cannot be deemed to be on a contracual basis. The right to requisition the property of a subject, on the part of the Central or State Government under Rule 75-A of the Defence of India Rules, rests on a unilateral decision of the Government. The person whose premises are requisitioned, *nolens volens*, has to submit, and his attitude or reaction is immaterial. The fact of requisitoining, whether it is *volens*, *vis-a-vis* the subject or *nolens*, does not acquire a contractual character. Where a person whose property has been requisitioned under Rule 75-A of the Defence of India Rules seeks compensation for use and occupation, for purposes of limitation, his case is not covered by Article 115 As the relationship of the parties is not *ex contractu*, the residuary Article 120, which prescribes a period of six years for a suit for which no period of limitation is provided elsewhere, alone, will apply to a case like the present.

Held, that section 19 of the Defence of India Act, 1939 and Rule 75-A of the Defence of India Rules only lay down that in the case of requisitioning of property, the person affected by the requisition shall have a right to be compensated, and the machinery is prescribed for determining the amount of compensation. If the dispute merely were as to the claim of compensation, it might well be argued that the amount should be assessed by an arbitrator and not by a Court. But where the main point in a case is, whether the plaintiff is estopped from claiming compensation, that issue is justiciable by a civil Court whose jurisdiction has not been taken away by any provision of the Defence of India Act. In a suit for the recovery of the amount of compensation where the liability has not been denied by the Union of India under any statutory inhibition, no provision of the Defence of India Act takes away the jurisdiction of the Civil Court. As a matter of fact section 14 of the Act leaves the jurisdiction of the Civil Court intact except as otherwise expressly provided by or under the Act.

Held, that in order to create estoppel the party asserting it has to show that it has been induced to act to its detriment or misled to its injury. It is an equitable defence

when a party has deliberately led another to believe that a particular thing is true and to act upon such belief to its detriment. It is based on the theory that party setting up such defence has been misled or has been placed in a worse situation. A change of one's position for the worse because of reliance on another's act is an element of estoppel. The deteriment said to have been suffered in this case is that the Government gave up its right to hold the premises under the requisitioning order and thereby changed its position for the worse. The essence of the doctrine of estoppel is that where a person does or omits to do something which influences the action of another who relies or acts thereon, equity will not permit him to controvert the same to the injury of the other party. As said by Lord Coke the name 'estoppel' was given because a man's own act stoppeth or closeth up his mouth to allege or plead the truth. The doctrine is predicted on the maxim that no one can be heard alleging his own turpitude as it was unconscionable to allow a person to maintain an inconsistent position by acquiescence and accepting the benefit and later on by repudiating it while retaining the benefit. Estoppel is a preclusion in law preventing a man from alleging or denying a fact in consequence of his own previous allegation or denial. It is, however, a shield for defence but not a weapon of attack and does not furnish a basis for action. Under the common law the doctrine of estoppel by representation was confined to representation as to facts either past or present but not to representations or promises concerning the future. A "promissory estoppel" which is a recent development of an equittable estoppel operates to preclude perpetration of fraud or causing of injury, in a case, where the representation or promise has been made to induce an action on the part of the party setting up the estoppel. In such a case the party making the promise is precluded from asserting want of consideration therefor. The doctrine of promissory estoppel is said to be older than the terminolgy. The equity gave relief, before, 1,500 to a plaintiff who had incurred detriment on the faith of the defendant's promise. The principle of "promissory estoppel" is that if a promise is made in the expectation that it would be acted upon and it was in fact acted upon the party making the promise will not be allowed, in fairness, to back out of it and the Courts should insist that the promise so made must be honoured and the promisor cannot be allowed to act inconsistently.

Regular First Appeal from the decree of the Court of Shri A. N. Bhanot, Sub-Judge, 1st Class, Delhi, dated the 6th day of December, 1950, dismissing the plaintiffs' suit with costs.

A. R. WHIG AND P. C. KHANNA, ADVOCATES, for the Appellant.

JINDRA LAL AND MR. DALJIT SINGH, AD'OCATES, for the Respondent.

JUDGMENT

Tek Chand, J. TEK CHAND, J.—This is a plaintiffs' appeal from the judgment and decree of Sub-Judge 1st Class, Delhi, dismissing their suit in which they had claimed Rs. 60,000 from the Dominion of India, the defendant. The facts giving rise to the suit are that the plaintiffs are owners of a three storeyed building in Delhi, covering an area of about 30 *bighas*. The Government of India, acting under Rule 75-A of the Defence of India Rules, requisitioned that building on 6th of June, 1944, and required the owners to deliver possession on 16th of June, 1944, to the Estate Officer, Central Public Works Department. The formal possession was taken on 20th of June, 1944. After the Government took over the possession of the premises it required the owners to make arrangement for water-supply, drainage and some other amenities. On 31st of May, 1945, an overseer of the Estate Officer furnished to the owners the details of the requirements. The owners plead that they spent about Rs. 10,000 in order to provide the ameinties required of them. On 11th June, 1945, a release order was passed in respect of this building and on 20th June, 1945, the plaintiffs were informed of the decision of the Government of India to release the house which had been requisitioned. The plaintiffs have claimed compensation amounting to Rs. 50,000 on account of their having been deprived

of the use of the building, etc., for the period during which the property remained unded requisition, which is about one year. A sum of Rs. 10,000 was claimed account of the amenities provided at the Government's request. Thus, in all, a suit for the recovery of Rs. 60,000 was filed on 23rd of August, 1948, after giving two months' statutory notice under section 80 of the Code of Civil Procedure.

In the written statement the defendant's contention was that the suit was not maintainable in view of the provisions of Rule 75-A of the Defence of India Rules and that compensation could be settled only under Section 19 of the Defence of India Act by negotiations failing which reference was to be made to arbitration. It was, therefore, contended that the suit was barred in view of the above provisions. It was also pleaded that this suit had been filed beyond the period of limitation. It was next pleaded that the owners of the building had undertaken that they would forego compensation for the period the house remained under requisition if the premises were released in their favour and the house was released on that specific condition and undertaking. It was, therefore, said that the plaintiffs were estopped from claiming any compensation.

The above pleas gave rise to the following issues :—

(1) Is the suit barred by time ?

(2) Is the suit barred under Section 19 of the Defence of India Act read with Act II of 1948 ?

(3) Are the plaintiffs estopped from claiming any compensation ?

(4) Relief.

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The first and the third issues were answered in the affirmative and the second in the negative. In consequence of the above findings, the suit was dismissed.

The parties had relied, in the main, upon documentary evidence though some witnesses had also been examined. P.W. 4 is Udhe Singh, who is plaintiffs' attorney and besides proving several documents he had stated that the building could fetch a monthly rental of Rs. 6,000 to Rs. 7,000. He also stated that sanitary fittings, etc., had been provided at a cost of Rs. 10,000. Plaintiff, Sat Narain, appeared as P.W. 6, and in his cross-examination he stated that on one occasion he had written to the Government that if the building was derequisitioned he would not claim any compensation. He, however, said that on his request the property in suit had not been derequisitioned.

The defendant examined only one witness, Mata Prashad (D.W. 1), who is Assistant Estate Officer, New Delhi. He was at the relevant time a second division clerk and he produced certain documents.

The learned counsel for the plaintiff-appellants has questioned the findings on issues No. (1) and No. (3) and has supported the decision of the trial Court on the second issue.

The first question, which may be examined, is whether the plaintiffs' suit, which was filed on 23rd of August, 1948, is barred by limitation. According to the trial Judge the case is covered by Article 115 of the Indian Limitation Act, which provides a period of three years for a suit for compensation for the breach of any contract, express or implied, not in writing registered, from the date of the breach of the contract. Article 115 applies to

actions *ex contractu*, whether express or implied, oral or written, but not registered.

The essence of an *ex contractu* relationship, apart from other requirements, is free consent of parties entering into it. Free consent is *sine qua non* of a contract. A contract is a deliberate engagement between competent parties, who undertake to do or abstain from doing some act. Free consent means a voluntary concurrence in the proposal made by another after the exercise of an intelligent choice. It is not a neutral, but an affirmative attitude. A mere non-resistance, passiveness, or submission is not equal to a free consent or voluntary agreement. Coercion, undue influence, fraud are antetheses of contract relationship, which rests upon freedom to agree and implies an option or a choice to decline to accept a proposal made by another. The requisitioning of the premises by the Central or the State Government in the exercise of a statutory compulsion, even where the other party is non-protesting or non-resisting, cannot be deemed to be on a contractual basis. The right to requisition the property of a subject, on the part of the Central or State Government under Rule 75-A of the Defence of India Rules, rests on a unilateral decision of the Government. The person whose premises are requisitioned, *nolens volens*, has to submit, and his attitude or reaction is immaterial. The act of requisitioning whether it is *volens*, *vis-a-vis* the subject or *nolens*, does not acquire a contractual character. Where a person whose property has been requisitioned under Rule 75-A of the Defence of India Rules seeks compensation for use and occupation for purposes of limitation, his case is not covered by Article 115. As the relationship of the parties is not *ex contractu*, the residuary Article 120, which prescribes a period of six years for a suit for which no period of limitation is

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provided elsewhere, alone, will apply to a case like the present. For the reasons stated above, Article 115 has no application and the trial Court was in error in deciding the first issue against the plaintiffs. The plaintiffs' suit is not barred by time and was filed well within the period of limitation as prescribed by Article 120.

On the second issue, the trial Court held that the jurisdiction of the civil Courts had not been excluded by Section 19 of the Defence of India Act. The learned counsel for the Union of India has contended that the finding of the trial Court on the second issue was erroneous. Under Section 2(2) (xxiv), the Central Government is empowered to make rules relating to "the requisitioning of any property, movable or immovable, including the taking possession thereof and the issue of any orders in respect thereof."

Section 3 provides that any rule made under Section 2 and any order made under such rule shall have effect notwithstanding anything inconsistent therewih contained in any other enactment.

According to Section 14, "save as otherwise expressly provided by or under this Act the ordinary criminal and civil Courts shall continue to exercise jurisdiction." In other words, this Section preserves the jurisdiction of the ordinary Courts and does not take away that jurisdiction except where it is specifically so indicated. Section 16(1) is to the effect that no order made in exercise of any power conferred by or under this Act shall be called is question in any Court Under Sub-section (2) where an order purports to have been made and signed by an authority in exercise of any power conferred by or under this Act, a Court shall presume that such order was so made by that

authority. An order passed in bad faith, in abuse of the Act, or for purpose of effecting a fraud on it, or, merely in colourable exercise of such power can be questioned by the Courts.

Section 17, sub-section (1) gives protection to officers of the Crown and provides that no suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done in pursuance of the Defence of India Act or the Defence of India Rules.

Section 17, sub-section (2) protects the Crown against any damage caused by acts done in good faith in pursuance of the Defence of India Act or Rules made thereunder. Section 19 contemplates payment of compensation in accordance with the principles mentioned therein, the relevant words being, "there shall be paid compensation, the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out,..." This section provides for the nomination of the arbitrator, who will proceed to determine fair amount of compensation and the party aggrieved from the order of the arbitrator may appeal to the High Court in certain cases. The Central Government may make rules for the purpose of carrying into effect the provisions of Section 19 and the rules may prescribe the procedure to be followed in arbitrations and the principles to be followed, in apportioning the costs of proceedings before the arbitrator.

Rule 75-A of the Defence of India Rules relates to requisitioning or acquiring of property. The contention of the learned counsel for the respondent is, that a suit like the present could not be instituted in a Court, and the only remedy of

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the plaintiffs lay, by having resort to arbitration proceedings as provided in Section 19 of the Act, and Rule 75-A of the Rules made thereunder. In this case, the main controversy rests on the question whether the plaintiffs had foregone the compensation for the period the house had been in Government possession and as a *quid pro quo*, the house was released by the Government on that specific condition. There is no provision in the Defence of India Act, or, in the Rules made thereunder, which contemplates a situation as has arisen in the present case. What is stated there is, that in case of requisitioning of property, the person affected by the requisition, shall have a right to be compensated; and the machinery is prescribed for determining the amount of compensation. If the dispute merely were as to the claim of compensation, it might well be argued that the amount should be assessed by an arbitrator and not by a Court. The main point in this case is whether the plaintiff is estopped from claiming compensation. This issue is in my view justiciable by a civil Court whose jurisdiction has not been taken away by any provision of the Defence of India Act. In case *Messrs Chetandas Gulabchand* v. *The State of Bihar* (1), it was held that there was nothing in Section 299 of the Government of India Act, 1935, to show that the Legislature intended to curtail the Common Law right of a citizen to be compensated by the State if his immovable property is acquired unless a provision has been made to that effect in some legislation. It was also held that that provision does not have the effect of restraining a person whose property has been acquired under Rule 75-A from seeking his remedy under sub-rule 4 and thereby depriving the civil Court of

(1) A.I.R. 1958 Patna 512.

its jurisdiction to determine in a suit the compensation payable to a subject by the State, in respect of the property acquired. In that case, the Additional District Magistrate had rejected the plaintiff's petition for payment of compensation and in view of this refusal it was held that the suit for compensation would be maintainable in the civil Court. The reasoning of this decision applies to the present case.

In *State of West Bengal* v. *Brindaban Chandra Dramanik and another* (1), non-payment of compensation was the basic cause of action for the suit. Such non-payment could not be in pursuance of the Defence of India Act or the Rules or orders made thereunder. It was held that Section 17(2) of the Act, was no bar to the maintainability of the suit and could not be pleaded in answer to the plaintiff's claim. The situation which has arisen in this case is somewhat similar. The learned counsel for the respondent has placed his reliance in the main on *Purnendu Bh. Deb Burman* v. *Union of India and others* (2). All that was held in this case was, that the commandeering of private property for war purposes, or quelling civil disturbances by the military authorities, was an act of State which was not justiciable in a Court of law. The ruling relied upon by the respondent has no bearing on the facts of this case and on its basis I am unable to hold that the civil Courts have no jurisdiction.

I find nothing either in the provisions of the Defence of India Act or in the Rules made thereunder which bar the entertainment of a suit like the present by a civil Court. In this case, the Union of India consistently denied its liability to pay any compensation to the plaintiffs on the

(1) A.I.R. 1957 Cal. 44.
(2) A.I.R. 1956 Cal. 66.

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ground that the plaintiffs had undertaken to forego compensation for the period the house was under requisition if the premises were released in their favour. In a suit for the recovery of the amount of compensation, where the liability has not been denied by the Union of India under any statutory inhibition, no provision of the Act takes away the jurisdiction of the civil Court. As a matter of fact. Section 14 of the Act leaves the jurisdiction of the civil Court intact except as otherwise expressly provided by or under the Act. In my view, the second issue was rightly found by the trial Court in plaintiffs' favour.

This brings me to the third issue, as to whether the plaintiffs are estopped from claiming any compensation. It is not necessary to refer to all the correspondence, that has passed between the parties; and I propose to refer only to such correspondence as has a bearing on this issue.

On 21st of February, 1945, a letter was addressed on behalf of the plaintiffs to the Secretary to the Government of India, Labour Department, (Ex. P. 14), stating that the house had not so far been occupied and was lying uninhabited since the day of requisitioning and necessary permission should be granted to them to occupy the house immediately. The Government of India replied by letter, Ex. P. 12, dated the 2nd of April, 1945, turning down the request of the plaintiffs for the release of their building, and regretted their inability to accede to plaintiffs' request on the plea that the housing position was still acute. On 21st of April, 1945, the plaintiffs repeated their request to the Government,— *vide* Ex. D. 6, for releasing the house on the ground, that they required it for residential purposes. They contended that the house had remained unoccupied ever

since the formal possession was taken by the Government on 20th June, 1944. The plaintiffs then said, "in case the Government is prepared to consider this request favourably, we would be willing to forego the compensation for the period the house has been in Government possession." The plea of plaintiffs is based upon the above request. On 11th of June, 1945, the Government of India passed an order cancelling the requisitioning of the house,— *vide* Ex. P. 17. On 20th June, 1945, in pursuance of the above order, the Estate Officer addressed a letter to Sat Narain plaintiff stating that the Government of India were pleased to release their house which had been requisitioned on 6th of June, 1944,—*vide* Ex. P. 16. A copy of the release order dated the 11th of June, 1945, was also enclosed (Ex. P. 17). On 15th of September, 1945, the plaintiff, Sat Narain, addressed a letter to the Estate Officer, Ex. P. 18, claiming compensation and requesting that the amount of compensation may be assessed having regard to the condition of the building and lawns, shrubs, fountain, etc. The Estate Officer relied to the above letter on the 25th of October, 1945, (Ex. D. 5) stating that the plaintiffs' claim for compensation was not justified, as the house was released on the specific condition that the plaintiffs would forego the compensation for the period the house had been under requisition. The plaintiffs on this addressed a letter dated the 30th of January, 1946 (Ex. P. 19) to the Estate Officer stating that in their letter dated the 21st of April, 1945 (Ex. D. 6) they had offered to forego the compensation, but they had been verbally told by the Executive Engineer that the request made could not be acceded to. The plaintiffs further said that with a view to expedite the release of the house they had made the suggestion foregoing compensation in their letter dated the 21st of

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April, 1945 (Ex. D. 6), as they had been put to great inconvenience. They then proceeded to say that their suggestion was not in any way commented upon either by the office of the Estate Officer or by the Executive Engineer and that it was never stipulated when releasing the house that the giving up of the compensation would be a condition precedent to the release of the house. They said that it was not proper on the part of the Government to refuse the compensation. In this letter, they asked the Estate Officer to reconsider the matter failing which the plaintiffs would be constrained to take legal steps.

It may be mentioned here that the plaintiffs had addressed a letter on 28th of June, 1948, to the President of India, requesting for payment of compensation for the year 1944-45 and they received a reply signed by Rai Bahadur Bishambar Das, Officer on Special Duty, stating that the Estate Officer has been asked to assess and pay the compensation,—*vide* Ex. P. 26, dated the 2nd of September, 1948, and the plaintiffs should correspond with him in the matter. The plaintiffs' contention, *inter alia,* is that after they had sent their letter (Ex. D. 6), dated the 21st April, 1945, foregoing the compensation, they were told that the Estate Officer had been asked to assess the compensation and pay the same. This letter does not indicate an undertaking to pay compensation despite the plaintiffs having relinquished their claim to it. When letter, Ex. P. 26, was sent by the Officer on Special Duty, it was not with reference to the plaintiffs' communication (Ex. D. 6), addressed to the Executive Engineer. Ex. P. 20, is the formal notice dated the 30th of March, 1946, addressed by the Advocates of the plaintiffs that if suitable compensation is not paid to them, they would be seeking redress in a Court of law.

On this issue, the only oral evidence that has any bearing, is the statement of P. W. 6, plaintiff Sat Narain, who stated in cross-examination that once he wrote to the Government that if the building was derequisitioned he would not claim any compensation, but on his request the property in question was not derequisitioned.

The trial Court was of the view that the house had been derequisitioned on the specific undertaking that the plaintiffs would not claim any compensation. In its view, the plaintiffs were estopped by their conduct from claiming compensation.

The rule of estoppel in general has been incorporated in Section 115 of the Indian Evidence Act, which runs as under :—

> "When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing."

The learned counsel for the appellants has urged that the provisions of Section 115 do not apply, as there was no representation of an existing fact or of a past event, but there was a mere statement of intention or a promise *de future* which did not create an estoppel. Ordinarily, plea of estoppel cannot be based upon a promise to do something in the future.

In this case plea of estoppel rests on the following words occurring in Ex. D. 6 :—

> "In case the Government is prepared to consider this request favourably, we

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would be willing to forego the compensation for the period the house has been in Government possession."

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This representation, in my view, does not relate to an existing fact, but refers to an intention or a promise in future. The representation is an expression of an intention and it may raise expectations, but it does not amount to an enforceable contract. The representation, however, is undeniably in the nature of a promise to relinquish a right to compensation. Estoppels, as pointed out by Garth C.J., in the *Ganges Manufacturing Co.*, v. *Sourujmull and others* (1), are matters of infinite variety, and are by no means confined to the subject which are dealt with in Chapter VIII of the Evidence Act.

The case of the Government is that it has acted upon the representation made by the plaintiff in his letter Ex. D. 6. The Estate Officer, in his letter dated the 25th of October, 1945, (Ex. D. 5), addressed to Sat Narain plaintiff inviting the latter's attention to Ex. D. 6 had said that it had been undertaken by him that he would forego the compensation for the period the house had been under requisition. This house, he said, was released on that specific condition and the claim for compensation in those circumstances was considered to be not justified. It is admitted at the bar that the premises remained released for three years subsequently and although it was within the power of the Government, to again requisition the premises they did not do so in view of the representation of the plaintiff to forego the compensation. It was argued on behalf of the plaintiffs that it was not just on the part of

(1) I.L.R. 5 Cal. 669.

the Government to decline to pay compensation when it was made payable by the very statute which conferred the power to requisition the premises.

The ethics of a party's conduct are hardly relevant in a case like the present. The brief facts of this case are, that the plaintiffs were anxious to give up the compensation for the period during which their property had been requisitioned and were keen to get possession and offered inducement to the Government to release the property by representing, that they would not demand any compensation. The Government, on this, passed the order of cancellation and released the property and did not exercise their right to requisition the property for a period of three years. It cannot, therefore, be urged that there was no *quid pro quo* on account of which the Government was persuaded to derequisition the plaintiffs' premises.

In order to create estoppel the party asserting it has to show that it has been induced to act to its detriment or misled to its injury. It is an equitable defence when a party has deliberately led another to believe that a particular thing is true and to act upon such belief to its detriment. It is based on the theory that party setting up such defence has been misled or has been placed in a worse situation. A change of one's position for the worse because of reliance on another act is an element of estoppel. The detriment said to have been suffered in this case is that the Government gave up its right to hold the premises under the requisitioning order and thereby changed its position for the worse. The essence of doctrine of estoppel is that, where a person does or omits to do something which influences the action of another, who relies or acts thereon, equity will

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not permit him to controvert the same to the injury of the other party. As said by Lord Coke the name 'estoppel' was given because a man's own act stoppeth or closeth up his mouth to allege or plead the truth. The doctrine is predicated on the maxim that no one can be heard alleging his own turpitude as it was unconscionable to allow a person to maintain an inconsistent position by acquiescence and accepting the benefit and later on by repudiating it while retaining the benefit.

Estoppel is a preclusion in law preventing a man from alleging or denying a fact in consequence of his own previous allegation or denial. It is, however, a shield for defence, but not a weapon of attack and does not furnish a basis for action.

Under the common law the doctrine of estoppel by representation was confined to representation as to facts either past or present, but not to representations or promises concerning the future. A "promissory estoppel" which is a recent development of an equitable estoppel operates to preclude perpetration of fraud or causing of injury, in a case, where the representation or promise has been made to induce an action on the part of the party setting up the estoppel. In such a case the party making the promise is precluded from asserting want of consideration therefor. The doctrine of "promissory estoppel" is said to be older than the terminology. "That equity gave relief, before 1,500, to a plaintiff who had incurred detriment on the faith of the defendant's promise, is reasonably clear, although there are, but three reported cases." ,—(*vide Ames, Lectures on* Legal History, P. 143. American Jurisprudence, Vol. 19, paragraph 53, page 657-658 contains the following statement of law :—

> "The doctrine of promissory estoppel is by no means new, although the name has

been adopted only in comparatively recent years. According to that doctrine, an estoppel may arise from the making of a promise, even though without consideration, if it was intended that the promise should be relied upon and in fact it was relied upon, and a refusal to enforce it would be virtually to sanction the perpetration of fraud or would result in other injustice. Promissory estoppel is sometimes spoken of as a species of consideration or as a substitute for, or the equivalent of, consideration; but the basis of the doctrine is not so much one of contract with a substitute for consideration, as an application of the general principle of estoppel, since the estoppel, may arise although the change of position of the promisee was not in any way an inducement to the promise and as not regarded by the parties as any consideration therefor."

The principle of "promissory" estoppel, which is also known as "Equitable" or "quasi" estoppel is expressed in the following words in Halsbury's Laws of England, Third Edition, Volume 15, page 175 :—

"When one party has, by his words or "conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the one, who gave the promise or assurance cannot afterwards be allowed to revert to their

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previous legal relations as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he himself has so introduced."

In the recent years this doctrine has been considerably developed as will appear from *Lyle-Meller* v. *A. Lowis and Co. (Westminster) Ltd.*, (1). In that case the defendants had, by their conduct, given an assurance that gas lighters and refills embodied the plaintiff's inventions and they were liable to pay royalties, thereon and as it was intended that the plaintiff should act on the assurance and he had acted on it the defendants could not go back on their assurance.

Dennings L.J., said :

> "I am clearly of opinion that this assurance was binding, no matter whether it is regarded as a representation of law or of fact or a mixture of both, and no matter whether it concerns the present or the future. It may not be such as to give rise to an estoppel at common law, strictly so called, for that was confined to representations of existing fact; but we have got far beyond the old common law estoppel now. We have reached a new estoppel which affects legal relations.

This new estoppel applies to representations as to the future. Take the kind of assurance which was held binding in *Central London Property Trust Ltd.* v. *High Trees House Ltd.* (2), and in *Tool Metal Manufacturing Co., Ltd.*, v. *Tungsten Electric Co., Ltd.* (3), *Tool Metal Manufacturing Co.*,

(1) (1956) 1 All. E.R. 247.
(2) (1956) 1 All. E.R. 256 (K.B.D.).
(3) (1953) 69 R.P.C. 108.

Ltd. v. *Tungsten Electric Co., Ltd.* (1), in the Court of appeal and in House of Lords *Tool Metal Manufacturing Co., Ltd.* v. *Tungsten Electric Co., Ltd.* (2). In each of those cases a creditor during the war gave a promise or assurance to the other party that he would for the time being forego sums which were thereafter to become due to him. In *Central London Property Trust Ltd.*, v. *High Trees House Ltd.*, (3), it was rent. In *Tool Metal Manufacturing Co., Ltd.*, v. *Tungsten Electric Co., Ltd.* (1), it was sums payable by way of compensation. The assurance was not a contract binding in law, but it was an assurance as to the future; it was intended to be acted on, it was acted on, and it was held binding on the party, who gave it. This appears distinctly from the speech of Lord Gohen *Tool Metal Manufacturing Co., Ltd.* v. *Tungsten Electric Co. Ltd.* (1).

I am not aware of any decisions of Courts in India, where a promise *in future* has been held to create an estoppel, but the decisions, both in England and in America, are based upon equitable principles and ought to be followed, the principle being that if a promise is made in the expectation that it would be acted upon and it was in fact acted upon the party making the promise will not be allowed, infairness, to back out of it and the Courts should insist that the promise so made must be honoured and the promisor cannot be allowed to act inconsistently. In this view of the matter, the appellant does not deserve to succeed on the principle of "promissory" estoppel. In the result, the appeal fails and is dismissed. In the circumstances of this case, the parties are left to bear their own costs throughout.

G. D. KHOSLA, C.J.—I agree.

G. D. Khosla, C. J.

B.R.T.

(1) (1954) 2 All. E.R. 28 (C.A.).
(2) (1955) 2 All. E.R. 657 (H.L.).
(3)(1956) 1 All. E.R. 256 (K.B.D.).