(1976) 01 PAT CK 0001

In the Patna High Court

Case No : C.W.J.C. No''s. 1181 and 1231 of 1975

Prasidh Narain Singh and Ain Khan Bhimni Chak Gram Panchayat and Another — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 20-01-1976

Acts Referred:

Citation : (1976) 9 PLJR 352

Hon'ble Judges : Shambhu Prasad Singh, J;Nagendra Prasad Singh, J

Bench : Division Bench

Advocate : Kailash Roy and Binod Kumar Roy in C.W.J.C. No. 1181 and Mr. Keshav Srivastava in C.W.J.C. No. 1231, for the Appellant; M.P Pandey and Amarendra Kumar Singh for the Respondent No. 7, Mr. Mohammad Khaleel, Govt. Pleader No. 3 with Mr. S. Hoda in C.W.J.C. No. 1181, Mr. Mohammad Khaleel, Govt. Pleader No. 3 with Mr. Iqbal Ahmad in C.W.J.C. No. 1231 for the State, for the Respondent

Final Decision : Allowed

Judgement

Nagendra Prasad Singh, J.—These two writ applications have been filed on behalf of the different petitioners for quashing the orders relating to the settlement of a Mela known as "Ain Khan Cattle Fair" for the year 1975-76 in favour of respondent no. 7 in both the writ applications as being in contravention of the Bihar Land Reforms Rules, 1951 (hereinafter referred to as the ''Rules'') framed under the Bihar Land Reforms Act, 1950 (hereinafter referred to as the ''Act''); and for a mandamus on the respondent authorities to settle the said fair with the petitioners of the two writ applications. As common questions of law and fact are involved in the two writ applications, they have been heard together with the consent of the parties and this judgment will govern them both.

2. The petitioner is C.W.J.C. no. 1181 of 1975 in the highest bidder at an auction held in connection with the settlement of the said Mela on the 24th February, 1975. Petitioners in C. W. J. C. no. 1231 of 1975 are (1) Ain Khan Bhimni Chak

Gram Panchayat, through its Mukhiya, Raghvendra Dhari Singh, and (ii) Mohammad Karim Baksh, Up-Mukhiya, of the aforesaid Gram Panchayat, claiming settlement of the Mela with petitioner no. 1 on preferential basis.

3. According to the petitioners, in Bikram Circle, there is a cattle fair known as "Ain Khan Cattle Fair" (hereinafter referred to as the Mela") held twice in a year for one week, starting from the Amawashya in the month of Baisakh and on the eve of Basant Panchami in the month of Magh. For the financial year 1974-75, the Mela had been settled with respondent no. 7, the ex-intermediary, for Rs. 75,000/-, the reserve jama being Rs. 72,000/- The term of the said settlement expired on the 31st March. 1975. Before the expiry of the said term, steps were taken for settlement of the Mela for the financial year 1975-76. The Commissioner, Patna Division fixed the reserve jama of the Mela in accordance with the Rules at Rs. 75,000/-. By an order, dated the 25th January, 1975, the Additional Collector fixed the 11th February, 1975 as the date for holding public auction and directed the Block Development Officer, Bikram to take steps for proper publication. A letter, dated the 7th February, 1975 from the District Panchayat Officer, Patna was received by the Additional Collector on the 8th February, 1975 recommending settlement of the Mela with the aforesaid Gram Panchayat. The Additional Collector directed the said letter to be kept on the records. On the 11th February, 1975, the date fixed for the public auction, respondent no. 7 filed on application making a prayer to stay the auction. From the order-sheet dated the 11th February, 1975, it appears that the petitioner in C.W.J.C no. 1181 of 1975 was also present and he requested the Additional Collector that, in view of the recommendation of the District Panchayat Officer, the Mela be settled with the Gram Panchayat. The Additional Collector, thereupon, by his order of that date directed the Mukhiya of the Gram Panchayat to deposit the security money at the rate of 5. p.c. as well as half of the reserve jama of Rs. 75,000/-. In that very order, the Additional Collector mentioned that the Mukhiya requested for two hours'' time to make deposit; but neither the security money nor half of the fixed jama was deposited till 5 10 p.m. in the evening, from which the learned Additional Collector inferred that the Gram Panchayat had no money and as such it was unable to deposit the same. Ultimately, he passed an order saying that another date should be fixed for holding auction which would be announced later. On the 12th February 1974, the Up-Mukhiya of the Gram Panchayat (petitioner no. 2 in C.W.J.C no. 1231/75) filed an application before the Additional Collector making prayer for one week''s time to enable the Gram Panchayat to deposit the requisite amount. The said prayer was rejected by an order of that date, saying that, as the Gram Panchayat had failed to deposit the requisite amount, the settlement in favour of the Gram Panchayat had been concealed and a decision had been taken to settle the Mela by public auction. On the 13th February, 1975, the Additional Collector fixed the 24th February, 1975 as the date for holding the public auction and directed the Block Development Officer and the Anchal Adhikari to announce and publish the said date. He further directed the records to be put up on the 24th February

1975. On the 24th February 1975, the date fixed for the public auction, a petition was filed on behalf of the Gram Panchayat that an application had been filed before the Revenue Minister in connection with the settlement of the said Mela and, therefore, the public auction should not be held till the Minister had passed some order. The said petition was rejected saying that offer for settlement of the Mela had been made to the Gram Panchayat on the 11th February, 1975, but the requisite amount was not deposited and as such the 24th February, 1975 had been fixed for settlement of the Mela by public auction. It is the admitted case of the parties that the auction was held on the 24th February, 1975 in which the petitioner in C.W.J.C. no. 1181 of 1975 was the highest bidder, having offered Rs. 77,100/- on the same day, he also deposited Rs. 38,550/-, being half of the bid money. The Additional Collector directed that the file should be sent to the State Government for approval. It may be mentioned that respondent no. 7 did not participate in the public auction. But, on the 1st March, 1975, he filed an application before the Additional Collector making certain allegations against the petitioner in C.W.J.C. no. 1181 of 1975 and offered Rs. 80,000/- for settlement of the Mela. The said application was sent for inquiry to the Sub-divisional Officer, Dinapore. The inquiry report of the D.C. L.R. (Deputy Collector in charge Land Reforms) Dinapore, dated the 24th March, 1975, was received by the Additional Collector and on the 26th March, 1975 he passed an order saying that from the inquiry report of the D.C.L.R. it appeared that the highest bidder, that is, the petitioner in C.W.J.C. no. 1181 of 1975, was close to Raghvendra Dhari Singh (the Mukhiya of the Gram Panchayat) and was a name-lender for him. It was also mentioned that the said Raghvendra Dhari Singh holds a Mela on his own raiyati land near the Government Mela in question which causes loss to the Government revenue. It was also mentioned that the D.C.L.R. had pointed out that, if the Mela was settled with respondent no. 7, the amount offered being higher, the State would be benefited. On these considerations, the Additional Collector recommended that the Mela be settled with respondent no. 7 for Rs. 80,000/- and he directed that the file be sent to the State Government for approval. The State Government communicated its approval to the aforesaid sattlement with respondent no. 7 under its letter, dated the 29th April, 1975, a copy whereof is Annexure "2" to the C.W.J.C. no. 1181/75. Copies of orders of the different dates have been annexed and marked Annexure "1" to the said writ application. The petitioner in C.W.J.C. no. 1181/75 has also annexed a copy of the petition filed by him before the Secretary, Revenue Department on the 7th April, 1975, saying that he was the highest bidder, having offered Rs. 77,100/-, but he had learned that respondent no. 7 had offered Rs. 80,000/- after holding of the auction. He made a prayer that the settlement in his favour should not be disturbed, but, in case it was not possible, then he also was prepared to offer Rs. 85,000/- for the settlement of the Mela. A copy of the said petition is Annexure "3" to the writ application.

4. C.W.J.C. no. 1181 of 1975 was filed on the 7th May, 1975, and it was admitted on the 9th May, 1975, and the rule was made returnable by the 24th June, 1975.

As by that time the Baijnath Mela was going on, prayer for stay of the Mela was not passed. C.W.J.C. no. 1231 of 1975 was filed on the 14th May, 1975, and it was admitted on the 16th May, 1975, and it was ordered to be heard with C.W.J.C. no. 1181 of 1975.

5. Counter-affidavits have been filed on behalf of the State and respondent no. 7. The facts are not in dispute. So far as the petitioner in C.W.J.C. no. 1181/75 is concerned, the stand of the contesting respondents appears to be that, although he was the highest bidder at the public auction, the settlement was not made in his favour in view of the aforesaid inquiry report of the D.C.L.R. that he was merely a name-lender for Raghavendra Dhari Singh, the Mukhiya of the Gram Panchayat (petitioner in C.W.J.C. no. 1231/75). So far as the petitioners in C.W.J.C. no. 1231 of 1975 are concerned, the case of the respondents is that offer for settlement of the Mela had been made to the Gram Panchayat and the Mukhiya had been directed to deposit 5% as security and 50% of the reserve jama, but he had failed to deposit the same and, therefore, the Mela had to be put to public auction. The settlement in favour of the respondent no. 7 has been supported on the basis that he had offered a higher amount than the amount fetched at the public auction.

6. Learned Counsel appearing for the petitioners has submitted that the respondent-authorities adopted a hybrid procedure for settlement of the Mela and ultimately made the settlement in favour of respondent no. 7 against the statutory provisions. Learned Counsel for the petitioner in C.W.J.C. no. 1181/75 laid such stress on the fact that, the petitioner being the highest bidder at the public auction, the settlement in his favour was complete in the eye of law no sooner 50% of the bid money was accepted by the authority concerned and there was no question of any approval by the State Government. So far as the petitioner in C.W.J.C. no. 1231 of 1975 are concerned, it has been argued on their behalf that the respondent-authorities were enjoined by the provisions of the rules to settle the Mela with the Gram Panchayat in question at the reserve jama fixed and only in case the Gram Panchayat refused to take the settlement the Mela could have been settled by public auction. The petitioners in both the writ applications have characterised the settlement in favour of respondent no. 7 as arbitrary under a procedure unknown to law.

7. Under the provisions of the Act the interest of the ex-intermediary vested in the State. Thereafter, a controversy arose about the rights of such intermediaries to hold Melas which they had been holding prior to the date of vesting, and by Bihar Act XVI of 1959. Sections 7A, 7B and 7C were inserted in the Act. By Section 7A it was specifically provided that nothing in Section 5, 6 or 7 shall be deemed to confer any right on the intermediary in respect of any land on which at any time within one year prior to the date of vesting of the estate or tenure the intermediary was holding a ''hat'' or ''bazar''. u/s 7B, the said right of holding the Mela vested in the State of Bihar, although, in view of Sections 5, 6, and 7, the land over which such Melas used to be held were to be deemed to have been

settled with the ex-intermediary. Section 7C read as under ;?

7C(1) Where it is intended to settle, at any time after the first day of January, 1960, any ''hat'' ''Bazar'' or ''Mela'' held on any land before the date of vesting and referred to in Section 7-A or Section 7-B, the Collector or the prescribed authority shall, subject to the rules made in this behalf, in the first instance, invite applications for the purpose of settling such ''hat'', ''bazar'' or ''mela'' as the case may be, from the out going intermediary of such land or his heir whose name is registered in this behalf in the prescribed manner with the Collector or the prescribed authority and shall, on receipt of such application, settle the ''hat'', ''bazar'' or ''Mela'' with the applicant in such manner and on such terms or conditions as may be prescribed.

(2) If no application is received under Sub-section (1), or if the applicant fails to take the settlement in accordance with the terms and conditions offered to him under the said sub-section, the Collector or the prescribed authority may settle the ''hat'', ''bazar'', or ''mela'' as the case may be, with any person.

In view of Section 7-C (2), the settlement of the Mela was to be made with others only if no application was received in accordance with Sub-section (1) of Section 7-C. After the insertion of the aforesaid Sections 7A, 7B and 7C, rules were framed laying down the procedure for registration of the names of the intermediaries and their heirs, for notice to be issued to them inviting applications for settlement and the procedure for settlement, if no such application was received. Rule 7-U provided the mode of fixation of the reserve jama. Rule 7-P provided the form of notice to the registered intermediaries inviting them for taking the settlement on the conditions mentioned therein. Rule 7Q, 7R and 7S provided about the deposit of the earnest money and opening of sealed tenders etc. so far as the ex-intermediaries are concerned. Rule 7-T, which is relevant for the present cases, made provision regarding settlement of such ''hat'', ''Bazar'' or ''Mela'' where no application was received from the ex-intermediaries or their heirs in pursuance of the said notice u/s 7-P. Rule 7-T reads as under:?

7-T. If no reply in respect to the notice under rule 7-P is received from any out going intermediaries and/or their heirs the Collector or the prescribed authority shall settle Hat, Bazar or mela for the reserve jama fixed under Rule 7-U with the society under the Bihar and Orissa Co-operative Societies Act, 1935 or the Gram Panchayat of the area in which the Hat, Bazar or Mela is situated and such Co-operative Society or Gram Panchayat shall execute a lease in form P (4) which should be registered.

In the event of failure to make settlement with the Co-operative Society or the Gram Panchayat, the Collector or the prescribed authority shall settle such Hat, Bazar or mela by public auction which shall be held on the appointed date and time and place, and for which a fresh general notice in Form P (5) shall be published in the manner provided in Rule 3A. In such case, the successful bidder shall forthwith deposit security in the Treasury/with the Bazar at the rate of two per cent of the reserve Jama fixed under Rule 7-U, and shall also execute a lease in Form P (4) which should be registered.

In view of the Rule 7-T, in the contingency mentioned in that rule, the prescribed authority has to settle such hat, bazar or mela for the reserve jama fixed with the Society under the Bihar and Orissa Cooperative Societies Act or the Gram Panchayat of the area in which such hat, bazar or mela is situate. Only in the event of the failure to make the settlement with the Co-operative Society or the Gram Panchayat, the Collector or the prescribed authority can settle the same after holding a public auction. In this connection it may be mentioned that by the Bihar Land Reforms (Amendment) Ordinance (Bihar Ordinance no 23 of 1974), Section 7-C has been deleted. The said Ordinance was published in an extra-ordinary issue of the Bihar Gazette on the 17th January, 1974. As such, on the day when the question of settlement of the Mela was under consideration, Section 7-C was not on the statute, and therefore, there was no question of inviting applications from the outgoing intermediaries or their heirs in the first instance and the authorities concerned had to proceed in accordance with Rule 7-T of Rules, that is, to offer the Mela for settlement on the reserve jama fixed to any Co-operative Society or to the Gram Panchayat of the area, and only in the event of failure to make the settlement with them, the Mela had to be settled by public auction with the highest bidder. This rule is very explicit and in unambiguous terms. If this rule is applicable to the settlement of the Mela, there cannot be two opinions that the settlement in favour of respondent no. 7 is arbitrary and illegal, being in contravention of the said rule. Admittedly, respondent no. 7 did not participate in the public auction and he has got the settlement by negotiation which is not permissible.

8. On behalf of respondent no. 7 it has been submitted that, in view of the deletion of Section 7-C of the Act, Rule 7-T will also be deemed to be deleted from the Rules and now the prescribed authority is at liberty to settle such Melas with any person whom he may consider most suitable, keeping in view the interest of the State. In my opinion, if it is held that consequent to the deletion of Section 7-C, Rule 7-T has also been scrapped from the Rules, there should be no difficulty in accepting this argument raised on behalf of respondent no. 7, because there will be no procedural impediment in the way of the authorities of the State while making the settlement of the rights which admittedly vest in the State. But, the Bihar Land Reforms Rules, 1951 were framed in exercise of the power conferred on the State Government u/s 43 of the Act. If it is held that Rule 7-T was framed u/s 7-C of the Act, then by deletion of Section 7-C, Rule 7-T will automatically go. On the other hand, if it is held that Rule 7-T will be deemed to have been framed in exercise of the power u/s 43, then there is no question of automatic deletion of Rule 7-T. Learned Counsel for respondent no. 7 has drawn our attention to Sub-section (1) of Section 7-C, where it had been mentioned "the Collector or the prescribed authority shall, subject to the rules made in this behalf, in the first instance, invite applications for the purpose of settling such

''hat'', bazar'', or ''mela'', as the case may be, from the outgoing intermediary of such land", and has submitted that Rule 7-K to 7-U have been framed in exercise of the powers u/s 7-C. No doubt, rules 7-K to 7-U were notified after insertion of Section 7-C, as mentioned above; but from that it cannot be inferred that they had not been framed in exercise of the rule making power u/s 43 of the Act. Sub-section (2) of Section 43 opens with the words "In particular and without prejudice to the generality of the foregoing power", meaning thereby that the State Government has power to make rules "not inconsistent with the provisions of this Act, for carrying out the purposes of this Act." The Rules may provide for all or any of the matters mentioned in Clauses (a) to (s) of Sub-section (2) of Section 43. This means that Clauses (a) to (s) are only illustrative of the matters which are to be governed by the rules. More-over, Clause (s) of Subsection (2) of Section 43 refers to "any other matter by this Act required, or expressly or impliedly authorised, to be prescribed." In view of the aforesaid provisions, it has to be held that the rule making power of the State Government is very wide and comprehensive in order to carry out the purposes of the Act. Whether Section 7-C is there or not, the right to hold such Melas has vested in the State Government. Rule 7-T has nothing to do with the right of option to be exercised by the outgoing intermediary in accordance with Section 7-C; really. It starts where the stage contemplated u/s 7-C, read with Rules 7-L and 7-P ended, that is, when the settlement was not to be made for one reason or the other with the ex-intermediary or his recorded heir. In that view of the matter, it is difficult to hold that, by deletion of Section 7-C, Rule 7-T has also been automatically deleted. In this connection it may be mentioned that the Learned Counsel appearing for the State has not raised any such argument; and from the different orders passed by the learned Additional Collector it appears that the authorities concerned are under the impression that Rule 7-T is in force according to which the first option is to be given to the Gram Panchayat of the area and in the event of its failure to take the settlement, the Mela is to be put to public auction for settlement.

9. Now, the next question for consideration is as to whether the settlement in question has been made in accordance with Rule 7-T During the course of arguments, Learned Counsel appearing for respondent no. 7 as well as the Learned Counsel for the State could not assert that the said settlement was in terms of Rule 7-T. I have already pointed out that once the settlement is to be made in accordance with Rule 7-T, the settlement in favour of respondent no. 7 is to be held to be arbitrary and illegal, being in contravention of the said rule. Rule 7-T is very explicit and contains the mandate of the rule making authority in exercise of its statutory power and leaves no direction in the authority concerned to make any deviation from the said rule even where by negotiation, after public auction, the State may be getting higher amount. This aspect of the matter was examined by the Supreme Court in (1) K.N. Guruswamy Vs. The State of Mysore and Others, where their Lordships had to consider the validity of a licence for liquor granted in contravention of the rules made under the Mysore Excise Act,

1901. One of the rules provided that the licence for such goods shall be granted either by auction or by such other method as may be notified by the Government. In case it was to be by public auction, then another rule provided that it will be knocked down to the highest bidder subject to formal confirmation by the Deputy Commissioner. The appellant to the Supreme Court was the highest bidder at public auction and the contract was knocked down in his favour. The Excise Commissioner, however, thought it proper to grant the said contract to another person because the Government was to get Rs. 5000/- extra per month as revenue. The said settlement by negotiation was held to be illegal on the ground that having decided to settle it by public auction the authorities could not plead that they had unfettered discretion to make the settlement. It may be mentioned that in that case the rules in question specifically permitted "such other method as may be notified by Government". Another rule also prescribed that the right of the highest bidder was subject to formal confirmation by the Deputy Commissioner, who was at liberty to accept or reject any bid at his discretion. There is no such provision in the present Rule 7T. In the said judgment of the Supreme Court the purpose of public auction was pointed out in these words :?

But that apart, this would, in our opinion, run counter to the policy of the legislature which is that matter of such consequence to the State revenue cannot be dealt with arbitrarily and in the secrecy of an office. Whatever is done must be done either under the Rules or under a Notification which would receive like publicity and have like force, and of which the people at large would have like notice. Arbitrary improvisation of an ''ad hoc'' procedure to meet the exigencies of a particular case is ruled out. The grant of the contract to Thimmappa was therefore wrong.

The aforesaid judgment fully supports the contention made on behalf of the petitioners in the two writ applications about the illegality of the settlement made in favour of respondent no. 7.

10. On behalf of respondent no. 7 the maintainability of the writ application on behalf of the petitioner in C.W.J.C 1181/75 was also challenged saying that the highest bidder at a public auction has no legal and and justiciable right to file a writ application before this Court. In my opinion, there is no substance in this contention. The settlement was to be made in accordance with the statutory provision under which the petitioner in C.W.J.C. no. 1181/75 had a right to question the settlement made in favour of respondent no. 7. This point was also raised in this aforesaid case of the Supreme Court which was answered in the following words :?

(20) The next question is whether the appellant can complain of this by way of a writ. In our opinion, he could have done so in an ordinary case. The appellant is interested in these contracts and has a right under the laws of the State to receive the same treatment and be given the same chance as anybody else. Here we have Thimmappa, who was present at the auction and who did no bid-not

that it would make any difference if he had, for the fact remains that he made no attempt to outbid the appellant. If he had done so it is evident that the appellant would have raised his own bid.

The procedure of tender was not open here because there was no notification and the furtive method adopted of settling a matter of this moment behind the back of those interested and anxious to compete is unjustified.

I have already pointed out that this petitioner was also willing to pay Rs. 5,000/- more than what was offered by respondent no. 7 after the public auction. It is obvious that if respondent no. 7 had participated in the public auction, the petitioner might have also offered a higher amount.

11. The question of locus standi in such cases was also considered by a Bench of this Court in connection with a lease for collection of tolls under the Bengal Ferries Act, in the case of (2) Rambharosa Singh Vs. The Govt. of the State of Bihar and Others, , where it was observed that in such cases the petitioners complain breach of statutory obligation imposed on the authorities concerned and as such they have sufficient legal right which entitles them to ask this Court for issuance of a writ under Article 226 of the Constitution Taking into consideration the aforesaid circumstances, the purported settlement in favour of respondent no. 7, has to be held to be null and void.

12. Now the question is as to what relief should be granted to the petitioners in the two writ applications I have already made a reference to the different orders passed by the respondent Additional Collector between the 25th January, 1975 and the 26th March, 1975. I have also pointed out that since the very beginning a hybrid procedure was adopted. On the 25th January, 1975 itself the 11th February, 1975 was fixed as the date of public auction, before offering the settlement to the Gram Panchayat in question. The respondent authorities were enjoined by the first part of Rule 7-T to make the settlement in favour of the Gram Panchayat in question. When his attention was drawn by letter dated the 7th February, 1975 of the District Panchayat Officer, on the 11th February 1975 the respondent Collector directed the Mukhiya of the Gram Panchayat to deposit 50% of the reserve jama along with 5% thereof as security. As the said amount was not deposited till 5 10 p.m. in the evening, he passed an order that another date for public auction would be fixed. The first part of Rule 7-T says that the lease in favour of the Gram Panchayat would be executed in Form P (4). Neither the rule nor Form P (4) authorities the authorities to demand the aforesaid amount within a day. In any view of the matter, the respondent Additional Collector or the authority who passed the order dated the 12th February, 1975 should have granted one week''s time as prayed for which was quite reasonable to deposit the amount on behalf of the Gram Panchayat on that date when the publication was not going to be held within a week from the 12th February, 1975. The public auction was to be held and was held on the 24th February, 1975. In my opinion, the Gram Panchayat could make a legitimate grievance about the non compliance of the provisions of rule 7-T. Even if it be held for the purposes of

argument that in the circumstances of the case it amounted to an event of failure to make settlement with the Gram Panchayat in question, the respondent Additional Collector having proceeded to hold a public auction and having accepted 50% of the bid money from the petitioner in C.W.J.C. no. 1181/75, there was no occasion to entertain the application filed on behalf of respondent no. 7, who never participated in the public auction, and to get an inquiry made behind the back of the petitioner in C.W.J.C. no. 1181/75. The purposes of the Act should be achieved only by following the mandatory provisions thereof, otherwise there is bound to be a conflict between the end and the means.

13. We are informed that the next Mela is to be held from the ensuing Basant Panchami day and very little time is left. But, in view of the fact that the settlement in favour of respondent no. 7 has been found to be illegal, it is difficult to refuse relief to the petitioners in the two writ applications. Learned Counsel appearing for respondent no. 7 has drawn our attention to the aforesaid judgment of the Supreme Court where relief to the appellant in that case was not granted by cancellation of the licence in favour of the respondent because the licence was to expire within the next few days. The facts of the present case are, however, different. The settlement has been made here for Melas to be held on two occasions only during the year 1975-76. As such, there is no chance of the writ becoming futile. We are also informed that the Mela which is going to be held will last for a longer period than that which was held in Baisakh last. The petitioners of both the writ applications are ready to deposit the whole amount, subject to any right that they may have for apportionment in law. Accordingly, I allow the two writ applications and quash the orders passed from the 25th January. 1975, when the date for public auction was fixed, without making offer of settlement to the Gram Panchayat in question, up to the order of the State Government, dated the 29th April, 1975, approving the settlement in favour of respondent no. 7 and direct the respondent authorities to proceed in accordance with law. As a necessary corollary, the settlement in favour of respondent no. 7 is also quashed. These writ applications have unfortunately remained pending in this Court from May, 1975 till today. After the cases were heard for some time, both parties made a prayer for adjournment on the ground that there were chances of compromise, and it was only on the 16th January, 1976 that the parties intimated that the talk of compromise had failed, and then the judgment was reserved. It is thus obvious that it is necessary to settle the Mela immediately to save the State from any loss that may occur due to non-settlement of the Mela before the approaching Basant Panchami. As the time is short, it will be open to the authorities concerned to fix a date for settlement by auction after proper publication, specifically mentioning that the auction will be held only if there is no settlement in favour of a Co-operative Society or the Gram Panchayat of the area. In the result, the two writ applications are allowed and the settlement in favour of respondent no. 7 is quashed. In the circumstances, there will be no order as to costs. Let a copy of this judgment be immediately forwarded to the Collector, Patna for information and necessary

action.

Shambhu Prasad Singh, J.

I agree

