MANU/BH/0047/1986

Equivalent Citation: AIR1986Pat267, 1986(34)BLJR206, 1986PLJR149

IN THE HIGH COURT OF PATNA
FULL BENCH

Civil Writ Jurn. Case Nos. 1390 of 1984 (R) and 42 of 1985 (R)

Decided On: 17.12.1985

Appellants:**Chetlal Sao and Ors.**
Vs.
Respondent:**State of Bihar and Ors.**

Hon'ble Judges/Coram:
S.S. Sandhawalia , C.J., S. Ali Ahmad and U.P. Singh , JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: K.K. Sahay, Barnwal S. Lal and Debi Prasad, Advs.

For Respondents/Defendant: S.K. Chattopadhyaya, Govt. Pleader No. I, Gopal Choudhary, Jr. Counsel to Govt. Pleader No. I,S.B. Gadodia, B.S. Lal and M.S. Mittal, Advs.

Overruled / Reversed by:
Satrudhan Sahani and Ors. vs. The State of Bihar and Ors., MANU/BH/0002/1992

JUDGMENT

S.S. Sandhawalia, C.J.

1. In this set of two connected writ petitions referred to the Full Bench three significant issues emerge for adjudication. These may conveniently he formulated at the very outset : --

> **1.** Whether the administrative instructions and circulars issued from time to time for the lease of fishery rights in tanks (sairats) vested in the State are statutory in nature and binding on the Government?
>
> **2.** Whether a writ of mandamus would be maintainable even in the absence of a concluded registered contract for the lease of such a sairat?
>
> **3.** Whether the State would still be bound by the doctrine of promissory estoppel even for the acts of its subordinates done in violation of its directions or administrative instructions?

2. The primal challenge of the petitioners herein is to the settlement of the sairats in favour of the Fishermen's Co-operative Societies at a reserve jama in pursuance of a policy decision to this effect. The relevant facts are closely similar -- if not identical -- and may, therefore, be conveniently noticed from C.W.J.C. 42 of 1985 (R) (Jageshwar Prasad v. State of Bihar). It is averred that there are ten sairats in Bisungarh Anchal which were to be settled and purported potentiality auctions were held by the authorities for fixing the reserve jama in view of a Government letter that big sairats were being settled for low amounts by the District Administration. On the

3rd Mar. 1984 an open bid took place in which respondent 6. Shri Ranjit Prasad, the Secretary of the Bisungarh Matsya Jivi Sahyog Samitee Limited (Bisungarh Fishermen's Co-operative Society Limited) was also present, in which petitioner 1 was the highest bidder for the Badki Bandh Barain for a sum of Rs. 26,500/- for the period of one year, and petitioner 2 was the highest bidder for Ramuwa Ahar Ramua for Rs. 19,500/- for one year which bids are said to have been accepted. It is stated that previously the reserve jama for these tanks were Rs. 1,325/- and Rs. 2,305/- only. Respondent 3, Deputy Commissioner of Hazaribagh, is said to have issued a letter to respondent 6 enquiring from him if he was interested in taking the settlement at the level of the auction held above and on his refusal to take the said notice a copy of annexure 4 under registered cover was sent to respondents 5 and 6. When the latter did not respond, respondent No. 4, the Anchal Adhikari called upon the petitioners to deposit one-half of the bid amount for three years within the time prescribed and in compliance therewith they deposited the same with the Nazir.

3 . Meanwhile respondent 5, Bisungarh Matsya Jivi Sahayog Samitee Limited (hereinafter referred to as the 'Co-operative Society') preferred C.W.J.C. No. 556 of 1984 (R) seeking a writ of mandamus to make the settlement of the sairats in favour of the cooperative society at the reserve jama already fixed in accordance with the policy decision taken by the State Government to this effect. Interim order therein was first passed on the 6th April, 1984 (vide annexure E to the counter-affidavit). The present petitioner Jageshwar Prasad filed an application for being added as a party in the writ application on the ground of being the highest bidder at the auction held on the 3rd March, 1984. Ultimately on the 27th April, 1984, whilst disposing of the said petition by a detailed order (annexure H to the counter-affidavit) the High Court in no uncertain manner pointed out that the Government was bound to implement its decision to give preference to co-operative societies for the settlement of sairats at the reserve jama and directed the Deputy Commissioner to take a final decision in respect of the settlement of the respective sairats in the light of the decision of the State Government within one month from the date of the receipt of the copy of this order so that the revenue may not suffer. Nevertheless, on the basis of the recommendation made by the Anchal Adhikari and the Deputy Commissioner, the Commissioner, North Chotanagpur Division, is said to have approved the settlement of the Badki Bandh Barain and Ramuwa Aahar, Ramua, in favour of the petitioners who were the highest bidders, by order dt. 26th July, 1984 (annexures 8 and 8A).

4. It is then sought to be averred that the respondent co-operative society is not a genuine organisation and is a one man show only and is not for the benefit of the members of the said society. It is stated that some reports were called for in this context. It is claimed that after depositing the bid money the petitioners had incurred expense for seed fisheries in the respective tanks. Subsequently, the respondent co-operative society preferred a petition for contempt being M.J.C. No, 141 of 1984 (R) for violating the order of the High Court in C.W J.C. No. 556 of 1984 (R) in which respondents 2 and 3 were noticed to show cause. Thereafter, respondent 3, the Deputy Commissioner, Hazaribagh, taking the plea of Government letter No. 1263 dt. the 13th of Nov. 1984 had cancelled the proposed settlement in favour of the petitioners and settled the sairats in question with respondents 5 and 6 (vide registered indentures annexures 14 and 14A), In pursuance thereof, respondent 4 issued parwanas in favour of respondents 5 and 6 by his letter No. 12 dt. the 3rd of Jan. 1985 (vide annexures 15 and 15A). Aggrieved thereby, the petitioners challenge the settlement in favour of the respondent co-operative society and seek the quashing of the registered and concluded contracts, (annexures 14 and 14A).

5. At the very threshold stage of admission, firm reliance was placed on behalf of the respondents on the Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. v. Sipahi Singh MANU/SC/0060/1977 : AIR 1977 SC 2149 to assail the very maintainability of the present writ petition in the absence of any concluded registered contract in favour of the petitioners. Noticing the significance of the issues involved, both the writ petitions were directed to be heard by the Full Bench.

6 . As before the admission Bench so before us, the learned counsel for the respondent State Mr. Chattopadhyaya has assiduously assailed the very maintainability of the writ petition in a forcefully pressed preliminary objection. It was first highlighted that the Government circulars or administrative orders or instructions issued from time to time in this context were not even remotely statutory in nature. No question of these being in any way binding on the State or on the citizen would thus arise. Secondly, it was then emphasised that to have even a vestige of a right in the context of lease for fishery, the same must be rested on a duly registered contract squarely within the parameters of Article 299 of the Constitution. Herein the admitted position being that no deed having been executed in favour of the petitioners, they could not maintain a writ of mandamus in the absence of a concluded registered contract. Equally they could not pretend to challenge and seek the cancellation of such a contract admittedly executed in favour of the respondent cooperative society.

7. It emerges as the virtually undisputed position herein that the settlement of sairats in Bihar is not under any Act of the legislature or any statutory rules framed thereunder. Whatever may have been the position earlier, by virtue of the statute, all sairati interests and rights vest absolutely in the State free from all encumbrances. Reference in this connection may be made to Section 4(a) of the Bihar Land Reforms Act, 1950 (hereinafter to be referred to as the 'Act') which deserves notice in extenso : --

> "4. Consequences of the vesting of an estate or tenure in the State. -- Notwithstanding anything contained in any other law for the time being in force or any contract and notwithstanding any non-compliance or irregular compliance of the provisions of Sections 3, 3A and 3B except the provisions of Sub-section (1) of Section 3 and Sub-section (1) of Section 3A, on the publication of the notification under Sub-section (1) of Section 3 or Sub-section (1) or Sub-section (2) of Section 3A, the following consequences shall ensue and shall be deemed to have ensued, namely :
>
> (a) Such estate or tenure including the interests of the proprietor or tenure-holder in any building or part of building comprised in such estate or tenure and used primarily as office or cutchery for the collection of rent of such estate or tenure and his interests in trees, forests, fisheries, jalkars. hats, bazars, mela and ferries and all other sairat interests as also his interest in all Sub-soil including any rights in mines and minerals, whether discovered or undiscovered or whether being worked or not, inclusive of such rights of a lessee of mines and minerals, comprised in such estate or tenure (other than the interests of raiyats or under-raiyats) shall, with effect from the date of vesting, vest absolutely in the State free from all encumbrances and such proprietor or tenure-holder shall cease to have any interests in such estate or tenure other than the interests expressly saved by or under the provisions of this Act."

A plain reading of the above can leave no manner of doubt that the paramount title in all fisheries, jalkars and sairati interests now lies with the State and is vested in it unhindered by any encumbrance. On this basic premises, it was rightly and forcefully contended that the respondent State cannot be denied its patent right of ownership in this context or the obvious privilege of leasing out the sairati rights either by auction, contract, private treaty or other legitimate means, barring any violation of Article 14. Reference in this connection also calls to Section 13 of the Act, the relevant part whereof is as under : --

> "13. Management of estates and tenures vested in the State.-- All estates and tenures vested in the State under the provisions of this Act shall, as far as practicable, be managed according to the rules for the time being in force for the management of Government estates subject to such directions as may, by general or special order, be issued from time to time by the State Government in this behalf :
>
> Provided that in art area in respect of which a Gram Panchayat has been established under Section 3 of the Bihar Panchayat Raj Act, 1947 (Bihar Act 7 of 1948), the State Government may on such terms and conditions as it may by general or special order, fix and, subject to such rules as may be prescribed, entrust the management of such estates and tenures including trees, forests, fisheries, jalkars, hats, bazars and ferries, comprised in such estates and tenures within the said area to the Executive Committee of such Gram Panchayat."

Relying on the above, the learned counsel for the State had forcefully pointed out that the Government for the purposes of management in this context is entitled to issue directions from time to time, which may be either special or general in nature. Such directions, which rest entirely in the discretion of the Government and which may be varied without notice at any time, would, therefore, hardly have statutory sanction or be of binding nature dependent as they are, on the fiat of the author without any attribute of permanence. The law inevitably rests on a sounder footing than the quick sands of changing orders or directions in the discretion of the State to be issued at any time in this context. This is further buttressed when reference is made to Section 43 of the Act which empowers the State Government to make rules. Even the closest reading of the same would show that apart from the generality of the power, the numerous Clauses (a) to (s) of Section 2 do not provide or envisage any framing of statutory rules for the settlement of sairats. In contradistinction thereto it deserves notice that the rules framed thereunder had earlier, in fact, provided in express terms for the settlement of hat, bazar or mela by virtue of Rules 7(r) to 7(u). These rules in the context of the settlement of a hat, bazar or mela provide for the calling of tenders or their settlement with co-operative societies or Gram Panchayats or by way of public auction, and the fixation of a reserve jama. In sharp contrast thereto, it was pointed out that the State Government had at no stage chosen to bind itself with any statutory rule with regard to the settlement of sairats. It had retained with itself the unfettered power to deal with the same by its own direction given in its discretion from time to time. Our attention was then drawn to notification No. G.S.R. 62 dt. the 19th Sept. 1981 reported in 1981 Bihar Law Times, Part IV, page 233, whereby even the aforesaid Rules 7(r) to 7(u) with regard to the settlement of hat, bazar or mela have also in terms been repealed and the matter has been taken out of any statutory or binding provision. Learned counsel for the respondent State plausibly and convincingly contended that if on the one side the State having itself done so, withdraws these matters (even in the context of the settlement of hat, bazar

or mela) from the range binding statutory rules, it would be wholly incongruous and untenable to suggest any statutory or binding force in ephemeral orders and directions issued from time to time as guidelines for its subordinates for the settlement of individual or general sairati rights. It calls for notice that the learned counsel for the petitioners were wholly unable in this context to rebut the stand of the respondent State or to cite either principle or precedent for holding that the guidelines in this regard were statutory or binding. It necessarily follows that the somewhat insignificant field of the settlement of tanks for fishery or other sairati rights has not been covered by any statutory provisions or rules nor can the ephemeral directions issued from time to time in the governmental discretion be given the status of a statute or raised to the pedestal of being binding either on the State or the citizen.

8. The answer to question No. 1 posed at the outset is thus rendered in the negative and it is held that the administrative instructions or circulars issued from time to time for the lease of fishery rights in tanks (sairats) vested in the State are not statutory in nature and consequently not binding.

9 . On the second limb of the argument Mr. Chattopadhyaya again forcefully contended that the leasing out of fishery rights or the settlement of any other sairati rights, (in the context that a paramount title vested absolutely in the State free from all encumbrances) was entirely contractual in nature. Therefore, if the State, as a matter of convenience, leases out such rights either by open auction or by inviting tenders or by fair private negotiation and even as a welfare State it goes out of its way to give it on concessional basis to the weaker and down-trodden sections of the society like fishermen, then such pure discretion, if reasonably exercised in this field, cannot be governed or fettered by the writ jurisdiction. In this respect, it is undisputed that by virtue of Sections 2(6) and 17(1)(d) of the Registration Act read with Section 54 of the T.P. Act, a sairat settlement being a lease of immovable property has to be registered if the same is above the value of Rs. 100/-. This aspect is concluded by the following observations in Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. v. Sipahi Singh MANU/SC/0060/1977 : AIR 1977 SC 2149 :--

> "That apart, there is an additional reason for holding that the settlement of Jalkar with respondent 1 was not valid and enforceable. The right to catch and carry away the fish being a 'profits a prendre', i.e. a profit or benefit arising out of the land, it has to be regarded as immovable property within the meaning of the Transfer of Property Act read in the light of Section 3(26) of the General Clauses Act. If a 'profits a prendre' is tangible immovable property, its sale has to be by means of a registered instrument in case its value exceeds Rs. 100/- because of Section 54 of the T.P. Act. If it is intangible, its sale is required to be effected by a registered instrument whatever its value. Therefore, in either of the two situations, the grant of the 'profits a prendre' has to be by means of a registered instrument. Accordingly, the transaction of sale of the right to catch and carry away the fish if not effected by means of a registered instrument would pass no title or interest (See Ananda Behera v. State of Orissa (1955) 2 SCR 919 : MANU/SC/0018/1955 : AIR 1956 SC 17). Even if the settlement of jalkar with respondent 1 is regarded as a lease as described by him in Annexure 2 to the writ petition, it would not make any difference because a lease of fishery which is immovable property as defined by Section 2(6) of the Registration Act if it is for any term exceeding one year or reserves a yearly rent has also to be registered as required by Section 17(1)(d) of the Indian Registration

> Act, 1908 and Section 107 of the Transfer of Property Act As in the instant case, the transfer of the 'profits a prendre' in favour of respondent No. 1 was admittedly for two years reserving a yearly rent and was not evidenced by a registered instrument, he had no right, title or interest which could be enforced by him. Manifestly therefore, the writ petition was misconceived and ought to have been dismissed."

In the present, case it is common ground that far from there being any registered instrument of lease of fishery rights, there is not even the semblance or any formal document having been executed in favour of the petitioners. That being so, in the light of the authoritative enunciation and in the very words of their Lordships, the writ petitions are manifestly misconceived and ought to be dismissed.

10. Reference must also in this context be made to Article 299 of the Constitution, the relevant part whereof is in the following terms :--

> "299.(1) All contracts made in the exercise of the executive power of the union or of a State shall be expressed to be made by the President, or by the Governor of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power, shall be executed on behalf of the President or the Governor by such person and in such manner as he may direct or authorise."

By virtue of the aforesaid provision, no contract made in the exercise of the executive power of a State can be binding unless it is expressed to be made and executed on behalf of the Governor of the State. Admittedly, herein no contract even remotely in conformity with Article 299 has been executed betwixt the respondent State and the petitioners. Consequently, no contractual obligation binding the respondent State can possibly arise. This is again well settled by the categoric enunciation in MANU/SC/0060/1977 : AIR 1977 SC 2149 (supra) in the undermentioned terms : --

> "It is now well settled that the provisions of Article 299 of the Constitution which are mandatory in character require that a contract made in the exercise of the executive power of the Union or of a State must satisfy three conditions viz. (i) it must be expressed to be made by the President or by the Governor of the State, as the case may be; (ii) it must be executed on behalf of the President or the Governor, as the case may be and (iii) its execution must be by such person and in such manner as the President or Governor may direct or authorise. Failure to comply with these conditions nullifies the contract and renders it void and unenforceable."
>
> In the light of the above, it seems plain that apart from the fact that the purported claim on behalf of the petitioners is a purely contractual one, there has not even arisen a concluded contract as yet on the basis of which even a suit could be maintained. Learned counsel for the respondents was, therefore, eminently right that if there did not even exist an ordinary contractual civil right enforceable by way of suit, no question of the grant of a writ of mandamus for the same could possibly arise. Directly covering this aspect of the matter is yet again the conclusion of their Lordships in the very case of Sipahi Singh (MANU/SC/0060/1977 : AIR 1977 SC 2149) in the following terms :--
>
> "In the instant case, it is obvious that the settlement of the Jalkar with respondent No. 1 was not made and executed in the manner prescribed by

> Article 299 of the Constitution. Accordingly, it could not be said to be valid and binding an the State of Bihar and respondent 1 could not base his claim thereon,"

11. Lastly, in this context the matter has now to be viewed in the light of the answer rendered to question No. 1. Therein we have already held that the administrative instructions or circulars issued from time to time for the lease of fishery rights in tanks (sairats) vested in the State are not statutory in nature and not binding. Once that is so, the very foundation for a claim of mandamus is knocked out. It is well settled that a writ of mandamus can only issue for compliance with a statutory public duty in which the petitioners have a clear enforceable right. If the administrative instructions and circulars are not statutory in nature, no question of any statutory public duty can possibly arise nor any semblance of an enforceable right in the petitioners would exist. This aspect has again been adverted to in para 15 of the report in Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. v. Sipahi Singh (MANU/SC/0060/1977 : AIR 1977 SC 2149) with the following conclusion : --

> "In the instant case, it has not been shown by respondent 1 that there is any statute or rule having the force of law which casts a duty on respondents 2 to 4 which they failed to perform. All that is sought to be enforced is an obligation flowing from a contract which, as already indicated, is also not binding and enforceable. Accordingly, we are clearly of the opinion that respondent 1 was not entitled to apply for grant of a writ of mandamus under Article 226 of the Constitution and the High Court was not competent to issue the same."

It thus seems manifest that the issue stands virtually concluded against the petitioners by the aforesaid binding precedent.

12. Inevitably, it remains to advert to the decisions of this Court. A Division Bench presided over by S. K. Jha, J,, in Sheopujan Singh v. State of Bihar MANU/BH/0012/1980 : AIR 1980 Pat 64 in the context of the grant of this very right of fisheries followed Sipahi Singh's case (MANU/SC/0060/1977 : AIR 1977 SC 2149) to hold as under : --

> "As we have noticed already, there is neither any legal nor any statutory right in the petitioner nor could learned counsel for the petitioner show to us any legal or statutory obligation on the part of any of the respondents 1 to 4 for the breach of which a writ of mandamus can issue."

13. In fairness to the learned counsel for the petitioners, one must first notice their reliance on Shiv Lochan Jha v. State of Bihar (MANU/BH/0030/1982 : AIR 1982 Pat 119:1982 BBCJ (HC) 261). This judgment does lend some aid to the case of the petitioners. What, however, is to be noticed at the outset in this context is that, with the greatest respect, the judgment has been rendered per incuriam. It failed to notice the binding precedent of the Supreme Court in MANU/SC/0060/1977 : AIR 1977 SC 2149 (supra) and equally the earlier Division Bench of this Court in Sheopujan Singh v. State of Bihar, (MANU/BH/0012/1980 : AIR 1980 Pat 64) (supra). Consequently, it proceeded on the assumption that a writ lay at the instance of a party in whose favour there was no concluded contract at all, which, in the light of the binding precedent, was foundationally erroneous. Without adverting to principle or precedent, the Bench said as a dictum that the circulars of the State Government in this context were binding, which is a view contrary to what we have earlier arrived at. The Bench

failed to notice that the rights were primarily contractual and the fatal infirmity of the infraction of Article 299 would come in the way of the petitioners. What is more it proceeded to appraise evidence and even to find that there were certain interpolations or overwritings in the documents and entered the thicket of facts to come to a conclusion of its own that the agreement arrived at in favour of the petitioner was a shady one. With the greatest respect, that does not appear to us as the province of the writ jurisdiction and, indeed, the Court went fishing into the troubled waters of the merits of a sairati settlement which, as repeatedly noticed, is essentially contractual. With deep deference, we regret our inability to subscribe to such a line of thought and the judgment in Shiv Lochan Jha v. State of Bihar (MANU/BH/0030/1982 : AIR 1982 Pat 119:1982 BBCJ (HC) 261) has, therefore, to be regretfully overruled.

14. What has been said above would apply equally to the subsequent judgment taking a similar view in Ram Chandra Singh v. The State of Bihar (MANU/BH/0006/1984 : AIR 1984 Pat 18:1984 BBCJ (HC) 16). Therein, even after noticing Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. v. Sipahi Singh MANU/SC/0060/1977 : AIR 1977 SC 2149 and Hari Shankar Singh v. State of Bihar MANU/BH/0024/1983 : AIR 1983 Pat 83, the Bench proceeded to assume jurisdiction and quashed annexure 4 thereto. Despite holding that "It is, no doubt, true that these decisions support the contention of the learned counsel for the respondents that a successful bidder on that account alone does not get any right in absence of any concluded contract followed thereafter", the Division Bench chose to proceed further in the matter. The fatal infirmities highlighted in Sipahi Singh's case in such a situation were not adequately noticed and acted upon. For the detailed reasons recorded earlier, it has to be held with the deepest respect that this judgment also does not lay down the law correctly and is hereby overruled.

15. For the five-fold reason that the rights herein are essentially contractual in nature; that a sairati settlement being a lease of immovable property has to be made by executing a formal registered document; that the same has to be in conformity with Article 299 of the Constitution; that there being no concluded contract betwixt the parties; and the binding decision in Sipahi Singh's case, (MANU/SC/0060/1977 : AIR 1977 SC 2149), it has to be held that a writ of mandamus in this context would not be maintainable.

16. To finally conclude, the answer to question No. 2 posed at the outset is rendered in the negative and it is held that a writ of mandamus would not be maintainable in the absence of a concluded registered contract for the lease of the sairat.

17. Repelled on the aforesaid two primal grounds, Mr. Debi Prasad, the learned counsel for the petitioners, then attempted to fall back on the doctrine of promissory estoppel. It was sought to be argued that because of the purported action of the Deputy Commissioner and its approval by the Commissioner of the division and the consequential deposit of some amounts for the purposes of the sairat settlement by the petitioners, the respondent State is now bound by the rule of promissory estoppel to give effect to the purported settlement in the petitioners' favour. It was contended that the act of the Deputy Commissioner and the Commissioner would still bind the Government despite the fact that these acts may be in direct infraction of the general instructions issued by the State and the specific directions made with regard to the respondents. Basic reliance was first sought to be placed on Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh MANU/SC/0336/1978 : AIR 1979 SC 621 and certain observations of a learned single Judge in (1980) 2 C HN 480. Reference was

also made to Gujarat State Financial Corporation v. Lotus Hotels Pvt. Ltd. MANU/SC/0036/1983 : (1983) 3 SCC 379 : (AIR 1983 SC 848), Jiwat Bai & Sons v G. C. Batra MANU/DE/0107/1976 : AIR 1976 Delhi 310 and Radha Krishan Agrawal v. State of Bihar MANU/BH/0017/1977 : AIR 1977 Pat 65.

18. The aforesaid contention has to be viewed in the context of three foundational factors. It is common ground that in February, 1981, if not earlier, the State Government took a firm policy decision that in this particular region sairat settlements, as a matter of first preference, were to be made with the Fishermen's Co-operative Societies in the area on the basis of the reserve jama. This decision was duly effectuated by the Department Circular No. 26/Ra dt. 12th Feb., 1981. It is manifest therefrom that the respondent State expressly decided to dispense concessional leases of sairats in favour of the local Fishermen's Co-operative Societies as a beneficent measure towards a peculiarly weaker section of citizenry. This apart, the State (vide annexure B dt. 15th Feb., 1984) gave an express direction to the Deputy Commissioner, Hazaribagh, that the settlement of the tanks of the Bishnugarh Block be made with the Bishnugarh Fishermen's Co-operative Society Ltd. in the light of the previous instructions. This was then followed by another letter dt. 24th Feb., 1984 addressed by the Under Secretary, Revenue and Land Reforms, Government of Bihar, to the Deputy Commissioner, Hazaribagh, in respect of the settlement of jalkar within the Bishnugarh Anchal. In this letter also, the State Government directed the Deputy Commissioner, Hazaribagh, to make settlement in favour of the said Co-operative Society in the light of the earlier decision of the State Government communicated by the letters dt. the 12th Feb., 1981 and 15th Feb., 1984. The last watershed in this context is then the order of the Division Bench in C.W.J.C. No. 556 of 1984(R) Bishungarh Matsyajivi Sahyog Samiti Ltd. v. State of Bihar, dt. 27th April, 1984 (Annexure H), the operative part whereof reads as follows : --

> "Having heard the learned counsel for the, petitioner, the learned counsel for the State and the learned counsel for the Intervener respondent, we are of the opinion that in view of the direction given by the State Government by its letter dt. 24-4-1984 there is no occasion for this court to adjudicate the dispute. The learned Deputy Commissioner has to take a final decision in respect of the settlement of the jalkars in question in the light of the decisions of the State Government. Accordingly, we direct the Deputy Commissioner to pass necessary orders in the light of the different decisions and directions given by the State Government within one month from the date of receipt of a copy of this order so that State Revenue may not suffer. With the aforesaid direction/ observation this application is disposed of."

It would follow from the aforesaid binding direction that earlier proceedings of the purported potentiality auction stood wiped off and were, in fact, totally irrelevant thereafter.

19. On the firm basis of the aforesaid foundational factors, learned counsel for the respondents had rightly argued that the impugned settlement in favour of the respondent Societies was directly in pursuance of the policy decision of the Government to give benefit to the weaker sections of poor fishermen collectivised in the local cooperative societies. Once that decision 'was taken to the effect that such settlements are to be made at the existing reserve jamas then the mere fact that such reserve jama may be lower than the supposed bids in potentiality auction was wholly irrelevant to the issue. Indeed, the policy decision was a deliberate bounty to the

Fishermen's Co-operative Societies which, because of their weaker financial condition, may not be able to compete with the commercial bids in open auction. Even on behalf of the petitioners it could not be disputed that the Government was within its power to take such a decision in the interest of its weaker citizens.

20. Mr. Gadodia, the learned counsel for the respondent Co-operative Societies, further pointed out that even the purported auction of the 3rd Mar., 1984, on which basic reliance was placed on behalf of the petitioners, was not a binding auction for the sairat settlement as such. Indeed, it was a misnomer for an unwarranted action taken by some State Officials in the garb of what is called a potentiality auction. It was not an auction strictu sensu in the eye of law at all and, therefore, no rights could possibly flow therefrom to the petitioners. It was also pointed out that Jageshwar Prasad, petitioner No. 1 in C.W.J.C. No. 42 of 1985(R) had intervened and became a party to C.W.J.C. No. 556 of 1984(R) and was, therefore, specifically bound by the earlier order of the High Court dt. 27th April, 1984 (vide annexure H). Further our attention was drawn to annexure G which particularised the deliberate violation of the governmental instruction and direction by the officials below despite the policy in favour of the Fishermen's Co-operative Societies and the directions given much earlier. In express terms, the operative part of annexure G read as follows : --

> "It is requested that a report of compliance must be sent to the Government after making settlement of the said tanks with the society in the light of the instructions contained in departmental Circular No. 26/Ra dt. 12-2-81 and letter No. 18/Ra dt. 15-2-84."

21. It would be manifest from the above that the purported potentiality auction of the 3rd Mar., 1984 was not an open auction for the settlement of sairats and in any case contrary to the clear instructions and directions of the State Government. The subsequent purported action of the acceptance of such bids and their approval and the directions to deposit the amount and its acceptance were in direct and headlong conflict with the express orders of the State Government and equally contrary to the policy decision and the instructions on the point earlier issued. Also they ran counter in a way to the orders of the High Court (vide annexure H) in C.W.J.C, No. 556 of 1984(R). In such a context, it is impossible to hold that the respondent State would be bound by the doctrine of promissory estoppel for the purported acts of some of its officials directly contrary to its general instructions and specific orders and directions.

22. Mr. Debi Prasad's emphasis on some of the general observations in Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh, (MANU/SC/0336/1978 : AIR 1979 SC 621) (supra) loses sight of the fact that later a co-equal Bench in Jit Ram Shiv Kumar v. State of Haryana MANU/SC/0335/1980 : AIR 1980 SC 1285 strongly dissented therefrom in some details in paras 40 to 51 of the report. However specifically covering the point before us, it has been observed therein as follows :--

> "On a consideration of the decisions of this Court it is clear that there can be no promissory estoppel against the exercise of legislative power of the State. So also the doctrine cannot be invoked for preventing the Government from acting in discharge of its duty under the law. The Government would not be bound by the act of its officers and agents who act beyond the scope of their authority and a person dealing with the agent of the Government must be held to have notice of the limitations of his authority."

22A. Before parting with this judgment, one must also refer to the submission of Mr.

K.K. Sahay, the learned counsel for the petitioners in C.W.J.C. No. 1390 of 1984(R) who had contended that his clients were not party to the earlier C.W.J.C. No. 556 of 1984(R). That is factually correct but this indeed is a distinction without a difference. The larger reasoning in the earlier part of the judgment is equally applicable to this case as well. Somewhat tenuously learned counsel had then contended that Sipahi Singh's case (MANU/SC/0060/1977 : AIR 1977 SC 2149) was no longer good law in view of the subsequent observations in para 11 of State of Haryana v. La! Chand MANU/SC/0033/1984 : AIR 1984 SC 1326. We are unable to find any conflict betwixt the two and even otherwise the decisions being of co-equal Benches, it cannot even remotely be said that Sipahi Singh's case no longer holds the field. This submission of the learned counsel, therefore, has to be rejected.

23. To conclude on this aspect, the answer to question No. 3 is rendered in the negative and it is held that the State is not bound by the doctrine of promissory estoppel for the acts of its subodinates done in violation of its directions or administrative instructions.

24. As all the contentions raised on behalf of the petitioner stand rejected, both the writ petitions must fail and are hereby dismissed. However, we leave the parties to bear their own costs.

S. Ali Ahmad, J.

25. I agree.

U.P. Singh, J.

26. I agree.