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(1969) 08 CAL CK 0026

In the Calcutta High Court

Case No : Appeal from Original Decree No. 369 of 1963

State of Bihar APPELLANT

Vs

Ramgarh Farms and Industries Ltd. RESPONDENT

Date of Decision : 01-08-1969

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3, Order 27 Rule 2, Order 3 Rule 4, Order 9 Rule 9, 11
Constitution of India, 1950 — Article 166, 166(1), 166(3), 19, 298
Displaced Persons (Debts Adjustment) Act, 1951 — Section 13
Evidence Act, 1872 — Section 93
Executive Business Rules — Rule 12, 28, 8
Government of India Act, 1858 — Section 65
Government of India Act, 1915 — Section 32
Government of India Act, 1935 — Section 176
Specific Relief Act, 1877 — Section 22, 56

Citation : (1971) 2 ILR (Cal) 119

Hon'ble Judges : Laik, J;A.C. Sen, J

Bench : Division Bench

Advocate : K.L. Misra, General, U.P., N.C. Sen, Sarwar Ali, Narottam Chatterjee, D.P. Misra and Bhabani Sankar Bagchi, for the Appellant;P.K. Roy, A.K. Mukherjee and R.S. Rao, for Respondents Nos. 1 and 2, S.K. Chaudhary and P.C. Chatterjee, for Respondents Nos. 34 and 39, Nirmal Kumar Chatterjee, for Respondents Nos. 6, 25 and 26, Amiya K. Guha, for Respondents Nos. 5, 18 and 24, Probodh K. Das, for Respondents Nos. 26 to 29, Sudhansu K. Hazra, for Respondents Nos. 4 and 10 to 17, Rathiyidra K. Dey, for Respondents Nos. 7 to 9 and Pramatha N. Palit, for the Respondent

Final Decision : Allowed

Judgement

A.C. Sen, J.—The present appeal is directed against the judgment and decree dated November 23, 1962, passed by the Additional District Judge, Fifth Court at Alipore, district 24-Parganas, in Title Suit No. 16 of 1962 and is at the instance of the State of Bihar, Defendant No. 1 in the said suit.

2. The suit out of which the appeal arises was one for declaration and injunction.

The suit was originally instituted by the Respondent No. 1, Ramgarh Farms and Industries Limited, against as many as 39 Defendants including the State of Bihar that was impleaded as Defendant No. 1. The Respondent No. 2, namely Bokaro and Ramgarh Ltd., was at first impleaded as Defendant No. 2, but was subsequently transposed to the category of the Plaintiff by an order being Order No. 121 dated September 19, 1960, the suit having been filed on February 9, 1959.

3. In the plaint as originally filed, the Plaintiff, Respondent No. 1, asked for the following relief?s:

(i) For a declaration that the compromise mentioned in the body of the plaint was valid and lawful and binding on the parties.

(ii) For a declaration that the State of Bihar was bound to act in accordance with the terms of the compromise.

(iii) For a mandatory injunction directing the Defendant No. 1 (the State of Bihar) to consent to the compromise petition to be filled in Court and to act in terms of the compromise agreed.

(iv) For a permanent injunction restraining the Defendants Nos. 1 to 32 and Defendant No. 39 from prosecuting the Title Suits set out in the schedule to the plaint.

(v) For cost and other appropriate relief?s. The prayer portion of the plaint was amended by an order passed on March 9, 1959. After amendment relief?s Nos. (ii) (iii) and (iv) stood thus:

(ii) For a declaration that the Defendants were bound to act in accordance with the terms of the compromise.

(iii) For a mandatory injunction directing the Defendants to consent to compromise petition to be filed in Court and to act in terms of the compromise agreed.

(iv) For a permanent injunction restraining the Defendants from prosecuting the Title Suits set out in the schedule to the plaint.

4. The suit was decreed on contest against the Defendant No. 1 (the State of Bihar) and ex parte against Defendants Nos. 33 and 34 and on admission against the rest and the Defendant No. 1, namely the State of Bihar, was saddled with costs. The suit was decreed in the following terms:

It is declared that the agreement [Ex. 1(a)] is valid and lawful and binding on the parties. It is further declared that the Defendants are liable to act in accordance with the same. The Defendants are permanently restrained from prosecuting the title suits mentioned in Schedule A and also annEx. B to the plaint.

5. The prayer for mandatory injunction as contained in relief No. (iii) was not pressed. The trial Court too thought that mandatory injunction could not be

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granted in the manner prayed for. Consequently the third relief was not granted.

6. The State of Bihar being the only contesting Defendant, the present appeal has been preferred by the State of Bihar alone impleading the Plaintiffs and the rest of the Defendants on record as Respondents. It may be noted that the names of Defendants Nos. 35 to 38 were struck off by Order No. 16 dated January 30, 1960, and Defendant No. 40 was subsequently added by Order No. 252 passed on November 12, 1962. A new paragraph, being para. 14A was inserted in the plaint by way of amendment on the basis of an order passed on March 9, 1959.

7. Respondent No. 1, the principal Plaintiff in the suit, is a public limited company having its registered office at 22 Chittaranjan Avenue, Calcutta. A registered lease was executed on February 12, 1948, between the Respondent No. 1 (Plaintiff No. 1) as lessee and Raja Bahadur Kamakshya Narain Singh (Respondent No. 3) as lessor. This lease purported to grant to the Respondent No. 1 permanent raiyati rights over 2,56,869-35 acres of land. Another lease of even date executed in favour of Respondent No. 1 by Rani Rikhinath Rueri (Respondent No. 30), Rani Shashanka Manjari Debi (Respondent No. 31) and Rani Lalita Rajyalakshmi (Respondent No. 28), purported to grant permanent raiyati leases of other lands to Respondent No. 1.

8. Thereafter, the Bihar Land Reforms Act, 1950 (XXX of 1950) was passed by the Bihar Legislature and the effect of this Act was to vest the zaminadary rights of Defendant No. 3 (Respondent No. 3} in the State of Bihar. On December 14, 1953, the Plaintiff company received a notice purporting to be u/s 4(h) of the Bihar Land Reforms Act informing the company that the Government intended to start an enquiry about the settlement of lands made in favour of the Plaintiff company by the proprietor Raja Bahadur Kamakshya Narain Singh appertaining to Touzi No. 28 of the Collectorate of Hazaribagh.

9. Thereupon the Plaintiff company filed a suit in the Court of the Sub-Judge of Hazaribagh being T.S. No. 12 of i954 for the following amongst other relief?s:

(a) For a declaration that Section 4(h) of the Bihar Land Reforms Act is illegal, ultra vires and void.

(b) For a declaration that Section 4(h) is meaningless.

(c) For a declaration that raiyati interest cannot vest under Sub-sections (a) and (b) of Section 4 of the Bihar Land Reforms Act if created before the date of vesting.

(d) For an injunction restraining the State of Bihar from taking possession of the lands in suit and from issuing or acting under any notice u/s 4(h).

10. Defendants Nos. 2 to 31 and 39 being Respondents Nos. 2 to 31 and 39 before us instituted as many as 285 title suits in the various Courts in the district of Hazaribagh against the State of Bihar so that the mines and mineral rights

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held by them under Raja Bahadur Kamakshya Narain Singh, Defendant, the Respondent No. 3, might not be taken possession of by the State of Bihar under the Bihar Land Reforms Act and claimed for practically the same relief?s.

11. The Plaintiff''s case is that during the pendency of the aforesaid 286 suits including T.S. No. 12 of 1954 there were long drawn negotiations between Raja Bahadur Kamakshya Narain Singh and others on behalf of all the parties who had instituted those suits and the then Ministers of the Government of Bihar, assisted by relevant officials of the State, for the compromise of the suits and negotiations terminated in a final agreement between the parties covering the claims in T.S. No. 12 of 1954 and in the 265 similar suits aforesaid ; that the terms of the compromise were finally proposed by an order dated May 5, 1957, of Sri K. B. Sahay, the then Revenue Minister in charge of Land and Revenue ; that the said order was communicated to Raja Bahadur Kamakshya Narain Singh ; and that on July 16, 1957, Raja Bahadur Kamakshya Narain Singh acting on behalf of all the parties communicated to the Government his unqualified acceptance of the terms.

12. Paragraph 7 of the plaint sets out the compromise which, according to the Plaintiff, binds the State of Bihar as well as the Plaintiffs in 286 Hazaribagh suits. The compromise as set out in the plaint consists of two parts. Part (1) is the preamble and part (2) sets out the terms, thirteen in number.

* * *

13. The primary object of the present suit is to compel the State of Bihar to abide by the compromise as set out in para. 7 of the plaint, because the State of Bihar denies the existence of any such compromise.

14. The other Defendants support the case of the Plaintiff. They, however, have not been impleaded as merely pro forma Defendants.

*** Star line: Details of the terms of compromise omitted.

The reason for impleading the other Defendants has been stated in para. 13 of the plaint, which runs thus:

In paragraph (13) of the terms of compromise...it was provided that all the parties to the compromise would act together and compromise petitions in terms thereof would be prepared and filed simultaneously in all the suits so that all disputes be ended at a time. But, some of the Defendants, other than the Defendant No. 1 have in breach of the said provision...filed and others are attempting to file the terms of compromise individually in their separate suits. The Plaintiff apprehends the action of the said Defendants in the matter of filing terms of compromise and/or proceeding with the hearing of their suits individually will prejudice their case as well as the case of the Plaintiff and they should, therefore, be restrained from proceeding with their suits in breach of the said paragraph (13) of the terms of compromise.

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15. The State of Bihar by a letter dated July 29, 1957, addressed to Raja Bahadur Kamakshya Narain Singh asserted that the compromise was not a completed agreement.

16. In para. 14 of the plaint the Plaintiff, Respondent No. 1, has stated that the acts of the Defendant State of Bihar in repudiating the agreement as aforesaid are breaches of contract and constitute the cause of action for the institution of this suit.

According to the Plaintiff, ''the agreement of compromise is a completed contract and is lawful and binding upon the Government''.

17. Paragraph 9 of the plaint contains the Plaintiff''s version as to how the compromise was brought about. Paragraph 9 runs thus:

The compromise was a composite agreement entered into between Raja Bahadur K. N. Singh with authorities from several parties as enumerated in the agreement on one side and the Land Revenue Commissioner of the State of Bihar acting with due advice from the Advocate-General of Bihar and the Legal Remembrance on the other side by Sri Bajrang Sahay who acts at times as Government Pleader in all matters relating to Ramgarh estate on the other side.

18. According to the Plaintiff, the State of Bihar is also estopped from denying either the existence or the validity of the compromise. Paragraph 14(a) of the plaint inserted subsequently by way of amendment sets out the Plaintiff''s case for estoppel. Paragraph 14(a) runs thus:

The Plaintiff states that the Defendant No. 1 is estopped from denying the authority and/or compromise of the said persons being Ministers and officers of Defendant No. 1 for offering and/or entering into the said terms of compromise and from denying the terms of the compromise as accepted by the Defendant No. 3 on the basis of which the Plaintiff as well as other parties changed their position by not taking any steps for due prosecution of the said suits filed by the Plaintiff and other respective parties to the said compromise. The Plaintiff further states that on the representations made by the said officers and/or Ministers of Defendant No. 1, the Defendant No. 3 as agent of the Plaintiff as well as other Defendants other than Defendant No. 1 accepted the said terms of compromise on his own behalf as well as on behalf of those Defendants and the plaintiff.

19. The Plaintiff claims that the Plaintiff is entitled to the specific performance of the agreement of compromise and also to an injunction against the State of Bihar, Defendant No. 1, restraining it from acting contrary to the terms of the compromise. The Plaintiff has also expressed its willingness to perform ''his part of the agreement in Clause 4 thereof.

20. The cause of action of this suit, according to the Plaintiff, arose on July 16, 1957, within the jurisdiction of the Alipore Court when Raja Bahadur K. N. Singh accepted the offer of compromise from the State of Bihar by his letter dated July 16, 1957, addressed to the Land Reforms Commissioner, State of Bihar, and on

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subsequent dates.

21. The relief?s sought by the Plaintiff have already been set out.

22. Besides the 286 suits specifically mentioned in the plaint the State of Bihar too instituted 2 suits in the Court of the Subordinate Judge, Hazaribagh, namely T.S. No. 53 of 1954 and T.S. No. 29 of 1955. Title Suit No. 53 of 1954 was instituted against as many as 76 Defendants. Raja Bahadur Kamakshya Narain Singh is Defendant No. 1 in that suit as well as in the instant suit. Defendants Nos. 1 to 24, 26, 27 and 28 of the Suit No. 53 of 1954 are Defendants Nos. 4 to 29 of the instant suit. That suit was instituted by the State of Bihar for a declaration that certain conveyances, leases, sub-leases executed in favour of the different Defendants as mentioned in the various schedules annexed to the plaint were sham, colourable and farzi and that they passed to and became vested in the State of Bihar on November 3, 1951. There was also a prayer that the Defendants be permanently injected from executing any lease or sub-lease in respect of any portion of the Ramgarh estate and Serampore estate as they stood before the transfers impugned in the suit and from working any mines on the basis of the impugned transfers.

23. Title Suit No. 29 of 1955 was instituted by the State of Bihar against as many as 10 Defendants who are also Defendants in the instant suit. All the Defendants are limited companies engaged in colliery operations. The suit was instituted for a declaration that the State of Bihar became entitled to receive royalties from Defendant No. 1 (Bokaro and Ramgarh Ltd.) with effect from November 3, 1951, in respect of leases mentioned in Schedules B and C to the plaint were vitiated by fraud and not binding on the State of Bihar, and that the terms and conditions mentioned in the original leases specified in Schedule A to the plaint remained unaffected by the indentures mentioned in Schedules B and C to the plaint and Defendant No. 1 (Bokaro and Ramgarh Ltd.) was bound, to pay to the State of Bihar royalties according to rates specified in the original leases. The State of Bihar also prayed for a decree for Rs. 11,74,753-15 P. on account of arrear royalties and interest upto the date of the suit against the Defendant No. 1. and other Defendants as might be found liable.

24. As stated above, in the present suit there is a prayer in the plaint that a permanent injunction be granted restraining the Defendants including the State of Bihar from prosecuting the title suits mentioned in the schedule to the plaint and T.S. Appeal 53 of 1954 and 29 of 1955 are included in the said schedule.

25. Annexures A and B to the plaint--it seems to constitute the schedule mentioned in item (iv) on the prayer port-on. annexure A is divided into three groups, A and B and C. The heading of group A is: Forest Trust Suits 246 in numbers made analogous. The heading of group B is as follows: List of 26 Title Suits popularly known in Court as Batch Suits made analogous by Court at the instance of the State of Bihar. The heading of group C is as follows: List of cases other than the above two batches of analogous suits which have been transferred

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to the Court of the Sub-Judge, Sri B.S. Tripathi, by the District Judge, Hazaribagh. Title Suit No. 24 of 1953 is included in group C, but this case was disposed of in favour on Raja Bahadur Kamakshya Narain Singh long before the-institution of the present suit. An appeal was preferred by the State of Bihar which was pending at the date of the institution of the present suit. No injunction has been asked for in respect of this appeal, but still the appeal has been included in group C. Both T.S. No. 24 of 1953 and the first appeal arising out of it should have been omitted from group C. Group C in substance consists of five suits. Hence, the Uiree groups of annEx. A account for 277 suits. Annexure a mentions the two comprehensive suits filed by the State of Bihar, namely, T.S. No. 53 of 1954 and T.S. No. 29 of 1955. The Plaintiff therefore has asked for injunction in respect of 277 plus 2, in all 279 suits and not 288 as mentioned in the plaint.

26. The suit out of which the present appeal arises was at first filed in the Tenth Court of the Subordinate Judge at Alipore on February 9, 1959. It was subsequently transferred to the Court of the Additional District Judge, Alipore, by an order passed by the District Judge, Alipore, on April 3, 1962. This suit is intimately connected with the 279 suits filed in or subsequently transferred to the Court of the Subordinate Judge at Hazaribagh. These suits were filed at Hazaribagh on different dates between 1951 and 1956. The Hazaribagh suits were filed after the commencement of the Bihar Land Reforms Act, 1950. The Bihar Land Reforms Act came into force on September 25, 1950. The primary object of this Act is to provide for transference to the State of Bihar of the interests of proprietors and tenure-holders in land and of the mortgagees and lessees of such interests including interests in trees, forests, fisheries, jalkars, ferries, hats, bazars, mines and minerals.

27. After the Act had come into force a notification dated October 31, 1951, u/s 3(1) of the Act was published in the Gazette purporting to vest the rights of Raja Bahadur K. N. Singh in Ramgarh estate being Touzi No. 28 and in Serampore estate being touzi No. 10 of the Collectorate of Hazaribagh. Prior to the passing of the Act Raja Bahadur K. N. Singh made various transfers and alienations of his rights in the said two estates in favour of the Plaintiffs and in favour of the Defendants other than Defendant No. 1, the State of Bihar. After the passing of the Act notices u/s 4(b) of the Act was issued by the Collector of Hazaribagh on the Plaintiff.

28. Section 4(b) of the Act lays down that the Collector shall have power to make inquiries in respect of any transfer including the settlement of lease of any transfer including the settlement or lease of any land comprised in such estate or tenure or the transfer of any kind of interest in any building used primarily as office or cut chary for the collection of rent of such estate or tenure or part thereof, made at any time after January 1, 1948, and if he is satisfied that such transfer was made with the object of defeating any provisions of this Act or causing loss to the State or obtaining higher compensation thereunder, the

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Collector may, after giving reasonable notice to the parties concerned to appear and be heard and with the previous sanction of the State Government annul such transfer, dispossess the persons claiming under it and take possession of such property on such terms as in appear to the Collector to be fair and equitable.

29. Ramgarh estate extends over 27 out of 32 thanas of the district of Hazaribagh. Touzi No. 28 covers the major portion of the estate. Besides Touzi No. 28 there are other small touzis also. The Manager of the Court of Wards added by purchase the Serampore estate which lies within Giridih subdivision and bears Touzi No. 10 series.

30. The Ramgarh estate may be divided into three parts according to the different rights enjoyed by the ''proprietor, viz., Raja Bahadur K. N. Singh: (i) Rights in or over sub-soil (mining rights), (ii) Rights in or over the land (surface rights), (iii) Rights over trees and forests (forest rights).

31. The Abolition of Zemindary Act was passed by the Bihar Legislature in 1950. Proprietors of Darbhanga and Ramgarh brought suits in law Courts, and when the cases were about to be heard in the High Court at Patna the State of Bihar repealed the said Act and replaced it by another Act, namely the Bihar Land Reforms Act (XXX of 1950). There was protracted litigation between the State of Bihar on the one side and a host of landlords on the other and the litigation ended when the Supreme Court held on May 2, 1952, that the Bihar-Land Reforms Act is valid with the exception of Section 4(b) and Section 23(f).

32. According to the Plaintiffs and the Defendants supporting the case of the Plaintiffs, Raja Bahadur K. N. Singh, the holder of Ramgarh estate, had entered into several agreements in 1954, that is to say, long before the move for the abolition of zamindary right, with different sets of individuals who subsequently floated several companies, to the effect that Raja Bahadur K. N. Singh would sell proprietary rights, would lease out portions of mining rights and would settle surface right with different parties on valuable consideration. It is not disputed that transactions were completed and several documents were registered in 1917 and 1948 with different companies and. parties. The mining rights were transferred to the three main companies, namely, (i) Mineral Development Company Ltd. (Defendant No. 6, Respondent No. 6), (ii) Jharkhand Mines Ltd. (Defendant No. 4, Respondent No. 5) who subsequently transferred their proprietary rights and sub-leased lease-hold portions to other companies. The surface rights over Khalas villages were transferred to the members of the family by way of gift as maintenance grants. The Plaintiffs say that the said maintenance grants were made according to the long established custom obtaining in1 the Ramgarh Raj family governed by the law of primogeniture.

33. Raja Bahadur K. N. Singh created six trusts in favour of his agnates and transferred in their favour rights over tenures within the Ramgarh estate. According to the Plaintiffs and the Defendants supporting the Plaintiff these trusts were created with the sole object of helping the less fortunate relations to

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tide over economic difficulties.

34. Raja Bahadur K. N. Singh also created religious and charitable trust making himself, his wife and his son (Defendants Nos. 27, 28, 29: Respondents Nos. 27, 28, 29) trustees and thereby transferred in favour of the trustees absolute rights to realize royalties from the transferees of mining and surface rights. According to the Respondents, this was done with the sole object of maintaining the long standing temples and charitable institutions like schools, hospitals, etc.

35. Raja Bahadur also transferred in favour of Ramgarh Farms and Industries Ltd., being Plaintiff-Respondent No. 1, rights over Zirat, Bakast and Gairmazra lands of Ramgarh estate for valuable consideration. The lease in respect of these lands in favour of the Plaintiff-Respondent No. 1 was created by registered deed of lease dated February 12, 1948. On the same date another lease was executed in favour of the Plaintiff-Respondent No. 1 by the Defendants-Respondents Nos. 28, 30 and 31 granting permanent raiyati rights in other lands; Plaintiff''s version of these two leases are to be found in paras. 2 and 3 of the plaint. According to the Plaintiff, these leases too were based on agreements entered into between the parties in 1945.

36. Raja Bahadur K. N. Singh also transferred for a consideration of Rs. 15 lacs to Rajkumar Praja Palak Nath Singh (Defendant-Respondent No. 40) the whole of Serampore estate.

37. u/s 3 of the Bihar Land Reforms Act the Ramgarh estate was notified on September 25, 1950. The said notification was made with a view to declaring that the said estate had passed to and become vested in the State of Bihar. Soon after the notification all the transferees brought'' title suits in the Court of the Subordinate Judge, Hazaribagh. Annexure A to the plaint contains a list of the suits instituted by the transferees from Raja Bahadur K. N. Singh and his relations.

38. As stated above, the State of Bihar too instituted two suits in the Court of the Subordinate Judge at Hazaribagh, being T.S. No. 53. of 1954 and T.S. No. 29 of 1955. These two suits evidently were filed as a counter blast to the 277 suits instituted by the transferees primarily from Raja Bahadur K. N. Singh.

39. The Respondents want that all the suits instituted by them in the Court of the Subordinate Judge at Hazaribagh as well as the two suits filed by the State of Bihar should be disposed of not on merits, but on the basis of the agreement of compromise set out in the plaint, and this appears to be the primary object of the suit out of which the present appeal arises.

40. The forests of Ramgarh estate were notified under the Bihar Private Forests Act. But the entire forest wealth of Ramgarh estate was transferred to a trust of which Basant Narain Singh, brother of Raja Bahadur K. N. Singh, was the Chairman. As many as 246 suits were instituted by Basant Narain Singh, Defendant-Respondent No. 39 in relation to the forests of Ramgarh. Some of

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these suits were filed in the Court of the Munsif, Giridih, some were filed in the Court of the Munsif, Hazaribagh, and the rest were filed in the Court of the Subordinate Judge, Hazaribagh, but the suits filed in the Courts of the Munsif at Giridih and Hazaribagh were transferred by the order of the District Judge, Hazaribagh, to the Court of the Subordinate Judge of Hazaribagh. In these forest suits Rajkumar Basant Narain Singh as the Chairman of the Board of Trustees challenged the validity of the Bihar Private Forests Act and the notification issued thereunder, asserted that the forests of Ramgarh estate including the interest of the trustees did not pass to and become vested in the State of Bihar, claimed the right to retain those forests and asked for mesne profits and damages for occupation of the said forests under the provisions of the Bihar Private Forests Act prior to the vesting of the said forests in the State of Bihar under the provisions of the Bihar Land Reforms Act.

41. The transfers that were made by Raja Bahadur K. N. Singh in 1947, 1948, 1949 and 1950 were very extensive in nature.

42. The plaint in the present suit cannot be properly appreciated without knowing the nature of the 279 suits instituted in the Court of the Subordinate Judge at Hazaribagh. The plaint must be examined in the light of the Hazaribagh suits. The- plaint says nothing as to many important events, having bearing on the present suit, that took place before the institution of the Hazaribagh suits and before the institution of the present suit at Alipore and after the institution of the Hazaribagh suits. We have described above the nature of the Hazaribagh suits as mentioned in annexes. A and B to the plaint, and now we intend to note some of the important events that took place in the meantime referred to in the written statement filed by the State of Bihar.

43. In para. 5 of the written statement the State of Bihar has asserted that the Plaintiff company and the other companies being Defendants Nos. 4 to 26 were set up by Raja Bahadur K. N. Singh to act as his benamdar in whose favour he directly and indirectly created certain farzi and sham and colourable transfers to save his zamIndary properties and with a view to defeating the provisions of the zamIndary abolition measures enacted by the Bihar Legislature and to get increased compensation and put'' the State Government to loss ; that the Raja Bahadur acquired a controlling interest in Defendant No. 2 company, namely Bokaro and Ramgarh Ltd. and created a number of farzi transactions in favour and for the benefit of this company through his benamdars; and that Defendants Nos. 28 to 31 are the wife, son, *** Star line: Details of transfers omitted. Grandmother and mother respectively and Defendant No. 39 is younger brother of Raja Bahadur.

44. According to Plaintiff the permanent raiyatI lease was taken on the basis of a prior agreement dated December 21, 1945. According to the State of Bihar, the agreement is a forged and ante-dated document created subsequently for the purpose of defeating the provisions of Section 4(h) of the Bihar Land Reforms Act and the leases in favour of the Plaintiff granting permanent'' raiyati rights are

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sham and colourable.

45. In para. 7 of the written statement it has been said that the zamindary rights of Raja Bahadur K. N. Singh in Ramgarh and Serampore estates vested in the State of Bihar on November 3, 1951, when notification u/s 3(1) dated October 31, 1951, was published in the Gazette.

46. As to the merits of the claim made by the Plaintiff in T.S. No. 12 of 1954 in the Court of the Subordinate Judge, Hazaribagh, the defence case is that the Plaintiff company is a benamdar of Raja Bahadur K. N. Singh and that the settlements alleged to have been made in favour of the Plaintiff company are farzi, sham and colourable conferring no title whatsoever on the Plaintiff company. It has been pointed out in para. 8 of the written statement that the main contention of the Plaintiff company in T.S. No. 12 of 1954 that Section 4(h) "of the Bihar Land Reforms Act is ultra vires has already been negatived by the Supreme Court of India.

47. As to the 285 suits instituted by other Plaintiffs as mentioned in para. 6 of the plaint the State of Bihar asserts that no mineral or other rights are owned by Defendants Nos. 2 to 31 or 39, that these Defendants have been acting as benamdars of Raja Bahadur K. N. Singh, that the transfers made in their favour are all farzi, sham and colourable and that with the vesting of the Ramgarh and Serampore estates on November 3, 1951, all mineral, forest and other rights in those estates vested in the State of Bihar free from all encumbrances.

48. As to the agreement dated July 16, 1957, which is the primary bone of contention between the parties, the State of Bihar has stated thus in para. 10 of the written statement:

It is denied that Raja Bahadur K. N. Singh had any negotiations on behalf of any parties to any suit. It is denied that negotiations...terminated in a final agreement of compromise of the Plaintiff''s suit No. 12 of 1954 or any other suits.... It is further denied that terms of compromise were proposed by order dated '' 5th May, 1957.... Shri K. B. Sahay.... It is asserted that the letter dated 16th July, 1957, from Raja Bahadur K. N. Singh was cleverly designed to bolster up a false claim that there had been a concluded contract of compromise. This Defendant further denies the authenticity and correctness of the so-called terms of compromise.... The so-called terms constituted only a draft prepared for discussion by Government officials, which terms were never communicated to Raja Bahadur K. N. Singh, nor were they placed before the Council of Ministers as required by law. The Plaintiff appear to have stealthily copied out although at places incorrectly from a draft placed on the file of the Government which were to serve as the basis for discussion about a compromise proposed by Raja Bahadur?.

49. As to the assertion made by the Plaintiff in para. 9 of the plaint that the Land Reforms Commissioner entered into the agreement with Raja Bahadur K. N. Singh and others, the State of Bihar has stated in para. 11 of the written

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statement that the Land Reforms Commissioner had no authority to conclude any agreement on behalf of the State of Bihar nor did he in fact conclude any such agreement.

50. The present suit, says the Defendant, as well as the various applications filed in the Hazaribagh Court by many of the Defendants in the present suit on the basis of the agreement set out in the plaint are nothing but a device to delay the disposal of the 277 Hazaribagh suits.

51. The Defendant has denied the Plaintiff''s right to claim specific performance of a contract which the State of Bihar never entered into with the Plaintiff and other Defendants. It is the positive case of the Defendant that no Minister or Officer of the State of Bihar offered any terms of compromise which could be accepted by Raja Bahadur K. N. Singh. Neither did the Plaintiff or the other parties changed their position by not taking any steps for due prosecution of the suits filed by them on any assurance on behalf of the State of Bihar. The Defendant has denied that Raja Bahadur K. N. Singh acted as the agent for the Plaintiff and other Defendants.

52. As to how the negotiation for compromise started and what was the ultimate result the Defendant has stated thus in para. 169(a) of the written statement:

this Defendant states that by his letter dated 28th April, 1957, Defendant No. 3 offered certain terms on which he and his so-called transferees could compromise the litigation and these terms were being examined by the various officials but had not been considered by this Defendant nor any decision taken and Defendant No. 3 was apprised of this position by a letter dated 6th May, 1957, sent to him by the then Land Reforms Commissioner.

53. In para. 21 of the written statement it has been stated that according to the rules framed under Clauses (2) and (3) of Article 166 of the Constitution an agreement of compromise of the nature alleged by the Plaintiff could not be entered into except with the approval of the Council of ''Ministers and except under authentication and signature of one of the Officers of the Government authorised in this behalf, and that neither the Land Reforms Commissioner nor any of the Ministers was so authorised nor was the matter about proposed compromise ever placed for consideration of the Council of Ministers.

54. The Defendant has pointed our that Raja Bahadur K. N. Singh initiated talks for a compromise in 1955 that they were abandoned, once again revived in April 1957 after a new Legislative Assembly had been elected, but the old Cabinet including Sri K. B. Sahay who was not elected was still continuing in office. It has further been pointed out that the late Dr. A. N. Sinha, the then Finance Minister, was in very bad state of health and not able to examine complicated files personally and that he died on July 5, 1957.

55. The further case of the Defendant is that the necessary data in respect of loss or gain to the State of Bihar in entering into a compromise on Raja

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Bahadur''s terms were not available to the various Government officials or the Legal Remembrancer or the Advocate-General and that no decision on compromise was possible without those data.

56. The defence version as to the proposals made by Raja Bahadur K.N. Singh in his letter dated April 28, 1957, is that they were under Government''s consideration and that no final decision had been taken on those proposals. In reply to the said letter of Raja Bahadur the Land Reforms Commissioner in his letter dated May 6, 1957, marked ''without prejudice'' simply acknowledged Raja Bahadur''s letter and said that the terms and conditions had been discussed with him,, that the same were under Government''s consideration and that he was making all efforts to obtain Government sanction as quickly as possible. It may be mentioned that there is no mention of this letter of April 28, 1957, written by Raja Bahadur in the plaint.

57. As to the letter of July 16, 1957, by Raja Bahadur, by which according to the Plaintiff the contract of compromise became complete, the Defendant has stated that Raja Bahadur falsely and cleverly assumed that negotiations had resulted in a concluded agreement of compromise and that the Land Reforms Commissioner in his reply dated July 30, 1957, refuted the various incorrect statements and assumptions and asserted that there had never been a concluded agreement.

58. The Defendant has asserted that there was never any approach made for a compromise by or on behalf of the Plaintiff or any of the so-called transferees of Raja Bahadur K. N. Singh. In his letter dated April 28, 1958, all that Raja Bahadur said was that he would exert his good office to persuade the Plaintiffs of the 26 batch title suits to withdraw all the suits as the State of Bihar was recognizing all transfers. The Defendant has pointed out that the 26 batch title suits referred to in the said letter cover only items 247 to 272 of group B of annEx. A to the plaint and do not include the present Plaintiff''s suit or 245 suits of group A or any of the suits in group C of annEx. A or any of the suits in annEx. B to the plaint.

59. The Defendant thinks that the Plaintiff and the Defendants Nos. 2 and 4 to 31 and 39 at the instance of Defendant No. 3 took recourse to all possible device and in the last resort conceived die idea of a false case of compromise to prevent early termination of the Hazaribagh suits.

60. The Defendants in the written statements have given an account of the efforts made by many of the Defendants in this suit supporting the Plaintiff in having a compromise recorded in the Hazaribagh Court in terms of the agreement set out in the present plaint.

61. Title Suit No. 29 of 1955 was fixed for hearing on February 10, 1959., before the Sub-Judge, Hazaribagh, and the Plaintiff filed the instant suit in the 10th Court of Sub-Judge at Alipore on February 9, 1959, and on that very day obtained an ad interim order of injunction with the result that the hearing of T.S. No. 29 of 1955 could not be taken up by the Sub-Judge, Hazaribagh. Other suits

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were fixed for hearing on subsequent dates, but hearing could not be taken up because of the said order of ad interim injunction.

62. A separate written statement was filed by Defendant No. 2 on December 22, 1959. Defendant No. 2 was thereafter transposed to the category of the Plaintiff by an order dated September 19, 1960. Defendant No. 2 generally supported the case for the Plaintiff and submitted that the suit should be decreed in terms of the relief prayed for by the Plaintiff. A joint written statement was filed by Defendants Nos. 7, 8 and 9 substantially supporting the Plaintiff and they submitted that the suit was fit to be decreed in terms of the prayer of the Plaintiff.

63. Defendant No. 6 too in his written statement contended that it was fit and proper for the Court to pass a decree in terms of the relief?s sought by the Plaintiff.

64. Raja Bahadur K. N. Singh as Defendant No. 3 submitted an elaborate written statement with several annexures. In para. 5 of the written statement he has described the successive stages in the negotiations for an agreement of compromise, which, according to him, ended in a concluded contract on his acceptance on July 16, 1957, on behalf of the Defendants in this suit supporting the Plaintiff. Annexure V-I to his written statement contains the various notes, that passed between various officers of the State of Bihar. His written statement, however, is absolutely silent about the episode in relation to the applications under Order 23, Rule 3 of the CPC in the Court of the Sub-Judge at Hazaribagh.

65. Defendants Nos. 4 and 10 to 17 filed a joint written statement on the line of the other Defendants; Defendants Nos. 5 and 19 to 24 filed a similar joint written statement, Defendants Nos. 27, 28 and 29 too filed a joint written statement supporting the Plaintiff Defendants Nos. 30 and 31 also filed a joint written statement in support of the Plaintiff; and the Defendant No. 39 also filed a written statement supporting the case of the Plaintiff.

66. The following issues were proposed on behalf of the State of Bihar:

(1) Has this Court jurisdiction to try the suit ?

(2) Has the Plaintiff a cause of action for the suit ?

(3) Has the T.S. No. 12 of 1954 of the Court of the Subordinate Judge, Hazaribagh, been compromised between the Plaintiff and the State of Bihar as alleged by the Plaintiff ?

(4) Was the Plaintiff a party to the alleged compromise ?

(5) Had Raja Bahadur K. N. Singh any authority from the Plaintiff to carry on such negotiation ?

(6) Was there a concluded agreement of compromise in fact as alleged by the Plaintiff ?

(7) Was there a contract of compromise as required by Article 299 of the

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Constitution of India ?

(8) Were the proposals for a compromise sent by Raja Bahadur K. N. Singh to the Land Reforms Commissioner considered and approved by the Council of Ministers ? Were such consideration and approval necessary for a concluded agreement of compromise ?

(9) Did the Land Reforms Commissioner or any other functionary of the Government of Bihar conclude any lawful agreement of compromise and was any such official or functionary authorised to finalize such agreement ?

(10) Is the notice u/s 80, Code of Civil Procedure, valid and sufficient ?

(11) Are Defendants Nos. 2 to 39 necessary or proper parties to the suit ?

(12) Is the Plaintiff entitled to specific performance of the alleged contract of compromise in view of the dismissal of the Order 23, Rule 3, Code of Civil Procedure, petitions of parties to other suits said to be covered by the alleged compromise agreement ?

(13) Is the plea of estoppel raised by the Plaintiff tenable ?

(14) Is the Plaintiff entitled to any of the relief?s asked for ?

67. The issues suggested on behalf of the State of Bihar undoubtedly arise out of the pleadings. The suggested issue No. (6) raising the question as to whether in fact that there was a concluded agreement of compromise appears to be the primary issue in the suit. Other issues suggested too are very relevant for the purpose of giving relief to the Plaintiff.

68. The learned Subordinate Judge, however, recast the issues as follows:

(1) Has the Plaintiff any cause of action for the suit ?

(2) Is the alleged agreement a valid, lawful and binding document ? Is the Plaintiff entitled to the declaration as prayed for?

(3) Is the Plaintiff entitled to the mandatory injunction as prayed for ?

(4) Is the Plaintiff entitled to the permanent injunction as prayed for ?

(5) To what relief is the Plaintiff entitled ?

69. Issue No. (1) as recast covers issue No. (6) suggested by the State of Bihar. If it is found that in fact there was no concluded compromise then it must be held that the Plaintiff has no cause of action for the suit because the suit is really one for the specific performance of the contract set out in para. 7 of the plaint. We, therefore, propose to take up this question first: Was there in fact a concluded agreement of compromise as alleged ?

70. Raja Bahadur K. N. Singh, Defendant No. 3, took a leading part in negotiating a compromise with the State of Bihar. According to the Plaintiff as

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well as the other Defendants supporting the Plaintiff it was Defendant No. 3 who acting on his own behalf and with due authority on behalf of his transferees succeeded in securing concluded contract as between the State of Bihar on the one hand and himself and his transferees, namely, the Plaintiff and the Defendants supporting the Plaintiff.

71. Raja Bahadur primarily relies on the various notes that passed between various officers of the State of Bihar in support of his theory of the concluded agreement of compromise. Annexure VII to his written statement gives a list of the notes that passed among the officers of the State of Bihar and the copies of the said notes: Exs. 1, 1(a), 2, 2(a), 3, 3(a) & (c) to (n), 4 are copies of the office notes marked as exhibits on behalf of the Plaintiff.

72. Order No. 51 dated January 16, I960,- shows that the entire office file was called for by the Plaintiff. The relevant portion of the said order runs thus:

Plaintiff filed another application praying for issue of a direction to Defendant No. 1 (State of Bihar) directing them to file the relevant file in which the documents filed by them to-day were kept. Plaintiff requires the entire file. Learned lawyer of the Defendant No. 1 raised no objection. Defendant No. 1 is directed to produce entire relevant file in Court by 25th January, 1960. From Order No. 54 dated January 254 1960, it appears that the relevant documents were filed by the State of Bihar on that day. The learned Sub-Judge observed as follows in his order No. 108 dated May, 30, 1960:

All relevant papers touching the alleged agreement were called for from the State of Bihar and all those papers were filed by the State of Bihar in proper time. The entire office file has been marked as Ex. A. It is, therefore, clear that both the State of Bihar as well as the Plaintiff and the Defendants supporting him rely primarily upon the office notes for the purpose of proving their respective cases regarding the agreement of compromise. We, therefore, propose to prove their respective cases regarding the agreement of compromise. We, therefore, propose to examine the relevant office notes to see whether in fact a concluded agreement of compromise was arrived at between the State of Bihar and the Raja Bahadur acting as the agent of the Plaintiff and the Defendants supporting the Plaintiff.

73. It is the common case of the State of Bihar and its opposite parties that there was a talk of compromise between the State of Bihar and Raja Bahadur, that the negotiation for compromise started in 1955, that it remained suspended till April 1957. According to the State of Bihar, the proposals made by Raja Bahadur K. N. Singh in his letter dated April U8, 1957, were under Government consideration and no final decision had been taken on those proposals for any such decision was ever conveyed to Raja Bahadur K. N. Singh, and in reply to the said letter of Raja Bahadur the Land Reforms Commissioner in his D.O. letter dated May 6, 1957, which was marked ''without prejudice'' simply acknowledged Raja Bahadur''s letter and said that the terms and conditions had been discussed

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with him and that the same were under Government''s consideration and that he was making all efforts to obtain Government sanction as quickly as possible. The Land Reforms Commissioner in his reply promised a further communication on the subject as soon as he was in a position to send it, but the promised further communication was never sent as Government took no action on the proposals for a compromise.

74. The drama opens with the letter of Sri K. B. Sahay, Revenue Minister, dated April 16, 1957, addressed to the then Advocate-General Sri Mahabir Prasad. The said letter reads thus:

Kindly see your notes dated 24th February, 1956. Sri Bateswar Singh a representative of Sri Kamakshya Narain Singh came to see me in this connection. In your notes dated 24th February, 1966, you said \\t was necessary to know the areas proposed by Ramgarh. He would be able to tell you the terms. You may kindly examine the terms and advise Government as to what should be done in this matter.

75. It transpires that Sri Bateswar Prasad Singh instead of telling the Advocate-General the terms proposed by Ramgarh handed over to him a short note of Ramgarh cases With a view to impressing upon him that the position of the State of Bihar in these litigations was very weak.

76. From the note of Mahabir Prasad, the Advocate-General, submitted on April 26, 1957, it transpires that Bateswar Singh saw him in connection with the contemplated settlement of all disputes between the State and Ramgarh. Mahabir Prasad has mentioned Bateswar as the representative of Sri Kamakshya Narain Singh. For the details of the litigation he depended primarily on the note submitted by Sri Bajrang Sahay, Advocate for the State of Bihar, as far back as March 19, 1966, in response to the direction of the Minister of Revenue, Sri K. B. Sahay. There is internal evidence to show that he had before him the note prepared by Sri Bateswar Singh.

We shall presently discuss his opinion as to leases other than mining leases, but there is no manner of doubt that he was considerably influenced by the note of Bateswar Prasad so far as the mining leases were concerned.

77. The learned Advocate-General of U.P. appearing on behalf of the State of Bihar says that Sri Mahabir Prasad was not justified in saying that there was no provision in the Land Reforms Act under which these leases could be attacked.

78. His contention is that these leases can be annulled by the Collector u/s 4(h) of the Bihar Land Reforms Act. The Collector u/s 4(h) has the power to make enquiries in respect of any transfer including the settlement or lease of any land comprised in an estate or tenure that has vested in the State, made after the first day of January 1, 1946, and if he is satisfied that such transfer was made with the object of defeating any provisions of the Act or causing loss to the State or obtaining higher compensation thereunder the Collector may, after giving

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notice to the parties concerned and with the previous sanction of the State Government, annul such transfer. In the instant case, all the mining leases were created after January 1, 1946. The learned Advocate-General, therefore, submits that these leases are liable to be annulled as there is no doubt that they were made with a view to causing loss to the State.

79. Mr. P. K. Roy on behalf of the Plaintiff Respondent No. 2, Bakaro and Ramgarh Ltd., on the other hand argues on a construction of Section 10 of the Bihar Land Reforms Act that the mining leases being subsisting leases within the meaning of Sub-section (1) of Section 10 cannot be annulled u/s 4(h). Sub-section (1) of Section 10 provides as follows:

Notwithstanding anything contained in this Act, where immediately before the date of vesting of the estate or tenure there is a subsisting lease of mines or minerals comprised in the estate or tenure or any part thereof, the whole or that part of the estate or tenure comprised in such lease shall, with effect from the date of vesting, be deemed to have been leased by the State Government to the holder of the said subsisting lease for the remainder of the term of that lease, and such holder shall be entitled to retain possession of the lease-hold property.

80. According to the State of Bihar, the date of vesting in the case of Ramgarh is November 3, 1951, whereas according to the decision of the Subordinate Judge, Hazaribagh, in T.S. No. 24 of 1953 the Ramgarh estate vested in the State of Bihar on January 26, 1955. Mr. Roy suggests that in any view of the matter the leases in question having been all created before November 3, 1951, were subsisting leases immediately before the date of vesting and hence Section 4(h) is not applicable to them by reason of the opening words ''notwithstanding anything contained in this Act'' in Section 10(1). The argument is that the non obstinate clause makes 4(h) non-applicable to lease of mines or minerals subsisting immediately before the date of vesting.

81. The learned Advocate-General of U.P., on the other hand, contends that the words ''notwithstanding anything contained in this Act'' have not the effect of making Section 4(h) non-applicable to mining leases. - These words mean, says he,'' that notwithstanding the" provision for vesting a subsisting lease shall be deemed to have been leased by the State Government. Non obstinate clause will operate if the premise, namely, where immediately before the date of vesting there is a subsisting lease of mines holds good and that the clause relates to the operative portion of Section 10(1) and not to the premise. There is no conflict between Section 10(1) and Section 4(h), hence the question of exclusion of Section 4(h) by the non obstinate clause in Section 10(1) cannot arise. According to him, Section 4(h) and Section 10(1) should be read together to appreciate the real scope of Section 10(1). He suggests that for the operation of Section 10(1) it is necessary to enquire whether a lease of mines may be regarded as subsisting immediately before the date of vesting. That being the position, he argues, Section 4(h) is necessarily attracted to a lease of mines or minerals. If it is found on enquiry that a mining lease was created after January 1, 1946, and

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before the date of vesting with the object of defeating any provisions of this Act or causing loss to the State or obtaining higher compensation, the Collector may annul such a lease and the annulment will relate back to the date of creation. He points out that if a mining lease created after January 1, 1946, is thus annulled then it can not be regarded as a lease subsisting immediately before the date of vesting.

82. Mr. Roy on behalf of Plaintiff Respondent No. 2 next argued that the mining leases involved in the present suit not having been made with any of the objects mentioned in Section 4(h) they were not hit by Section 4(h). The learned Advocate-General of U.P. on behalf of the State of Bihar, on the other hand, asserted that the sole object of these mining leases was to cause loss to the State of Bihar and that, therefore, they were hit by Section 4(h).

83. From the note of Bajrang Sahay it appears that the State of Bihar had been contesting all the suits by the transferees from the Raja Bahadur on the ground that all the transactions in favour of the Plaintiffs "of all the suits pending in the Court of the Subordinate Judge at Hazaribagh mentioned in annEx. A to the plaint were farzi, sham and colourable and did not pass any title to the Plaintiffs. Sri Mahabir Prasad in his note pointed out that the transferees being mostly public limited companies it would be difficult, well-high impossible, to prove in a Court of law that those public limited companies were benamdars of the Raja. Mr. Roy draws our attention to this part of the opinion of Sri Mahabir Prasad and says that he gave a very sound advice. He has tried to convince us that the theory of benami cannot be applied in the case of a company. The real owner merely uses the name of the benamdar as an alias. If the so-called benamdar has a real existence apart from the real owner then the case is not one of benami. Benami postulates unity as. opposed to duality. This in short is the argument of Mr. Roy. He read out the following extract from the judgment of Gajendragadkar C.J. in Tata Engineering and Locomotive Co. Ltd. Vs. State of Bihar and Others, :

The doctrine of lifting of the veil postulates the existence of dualism between the Corporation or Company on the one hand and its members or share-holders on the other. He points out that in the instant case the State of Bihar wants to pierce the veil of the different companies mostly incorporated within a? period of five years before the commencement of the Bihar Land Reforms Act on the allegation that these companies are merely the benamdars of Raja Bahadur K. N. Singh. The piercing of the veil, he argues, postulates the existence of dualism between the corporation or company on the one hand and its members or share-holders and this dualism cuts at the root of benami. He, that is Mr. Roy, therefore concludes that Sri Mahabir Prasad was perfectly justified in saying that it was very difficult, well-nigh impossible to prove that the companies were the benamdars of Raja Bahadur K. N. Singh.

84. Mr. Roy''s argument assumes that it is the case of the State of Bihar that the transfers were genuine but that Raja Bahadur was the real transferee. If that were the case of the State of Bihar, then certainly it could have been argued on

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behalf of the transferee companies that they would not be the benamdars for Raja Bahadur even if Raja Bahadur and his relations held all the shares of these companies. In other words, the veil could not be pierced without postulating the existence of dualism between the companies and their share-holders. But the case for the State of Bihar is that these transfers are fictitious and that they had not the effect of transferring any interest in the mines from Raja Bahadur to the companies.

85. In the comprehensive T.S. No. 53 of 1954 the State of Bihar has asked for a declaration that the conveyances mentioned in the schedules to the plaint including the mining lease are sham, colourable and farzi and did not pass any title to the transferees and the properties purported to have been conveyed continued to be the exclusive properties of Raja Bahadur K. N. Singh until they passed to and became vested in the State of Bihar on November 3, 1951. As pointed out by Venkatarama Ayyar J. in Meenakshi Mills, Madurai Vs. The Commissioner of Income Tax, Madras, the word benami is used to denote two classes of transactions which differ from each other in their legal character and incidents. The relevant portion of the judgment runs thus:

In one sense, it signifies a transaction which is real, as for example when A sells properties to B but the sale-deed mentions X as the purchaser. Here the sale itself is genuine, but the real purchaser is B, X being his benamdar. This is the class of transactions which is usually termed as benami. But the word benami is also occasionally, perhaps not quite accurately, used to refer to a sham transaction, as for example, when A purports to sell his property to B without intending that his title should cease or pass to B, it is only in the former class of cases that it would be necessary...to enquire into the question as to who paid the consideration for the transfer, X or B.

In the instant case the word benami has been used in the second sense. The learned Advocate-General of U.P. relies on this case, namely, the case of Meenakshi Mills, Madurai Vs. The Commissioner of Income Tax, Madras, for the purpose of showing that fictitious sales can be made in favour of companies. In that case, sales of yarn by the Assessee, a public limited company, to the subsidiary private limited companies were held to be fictitious conveying no title or interest to the subsidiaries. The learned Advocate-General read out the following passage from the speech of Halsbury in Solomon v. Solomon (1897) A.C. 22 H.L for showing that a company itself may not have any real existence.

I am simply here dealing with the provisions of the statute, and it seems to me to be essential to the artificial creation that the law should recognise only that artificial existence--quite apart from the motives or conduct of individual corporations. In saying this, I do not at all mean to suggest that if it could not go behind the certificate of incorporation to show that a fraud had been committed upon the officer entrusted with the duty of giving the certificate, and that by some proceeding in the nature of feire facias you could not prove the fact that the company had no real existence.

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86. The following passage from the speech of Lord Watsen was also read out:

I can conceive that there might be a limited company formed and registered by a person who had the sole interest in it, the other subscribing members being persons who were his alliances and having no real existence, and in that case also- there would be no legal company, and the real owner of the concerns would be liable for its debts to the full extent of his means.

87. It has been pointed by Venkatarama Ayyar J. in the case of Sree Meenakshi Mills Ltd. (Supra) as a benamdar for the parent company especially for the purpose of income tax. Where the question is whether the profits earned by a subsidiary company X can be held to be profits earned by the parent company A and taxed in the hands of A, the fact that X is a legal entity does net stand in the way of its profits being treated as profits of A. The following six tests have been laid down by Atkinson J. in (1939) 4 All E.R. 1161:

?I find six points which were deemed relevant to the determination of the question: Who was really carrying on the business.... Secondly, were the persons conducting the business appointed by the parent company ? Thirdly, was the company the head and the brain of the trading venture ? Fourthly, did the company govern the adventure, decide what should" be done and what capital should be embarked on the venture ? Fifthly, did the (parent) company make profits by its skill and direction ? Sixthly, was the (parent) company in effectual and constant control ? If the six tests mentioned above are satisfied then the subsidiary com pany may be regarded as the benamdar of the parent company. If one company? can be said to be the benamdar of another company, can it be said that a company cannot be the benamdar for a private individual ? It is in this way that the question has been posed on behalf of the State of Bihar. According to the Advocate-General of U.P., on principle it cannot be said that it is well-nigh impossible to prove in a Court of law that the public limited companies claiming to be lessees under Raja Bahadur are benamdars of the latter. If from the evidence on record the Court is satisfied that it is Raja Bahadur who is really carrying on the business of these companies, that the persons conducting the business of these companies have been appointed by Raja Bahadur, that Raja Bahadur is the head and brain of activities of these companies, that Raja Bahadur decides what should be done and what capital should be embarked on their various ventures and that Raja Bahadur is in effectual and constant control of these companies then there will be no difficulty-in holding that these companies are the benamdars of Raja Bahadur.

88. Mr. Roy on behalf of Plaintiff-Respondent No. 2 drew our attention to the decision of the Supreme Court in the case of Mineral Development Ltd. Vs. The State of Bihar and Another, . On the application of the Mineral Development Ltd. under Article 32 of the Constitution the Supreme Court quashed the order of the Government of Bihar dated September 7, 1955, cancelling the Petitioner''s licence for mining mica. It may be mentioned that Mineral Development Ltd. is the Defendant Respondent No. 6 in the present appeal. The licence for mining

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mica was granted to the Petitioner before the Supreme Court as the holder of a lease for all minerals for 999 years in respect of 3026 villages granted by Raja Bahadur K. N. Singh on December 29, 1947. This lease has been challenged by the State of Bihar in T.S. No. 53 of 1954 instituted in the Court of the Subordinate Judge, Hazaribagh, and in the written statement of the State of Bihar in the suit out of which the present appeal arises this lease has been characterized as sham, jarzi and colourable. The Supreme; Court disposed of the petition under Article 32 of the Constitution on the assumption that there was a dispute on the question of title. The material portion of the judgment runs thus:

The case of the State is that the said lease was benami only for the said proprietor and the case of the Petitioner is that the wife of the proprietor, Rani Lalita Rajyaluxmi Devi, is the registered share-holder of the company. The question whether the lease is only benami of the proprietor or not is; now in dispute in Title Suit No. 53 of 1954 pending in the file of the Court of the Subordinate Judge, Hazaribagh. We shall, therefore, assume for the purpose of this case that there is a dispute on the question of title, the State Government asserting that the lease is only benami for the proprietor and the Petitioner claming to be the real lessee and the wife of the proprietor only a registered shareholder of the company. Whichever version is true, the proprietor directly or because of his wife is very much interested in the company, at any rate, the Government''s case is that he is the owner.

The petition on behalf of the company, however, was accepted and a writ of certiorari was issued against the State of Bihar quashing the impugned order.

89. According to Mr. Roy, the Supreme Court thought that either the company was the lessee or Raja Bahadur K. N. Singh was the lessee and that in either case the impugned order was liable to be quashed. Mr. Roy suggests that Raja Bahadur could be regarded as a lessee only u/s 9(1) of the Bihar Land Reforms Act, which provides as follows:

With effect from the date of vesting all such mines comprised in the estate or tenure as were in operation at the commencement of this Act and were being worked directly by the intermediary shall, be entitled to retain possession of those mines as a lessee thereof.

He concludes from this that, even if the leases in favour of the companies are held to be sham and colourable, Raja Bahadur would be entitled to retain the mines as a lessee under the State of Bihar. As against this it is contended on behalf of the State of Bihar that there is nothing on record to show that all the mines comprised in the various leases were in operation at the commencement of the Bihar Land Reforms Act. It is not necessary for us to resolve this controversy nor do we intend to do so. Mr. Roy wants to say that Raja Bahadur really did not create these leases with a view to causing loss to the State or claiming higher compensation of defending any provisions of the Act, because but for these leases he would have been entitled to retain possession of these

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mines as a lessee under the State. This question however is not at all germane to the query whether in fact the State of Bihar entered into an agreement of compromise with the Plaintiff and the Defendants supporting the Plaintiff.

90. Mr. Roy read out the following passage from the judgment of Mitter J. in Andhra Pradesh v. Madras Union of Journalists AIR 1967 S.C. 1867 to justify the opinion of Sri Mahabir Prasad on the question of benami:

We do not think that even in Industrial law a new company which is an independent legal entity can be called a benamdar for another older organisation because there was in both companies a person or family of persons who could guide the destinies of the two companies.

91. At the hearing of the appeal there was a great deal of controversy over the opinion given by Sri Mahabir Prasad. It is for this reason that we have noted at great length the respective arguments of both sides, even though they are not very material for the determination of the point at issue, namely, whether there was a concluded contract of compromise between the parties. According to the State of Bihar, Sri Mahabir Prasad should have considered the position more carefully before giving his final opinion on the question of settlement. He was rather hasty ; his opinion was based upon insufficient data ; he should have called for further" materials from the officers of the State; instead of relying upon the notes of Bajrang Sahay prepared nearly two years back he should have called for the subsequent developments; he neglected to consult documentary evidence that was easily available. These are some of the grievances of the State of Bihar in relation to the opinion given by Mahabir Prasad. Mr. Roy on the other hand seeks to demonstrate that Sri Mahabir Prasad fully realised the weakness of the position of the State of Bihar at least in respect of the mining leases. He realised that in view of Sections 9, 10 and 25 of the Bihar Land Reforms Act, and in view of the fact that the lessees were all limited companies it would be well-nigh impossible for the State of Bihar to prove benami or invoke Section 4(h). Mr. Roy, therefore, contends that Sri Mahabir Prasad gave the soundest possible opinion on the facts and in the circumstances of the case. We may at once point out that it is not at all necessary for us to assess the soundness of the advice given by Sri Mahabir Prasad on merits, nor is it necessary for us to determine whether or not he acted in good faith.

92. From internal evidence it is clear that the time at the disposal of Sri Mahabir Prasad was too short for the proper consideration of the 279 suits pending in the Hazaribagh Court. The note prepared by Bateswar is thus headed:

A short note of Ramgarh cases made over to Advocate-General by Shree B. P. Singh on 25th April, 1957.

Hence it appears that the note of Bateswar was handed over to Sri Mahabir Prasad on April 25, 1957, and Mahabir Prasad submitted his opinion on April 26, 1957, that is to say, the very next day. It is all but natural that he could not apply his mind properly to the individual suits to assess the possibility of success.

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However, in our opinion very little turns on that. - His opinion may be hasty, may be well considered ; the question for determination is whether in fact a concluded contract of agreement was arrived at as alleged in the plaint.

93. From the note of Sri Mahabir Prasad there is no room for doubt that he was in favour of a compromise. He thus concluded his note:

In the circumstances a settlement of all disputes out of Court on such terms as may be available is desirable. It will not be in public interest to persist in fighting out these suits with little chance of success. The litigation is bound to be expensive and long drawn out. I have indicated what I think about merits of the various suits.

It cannot be said that he did not give his opinion in good faith or that he gave his opinion like an easy going man as suggested by the learned Advocate-General of U.P.

94. The opinion of Sri Mahabir Prasad was received by the Revenue Minister Sri K. B. Sahay on April 26, 1957, that is to say, on the very day the opinion was given by Sri Mahabir Prasad. The Revenue Minister forwarded it to Sri C. K. Raman, Land Reforms Commissioner, for favour of advice, and Sri C. K. Raman, in his turn, forwarded it to Sri Chandra Prasad, Legal Remembrance, on April 27, 1957, with the following note: ''I shall be grateful for your advice. We may discuss''.

95. Sri Shib Chandra Prasad, Legal Remembrance, that very day, that is on April 27, 1957, sent the following note to Sri C. K. Raman, Land Reforms Commissioner:

We had prolonged discussions to-day in this connection during the major portion of which Sri Bajrang Sahay was also present.

The matter is a complicated one and also very important and it does not seem possible to give any definite advice without considering all the pros and cons of the matter specially with reference to the materials which are in possession of the Government and which the Government may be able to collect as evidence in this case. Whenever there is a question of compromise, there must be certain definite terms, offered on each side....

This is also wanting in this case. Therefore, if it is decided to compromise the suits, then the best course would be to request the other party to offer their terms of compromise....

We need not offer our terms,'' unless and until we have come to know the minimum on which the other parties are predated to compromise the suits. It is clear from the above note that uphill April 27, 1957, the State of Bihar did not know the terms of compromise proposed by Raja Bahadur K. N. Singh. That very day, that is on April 27, 1957, C. K. Raman, Land Reforms Commissioner, sent a note to Sri K. B. Sahay, Minister, Land Revenue:

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96. The Land Reforms Commissioner was not sure whether the Advocate-General, Sri Mahabir Prasad, had seen all the papers. It is clear that he was not prepared to accept the opinion of the Advocate-General without proper examination of the papers.

97. That very day, that is to say, on April 27, 1957, Sri K. B. Sahay, the Revenue Minister, sent the following notes to the Legal Remembrance and the Land Reforms Commissioner.

I do not think any further discussion with the Advocate-General is necessary. He has already expressed his opinion in his notes dated 26th April, 1957, after hearing Bateswar Singh, a representative of Sri Kamakshya Narain Singh. Probably he consulted Sri Bajrang Sahay as well. Bajrang Sahay''s note...is placed below. I would therefore suggest that L.R. may apply his mind and help Government to come to a decision. So far as I am concerned I have already said in my notes dated 22hd February, 1956, that compromise could be made with Sri Kamakshya Narain Singh...consistent with public interest....

Frivolous litigation is also not in public interest. The Advocate-General thinks that most suits...are not well based upon date and law. The Revenue Minister was not right in thinking that probably Sri Mahabir Prasad consulted Sri Baprang Sahay. Sri Mahabir Prasad''s notes dated April 26, 1957, makes the position clear.

98. On the next day, that is to say, April 28, 1957, Sri Shib Chandra Prasad, Legal Remembrancer, sent an elaborate note to the Revenue Minister through the Land Reforms Commissioner.

He concluded his note in these words:

In conclusion I must state clearly that I have given my advice on the basis of the materials available to me and on the Secretariat files linked below and during the discussion with Sri Bajrang Sahay and the Land Reforms Commissioner.

Whether or not the suits should be compromised is more a matter of policy than of law and legal advice.... If Government think that the evidence of the nature...indicated above is not likely to be available...the Government will not be able to succeed in this litigation ultimately.

99. Sri C. K. Raman, Land Reforms Commissioner, submitted his note on the same day on which Sri Shib Chandra Prasad, Legal Remembrancer, submitted his note, namely on April 28, 1957. Sri Raman started by saying that it was not possible for him to go through the linked files of the Revenue Department. He was against deciding anything in a hurry. He thought that the matter was so important that it would have to be placed before the Council of Ministers before a final decision. He pointed out that the Government were forced into this litigation that they were made Defendants in a number of cases and that it was only later that the Government considered it expedient to file an omnibus suit.

100. He expressed his doubt as to whether the Government had a weak case and

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whether it was so weak that it should be compromised on such terms as might be available as advised by the Advocate-General. This question, according to him, could not be decided without investigation in regard to each of the points suggested by the Legal Remembrance, and he was not sure whether the Advocate-General had made this kind of examination of each case before tendering his advice. It would be necessary with regard to each case to examine the kind of evidence that would be required to discharge the onus to establish the case of benami. This investigation, in his opinion, ought to be done in order that Government, might know to what extent they should be prepared to go in agreeing to the terms of compromise. Such investigation could not properly be confined to such papers as existed in the Secretariat only. His advice was as follows:

I may note that it is doubtful if even such papers as exist in the Secretariat have all been got hold of and made available to the L.R. in the short period during which this case has been examined. It may be necessary to make investigations at Hazaribagh and Calcutta and possibly elsewhere, particularly in regard to the transactions affecting the companies and their share-holders. I would therefore suggest that sufficient time should be given to the department to probe the matter in all its aspects and make its recommendations.

101. He complained that there was no indication whatever from the other side as to the terms on which the compromise was sought.

He said that Raja Bahadur should be told about the Government''s preparedness for compromise and asked to state his terms. The form of communication, according to him, would be without prejudice to the conduct of the suits. He felt that the Minister might like to consult the Chief Minister before taking the step suggested by him.

102. This was followed by the notes of Sri K. B. Sahay, Revenue Minister, to the Legal Remembrance and the Land Reforms Commissioner. - As to the probe suggested by the Legal Remembrance in his notes dated April 28, 1957, into the papers in the office of the Registrar of Companies to ascertain whether Raja Bahadur directly or through his relations owned the majority of the shares in the companies holding mining leases, the Minister of Revenue felt that this kind of probe was impossible. As to the suggestion of the Legal Remembrance to find out facts as to how these companies holding mining leases originated, how their capital was raised and who dealt with the Banks, he felt that it was impossible to collect materials as suggested by the Legal Remembrance. He thought that in the political atmosphere created in the district of Hazaribagh in the wake of the last General Election it would be impossible to produce laborers etc. as witnesses against Raja Bahadur.

103. In the circumstances, he felt that instead of perusing those suits compromise might be made with Raja Bahadur provided he agreed to the stand of the State of Bihar that these estates vested in the Government in November

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1951. He concluded his notes in these words:

I wish I could consult CM., but as he is busy with Ministry making, it is not possible for me to contact him. The question of obtaining the sanction of the Council of Ministers does not, in my opinion, arise because these suits were not instituted by the order of the Council of Ministers. They were instituted on the advice of the Law Officers of the State, L.R. and the Advocate General, who are the two top-most Law Officers of the State who have advised-that compromise should be made.

Steps may be taken to have a compromise with Sri Kamakshya Narain Singh in terms of the advice of L.R. as contained in his notes dated 28th April, 1957.

104. The next note is by Sri Shib Chandra, Legal Remembrance, dated April 30, 1957, to the Land Reforms Commissioner. He started by saying that he had just then received a letter from Raja Bahadur proposing his terms of compromise.

105. He pointed out that Raja Bahadur was not prepared to accept the position that his estate had vested on November 3, 1951.

106. The Legal Remembrance had the impression after his discussion with Sri B. Sahay that Raja Bahadur''s proposals were final and that he was not prepared to modify them in order to agree to the position as advised by the Legal Remembrance. He, therefore, wanted to know whether there should be further negotiations with Raja Bahadur.

107. This note makes it clear that there was no concluded agreement upto April 30, 1957. The letter referred to in the note of the Legal Remembrance is dated April 28, 1957. It was written by Raja Bahadur from Patna and it was addressed to the Legal Remembrance, Government of Bihar, and marked ''without prejudice''. The letter is worth quoting in extenso ;

Dear Sir, Realizing that the continuance of the long standing litigation between me and the State of Bihar with particular reference to T.S. 24 of 1953 and the suit and proceedings against Bokaro and Ramgarh Ltd., where I am a partner in the Managing Agency, is not in my interest nor in the interest of the State of Bihar, I deputed on the advice of the Hon''ble Revenue Minister my representative Sri S.P. Singh to the Advocate-General Sri Mahabir Prasad to discuss terms of a compromise between me and the State of Bihar.

The main terms on the side of the State would be as follows:

1. That the State of Bihar should accept the judgment...in T.S. No. 24 of 1953...and accept 26th January, 1955, to be the date of vesting of Ramgarh Estate.... The appeal preferred therefrom by the State of Bihar...be withdrawn....

I hereby agree that I shall make no claim for refund of rents actually realised...between...3.11.51 and 26.1.55.

2. That the State of Bihar should withdraw T.S. No. 53 of 1954 and recognise all

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transfers and settlements made by me and should no longer contend that the transfers and settlements ...are...sham.

3. That the State of Bihar should also withdraw T.S. No. 29 of 1954 against.... Bokaro and Ramgarh Ltd. and recognise the reduction in rents or royalties...and...accept...reduced rents from 26.1.56.

4. That the State of Bihar should recognise settlement of lands made with Ramgarh Farms and Industries Ltd.

5. That the State of Bihar should recognise the settlements made with the Religious and Charitable Trust.

The letter?s offered by me are as follows:

(i) I would make no demand for. any refund of rents....

realised by the State...till 26th January, 1955....

(ii) I shall withdraw the Title Suit...brought by me for declaration of Section 3A of the Bihar Land Reforms Act to be ultra vires.

(iii) I shall exert my flood office in persuading the Plaintiffs of the 26 Batch Title Suits (some of whom are my relations and others are transferees) to withdraw all these suits....

(iv) As Chairman, Ramgarh Farms and Industries Ltd., I will withdraw T.S. No. 12 of 1954....

(v) Title Suits filed by Religious Charitable Trust will be withdrawn.

I would hereby intimate to you that I agree to the terms abated above, I would now expect that...the State would...move to implement its terms.

108. On May 1, 1957, the Land Reforms Commissioner sent a note to the Minister, Land Revenue, Sri K. B. Sahay, He placed before the Minister a copy of the unsigned draft terms and conditions of compromise, which he had received from Sri Bajrang Sahay and a true copy of the letter dated April 28, 1957, which he had received that very day from Raja Bahadur K. N. Singh. He pointed out that the Legal Remembrance had also received on the previous day from Raja Bahadur an exact copy of the letter dated April 28, 1957.

109. He informed that he was examining the terms and conditions of the compromise with the assistance of Mr. Mathur, Mr. M. Chaudhury and Mr. Umeshwar Prasad of the Revenue Department. He hoped to produce in consultation with Umeshwar Prasad a note addressed to the Legal Remembrance seeking his advice on some of the legal points involved in the acceptance of the terms and conditions of compromise drafted by Bajrang Sahay as some of the terms in the draft of Bajrang Sahay did not find place in the letter of Raja Bahadur.

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110. This note shows that Bajrang Sahay prepared an unsigned draft of the terms and conditions of compromise on receipt of the letter of Raja Bahadur dated April 28, 1957, containing the terms of compromise suggested by Raja Bahadur.

111. An elaborate note was sent by the Land Reforms Commissioner to the Legal Remembrance on May 1, 1957. He started his note by saying that Bajrang Sahay had prepared a draft of the terms of compromise of the existing suits between the State of Bihar and Raja Bahadur, ex-proprietor of Ramgarh and that he was placing below the draft that had been given to him by Bajrang Sahay. He dealt with each of the conditions to indicate his point of view. He, however, complained that it was not possible for him within the short time at his disposal to ask the officers of the Department to examine the draft terms in detail or to consult the records of the various cases. He pointed out that he had only a brief discussion with the officers dealing with the matter.

112. He was not sure whether the terms of compromise would be legally enforceable in the event of Raja Bahadur backing out or any other Defendant or. Plaintiff in the pending suits challenging the right of Raja Bahadur to make such compromise on their behalf and he sought for advice on this point. He indicated the possibility of challenge by the coparceners of Raja Bahadur.

113. The Legal Remembrance concluded his note by saying that the draft terms and conditions needed considerable improvement from the legal point of view. He said:

I shall be very grateful, if either the draft is suitably revised or we are assisted in drawing up a fresh draft on the basis of which Government orders can be sought after meeting the legal points that I have raised, and after consulting the Finance Department.

114. From this note of the Land Reforms Commissioner it is clear that Raja Bahadur was carrying on negotiations for compromise in his personal capacity and not as the representatives of the Plaintiffs of the different suits pending in the Court at Hazaribagh.

115. The note of Sri Bajrang Sahay relating to his draft dated May 2, 1957, is very significant. He pointed out that the Land Reforms Commissioner made a mistake in thinking that he, Sri Sahay, gave a draft of the terms of compromise to be entered into between Ramgarh and the State of Bihar. He made it clear that the draft that was sent was meant to be the draft of a communication to be sent to the Deputy Commissioner, Hazaribagh, in case Government accepted the advice of the Advocate-General in toto and that the draft did not at all represent his views on the question of compromise. He said that his views were contained in his note of August 1955 and that they were materially different from the views of the Advocate-General. As to the appeal filed by the State of Bihar against the decision of the Sub-Judge, Hazaribagh, as to date of vesting, he was of opinion that the Government had a very strong case. There was no reference to this

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point in the note as this point was decided by the Hazaribagh Court in July 1956 long after the preparation of his note.

116. The Legal Remembrance sent a note to the Land Reforms Commissioner, the very next day, namely May 2, 1957, trying to meet the objections raised by the Land Reforms Commissioner in his note dated May 1, 1957. He intimated at the very outset that the draft of the compromise was not prepared by Sri Sahay embodying his personal views.

117. He thought it unnecessary to prepare a separate draft as suggested by the Land Reforms Commissioner because he prepared his notes with respect to the draft already in the file suggesting deletion of conditions 7 to 10 and a light modifications in the rest. He concluded his note by saying ''F.D. (Finance Department) should be consulted as financial matters are involved''.

118. The foregoing analysis of the note of the Legal Remembrance dated May 2, 1957, clearly indicates that the question of compromise did not go beyond the stage of inter-departmental nothings and counter-nothings. It is also clear from his note that the State had no reason to think that Raja Bahadur was negotiating compromise not only on his own behalf but also on behalf of the various companies and individuals involved in Hazaribagh litigation. It further transpires that the draft that was being considered by the Land Reforms Commissioner and the Legal Remembrance on May 1 and 2, 1955, was meant to be the draft of a communication to be sent to the Deputy Commissioner in case Government accepted the advice of the Advocate-General in toto.

119. The next note of the Land Reforms Commissioner, dated May 3, 1957, to the Minister, Land Revenue, is of very great importance. From that note it appears that the matter of compromise was discussed with the Minister, Land Revenue, on May 2, 1957, and that concrete proposals were formulated regarding the proposed compromise with Raja Bahadur. The proposal was drafted by Sri Bajrang Sahay with the assistance of the Additional Secretary Sri Mohan Choudhury, the Deputy Secretary and the Land Reforms Commissioner and was unofficially accepted by Raja Bahadur after haggling which lasted for ten hours. The proposal was sent to the Minister, Land Revenue, by the Land Reforms Commissioner along with his note. He said that it was impossible to give within the" time at their disposal even an approximate idea of the financial loss which the State would be incurring as a result of the compromise on the supposition that the State would win all the cases. He pointed out that there was no strong ground for such supposition as shown by the opinions of the Advocate-General and the Legal Remembrance. He requested the Minister, Land Revenue, to approve the proposals contained in the draft sent along with his notes so that the proposals might be referred to the Finance Department for their concurrence.

He intimated that he had given copies of the draft proposals to the Revenue Secretary and to the Additional Secretary, Sri Mohan Chaudhury, asking them to give him some idea of the loss involved. He requested the Revenue Minister to

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see their replies linked up with his note. He emphasized that the time at their disposal was not enough for making detailed enquiries. He kept a separate copy of the draft for the use of the Finance Department.

120. The Minister, Land Revenue, Sri K. B. Sahay, made the following remarks on the note submitted by the Land Reforms Commissioner on May 3, 1957:

As proposed If the Advocate-General and L.R. had not expressed the opinion that the materials at our disposal did not warrant the hope that the suits would be decreed in our favour, I would have liked the suits to be pursued. But in view of their unanimous opinion I feel that if the compromise is effected it will mean no financial loss to Government. F.D. (Finance Department) may however be approached for approval before orders issue.

The file was sent to the Finance Department and this will appear from the following endorsement: F.D.

Your concurrence please. Sd. Illegible, 3.5.57

121. It is contended on behalf of the Plaintiff-Respondent that a concluded contract of compromise came into existence on May 3, 1957. The argument is that the proposal drafted by Sri Bajrang Sahay with the assistance of highly placed officers having been unofficially accepted by Raja Bahadur after haggling for ten hours and approved by the Minister, Land Revenue, there was a concluded contract of* agreement on May 3, 1957. The learned trial Judge too thinks that the notes of the Land Reforms Commissioner to the Minister of Revenue on May 3, 1957, and the order of the Minister of Revenue of the same date leaves no room for doubt that an agreement was reached on the terms mentioned in para. 7 of the plaint as alleged by the Plaintiffs.

122. We are unable to accept either the argument on behalf of the Plaintiffs-Respondents or the conclusion of the learned trial Judge. The proposals drafted by Sri Sahay was unofficially accepted by Raja Bahadur. From this note of the Land Reforms Commissioner dated May 3, 1957, we do not get any idea as to the proposal drafted by Sri Sahay. It is not clear what is mint by the words ''unofficially accepted''. Then again, what was accepted was the proposal. The proposal for the compromise does not ordinarily imply the terms o? compromise. The Minister for Revenue approved the proposals and not the concrete terms of compromise. The Revenue Minister approved the proposals so that they may be referred to the Finance Department. The approval was only for that purpose. A contract no doubt may come into existence by offer and acceptance. But the ^proposal for compromise drafted by Sri Sahay cannot be regarded as an offer in that sense, nor can the unofficial acceptance of the proposal by Raja Bahadur be regarded as acceptance in that sense. We do not Know what was actually offered and what was actually accepted. Hence, there was no concluded contract before the approval of the Revenue Minister. The approval of the Revenue Minister is merely a matter of departmental procedure. Raja Bahadur had nothing to do with this approval, neither was this approval communicated to Rai? Bahadur.

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Therefore, such approval cannot create any legal relation between the State of Bihar and Raja Bahadur.

123. It is needless to point out that it is not the plaint case that there was any concluded contract on May 3, 1957. According to the plaint, the terms of the compromise were finally proposed by an order dated May 5, 1957, of Sri K. B. Sahay, the then Minister in charge of Land Revenue, which was communicated to Raja Bahadur K. N. Singh and on July 16, 1957, Raja Bahadur K.N. Singh acting on behalf of all the parties communicated to the Government his unqualified acceptance of the terms. Hence, in the plaint it has been stated that the contract was concluded on July 16, 1957. Issue No. 2 enquires whether the alleged agreement is a valid, lawful and binding document. The agreement alleged is one of July 16, 1957, and not of May 3, 1957.

124. In the written statement of Raja Bahadur it has been stated in unequivocal terms that he intimated to the State of Bihar that the agreement stood as a concluded contract with effect from July 16, 1957. There is no mention of the order dated May 3, 1957, of Sri K. B. Sahay, Minister of Land Revenue, by which, according to the plaint, the terms of compromise were finally proposed which on acceptance resulted in a concluded contract.

125. The judgment of the trial Court on the question of the agreement of compromise is primarily based upon the oral evidence of P.W. 13, Bateswar Prasad Singh. Let us examine his evidence on this point. He says that the draft of the agreement for compromise was made by Bajrang Sahay, that the draft was discussed at Ramgarh House, that the Land Reforms Commissioner Bajrang Sahay, Bateswar himself and one Badri Narayan participated in the discussion, that Badri Narayan took part in the discussion as representative of Sri K. B. Sahay, Minister of Revenue, and that the terms of compromise were finalised after prolonged discussion. He further says that the terms of agreement so finalised at the discussions were accepted by the Revenue Minister and the State of Bihar. He does not as) that on such acceptance by the Revenue Minister a concluded contract came into existence. From the nothings dated May 3, 1957, by the Land Reforms Commissioner and the Minister of Land Revenue it transpires that the Revenue Minister merely approved the proposals formulated by Sri Bajrang Sahay. Approval and acceptance are not the same thing. Moreover, it cannot be suggested that a contract came into existence on the approval of the proposals. P.W, 13 does not say that the terms of compromise were offered by Raja Bahadur on behalf of his transferees and lessees and accepted by the Revenue Minister. The case for the Plaintiff is that the terms of compromise were offered by the State of Bihar and accepted by Raja Bahadur. We are, therefore, not prepared to attach any importance to the demonian of P.W. 13 that the terms of agreement so finalised were accepted by the Revenue Minister. Moreover, there is nothing on record to show that the approval of the Revenue Minister on May 3, 1957, was communicated to Raja Bahadur or was intended to be communicated to Raja Bahadur. It is, therefore, absurd to suggest

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even on the deposition of P.W. 13 that there was a concluded contract of May 3, 1957.

126. In his cross-examination P.W. 13 says that the terms were finalised at the Ramgarh House on May 1, 1957, if he remembers aright. He, however, does not say in so many words that the contract became final on May 1, 1957. From the note of the Land Reforms Commissioner dated May 3, 1957, it appears that the matter of compromise was discussed with the Minister, Land Revenue, on May 2, 1957, and concrete proposals were formulated and that the proposal drafted by Sri Sahay with the assistance of responsible officers as unofficially accepted by Raja Bahadur after haggling which lasted for ten hours. P.W. 13 most probably referred to this proposal drafted by Sri Sahay in his cross-examination. In that case, the date would be May 2, 1957, and not May 1, 1957, as told by P.W. 13. It cannot be said that the terms were finalised by the proposal drafted by Sri Sahay on May 2, 1957. That was meant to be the basis for the negotiation of the proposed compromise. It is not denied that there was a talk of compromise. But the question for determination is whether the talk ended in a concluded contract of compromise. The evidence of P.W. 13, to say the least, is very vague on this point and from his evidence it cannot be concluded that the agreement was finalised either on May 1, 1957 or May 3, 1957.

127. Towards the conclusion" of his cross-examination P W. 13 said that on receipt of Narsingha Das''s letter on May 4, 1957, the contract was complete. In his examination-in-chief he said that the letter of acceptance was sent by Raja Bahadur on July 16. 1957. So it appears that he mentioned four different dates, namely May 1, 1957, May 3, 1957, May 4, 1957 and July 16, 1957, as the date of the contract. Can any reliance be placed on such evidence in deciding whether in fact there was a concluded contract of compromise between the parties ? We are not prepared to attach any importance to his evidence on this point.

128. Moreover, having regard to the plaint case that the contract of compromise was made on July 16, 1957, the evidence of P.W. 13 to show that the contract was made either on May 1, 1957 or on May 3, 1957 or on May 4, 1957, is wholly irrelevant. Our attention, was drawn to the dictum of the Privy Council that no amount of evidence can be looked into upon a plea which was never put forward in the case of AIR 1930 57 (Privy Council) . The learned Advocate-General of U.P. also relied upon the following observations of the Supreme Court in Trojan and Co. Ltd. Vs. Rm. N.N. Nagappa Chettiar, :

It is well-settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an. amendment of the plaint the Court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case.

129. In the instant case, the Plaintiff made no application for the amendment of plaint, where it has been specifically stated that the contract was concluded on

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July 16, 1957. There is no suggestion in the plaint that the contract might have been concluded earlier. Hence, the Plaintiff cannot be allowed to prove at the hearing that the contract was concluded either on May 1, 1957, or on May 3, 1957, of on May 4, 1957.

130. The Land Reforms Commissioner sent one copy of the draft proposals prepared by Sri Sahay to the Secretary, Revenue Department, and one copy to the Additional Secretary, Revenue Department, with a request that the financial implications and the loss likely to be suffered by the State Government in case the suits relating to Ramgarh estate and forests, minerals etc. were compromised might be examined immediately and intimated to him. It was received at 10 a.m. Both the Secretary and the Additional Secretary were informed by the Land Reforms Commissioner that the matter would be again discussed with the Member, Land Revenue, at 11-30 a.m. that very day. They were asked to give only an approximate idea of the financial implications as there was no time to make a detailed examination. They were requested to return the papers to him before 11-30 a.m. together with their notes.

131. The Revenue Secretary sent his note to the Land Reforms Commissioner at 11-45 a.m. that very day. With regard to the terms of compromise which concerned the Land Reforms Section he said that, in case these terms were accepted, the financial loss to the State could, not be calculated even approximately on the scant materials available on the records and within the short time available. With regard to the raiyati settlement with Ramgarh Farms and Industries Ltd. he said that it was not possible to give any estimate of the loss without local enquiries as he did not know the extent of the arable and waste-lands and other details.

132. He was not in a position to estimate the likely losses that might be incurred as a result of recognising the transfers made to the various trusts created for religious and charitable purposes and for the maintenance of the relations. In the case of religious and charitable trusts, a liability of a permanent nature by way of payment of annuity in cash would be created and the loss would be considerable. He gave the following illustration. If the net income of the property dedicated was Rs. one lakh, the ex-landlord at best would get compensation at three times, that is, Rs. 3 lakhs in bonds spread over a period of 40 years. But in case of recognition, as stipulated in Clause 7 of the draft compromise the trustees would get Rs. 1 lakh in cash annually for all times to come. He ended by saying that the illustration would give an idea of the colossal loss the Government would suffer.

133. The Additional Secretary, Revenue Department, Sri M. Choudhury too gave his opinion as to the loss to be incurred by the State of Bihar by entering into the compromise in his note dated May 3, 1957, sent to the Land Reforms Commissioner. It was not possible for him to calculate the financial loss within the few hours available to him for the examination of this complicated matter. He showed that the loss likely to be sustained by the State Government on account of recognition of the modifications made in the terms of the original leases in

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favour of Bokaro and Ramgarh Ltd. would amount to Rs. 11,74,643 and odd till September 22, 1955, that is, the date of filing T.S. No. 29 of 1955 by the State of Bihar. He expressed his inability to say anything as to the loss that was likely to result from compromise in respect of cases on the Forest Act as the relevant papers were not in the Secretariat.

134. The notes of the Secretary and the Additional Secretary, Revenue Department, dated May 3, 1957, submitted to the Land Reforms Commissioner, were forwarded by the latter to the Minister, Land Revenue, on May 3, 1957. In spite of these notes the Minister in his note dated May 3, 1957, approving the proposal drafted by Sri Sahay stated that he felt if the compromise was effected it would mean no financial loss to the Government.

135. The file was sent to the Finance Minister on May 3, 1957, and the Finance Minister sent it to the Secretary, Finance Department, who received it at about 5-30 p.m. on that day. The Minister desired the Secretary to put up the file to the Minister "that very day. The Secretary, Finance Department, examined the materials available in the file.

136. His first reaction was that the decisions proposed to be taken in terms of the draft petition of compromise (placed on the file) were of very great importance as they would have far-reaching financial implications not only in respect of the properties covered by the various suits mentioned in the petition of compromise but also in respect of similar properties of other ex-Zamindars. Finance Department would, therefore, like to make a full and detailed examination of the case before tendering their final advice. Such examination, said he, was not possible on the basis of the materials contained in the file. He made it clear that it was not possible for him to examine carefully the direct and implied financial implications of all the proposals contained in the draft petition of compromise within the few hours in which he had to examine and submit the file.

137. He mentioned the fact that the responsible officers of the Revenue Department as well as the Chief Mining Officer pointed out that it was not possible for them to give an approximate idea of the financial loss or gain involved within the time in which they were asked to make these calculations. He invited the attention of the Minister to the relevant portions of the notes submitted by the Secretary and the Additional Secretary of the Revenue Department just to show that only on two items covered by the draft compromise the State of Bihar would suffer a loss of several lakhs. The actual loss, according to him, might go upto several crores or might be confined to a few lakhs only. In the absence of any materials on the file, it was not possible for the Finance Department to make even a guess regarding the extent of the loss.

138. He submitted that in a case of such importance having far reaching implications it would not be right for the Finance Department to record their advice in a hurry, more so when the case had to be placed before the Council of Ministers in terms of item 33 of the third Schedule to the Rules of Executive

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Business.

139. He was in favour of returning the file to the Revenue Department requesting them to work out the financial implications of the terms of the proposed compromise and then refer the case back to the Finance Department for their advice.

140. It may be pointed out that the Secretary, Finance Department, throughout his note used the expression ''proposed compromise''. If the agreement became final on the approval of the Revenue Minister, Sri K. B. Sahay, the Secretary of the Finance Department, who received the file after such approval, would not have referred to the draft of Sri Sahay as the ''proposed compromise''. The Finance Department would not have been approached for approval if the agreement of compromise had already become final. The matter was in the stage of negotiation when the file was sent to the Finance Department.

141. The next note is that of the Finance Minister, dated May 4, 1957. He did not agree with the Finance Secretary that compromise with one individual meant compromise with the entire body of persons similarly placed. From the perusal of the notes of the Advocate-General and the Legal Remembrance it appeared to him that by honouring the transfers made by Raja Bahadur including leases and sub-leases the State of Bihar would not be showing any concession to him because both the Advocate-General and the Legal Remembrance were of opinion that the necessary evidence to prove that these transfers were bogus were lacking and that the evidence available to the Government was not sufficient. He thought that it was not possible to collect further evidence. In the circumstances, the State could not but recognise these transfers. He, therefore, thought that no financial loss was involved in such recognition. He felt that to end useless and expensive litigation the State of Bihar ought to accept the compromise as contemplated in the draft prepared by the Revenue Department and that no further loss of time would be advantageous to the Government.

142. He also agreed with the view of the Revenue Department that the question of obtaining the sanction of the Council of Ministers in this case did not arise.

143. It may be pointed out that the Finance Minister advised acceptance of the compromise as contemplated in the draft prepared by the Revenue Department. Hence, it follows that the Finance Minister prepared his note on May 4, 1957, on the footing that the compromise had not yet been accepted. This knocks the bottom out of the theory that the agreement of compromise became final on approval of the proposal contained in the draft by the Revenue Minister. This strengthens the argument on behalf of the State of Bihar that the proposals were approved so that they might be referred to the Finance Department.

144. In sending the file to the Revenue Department together with the note of the Finance Minister, the Finance Secretary made the following endorsement on May 4, 1957:

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F.D. (Finance Department) advise as above. Revenue Deptt. may consider whether in terms of Rule 28(a)(ii) of the Rules of Executive Business...this is not a case of sufficient administrative importance which should be shown to the CM. (Chief Minister) through C.S. (Chief Secretary). It would appear from the Revenue Minister''s minute dated 30th April, 1957,...that Revenue Minister also wished to consult CM. with regard to this matter.

145. The Land Reforms Commissioner suggested the future course of action in his note dated May 4, 1957, to the Legal Remembrance. He started by saying that the proposed draft of compromise was being placed below. He would not have used the expression ''proposed draft of compromise'' if the agreement of compromise had already become final. He pointed out that the draft had been corrected after discussion with him in the presence of the Revenue Minister and that the corrections made had been accepted by Raja Bahadur after a good deal of haggling....

146. Mr. Roy, appearing on behalf of the Plaintiff-Respondent No. 2, says that the compromise was finalised on the acceptance of the corrections by Raja ?ahad?r after a good deal of haggling. We cannot accept this contention of Mr. Roy. The corrections were accepted by Raja Bahadur in course of negotiation. The note of the Land Reforms Commissioner dated May 4, 1957, gives no idea as to the nature of the corrections. The Land Reforms Commissioner used the expression ''the proposed draft compromise'' even after the corrections had been accepted by Raja Bahadur. Mr. Roy argues that the legal position will not be altered even if the Legal Remem brancen thinks that the compromise has not been finalised if in fact it has been finalised. - This is rather begging the question, because the primary question for determination is whether the compromise was finalised, if so, at what point of time. The note of the Land Reforms Commissioner, dated May 4, 1957, a contemporaneous document, does not indicate that the compromise was finalised. At least the Land Reforms Commissioner did not think like that. His following remarks are significant:

As soon as the draft is finally ready after being vetted by you, I propose to have each page of it signed by Sri K. N. Singh and by an officer of the Revenue Department.

Till then the draft was not finally ready. It would be finally ready after being vetted by the Legal Remembrance. Thereafter, each page of the draft was to be signed by Raja Bahadur and an officer of the Revenue Department. This shows that the corrections were accepted by Raja Bahadur informally to be followed by formal acceptance by signing each page of the draft after it had been finally ready. That being the position it is to much to say that the com-promise became final on May 4, 1957, after the corrections had informally been accepted by Raja Bahadur.

147. The proposed draft compromise was merely the basis for discussion. The corrections suggested by the Legal Remembrance and subsequently accepted by

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Raja Bahadur merely modified the basis for discussion. Moreover, the note of the "Land Reforms Commissioner gives no idea as to the conditions contained in the proposed draft of compromise. From this note it cannot be said what were the terms of the compromise which, according to Mr. Roy, became final. We are, therefore, not prepared to hold on the basis of this note that the compromise became final on May 4, 1957.

148. It is not the Plaintiff''s case in the plaint that the negotiations terminated in a final agreement on May 4, 1957. From para. 7 of the plaint we learn that there were long drawn negotiations which terminated in a final agreement. We further learn that the terms of compromise were finally proposed by an order dated May 4, 1957, of the Revenue Minister and that on July 16, 1957, Raja Bahadur acting on behalf of all the parties communicated unqualified acceptance of the terms. In para. 20 of the plaint it has been stated that the cause of action of the suit arose on July 16, 1957, when Raja Bahadur accepted the offer of compromise from the State of Bihar. Paragraphs 7 and 20 of the plaint make it clear that according to the Plaintiff the long drawn negotiations did not terminate in a final agreement before July 16, 1957. In other words, these two paragraphs leave no room for doubt that according to the Plaintiff negotiations were not concluded even on July 15, 1957. That being the position the Plaintiffs will not be allowed to say that the negotiations terminated in a final agreement on May 4, 1957.

149. The Land Reforms Commissioner stated in his note of May 4, 1957, that the draft would be finally ready after being vetted by the Legal Remembrance, that he proposed to have each page to the draft so vetted signed by Raja Bahadur and by an officer of the Revenue Department and that the draft so vetted and signed would be ''kept as the original paper of compromise on the basis of which all other actions could be taken''. As these things were not done on May 4, 1957, the original paper of compromise did not come into existence on that day. It is difficult to say what was exactly meant by the Land Reforms Commissioner by the expression ''original paper of compromise''. Even if it be assumed that expression means the final agreement of compromise, there was no such final agreement on May 4, 1957, as the draft was neither vetted nor signed as suggested by the Land Reforms Commissioner. Again, the expression ''original paper of compromise'' may also mean a paper on the basis of which further discussion would take place, and the words ''on the basis of which all other actions could be taken'' make this interpretation plausible. If this interpretation is accepted, then by no stretch of imagination can it be said that the agreement of compromise became final on May 4, 1957.

150. The note submitted by the Legal Remembrance to the Land Reforms Commissioner on May 4, 1957, after the receipt of the file from the Land Reforms Commissioner clearly indicates that there was no concluded agreement of compromise on May 4, 1957. He started by saying that he had examined ''the proposal for compromise'' strictly from the point of view of the interest of the Government, and that in doing so he had been careful to see what would be

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''legal effects of the different terms proposed to be embodied in the compromise''. This indicates that upto May 4, 1957, the terms of compromise were in the realm of proposal.

151. He failed to understand why he should vet the draft, because the drafting of the compromise petition, according to him, was the business of the lawyers of both the parties.

152. He concluded his note by saying that it was essential that this case should be shown at least to the Chief Minister and his approval taken before the terms were finalised. His note of May 4, 1957, leaves no room for doubt that the terms were not finalised on May 4, 1957.

153. The Chief Secretary in his note dated May 4, 1957, called for the file for examination and submission to the Chief Minister. The relevant portion of the note runs thus:

I understand that the Revenue Department are examining proposals to compromise all pending cases of the State Government against Sri Kamakshya Narain Singh. These cases...involve important questions of law and policy and also financial implications. In my opinion, the proposals ought to go to the Council of Ministers?.

154. Sri-K. B. Sahay, Revenue Minister, sent a note to the Land Reforms Commissioner on May 5, 1957. The main file together with the notes of the Advocate-General and the subsequent notes of the Legal Remembrance and the draft of agreement settled with Raja Bahadur was not sent to him, so he could not refer to them in preparing his note. He said that the main file containing the necessary papers would have enabled him to give his final comments on the proposal. He quoted the opinion of the Legal Remembrance given on May 4, 1957, in favour of the compromise. The draft agreement, according, to him, was all in favour of the Government.

155. He painted out that the leases making reduction of rents and royalties payable by Bokaro and Ramgarh Ltd. would be void if they were against the Mineral Concession Rules, that as far as he remembered Raja Bahadur agreed not to claim refund of profits realised by the State between November 3, 1951 and January 26, 1955, and that he had been given to understand that Raja Bahadur agreed to arrears being realised by the State of Bihar. He pointed out these things as he was in favour of the compromise.

156. The last paragraph of his note runs thus:

From the papers that have been sent to me it is not clear whether the agreement has been finalised and, if so, whether copy of the draft agreement as finally settled has been sent to Sri K. N. Singh for his confirmation. If not, I would suggest that a copy may be sent to him. After he has confirmed the draft agreement the file may be shown to Chief Minister who is now'' comparatively free. If Sri K.N. Singh does not confirm the draft agreement that will be an end

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of the matter.

157. In para. 7 of the plaint this note of Sri K. B. Sahay dated May 5, 1957, has been described as an order. The relevant portion of para. 7 runs thus:

The terms of compromise were finally proposed by an order dated 5th May, 1957, of Sri KB. Sahay, the then Minister in charge of the Land Revenue, which was communicated to the Raja Bahadur K. N. Singh.

It is needless to point out that Sri K. B. Sahay merely, suggested that a copy be sent to Raja Bahadur.... He really did not pass any order to that effect. By enquiring whether the agreement had been finalised he really wanted to know whether the final draft of agreement had been prepared. He suggested that the file might be shown to the Chief Minister after Raja Bahadur has confirmed the draft agreement. By the expression ''after he has confirmed'' he really meant ''after he has approved''. If Raja Bahadur did not approve the draft there would be an end of the matter. If, however, Raja Bahadur approved the draft the parties would enter into an agreement of compromise on the basis of the draft approved by Raja Bahadur. He suggested showing? the file to the Chief Minister after the draft agreement had been approved by Raja Bahadur. There would have been no point in showing the file to the Chief Minister if on approval or confirmation by Raja Bahadur the draft would have been transferred into a final agreement. There is really no foundation for the plaint case that a concluded contract came into existence on the acceptance by Raja Bahadur on July 16, 1957, of terms of compromise finally proposed by an order of Sri K. B. Sahay dated "May 5, 1957.

158. It may be noted in this connection that Sri K. B. Sahay was defeated at the General Election of 1957 which took place in February 1957. Sri K. B. Sahay was in the nature of a care-taker Minister and he had to quit office on the formation of a new Cabinet on May 5, 1957. He continued as a Revenue Minister in the care-taker Ministry till May 5, 1957, and ceased to be a Minister on and from May 6, 1957. His successor-in-office was Sri Binodananda Jha. It is very unlikely that Sri K. B. Sahay would pass an order on the last day of office finally proposing the terms of compromise to Raja Bahadur for his acceptance. That he did not pass any such order will also be evident from the fact that he suggested showing the file to the Chief Minister after Raja Bahadur had confirmed the draft agreement. It" is also worth mentioning that May 5, 1957, was a Sunday. It is unlikely that an order of such great importance would be passed on a Sunday, especially when the main file was lying elsewhere, probably with the Chief Minister.

159. The two notes of the Land Reforms Commissioner both dated May 5, 1957, make the position clear. Those notes appear to have been prepared on receipt of the note of Sri K. B. Sahay, Revenue Minister, dated May 5, 1957. He expressed his regret for his inability to send the file to Sri K. B. Sahay, Minister, Land Revenue. He could not send the file to K. B. Sahay as it had been submitted to the Chief Minister through the Chief Secretary, who had called for -it immediately. He made it clear that the draft agreement was still under

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examination and that it had already undergone some changes as a result of continuing examination.

160. According to him, the agreement could not be said to have been finalised till then because there were hitch over two points, viz. (i) over the recognition of the reduction in rents and royalties made in favour of Bokaro and Ramgarh Ltd., (ii) over the withdrawal of the suits relating to the Forest Act. He said, In any case the proposed agreement not having been finalised it is not possible to supply a copy of it to Sri K.N. Singh and to ask him formally, as to whether he accepts the agreement or not, because the compromise has to stand as a whole or to fall as a whole.

161. He said that he would send a copy of the agreement to Raja Bahadur immediately after it was finalised for his acceptance as ordered by the Revenue Minister, Sri K. B. Sahay, but before that he would send only an acknowledgment.

162. We learn the following facts from the second note of the Land Reforms Commissioner of even date. At the instance of the Revenue Minister the Land Reforms Commissioner took the file once again to the Minister and the matter was discussed. The Revenue Minister was of opinion that a letter should be addressed'' to Raja Bahadur in terms of his minutes recorded in the file. The representative of Ramgarh who was present during the discussion handed over the draft at p. 16 /C of the file in terms of those minutes and wanted that such a letter should be addressed to Ramgarh. The Land Reforms Commissioner pointed out that it was not at all possible for the Government to do so, because the terms and conditions were still under discussion, because no final orders had been passed by Government, because the Chief Minister''s orders were still awaited, and because the matter had not been placed before the Council of Ministers as required by the Finance Secretary and the Chief Secretary.

163. The last few lines will indicate under what circumstance the letter of May 6, 1957, to which we shall presently refer, was written to Raja Bahadur. They are in these terms:

So it cannot be said that the terms and conditions have yet been finalised or laid down by Government nor can Ramgarh be asked to accept them now. There can be no question of acceptance of the draft terms and conditions by Ramgarh until Government have sanctioned them; after discussion a separate draft, which is at p. 17/C was drawn up and approved by the Revenue Minister. Revenue Minister agreed that the draft should be as at p. 17/C since the compromise has not taken place. Please issue the draft and add the words ''without prejudice.

164. The Land Reforms Commissioner, Sri S.C. Mukherjee, wrote a letter on May 6, 1957, addressed to Raja Bahadur of Ramgarh, The letter was marked ''without prejudice''. The text of the letter is quoted below:

D.O. No. 3033

L.R. Patna The 6th May, 1957

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Dear Sir,

I would write to acknowledge receipt of your letter dated 28th April, 1957, conveying certain terms and conditions on the basis of which you are prepared to compromise all litigations pending between the State of Bihar and yourself as well as several others deriving title through you. The terms and conditions have been discussed with you and are under Government''s consideration. You are already aware of the progress of the negotiations and I am making all efforts to obtain Government''s orders as quickly as possible. A further communication on the subject will follow as soon as I am in a position to send it.

Yours faithfully,

S.C. Mukherjee.

165. P.W. 13 in his examination-in-chief said as follows regarding this letter:

Raja and myself and Mr. S.K. Choudhury, Advocate, went back to Patna on 5th May, 1957, and received this letter from S.C. Mukherjee at Patna on 6th May, 1957 (Ex. 2), along with a copy of the agreement [Ex. 2(A)]. S.C. Mukherjee was Secretary to the Revenue Department besides being the Land Reforms Commissioner. I saw Mr. K. B. Sahay on 6th May, 1957.

166. A copy of this letter was proved by P.W. 13 and it was marked as Ex. 2. According to P.W. 13, a copy of the agreement set out in para. 7 of the plaint was sent along with the letter. The copy of the agreement was also proved by P.W. 13 and it was marked as Ex. 2(a). The letter itself does not say that the copy of any agreement is being enclosed to the letter. There is no mention of any enclosure in the body of the letter. In the face of the second note of the Land Reforms Commissioner dated May 5, 1957, it is difficult to believe that Ex. 2(a) was sent along with the letter. Attention may be drawn to the following passage in the said note:

So it cannot be said that the terms and conditions have yet been finalised.... There can be no question of acceptance of the draft terms and conditions by Ramgarh until Government have sanctioned them.

167. The statement of P.W. 13 in his examination-in-chief that K. B. Sahay told him that it was in compliance with the direction given to the Land Reforms Commissioner, or that the words ''without prejudice'' was a formal matter as the compromise agreement was sent to Raja, or that it was sent under instructions of the Revenue Minister is nothing but hearsay. We are not prepared to attach any importance to this part of his evidence.

168. However much we may stretch the language of this letter, Ex. 2, it cannot be regarded as a letter proposing or offering the terms of compromise for the acceptance of Raja Bahadur.

169. There is some discrepancy between the. deposition of P.W. 13 and the written statement of Raja Bahadur as to when and how Ex. 2 was received by

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Raja Bahadur. P.W. 13 says that Raja Bahadur, himself and Mr. S.K. Choudhury, Advocate, received this letter from S.C. Mukherjee at Patna on-May 6, 1957, along with a copy of the agreement, Ex. 2(a). In para. 5(f) of the written statement of Raja Bahadur it has been stated that on the morning of Tuesday, May 7, 1957, Raja Bahadur received from the Land Reforms Commissioner through a messenger a packet containing Ex. 2 and also the final terms of agreement offered by the State of Bihar for compromising the suit. There is no mention of any messenger in the deposition of P.W. 13.

170. The case for the Plaintiff is that on July 16, 1957, Raja Bahadur acting on behalf of all the parties communicated to the Government his unqualified acceptance of the terms. In other words, the Plaintiff intends to say that the contract of compromise was concluded on the acceptance of the terms by Raja Bahadur by his letter of July 16, 1957. This letter has been marked as Ex. 2(a). Let us see whether this letter may be regarded as a letter of acceptance. The letter begins by saying:

I beg to acknowledge your D.O. No. 3033 L.R. dated the 6th May, 1957, sent per messenger to me at Patna and I am also in receipt of the terms and conditions agreed to between me and the State of Bihar. On my part I feel happy that the negotiations have come to a successful conclusion.

This passage indicates that the terms and conditions had already been agreed to between Raja Bahadur and the State of Bihar and that there was no question of further acceptance.

171. In para. 2 of the said letter Raja Bahadur expressed his gratitude to the Advocate-General, late lamented Finance Minister Sri Anugraha Narain Sinha, K. B. Sahay and the Land Reforms Commissioner for having helped the progress of the negotiations and bringing them to a successful end.

172. Paragraph 3 of the letter may lend some support to the theory that the terms offered by the State of Bihar were accepted by Raja Bahadur by this letter. Paragraph 3 runs thus:

I do hereby confirm all the terms of the compromise entered into between me and the Government after so much of discussion between the representatives of both sides. The compromise now is a concluded contract though I feel that personally I am loser in the bargain. My greatest gain in the compromise has however been peace with the State of Bihar and I deeply appreciate it.

Reading between the lines this paragraph too cannot be construed as an acceptance of the terms offered by the Government. Raja Bahadur was merely confirming the terms of the compromise already entered into between him and the Government. What he meant to say was that the terms sent along with the letter of the Land Reforms Commissioner dated May 6, 1957, were indeed the terms on which he had entered into compromise with the State of Bihar. It is not clear what Raja Bahadur meant to say by these words, viz. ''the compromise now

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is a concluded contract''. He might have meant: ''now that I have confirmed all the terms, the compromise shall henceforth be regarded as a concluded contract''. Or, he might have meant ''the compromise is already a concluded contract''. In the context of the earlier portion of the letter the second interpretation appears to be more appropriate.

173. In the next paragraph he stated that he had been duly authorised by all his transferees to bring about this compromise and that he was conducting the negotiations on behalf of them.

174. In the last paragraph of the letter Raja Bahadur tried to explain the delay. He wrote as follows:

The delay in replying to your letter is due to my having to secure final confirmation by the transferees concerned to terms and conditions of the agreement of compromise through Sri B. P. Singh. He, it may be noted, tried to explain the delay in replying to the letter of the Land Reforms Commissioner and not the delay in accepting the terms offered. He all along used the expression ''confirm'' instead of ''accept''. The last few words, viz. ''the agreement of compromise through Sri B. P. Singh'' are significant. They suggest that there was already an agreement brought about by Sri B. P. Singh and that Raja Bahadur merely secured final confirmation by the transferees of the terms and conditions of an existing agreement.

175. The above discussions make it clear that the letter of July 16, 1957, Ex. 4(a), cannot be regarded as a letter of acceptance. By this letter Raja Bahadur merely certified that Ex. 1(a) was the true copy of the agreement which was previously concluded with the State of Bihar through Sri B. P. Singh.

176. But as indicated above this question, namely, whether Raja Bahadur by his letter of July 16, 1957, accepted the offers of compromise tendered by the State of Bihar, really does not arise on the facts and in the circumstances of the case. We have given our reasons why it is difficult to believe that Ex. 2(a) was sent along with the letter dated May 6, 1957, written by the Land Reforms Commissioner to Raja Bahadur marked ''without prejudice''.

177. Another fact deserves mention. Raja Bahadur''s letter of July 16, 1957, was replied to by the Land Reforms Commissioner on July 30, 1957. Raja Bahadur''s letter of July 16, 1957, appears to have been received by the Land Reforms Commissioner on July 27, 1957. The learned Advocate-General of U.P. says that it is difficult to explain the delay except on the theory that Raja Bahadur deliberately ante-dated his letter. July 29, 1957, was the date fixed for the hearing of the Hazaribagh suits. The suggestion of the learned Advocate-General is that this letter must have been written on July 27, 1957, or a day or two earlier setting up a false case of compromise so that the Hazaribagh suits might not be heard on the date fixed. He referred to the order-sheet, Ex. B in T.S. No. 60/70 of 1948 of the Court of Sub-Judge in support of the theory of the letter being ante dated with a purpose. Kumar Basant Narain Singh is the Plaintiff of

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that suit. He is the brother of Raja -Bahadur. He is the Plaintiff in all the 246 suits relating to the Forest Act. He is the Defendant No. 39 in the present suit. In his written statement he has stated that he duly authorised Raja Bahadur to negotiate a compromise with the State of Bihar on his behalf. On May 27, 1957, he filed a petition for time in the Hazaribagh Court on the ground that the documents necessary to be filed in the case had not been collected. On June 25, 1957, he filed a petition for time on the ground of absence of witnesses and documents Even in July 1957 he deposited witness expense. July 22, 1957, was fixed for the hearing of the suit and it was on that date that he, Basant Narain Singh, for the first time filed a petition for time on the ground that a compromise had been arrived at covering most of the suits including the suit of the Plaintiff.

178. It is contended by the learned Advocate-General of U.P. that if the offer of the State of Bihar was accepted by Raja Bahadur by his letter of July 16, 1957, Basant Narain Singh would not have deposited witness expense on July 17, 1957. He further submits that the very fact that Basant Narain Singh filed a petition for time on the ground of compromise for the first time on July 22, 1957, clearly shows that the idea of sending a letter of acceptance could not have been conceived by Raja Bahadur before that date. In other words, the alleged letter of acceptance, Ex. 4(a), must have been written between July 22, 1957 and July 29, 1957. If the letter was in fact, written on July 16, 1957, Basant Narain would have known it at once and he would not have deposited witness expense on July 17, 1957.

179. We do not intend to elaborate the argument on behalf of the State of Bihar on this point any further, because it is not at all necessary for us to decide whether Ex. 4(a), letter of Raja Bahadur, was ante-dated or not. We have found that the terms and conditions on the line of Ex. 2(a) were not offered by the State of Bihar along with the letter of the Land Reforms Commissioner of May 6, 1957 (Ex. 2), and hence the question of acceptance of those terms does not arise. We have further held that Ex. 4(a) cannot be construed as a letter of acceptance. Hence, it matters little whether it is antedated or not. We, therefore, refrain from passing any opinion as to the exact date of Ex. 4(a), the letter of Raja Bahadur, purporting to have been written on July 16, 1957.

180. Raja Bahadur in para. 5(f) of his written statement has stated that he obtained a copy of the terms and conditions contained in Ex. 2(a) from the Secretary to the Finance Minister. The relevant portion of the said paragraph runs thus:

This Defendant on the morning of the 5th May, 1957, received a letter fro*m the Secretary to the Finance Minister Sri A. N. Sinha, deceased, through a messenger enclosing the terms of the compromise, addressed to Thakur B. P. Sinha.

181. The letter mentioned in para. 5(f) of Raja Bahadur''s written statement has been marked as Ex. 1. This letter appears to have been written by Narsingha

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Das, Private Secretary to the Minister of Land, Agriculture and Excise. The letter is dated May 4, 1957, reference No. being D.O. No. 452. It appears to have been written in the private letter-head of Narsingha Das. In the written statement he has been described as the Secretary to the Finance Minister, but in the letter-head his designation is Private Secretary to the Minister of Land and Agriculture. The letter was addressed to Thakur Bateswar Prasad Singh. The text of the letter is as follows:

Dear Sir,

In compliance with your request to the Minister of Finance for a copy of the Compromise Agreement between Shri Raja Bahadur Kamakshya Narayan Singh and Government of Bihar in respect of various suits, I am directed by the Finance Minister to enclose a copy of the terms and conditions of the aforesaid Compromise Agreement as finally approved by the Finance Minister.

Yours faithfully,

Narsingha Das

182. There is nothing in this letter to indicate that it was sent to Bateswar by way of an offer. It was sent to Bateswar in compliance with his request to the Minister of Finance for a copy of the compromise agreement. It was sent at the ''desire'' and not on the ''direction'' of the Finance Minister. Hence, it cannot be regarded as an official communication. In any event, it did not reach Bateswar through proper official channel. In the plaint no mention has been made of this letter of Narsingha Das. This letter, therefore, has very little to do with the case made on in the plaint. Accordingly, no importance can be attached to this letter or its enclosure.

183. From the above discussion it is quite clear that the Plaintiff has not been able to establish that there was any concluded agreement of compromise between the State of Bihar and the Raja Bahadur acting on behalf of the Plaintiff and the other Defendants in this suit, who claim to be transferees from Raja Bahadur.

184. According to the Plaintiff, the terms of compromise communicated to Raja Bahadur as per order of Sri K. B. Sahay, Revenue Minister, dated May 5, 1957, are the terms set out in para. 7 of the plaint. But the terms and conditions contained in the draft of the agreement in the office file do not exactly tally with the terms and conditions set out in para. 7 of the plaint. So far as Clause 8 is concerned, there is a material discrepancy between Clause 8 as set out 1n the plaint and Ex. 2(a) and Clause 8 as set out in the official draft in the file. The last sentence of Clause 8 as set out in para.''7 of the plaint runs thus:

They further agree that the position of this compromise will be and will remain effective until the decision in the ultimate appeals.

The last two sentences in Clause 8 of the official draft are as follows:

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They further agree that the position of this compromise will be and remains effective whatever the decision on the date of vesting may be ultimately in the aforesaid appeals in case the date of vesting is held by the Courts to be 26th January, 1955, the parties to these compromise hereby agree that they or any of them shall not claim any refund from the State of Bihar on account of the latter having realised rents, royalties and other dues from tenants and lessees etc. for the period from the 3rd November, 1951 to the 26th January 1955.

185. It may be recalled in this connection that the Legal Remembrance in his note of May 4, 1957, insisted that there should be a term in the compromise that even if ultimately the Courts held that the vesting of the Ramgarh estate in Government was January 26, 1955, Raja Bahadur and his transferees would waive all claim to refund of profits already realised by the State between November 3, 1951 and January 26, 1955. He pointed out that in the absence of such a term Government would have to refund a very large amount of money which Government had already realised from the raiyals and lessees of the Ramgarh estate when it had taken possession thereof on November 3, 1951, after notification in the State Gazette that the Ramgarh estate had vested in Government on that date. Even Mahabir Prasad, the Advocate-General, in his note of April 26, 1957, advised that the appeal preferred by the State of Bihar against the decision of the Subordinate Judge, Hazaribagh, that the estate of Ramgarh vested on January 26, 1955, and not on November 3, 1951, might be withdrawn provided it was agreed that no claim for damages or refund of any profits derived by the State during this period was made. In that note of May 4, 1957, the Legal Remembrance insisted on another point, viz. that the State would be entitled to recover the arrears not realised between November 3, 1951 and January 26, 1955. A term relating to the refund and recovery of arrears was drafted by Sri Bajrang Sahay and was sent to Raja Bahadur at about 9-30 p.m. on May 3, 1957. From the note of the Legal Remembrance, it appears that Raja Bahadur agreed that there should be no refund by the State but made no commitment as to arrears. It is all but natural that the official draft would contain a term relieving the State from the liability to refund rents, royalties and other dues realised front tenants and lessees etc., between November 3, 1951 and January 26, 1955. It is highly improbable that the State of Bihar would make an offer of certain terms and conditions not containing any clause regarding refund. This fact also militates against the theory that the terms of compromise as set out in para. 7 of the plaint were offered by the State of Bihar for the acceptance of Raja Bahadur.

186. Certain other facts regarding the concluded agreement of compromise have been pointed out by the learned Advocate-General of U.P. The notice u/s 80 of the Code of Civil Procedure, dated September 15, 1958, was sent to the Secretary to the Government of Bihar and to the Deputy Commissioner, Hazaribagh. In para. 2 of the said notice it has been specifically stated that the State of Bihar entered into an agreement of compromise on July 16, 1957, with the Plaintiff in respect of suit No. 12 of 1954. In para. 7 of the said notice it has

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been stated that the compromise was a composite agreement entered into between Raja Bahadur with authorities from several parties as enumerated in the agreement on one side and the Land Reforms Commissioner representing the State of Bihar acting under the directions from the late Sri A. N. Sinha and Sri K. B. Sahay, Hon''ble Ministers of Finance and Revenue respectively. A. N. Sinha died on July 5, 1957, as stated by P.W. 13 and also in the written statement of Raja Bahadur. Sri K. B. Sahay ceased to be a Minister on and from May 6, 1957. In the notice it has not'' been stated that the terms of the compromise were offered by the State of Bihar on the basis of an order of Sri K. B. Sahay dated May 5, 1957. The learned Advocate-General of U.P. says that on the case made in the notice, namely, that the State of Bihar entered into an agreement on July 16, 1957, the State of Bihar could not have entered into the contract on that date under the directions of A. N. Sinha and K. B. Sahay. It is for this reason, says he, that in the plaint the story of offer on the basis of an order dated May 5, 1957, of Sri K. B. Sahay was subsequently introduced into the plaint. It cannot be denied that the version of the agreement in the notice is slightly different from its version in the plaint. If, however, the Plaintiff succeeded in establishing the agreement set up in the plaint, this discrepancy would not have mattered much. But as we have found that there was no concluded agreement of compromise as alleged in the plaint no useful purpose will be served in considering the effect of this discrepancy between the notice and the plaint.

187. According to the Advocate-General of U.P., the version of the agreement given by the Plaintiff is not the same as given by Raja Bahadur in his written, statement. As stated above, Raja Bahadur has not said in his written statement that the terms of the agreement were offered by the State of Bihar as per order dated May 5, 1957, of Sri K. B. Sahay, the Minister of Land Revenue. In the written statement of Raja Bahadur there is a reference to the D.O. letter of the Land Reforms Commissioner dated May 6, 1957. But, as stated above, that D.O. letter, cannot be construed as a letter offering the terms and conditions of an agreement of compromise. According to the written statement of Raja Bahadur, offer appears to have been made by the State of Bihar by simply sending the terms and conditions to Raja Bahadur. There is a lot of difference between an offer by simply sending the terms and conditions and an offer as per order passed by the Revenue Minister. Therefore, the learned Advocate-General of U.P. is right in saying that the version of the agreement given by the Plaintiff is not the same as the version given by Raja Bahadur in his written statement. But as we have found that there was no agreement of compromise between the parties, it is not necessary to discuss the effect of this discrepancy any further.

188. The Advocate-General of U.P. pointed out that P.W. 13, Sri B. P. Singh, gave two versions of the agreement not to be found either in the plaint or in the written statement of Raja Bahadur. At first, P.W. 13 said that the draft of the agreement for compromise was made by Bajrang Sahay that it was discussed at Ramgarh House that the Land Reforms Commissioner, Sri Bajrang Sahay, Raja Bahadur the witness himself and one Sri Badri Narayan participated in the

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discussion and that the terms of compromise were finalised after prolonged discussions on May 1, 1957. In other words, he meant to say that the agreement was concluded on May 1, 1957. He next said that he received Ex. 1, a letter signed by Narsingha Das, Secretary to the Finance Minister, dated May 4, 1957, with Ex. 1(a) the agreement set out in para. 7 of the plaint and. that on receipt of that letter on May 4, 1957, the contract became complete. In other "words, he meant to say that the contract became complete on May 4, 1957. Thus P.W. 13 Gaye two versions of the agreement. According to one version the agreement became complete on May 1, 1957, and according to the other version the agreement became complete on May 4, 1957. But both the versions are different from the version given in the plaint.

189. The version of the agreement given by the learned Judge in his judgment is different from all the versions given above. The relevant portion of the judgment runs thus:

The Minister (Land Revenue) in his note ordered ''as proposed'' thereby approving all the terms of the compromise which were already accepted by the parties acting through the Raja of Ramgarh and P.W. 13. He ordered that ''F.D. may, however, be approached for approval before orders are issued''. The matter, thereafter, went to the Finance Secretary who put up the matter before the Minister of Finance, Dr. A. N. Sinha, with his comments. The Finance Minister also agreed with the terms of compromise.... P.W. 13 stated that after the concurrence of the Finance Minister a copy of the terms of agreement finally approved and accepted by both the parties was sent to him by the Secretary to the Finance Minister. The above facts and circum stances would leave no room for doubt that the agreement had been reached and terms settled for the compromise.

190. The Revenue. Minister ordered ''as proposed'' in his note dated May 3, 1957. The Finance Minister stated in his note dated May 4, 1957, that he felt that ''we ought to accept the compromise as contemplated in the draft prepared by the Revenue Department''. By ''we'' he certainly meant the State of Bihar. The trial Court has not stated clearly whether the agreement was reached on the passing of the order ''as proposed'' by the Revenue Minister on May 3, 1957, or on the suggestion given by the Finance Minister on May 4, 1957, that the compromise should be accepted. It seems, according to the learned Judge, the agreement was reached either on May 3, 1957 or on May 4, 1957. But either of the versions of the learned Judge is entirely different from the version given in the plaint.

191. Again in the plaint it has been stated that the Plaintiff and the other Defendants were acting through Raja Bahadur, but the learned Judge has said that the Plaintiffs and other Defendants were acting through Raja Bahadur and P.W. 13.

192. It goes without saying that except the version given in the plaint all other

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versions should be ignored altogether. The very fact that the Plaintiff at the trial instead of proving the contract set up in the plaint tried to prove some other contract shows that the Plaintiff has no case.

193. P.W. 13 has stated that one Badri Narayan, a businessman and a friend of Sri K. B. Sahay, Minister of Revenue, took part in the discussion over the agreement of compromise as a representative of Sri K. B, Sahay. The learned Advocate-General of U.P. criticized this part of the evidence of P.W. 13 by saying that it was difficult to believe that a businessman like Badri Narayan took part in the discussion of such an important matter as the compromise of 279 suits as a representative of the Revenue Minister and that the terms of compromise were fanalised after prolonged discussion inter alia with Badri Narayan. If Badri Narayan in fact took part in the discussion, then the discussion must have been informal in nature and the terms of compromise could not have been finalised as a result of such informal discussion. The learned Advocate-General contended that either P.W. 13 was not speaking the truth or that no terms of compromise were finalised at the discussion at Ramgarh House on May 1, 1957. In our opinion, there is much force in this contention, but it is not necessary for us to decide this point as the agreement set up by P.W. 13 is not the agreement set up in the plaint.

194. The conclusion of the learned Judge that there was a final agreement between the State of Bihar and the Plaintiff and other Defendants is primarily based on the evidence of P.W. 13. The following extract from his judgment indicates why he attached so much importance to his evidence:

P.W. 13 is...a very respectable and responsible gentleman. He is a sitting member of the Lok Sabha.... There is no reason to disbelieve this witness who is a respectable person and who deposed in a straightforward manner. It is worthwhile to observe that the evidence adduced by this witness P.W. 13 on the fact in issue as to whether there was a final agreement between the State of Bihar and the Plaintiffs and other Defendants for the compromise of the suits in question is practically ex parte. The State of Bihar has not ventured to examine any witness to challenge or contradict the averment of P.W. 13 on oath. The evidence indicates that the Advocate for the State of Bihar, Mr. Bajrang Sahay, who was admittedly in charge of all Ramgarh cases for the State, played a very important role in the matter of reaching the agreement, but he also did not take any oath to deny the allegation of the Plaintiff. In this view of the ex parte evidence on the part of the Plaintiffs it must be held that there was a final agreement between the State of Bihar and the Plaintiffs and other Defendants for the compromise of the suits mentioned in the schedule to the plaint in the terms recorded in the memo random [Exs. 1(a) and 2(a) as also Ex. A].

195. It is difficult to understand what the learned Judge means by saying that the evidence of P.W. 13 is practically ex parte. A number of documents were filed by the State of Bihar and they have been marked as Exs. A, B, C, D and D(l)-(12). Documentary evidence is no less important than oral evidence. On the facts

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and in the circumstances of the present case documentary evidence is much more important than oral evidence. Both sides have relied on the nothings on the Government file. [Ex. A and Exs. 1 series, 2 series, 3 series and 4 series.] Whether there was any final contract of compromise is mostly to be gathered from documentary evidence produced in this case by both the parties.

196. It should further be remembered that the case of the State of Bihar is that no final agreement was arrived at between the State of Bihar and the Plaintiffs, and the other Defendants though the proposals made by Raja Bahadur in his letter dated April 28, 1957, were under Government''s consideration. The State of Bihar cannot be blamed for not trying to prove the negative by oral evidence. Onus heavily lay upon the Plaintiff. The evidence of P.W. 13 cannot be treated as sacrosanct simply because he had pledged his oath. We have shown above that he led evidence to prove something which was not pleaded by the Plaintiff. It was his evidence, as pointed out by the learned Judge, that the P.W. 13 represented the parties to the suits mentioned in schedule to the plaint along with the Raja of Ramgarh. The plaint does not say that P.W. 13, B. P. Singh, represented the Plaintiff and the other Defendants along with Raja Bahadur. Even Raja Bahadur in his written statement has not said that P.W. 13 represented the Plaintiff and the other Defendants along with him. He has simply said that Thakur B. J\\ Singh (P.W. 13) was in repeated contact with the several Ministers and officers and that he was doing the liaison work between the Defendant, namely, Raja Bahadur and the officers and Ministers of the State of Bihar.

197. P.W. 13 stated in his, examination-in-chief that the draft of the agreement for compromise made by Sri Bajrang Sahay was discussed at Ramgarh House and that the terms of compromise were finalised after prolonged discussion. It was elicited in Cross-examination that the terms were finalised at the Ramgarh House on May 1, 1957. He mentioned the names of persons who took part in the discussion in his examination-in-chief. The name of Kumar Basant Narain Singh was not mentioned as one of the persons who joined the discussion. In his examination-in-chief he did not say that discussion took place for more than one day. But in his Cross-examination he stated that Kumar Basant. Narain Singh at times participated in talks. No final decision as to the formation of the disputed contract can be taken on the evidence of such a witness. He was not sure whether the contract was finalised on May 1, 1957 or May 4, 1957. He admitted in his Cross-examination that he got copies of the note of the file informally. The draft of the agreement considered by the Ministers and the officers of the State formed part of the file. It was not at all difficult for him to get informally a copy of the draft of the agreement without the subsequent amendments. He stated in his Cross-examination that the terms of the agreement were sent to him formally. We have shown above that Ex. 1 (a), alleged to be a true copy of the terms of the disputed agreement, was sent to him by Narsingha Das along with a letter in his private letter-head. Had it been sent formally, it would have been enclosed to a formal official communication. Again, it is not the Plaintiff''s case that the terms and conditions were offered by the Finance Minister through

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Narsingha Das.

198. The Plaintiff No. 1 submitted on June 8, 1962, a long list of witnesses along with a petition for service of summonses on them. In the petition it was stated that the persons mentioned in the list were very material witnesses for Plaintiff No. 1 and that unless they were cited as witnesses it would be difficult for the Plaintiff No. 1 to prove its case.

199. The list contained inter alia the following names: 1. Hon''ble Sri Binodananda Jha, Chief Minister 3. Sri Mahabir Prasad, Advocate-General 4. Sri Lai Narain Sinha, Government Advocate 5. Sri Bajrang Sahay, Advocate 6. Sri C. K Raman, I.C.S., Land Reforms Commissioner and Chief Secretary 7. Sri Shib Chandra Prasad, Legal Remembrance 8. Sri Mohan Choudhury, Secretary, Revenue Department 9. Sri D. N. Mathur, Additional Revenue Secretary 25. Sri Krishna Ballav Sahay, Ex-Minister, Revenue 26. Sri Bateswar Prasad Singh 31. Raja Bahadur Kamakshya Narain Singh.

200. A verified petition on behalf of the State of Bihar was filed on June 16, 1962. It was stated in the said petition that Bajrang Sahay was not a material witness on the point of a concluded agreement for compromise. It was further stated that Lai Narain Sinha, engaged by the State for the conduct of the Alipore suit along with Bajrang Sahay, was never associated as an adviser to the State of Bihar at any stage of the negotiations for compromise. It was prayed that the Plaintiff''s prayer for examining Lai Narain Sinha and Bajrang Sahay might be rejected or in the alternative they might be examined by the Plaintiff before recording any other evidence in the case. Two letters, one written by Lai Narain Sinha and the other written by Bajjang Sahay, both addressed to Sri H. K. Chatterjee, were annexed to the petition filed by the State of Bihar. Sri Bajrang Sahay wrote in that letter that he had no personal knowledge as to whether there had been or had not been a concluded agreement of compromise and that he was never present at any conference at which any person on behalf of the Plaintiffs or Sri K. N. Singh or any party concerned in -Ramgarh litigation might have been present.

201. Order No. 215 dated June 16, 1962, shows that by consent the learned Judge passed an order appointing Sri Sushil Kumar Basu as Commissioner to take down the deposition of the witnesses of Patna and Gaya included in the list of witnesses. The learned Judge gave further direction to the Commissioner to record first of all the depositions of Sri Bajrang Sahay and Sri Lai Narain Sinha. By the said order No. 215 dated June 16, 1962, Sri Ajit Kumar Ganguli, Advocate, was appointed Commissioner to record the deposition of the witnesses residing at Hazaribagh and Ranchi.

202. Sri Sushil Kumar Basu stated in his report dated July 7, 1962, that he met as many as eight witnesses including Sri Lai Narain Sinha, Sri Bajrang Sahay, Sri Shib Chandra Prasad (Ex-Legal Remembrance), Sri Mahabir Prasad (Advocate-General) and Sri Mohan Choudhury (Ex-Additional Revenue Secretary) from June

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30, 1962 to July 3, 1962, but could riot examine them and record their depositions as no lawyer or any agent on behalf of the Plaintiffs was present at the time of contacting with those witnesses. He further mentioned in his report that Sri J.D. Singh, Law Agent on behalf of the Plaintiff, saw him on July 2, 1962 and July 4, 1962, and stated without filing any petition that the Plaintiffs could not participate in the Commission as their lawyer was ill.

203. Sri Umapada Banerjee was specially commissioned to take down the deposition of Sri K. B. Sahay. He went to Hazaribagh on July 7, 1962, for recording the deposition of Sri K. B. Sahay. The witness was present and the lawyer for the State of Bihar was also present. A clerk, said to be of the Plaintiff, came to the residence of the witness along with the Commissioner, but no lawyer appeared although the Commissioner waited for 45 minutes. The witness could not be examined. Later on the Plaintiff''s agent appeared with his lawyer and filed a petition for an adjournment on the ground stated therein.

204. Another application was filed before the Commissioner by the Plaintiff company on July 10, 1962, wherein the Plaintiff stated as follows:

Your Petitioner is advised and submits that without first examining the chief witness Raja Bahadur K. N. Singh, the Plaintiff company shall not run the risk of examination of other witnesses and that the necessity of examining the other witnesses will only be decided in the light of evidence of Raja Bahadur K. N. Singh, chief witness.

The Plaintiff company, therefore, prayed that the examination of the witnesses might be adjourned till after the examination of Raja Bahadur K. N. Singh and begged to be excused for not producing or calling Sri K. B. Sahay for examination before the Commissioner in terms of the Commission. This petition was disposed of by the learned Judge by his order No. 246 dated July 27, 1962. The learned Judge made the following remarks:

The prayer for the Plaintiff cannot be allowed. There is no reason why the examination of his witnesses should be deferred until after the examination of Raja K. N. Singh who is a Defendant. This seems to be an attempt to delay the hearing of the suit and should not be encouraged.

205. By the said order the learned Judge also rejected the prayer of the Defendant No. 1, the State of Bihar, for recalling the writ.

206. On November 12, 1962, the learned Judge heard the petition dated September 27, 1962, filed by the Plaintiff company praying for issue of the writ of commission to the High Commissioner for India in London for the examination for Raja Bahadur K. N. Singh as a witness. The petition was seriously opposed by the State of Bihar. The learned Judge rejected the petition with the following observations:

Several Commissions were issued in the meantime for examination of witnesses cited by him at different places and considerable time has been spent for the

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execution of these Commissions although most of the witnesses cited were not produced or examined by the Plaintiffs before the Commissioners.... It seems that this petition has been filed with object of further delaying the disposal of the suit.

207. From the report of Sri Ajit Kumar Ganguli, Pleader Commissioner, dated August 3, 1962, it appears that he took evidence of as many as four witnesses at Hazaribagh from July 30, 1962 to August 1, 1962.

208. Sri Sushil Kumar Basu, Commissioner, submitted another report on September 17, 1962. The following extract from his report is very significant:

The examination of this witness, Pandit Binodananda J ha, Chief Minister, Bihar, was fixed on 13th September, 1962, at 11 a.m. I had been to the Hon''ble Chief Minister''s residence and Mr. Bajrang Sahay was present but could not examine him...as no lawyer or any. agent on behalf of the Plaintiffs was present there.... The examination of the witness Sri Mahabir Prasad, Advocate-General...was fixed on 14th September, 1962, at 7-30 a.m.

...I had been to the residence of the said witness at 7-30 a.m.

Mr. Bajrang Sahay was present but I could not examine the said witness as no lawyer or any agent on behalf of the Plaintiffs was present there.... Even on 15th September, 1962, nobody approached me on behalf of the Plaintiffs. So I could not examine any other witness. Mr. Bajrang Sahay saw me on all these days but I could not examine him for the same reason.

209. The conduct of the Plaintiff in the matter of examining respectable witnesses, like the Chief Minister of Bihar, the Advocate-General, the Ex-Revenue Minister and others on Commission is not at all commendable. The Commissioner Sri Sushil Kumar Basu contacted Sri Bajrang Sahay, Sri M.P. Sinha, Revenue Minister, Sri Shib Chandra Prasad, Ex-Legal Remembrance, Sri C. K. Raman I.C.S., the Ex-Land Reforms Commissioner, Sri Mahabir Prasad,- Advocate-General, Sri Mohan Choudhury, Ex-Additional Revenue Secretary. But they could not be examined as no lawyer or any agent on behalf of the Plaintiffs was present. Similarly, Sri K. B. Sahay could not be examined by the Commissioner Sri Umapada Banerjee because the Plaintiff refused to co-operate. Sri K. B. Sahay was present, but the Plaintiff''s lawyer was absent though the lawyer on behalf of the State of Bihar was present. (Fide report of Sri Umapada Banerjee dated November 12, 1962.).

210. Without availing of the opportunity to examine the persons who, according to the Plaintiff, took prominent part in negotiating and concluding the disputed agreement of compromise, the Plaintiff examined in Court Sri Bateswar Prasad Singh on November 12, 13 and 14, 1962, to prove that the terms of the compromise were finalised at the Ramgarh House on May 1, 1957, after? prolonged discussion between Land Reforms Commissioner, Bajrang Sahay, Raja of Ramgarh, the witness himself, and Sri Badri Narain. No attempt was made to

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examine Badri Narain either on Commission or in Court. Can any importance be attached to the evidence of P.W. 13 after all that had happened before the two Commissioners ?

211. The learned Judge appears to have drawn an adverse inference against the State of Bihar as- Sri Bajrang Sahay who, according to him, being admittedly in charge of all Ramgarh cases for the State played a very important role in the matter of reaching the agreement, did not take any oath to deny the allegation of the Plaintiff*. By the words ''allegation of the Plaintiff'' the learned Judge evidently meant the allegation made by P.W. 13. In our opinion, the learned Judge was not justified in drawing such adverse inference.

212. Sri Bajrang Sahay was engaged by the State of Bihar to conduct the present suit on behalf of the State of Bihar. An objection was raised by the State of Bihar when the Plaintiff mentioned the name of Sri Bajrang Sahay as one of the witnesses to be examined on Commission. In the petition of objection it was clearly stated that Sri Bajrang Sahay was not a material witness on the point of a concluded agreement for compromise. Paragraph 5 of the said petition runs thus:

That the fact that there was a negotiation for compromise, that the terms had been suggested by Sri K.N. Singh and were under consideration of Government are not matters of dispute in this case. The only point of controversy is as to whether there was ultimately any concluded agreement and of this fact Sri Bajrang Sahay is not a witness.

The alternative prayer of the State of Bihar was that Sri Bajrang Sahay and Sri Lai Narain Sinha should be examined before other evidence was recorded. The Commissioner for the examination of Sri Bajrang Sahay and others was, however, appointed by. consent.

213. On the facts stated above Sri Bajrang Sahay should have been examined by the Plaintiff either on Commission or in Court. Everything is to be presumed against the Plaintiff for not calling Sri "Bajrang Sahay who was within his reach and who, according to the Plaintiff, was acquainted with the facts of the case.

214. Apart from Sri Bajrang Sahay, the Plaintiff also refrained from examining other respectable witnesses when they appeared. It can reasonably be inferred from this conduct of the Plaintiff that those witnesses on examination and Cross-examination would have deposed to a state of facts set up in the written statements of the State of Bihar.

215. It may further be pointed out that Sri Bateswar Prasad Singh, P.W. 13, was a highly interested witness. The materials on record disclose that he was connected with the Ramgarh estate. He was appointed Assistant Manager in 1941 and was made Manager in 1942. He was promoted to the rank of Chief Manager in 1946. He was working for the estate even when he was examined as a witness. He holds a hereditary tenure in respect of 20 villages in Ramgarh estate and he is to serve the Ramgarh Raj family. Sri Praja Palak Nath Singh

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executed a deed of sale in his favour of a portion of Serampore estate. The learned? Judge was not justified in accepting the story of a concluded contract of compromise primarily on the evidence of such a highly interested witness.

216. The only conclusion that follows from the above discussion is that the Plaintiffs Respondents have failed to establish that there was any concluded contract of compromise either on July 16, 1957, or at any other time between the State of Bihar on the one hand and the Plaintiffs and the other Defendants. This is sufficient for the purpose of disposing of? this appeal by dismissing the suit out of which the present appeal arises.

217. Various other points have been argued and some of them at great length at the hearing. We should like to deal with those points as briefly as possible.

218. It was argued on behalf of the State of Bihar that there was nothing on record to show that Raja Bahadur carried on the negotiation for compromise as the representative of the Plaintiffs and the other Defendants. In para. 9 of the plaint it has been stated that the compromise was a composite agreement entered into between Raja Bahadur with authorities from several parties as enumerated in the agreement on one side and the Land Reforms Commissioner with due advice from the Advocate-General and others. In para. 10 of the written statement the-State of Bihar has denied that Raja Bahadur had any negotiations on behalf of any parties to the suit. In para. 17 of the written statement the State of Bihar has asserted that the Plaintiff was never a party to the negotiations carried on by Raja Bahadur who had no authority from the Plaintiff to carry on such negotiations. In para. 27 of the written statement it has been stated that there was never any approach made for a compromise by or on behalf of the Plaintiff or any of the so-called transferees of Raja Bahadur.

219. The following two issues were suggested by the State of Bihar on May 2, 1959:

(a) Was the Plaintiff a party to the alleged compromise ?

(b) Had Raja Bahadur K. N. Singh any authority from the Plaintiff to carry on such negotiations ?

220. As stated above, the issues were recast by the learned Subordinate Judge on August 17, 1960, and the above two issues proposed by the State of Bihar were not included. Obviously the learned Subordinate Judge thought that issue No. 2 of the issues as finally recast was comprehensive enough to include these two issues proposed by the State of Bihar.

221. It goes without saying that the oral evidence in support of the plaint case that Raja Bahadur carried on negotiation for compromise with the State of Bihar on behalf of the Plaintiff and the other Defendants is very meagre. It is rather strange that though the Defendants Nos. 2 to 9, 18 to 31, 39 and 40 stated in their written statements about their authorising Raja Bahadur to act on their behalf in the matter of compromise did not lead any oral evidence to that effect,

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nor did they file any documents showing such authority.

222. Contemporaneous notes in Government file do not show that Raja Bahadur acted on behalf of the Plaintiffs and other Defendants in the matter of compromise. The letter dated April 28, 1957, written by Raja Bahadur to the Land Reforms Commissioner, Ex. 4, shows that Raja Bahadur had no authority from his transferees. In para. 5(iii) of that letter Raja Bahadur wrote as follows:

I further state that I shall exert my good offices in persuading Plaintiffs of the 26 Batch Title Suits (some of whom are my relations and transferees) to withdraw all these suits in view of the fact that State of Bihar is recognizing all the transfers and settlements and they are being saved the trouble of prolonged litigation.

223. Sri K. B. Sahay, Minister, Land Revenue, in his note to the Advocate-General dated April 16, 1957, stated that Sri Bateswar Singh, a representative of Sri Kamakshya Narain Singh, came to see him in the matter of compromise. This note says nothing about the representative character of Raja Bahadur. In the note of the Legal Remembrance dated May 4, 1957, to the Land Reforms Commissioner the Legal Remembrance mentioned Bateswar as the representative of Raja Bahadur. Bateswar as the representative of Raja Bahadur agreed to the proposal that arrears would be collected by the State. It is Bateswar who saw Sri K. B. Sahay and the Legal Remembrance. It has not been stated in the written statements of Raja Bahadur or Rajkumar Basant Narain that Bateswar was the representative of the transferees of Raja Bahadur including the Plaintiff. The position taken up by the State of Bihar was that all the transfers made by Raja Bahadur were bogus in nature that no title passed to the transferees and that Raja Bahadur continued to be the owner of the properties covered by those transfers. The Plaintiff company, however, asserted that the transfers in its favour were real and that the rayati interest in the transferred lands vested in it. Therefore, onus heavily lies on the Plaintiff to prove that the Plaintiff was a party to the disputed agreement.

224. If Raja Bahadur carried on negotiations as the representative of the Plaintiffs and the other Defendants, the contemporaneous notes in the office file would have mentioned that fact. These notes rather go to show that Raja Bahadur mooted the idea of a compromise and moved in the matter in his individual capacity, the documentary evidence V. far out-weighing the feeble attempt made by the Plaintiffs and only a few among the other Defendants by oral evidence to establish the representative character of'' Raja Bahadur. There is no doubt that Raja Bahadur started negotiations for compromise not only for his own benefit but also for the benefit of his transferees. If the negotiation terminated in a concluded contract between Raja Bahadur and the State of Bihar, then the question might arise whether the Plaintiff and the other Defendants could claim any benefit under that contract even though they were not a party to that contract. Ordinarily, a contract cannot be enforced by a person who is not a party to it. But where a trust has been created by a contract, a cestui que trust

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can enforce the rights which the trust so created has given. But in view of our finding that there was no concluded contract of compromise between the State of Bihar and Raja Bahadur it is not necessary for us to-decide the hypothetical question whether the Plaintiff and the other Defendants could have enforced the contract as beneficiaries under a trust. We are, however, satisfied that there was no concluded con-tract nor did Raja Bahadur act as the representative of the Plaintiffs and other Defendants in the matter of negotiation for a compromise.

225. The learned Advocate-General of U.P. tried to show that the offer alleged to have been made by the two letters, offre by Narsingha Das and the other by the Land Reforms Commissioner, accompanied by the terms of compromise, could not be regarded as an effective offer on behalf of the State of Bihar and that, therefore, its acceptance by Raja Bahadur could not result in a concluded contract of compromise. In para. 7 of the plaint it has been stated that the terms of compromise were finally proposed by an order dated May 5, 1957, of Sri K. B. Sahay, the then Minister in charge of Land Revenue and that Raja Bahadur accepted the terms in toto. This order, as shown above, is nothing but a suggestion by Sri K-B. Sahay in his note dated May, 5, 1957, to send a copy of the draft agreement to Raja Bahadur. This, says the learned Advocate-General, cannot be regarded as the order of the State of Bihar. He relies upon the following observations of the Supreme Court in Bachhittar Singh Vs. The State of Punjab, in support of his argument.

The business of a State is a complicated one and has necessarily to be conducted through the agency of a large number of officials and authorities. The constitution, therefore, requires and so did the Rules of Business framed by the Rajpramukh of Reps. provide that the action must be taken by the authority concerned in the name of the Rajpramukh. It is not till this formality is observed that the action can be regarded as that of the State.... The Minister is no more than an adviser and the Governor is to act with the aid and advice of his Council of Ministers. Therefore, until such advice is accepted by the Governor...a particular matter does not become the action of the State until the advice of. the Council of Ministers is accepted by the Head of the State.

We fully agree with the learned Advocate-General that the suggestion of Sri K. B. Sahay in his note dated May 5, 1957, cannot be regarded as an order of the State of Bihar.

226. According to P.W. 13, Bateswar Singh, the draft agreement of compromise alleged to have been made by Bajrang Sahay was discussed at the Ramgarh House on May 1, 1957. The Land Reforms Commissioner, Bajrang Sahay, Bateswar Singh and one Badri Narain, alleged to be a friend and representative of Sri K. B. Sahay, took part in the discussion. So, according to this evidence, No. Minister of State was present at the discussion in the Ramgarh House where, according to P.W. 13, the terms of compromise were finalised after prolonged discussion. In para. 9 of the plaint it has been stated that the agreement took place between Raja Bahadur with authorities from several parties mentioned in

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the agreement and the Land Reforms Commissioner acting with, due advice from the Advocate-General, the Legal Remembrance and Bajrang Sahay. The Plaintiff has not mentioned the name of any Minister in the said paragraph. According to the Plaintiff, the State of Bihar is estopped from denying the authority of its Ministers and officers for offering the terms of compromise. (Vide para. 14A, plaint.)

227. The notice u/s 80, Code of Civil Procedure, was served on the State of Bihar on September 15, 1958. Paragraph 7 of that notice is nothing but para. 9 of the plaint with slight variation. This notice says that the agreement took place between Raja Bahadur with authorities from parties mentioned in the agreement on the one hand and the Land Reforms Commissioner representing the State of Bihar acting under the directions from the late Sri A. N. Sinha and Sri K. B. Sahay, Hon''ble Ministers of Finance and Revenue respectively, and with due advice from the Advocate-General of Bihar and the Legal Remembrance on the other, aided by Sri Bajrang Sahay.

228. The version of Raja Bahadur in para 2(n) of his written statement is that he agreed to have talks with the Ministry and particularly with the Revenue Minister Sri K. B. Sahay and the Finance Minister A. N. Sinha, for a compromise of the various suits between the State and Raja Bahadur and his assignees lessees and grantees. He has not mentioned the name of the Land Reforms Commissioner or the Advocate-General or Bajrang Sahay. According to Basant Narain Singh (vide his written statement, para. 7) Raja Bahadur contacted not only the two Ministers Sri A. N. Sinha and Sri K. B. Sahay but also the Land Reforms Commissioner, the Legal Remembrance and Bajrang Sahay. He, however, has not mentioned the name of Advocate-General.

229. The learned Advocate-General says that, even according to the pleadings of the Plaintiff and the pro forma Defendants and on the evidence of P.W. 13, Raja Bahadur merely contacted some of the Ministers and officers of the State. None of them, he asserts, were competent to make any offer of compromise on behalf of the State of Bihar. Such offer could be made only by an official communication in writing in the name of the Governor. He says that there is no document on record showing that the State of Bihar made offer of any kind to Raja Bahadur in writing and that an oral offer cannot be regarded as an offer by the State of Bihar. It is not necessary to dilate upon this point any further, because we have found as a fact that MO offer was made to Raja Bahadur by the State of Bihar. In view of this finding it is needless to enquire whether the Ministers or officers of the State were competent to make any offer without observing the formality enjoined by the Rules of Business.

230. It was next argued by the learned Advocate-General that the Revenue Minister and the Finance Minister were not competent to finalize the compromise without the consent of the Council of Ministers. According to him, the compromise of a suit appertains to the executive action of the Government of a State within the meaning of Article 166(1) of the Constitution. Sri K. B. Sahay,

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Revenue Minister,...in his note dated April 30, 1957, said:

The question of obtaining the sanction of the Council of Ministers does not, in my opinion, arise because these suits were not instituted by the order of the Council of Ministers. They were instituted on the advice of the Law Officers of the State. The learned Advocate-General points out that all the suits except two were instituted no by the State of Bihar but by the Plaintiffs and the pro forma Defendants. He contends that the compromise of a suit is entirely different from the institution of a suit. Before compromising a suit a decision has to be taken as to the respective rights of the parties, when the State enters into a compromise, it abandons certain rights and acquires certain other rights in return. The pros and cons are to be carefully considered and a decision is to be taken after due deliberations. He, therefore, submits that the making of a compromise is part of the executive action of the State. The institution of a suit, according to him, is a neutral action. The rights are to be adjusted by the Court and decision too is to be made by the Court. Therefore, he submits, institution of a suit need not be made in accordance with the provisions of Article 166. That, however, cannot be said about the compromise of a suit.

231. There is, no doubt, some distinction between the institution of a suit and the compromise of a suit. But, even then it is difficult for us to accept the argument of the learned Advocate-General on this point in toto. If it becomes necessary to consult the Council of Ministers in every case of compromise the result will be disastrous. The Government Pleader at the hearing may concede a point, he may ask the Court to pass an order by consent, he may approve of certain proposals made by the adversary, and the Court may pass an agreed order, he may give his consent to the adjournment of a case at the request of the other side. It is needless to enumerate further instances. Minor compromises in one form or other are being made by the Government Pleaders all over the country. If the argument of the learned Advocate-General of U.P. is to be accepted, then in every case the State may say that the State is not bound by any orders passed in the circumstances mentioned above. When the State is a party to any litigation, the Government Pleader fully represents the State and any consent given by him on behalf of the State will necessarily be binding on the State. Article 166 of the Constitution is not applicable to proceedings in Court even when the State is a party to such proceedings. The State like any other private litigant shall have to abide by the CPC once the dispute is brought before the Court.

232. But, here we are not concerned with compromise in Courts. The present suit is one for the specific performance of a contract. The question for consideration is whether the agreement set out in para. 7 of the plaint can bind the State of Bihar if it is found that the agreement was concluded on behalf of the State of Bihar by some Ministers and /or certain officers of the State behind the back of the Council of Ministers. The real object of the learned Advocate-General in driving a distinction between the institution of a suit and the

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compromise of a suit was to show that the disputed agreement touched matters which required consideration by the Council of. Ministers and that the agreement could not be regarded as final as it was not sanctioned by the Council of Ministers. He referred to the various Rules from the Rules of Executive Business framed by the Governor of Bihar under Article 166(3) of the Constitution of India just to show that matters incorporated in the disputed agreement could not have been incorporated without the consent of the Council of Ministers.

233. Rule 8 of the Rules of Executive Business, Bihar, provides flat all cases referred to in the third Schedule to the said Rules shall ordinarily be brought before the Council of Ministers. Item 33 of the third Schedule inter alia refers to all cases relating to alienation or grant or contract or settlement or lease of land or any other Government properties or assignment of revenue or concession, grant of minerals of forest rights. It is argued on behalf of the State of Bihar that the terms of compromise set out in the plaint relate to alienation or grant or contract or lease of land or assignment of revenue of grant of minerals or forest rights and that, therefore, these terms should have been brought before the Council of Ministers under Rule 8 of the Rules of Executive Business. By the first term the State of Bihar recognizes as valid: (i) the sales, minerals leases and sub-leases made and executed in favour of the Plaintiffs in first 13 suits mentioned therein and in favour of Defendants Nos. 2 to 24 of T.S] No. 53 of 1954, (ii) the religious and charitable trusts and (iii) the khorposh grants. The case for the State of Bihar is that the lands covered by these transactions passed to and became vested in the State since the date of vesting under the Bihar Land Reforms Act. It is, therefore,-argued on behalf of the State of Bihar that term No. (1) of the terms of compromise cannot bind the State of Bihar as it was not brought before the Council of Ministers. Terms Nos. (3) to (7) closely resemble term No. (i); therefore, they too, it is argued, cannot bind the State of Bihar as they were not brought before the Council of Ministers.

234. Reference was also made on behalf of the State of Bihar to Rule 28(a)(ii) which provides that cases raising questions of policy shall be submitted to the Chief Minister through the Chief Secretary by the Secretary of the Department concerned after consideration by the Minister-in-charge but before the issue of orders. It is argued that the compromise in the instant case raised a question of policy as the State was about to lose by this compromise the entire mineral resources of the district of Hazaribagh as well as all the forests and vast tracts of agricultural lands of that district. Again, the Legal Remembrance in the last paragraph of his note dated April 29, 1957, to the Revenue Minister asserted that whether or not the suits should be compromised was more a matter of policy than of law and legal advice. The preamble to the compromise says that the litigations should be compromised on terms consistent with public interest and dignity of the State Government. It is suggested by the learned Advocate-General that public interest and dignity of the State are matters of policy. He further says that the note of the Land Reforms Commissioner dated May 1, 1957, raises question of public policy in paras. 17 and 18, so also the note of the Legal

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Remembrance dated May 5, 1957, para. 19. It is, therefore, contended on behalf of the State of Bihar that the Revenue Minister, the Land Reforms Commissioner or any other officer was not competent to issue orders regarding the compromise before submitting the question of compromise to the Chief Minister. It is in evidence that the Chief Secretary in his note dated May 4, 1957, to the Land Reforms Commissioner and the Revenue Secretary directed that the file be sent to him immediately for examination and submission to the Chief Minister, because, in his opinion, the cases involved important questions of law and also financial implications and because he thought that the proposals ought to go to the Council of Ministers in accordance with items 18, 20 and 33 of the third Schedule to the Rules of Executive Business and also under Rule 28. The note of the Land Reforms Commissioner dated May 5, 1957, shows that the file could nor*be sent to the Revenue Minister on May 5, 1957, as the file had already been submitted to the Chief Minister through the Chief Secretary and that the file was at that time with the Chief Secretary on May 5, 1957. Rule 12 says that all cases referred to in the third Schedule shall, be submitted to the Chief Minister through the Secretary to the Council after consideration by the Minister-in-charge with a view to obtaining his order for circulation or for bringing it up for consideration at a meeting of the Council. It is argued on behalf of the State of Bihar that, as the file was not returned to the Revenue Minister, as the file was still lying with the Chief Secretary, the Revenue Minister was not competent to make any offer or direct the Land Reforms Commissioner to make any offer of the terms of compromise to Raja Bahadur on May 5, 1957, or to pass any order to that effect.

235. Mr. Roy appearing on behalf of Respondent No. 2 contends that Article 166 has no application to a compromise in a suit. But, it should be remembered that Raja Bahadur was not discussing the terms of a compromise petition to be filed in Court, he was discussing about the scheme to be pursued by the State of Bihar with regard to the litigations pending in the Hazaribagh Court so that steps might be taken subsequently by the parties to the suit in accordance with the agreed scheme. It is for this reason that Raja Bahadur was carrying on negotiation with the Revenue Department. The State Advocate, Sri Bajrang Sahay, was there merely to assist the Revenue Department in the matter of preparing the scheme. We, therefore, think that the contention of Mr. Roy is untenable.

236. It may, however, be argued on behalf of the Respondents that if Raja Bahadur got an offer of the terms of compromise, either from the Finance Minister or from the Revenue Minister or from a responsible officer and, if Raja Bahadur accepted the offer in good faith, the State of Bihar could not be heard to say that the Minister or other State officials were not competent to make the offer, because Raja Bahadur had every right to assume that the offer had been made strictly in accordance with the procedure laid down in the Rules framed under Article 166(3). To this the answer seems to be that Raja Bahadur was carrying on negotiations with the Revenue Department and that he was aware of

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the fact that the final sanction of the Council of Ministers had not been obtained. That Raja Bahadur was aware of the real position would appear from para. 10(a) of his written statement. That paragraph further shows that he was anxious to effect the compromise behind the back of the Chief Minister, Dr. Sri Krishna Sinha, who was hostile to Raja Bahadur.

237. It is, however, unnecessary to dilate this point any further. We have J Surely noted the controversy between the parties as to the validity of the offer alleged to have been made by the Land Reforms Commissioner as per order passed by the Revenue Minister dated May 5] 1957, admittedly without the sanction of the Council of Ministers. It is not easy to answer what would be the legal position if in fact an offer of the terms of compromise had been made by the Revenue Minister or by the Land Reforms Commissioner and if in fact the said offer had been accepted by Raja Bahadur in good faith. However, in view of our finding that no such offer had in fact been made either by the Revenue Minister or by the Land Reforms Commissioner it is not necessary for us to pass any opinion on the hypothetical question.

238. Let us now consider an argument based on Article 299 of the Constitution. It was contended on behalf of the State of Bihar that assuming that there was a valid offer followed by a valid acceptance the contract was hit by Article 299 of the Constitution. Clause (1) of that Article provides as follows:

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 persons arid in such manner as he may direct or authorise. Article 298 says that the executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purposes.

239. It is argued on behalf of the State of Bihar that as the executive power of the State extends to the making of contracts for any purpose, the disputed contract of compromise falls within the ambit of the executive power of the State of Bihar. As all the contracts made in the exercise of the executive power of a State shall be expressed to be made by the Governor of the State, the disputed contract, says the learned Advocate-General of U.P. should have been expressed to be in the name of the Governor of Bihar. As it was not so expressed, he submits, the disputed contract is not binding on the State of Bihar. Reference was made to the case of Ram lawaya v. State of Punjab AIR 1955 S.C. 549 to indicate the extent of the executive power of the State. In that case, certain publishers of text books applied under Article 32 for appropriate writ challenging a series of notifications issued by the Education Department of the Punjab Government in pursuance of their policy of nationalization of text books on the ground of the infringement of their fundamental rights under Article 19(l)(g). It

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was urged on behalf of the publishers that the Government had no power in law to carry on the business of printing or selling text books without the sanction of the Legislature, and that the function of the executive was merely to execute the laws passed by the Legislature or to supervise the enforcement of the same. This argument was not accepted by B. K. Mukherjee C.J. who delivered the judgment. His Lordship observed as follows:

It may not be possible to frame an exhaustive definition of what executive function means and implies. Ordinarily, the executive power connotes the residue of Governmental function^ that remain after legislative and judicial functions are taken away.... The executive function comprises both the determination of the policy as well as carrying it into execution. This evidently includes the initiation of legislation, the maintenance of order, the promotion of social and economic welfare, the direction of foreign policy, in fact the carrying on or supervision of the general administration of the State.

At another place his Lordship pointed out that where the executive Government formulates a particular policy in furtherance of which they want to start a trade or business it is not always necessary that there must be a specific legislation legalizing such trade activities before they can be embarked upon.

240. It is argued on the principle laid down in Ram Jawaya''s case (Supra) that the disputed contract on the Plaintiff''s own showing was made by the State of Bihar in exercise of its executive power and that, therefore, it should have been expressed to be made in the name of the Governor. The case for the Respondents is that the disputed contract came into existence as a result of offer and acceptance. The State of Bihar offered the terms of compromise and Raja Bahadur accepted those terms. The making of offer appertains neither to the judicial nor to the legislative power of the State, it must necessarily appertain to the executive power of the State.

241. The further contention on behalf of the State of Bihar is that Article 299 is mandatory. In support of this contention reference was made to the recent decision of the Supreme Court in K.P. Chowdhary Vs. State of Madhya Pradesh and Others, . In that case, a forest contractor agreed to bid for certain contracts in pursuance of the notification issued by the Forest Officer for auction of various contracts in that Division The Appellant contractor successfully bid for certain contracts. After the close of the auction the Appellant signed the contract form as required under the rules. These documents were also sent to the Chief Conservator of Forests for his sanction as the sales of these contracts were beyond the power of sanction of the Divisional Forest Officer. Before, however, the contract was accepted, the Appellant raised a dispute as to the marking of the trees and refused to complete the contract or pay any instalment of consideration as per the rules. After due notice to the Appellant, the contract was re-auctioned and the deficiency was sought to be enforced against the Appellant as arrears of land revenue. The recovery was challenged by the Appellant by a petition. The High Court dismissed the petition holding that, although the

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contract was not a completed contract inasmuch as it was not accepted by the Chief Conservator of Forests, it was a case of an implied contract and was not hit by Article 299 of the Constitution. On appeal, the Supreme Court held that there was no contract between the Appellant and the Government as required by Article 299(1) and that in view of the mandatory terms of Article 299 no implied contract could be spelt out between the Government and the Appellant at the stage of bidding, for Article 299 in effect ruled out all implied contracts between Government and others persons. After reviewing all the earlier cases on this point Wanchoo J. summarised the legal position in these terms:

Two consequences follow from these decisions The first is that in view of Article 299(1) there can be no implied contract between the Government and another person, the reason being that if such implied contracts between the Government and another person were allowed, they would in effect make Article 299(1) useless, for then a person who had a contract with Government which was not executed at all in the manner provided in Article 299(1) could get a way by saying that an implied contract may be inferred on the facts and circumstances of a particular case. The second consequences which follow from these decisions is that if the contract between the Government and another person is not in full compliance with Article 299(1)-it would be no contract at all and could not be enforced either by the Government or by the other person as a contract.

In the instant case, there is no dispute that the contract in question was not executed in the manner provided in Article 299(1) of the Constitution. It is, therefore, contended on behalf of the State of Bihar that this so-called contract cannot be enforced by the Respondents. The following cases were cited on behalf of the State of Bihar in support of the proposition that Article 299(1) is mandatory: Chatturbhuj Vithaldas Jasani Vs. Moreshwar Parashram and Others, ; Thakurdas Therumal v. Union of India AIR 1955 S.C. 468 ; Ram Jawaya v. State of Punjab (Supra); The State of Bihar Vs. Karam Chand Thapar and Brothers Ltd., ; The New Marine Coal Co. (Bengal) Private Ltd. Vs. Union of India (UOI), ; Karamshi Jethabhai Somayya Vs. The State of Bombay, ; Ambalal v. Ahamedabad Municipality AIR 1968 S.C. 1218 . In Ambalal v. Ahmedabad Municipality the Supreme Court has laid down the following dictum on Article 299(1) of the Constitution of India which are mandatory in character and the contravention of these provisions nullifies the contracts and makes them void. There is no question of estoppel or ratification in such a case. The reason is that the provisions of.... Article 299(1) of the Constitution have not been enacted for the sake of mere form, but they have been enacted for safeguarding the Government against unauthorised contracts. The provisions are embodied in?. Article 299(1) of the Constitution on the ground of public policy...on the ground of protection of general public?and these formalities cannot be waived or dispensed with. There cannot be any manner of doubt that if Article 299(1) applies to the disputed contract, then it cannot be enforced as it has not been executed in the manner provided in Article 299(1).

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242. It is for this reason that Mr. Roy appearing on behalf of the Respondent No. 2 says that the instant contract is not at all governed by Article 299(1). The trend of his argument is as follows: The contract in question was entered into with a view to compromising certain suits pending in the Hazaribagh Court. Therefore, the State of Bihar entered into the contract as an ordinary litigant and not in exercise of the executive power of the State. Suits are governed by the Code of Civil Procedure. Hence, in the matter of litigation the CPC prevails and as the CPC prevails, Article 299(1) has no application.

243. He elaborated his argument by relying on Article 300 of the Constitution. Article 300 provides as follows:

The Government of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued by the name of the State and may, subject to any provisions which may be made by Act of Parliament or of the Legislature of such State enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted.

Mr. Roy submits that as Article 300 deals with suits and proceedings by or against the State it embodies procedural law. A suit instituted by or against a State, he adds, must necessarily be governed by the Code of Civil Procedure. The next step in his argument is that the CPC overrides Article 299. He urges that if it can be shown that the contract in question has been completed in accordance with the provisions of the Code of Civil Procedure, then its validity cannot be challenged by saying that it has not complied with the requirements of Article 299(1). The CPC does not say how a contract is to be completed. Mr. Roy probably means to say that the State being in the position of an ordinary litigant in a Court of law the validity of a contract entered into by the State for the compromise of a pending suit shall be tested by the same standard by which the validity of such contracts between private persons is tested.

244. He tries to establish the validity of the contract of compromise set out in the plaint by the following process of reasoning.

The contract in question is in the nature of a contract contemplated by Order 23, Rule 3 of the Code of Civil Procedure. The State before a Court of law is in the position of an ordinary litigant. When the State enters into an agreement for the adjustment of a suit to which the State is a party, the State does so as a litigant and not in the exercise of the executive power of the State. Just as an ordinary litigant can compromise a suit orally, the State too can do so orally in disregard of the requirement of Article 299(1) and the validity of such compromise cannot be challenged by invoking Article 299(1).

245. Mr. Roy says that if it be the case of the State of Bihar that the agreement in question is not binding upon it on the ground of non-compliance with the

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requirements of Article 299(1) then the power filed on behalf of the State at the time of the filing of the present appeal must be held to be invalid as it has not been executed in the name of the Governor. If the power is held to be invalid, says he, then the appeal is liable to be dismissed on the ground that the State of Bihar did not authorise any one to file the present appeal. The power appears to have been executed by the Additional Legal Remembrance. Mr. Roy says that an the argument advanced on behalf of the State of Bihar the agreement between the State and the learned Advocate accepting the power shall have been -expressed to be made in the name of the Governor. But he himself thinks that a power executed in that fashion is perfectly valid because Article 299(1) has no application things done in the Court in connection with the filing and the conduct of any legal proceeding.

246. According to him, Article 300 deals with procedure and suits and proceedings are entirely governed by that Article, and the party before the Court is not the Governor in whom is vested the executive power of State within the meaning of Article 299(1) but the State itself. As under Article 361 of the Constitution the Governor cannot be answerable to any Court for the exercise and performance of the powers and duties of his office, says he, a contract for the compromise of a suit can be executed only by the State and not by the Governor because the party to the suit is the State and not the Governor. He, therefore, contends that if the Court is satisfied that the agreement of compromise has been made by the State of Bihar, the Court cannot refuse to record the compromise merely on the ground that the compromise is not expressed to be made in the name of the Governor if the compromise is otherwise valid.

247. Article 300, according to Mr. Roy, clearly says that the State can sue or be sued as a juristic personality. Just as in the case of a company the only thing to be seen is whether an'' agreement has been entered into by a competent person such as director or secretary or the lawyer on record so also in the case of the State, that is party to a suit, it is to be seen whether the agreement has been made by any competent person on behalf of the State. His contention is that if in the instant case it is found that the agreement in question was executed by the Revenue Minister or by the Land Reforms Commissioner or by the Advocate on record, namely Bajrang Sahay, then its validity cannot be denied on the ground that it is not expressed to be made in the name of the Governor. He concludes by saying that the position of the State as a litigant and in respect of anything connected with litigation relating to a State are wholly covered by Article 300.

248. Mr. Roy cited the case of State of Punjab Vs. Okara Grain Buyers Syndicate Ltd. and Others, to substantiate his argument based on Article 300. In that case, certain displaced creditors applied u/s 13 of the Displaced Persons (Debts Adjustment) Act, 1951, for the recovery of debts due from the State of Punjab. Section 13 authorizes any displaced creditor claiming a debt from any other person who is not a displaced person to apply to the Tribunal for the recovery of

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the debt. The question arose whether the words ''any other person'' included the State of Punjab. It was argued on behalf of the State that the State is not bound by a statute unless it appears that it is brought within it by express words or by necessary intendment. It was argued on behalf of the displaced creditors that the expression ''person'' must be held to include the State, inasmuch as not merely natural persons but artificial and juristic entities like companies and corporations were expressly brought within the Act. The learned Advocate-General of Punjab, on the other hand, submitted that though the State was a body politic, it had not the characteristics of a corporation. In reply to this argument of the Advocate General the Supreme Court observed as follows:

It would not be correct to say that the State is not a constitutional or even juristic entity for the reason that it does not partake of the characteristics of or satisfy in whole the definition of a corporation. The State is an organized political institution which has several of the attributes of a corporation. Under Article 300 of the constitution, the Government of the Union and the Government of a State are enabled to sue and be sued in the name of Union of India and of the Government of the State, as the case may be,.... It would not, therefore, be improper to speak of the Union and the State as constitutional entities, which have attributes defined by the Constitution.

249. Mr. Roy contends that the State as a litigant is neither the Governor of the State nor the Government of the State. It has a separate existence of its own. Therefore, says he, when a suit to which the State is a party is adjusted by -an agreement or compromise, such agreement or compromise need not fulfill the requirements of Article 299(1), because it is not made in exercise of the executive power of the State. It is difficult to accept this extreme argument of Mr. Roy that the State as a litigant is neither the Governor nor the Government of the State, but an entity unconnected with and independent of both. Article 300 says that the Government of a State may sue or be sued by the name of the State, therefore, the party to sue or be sued is the Government of the State. That Article simply says that the Government of the State is to be described in the cause title by the name of the State.

250. The learned Advocate-General of U.P. contended that the interpretation put on Article 300 by Mr. Roy was wholly untenable. He cited the case of Kastur Lal v. State of U.P. AIR 1965 (C) 1039 to indicate the true scope and import of Article 300. There the Appellant was a firm dealing in bullion. One of its partners Rabia Ram went to Meerut to sell gold, silver and other goods. He was taken into custody by three constables. He was released on bail and the silver seized from him was returned, but the gold that was seized was not returned. The Appellant firm, therefore, sued the State of U.P. for the recovery of the gold seized or for the price thereof amounting to Rs. 11,000 and odd. The suit was decreed by the trial Court but dismissed by the High Court on appeal. The Supreme Court upheld the decision of the High Court. The judgment was delivered by Gajendragadkar C.J.

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251. The learned Chief Justice of India analysed Article 300 in this manner:

It would be noticed that this Article consists of three parts. The first part deals with the question about the form and the cause title for a suit intended to be filed by or against the Government of India or the Government of a State. The second part provides, inter alia, that a State may sue or be sued in relation to its affairs in cases like those in ?which a corresponding province might have sued or been sued if the Constitution had not been enacted. In obiter words, when a question arises as to whether a suit can be filed against the Government of a State, the enquiry has to be: could such a suit have been filed against a corresponding province if the Constitution had not been passed ? The third part of the Article provides that it would be competent to the Parliament or the State Legislature of a State to make appropriate provisions in regard to the topic covered by Article 300(1). Since no such law has been passed by the Respondent in the present case, the question as to whether the Respondent is liable to be sued for damages at the instance of the - Appellant, has to be determined by reference to another question and that is whether such a suit would have been competent against the corresponding province.

252. It is contended by the learned Advocate-General of UP. that the argument of Mr. Roy that whatever relates to litigation in which a State is involved is governed by Article 300 is not supported by the above decision of the Supreme Court in Kastur Lai''s case (Supra). The said Article, he submits, provides for three things as pointed out by the Supreme Court and its primary object is to confer upon a private person the right to sue the Union or a State. He traced the history behind Article 300 and referred to the corresponding provision in the Government of India Act of 1858, that of 1915 and that of 1935 in order to show that Article 300 preserves the right which all persons at one time enjoyed to sue the East India Company as a trading corporation and which right was preserved by Section 65 of the Government of India Act, 1858, Section 32 of the Government of India Act, 1915, and Section 176 of the Government of India Act of 1935. The East India Company prior to 1858 not only governed territories in India but also carried on trading activities. The Company was not liable for anything done in exercise of its sovereign rights, but in respect of its trading activities it enjoyed no such immunity. It is contended on behalf of the State of Bihar that by Article 300 only the liability of the Government to be sued for acts done otherwise than in exercise of its sovereign authority has been recognised, and the question of creating a new entity for the purpose of litigation does not arise at all. We too are of opinion that the object of Article 300 is not to create a new entity for the purpose of litigation, because, as already pointed out, the party to the suit is either the Government of India or the Government of a State. We are further of opinion that Article 300 does not lay down any procedure save and except indicating the form and the cause title ; it embodies by and large substantive law.

253. Order 27, Code of Civil Procedure, regulates suits by against the Government or public officers in their official capacity. Rule 2 of Order 27 says

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that persons being ex officio or otherwise authorised to act for the Government in respect of any judicial proceeding shall be deemed to be the recognised agents by whom appearances, acts and applications under the Code may be made or done on behalf of the Government. Order 3 contains provisions regarding recognised agents and pleaders. Rule 4 of Order 3 says that no pleader shall act for any person in Court unless he has been appointed fop the purpose by such person by a document in writing signed by such person or by his recognised agent or by some other persons duly authorised by or under a power-of-attorney to make such appointment. The power embodying the agreement between the lawyer and the State of Bihar authorising the former to represent the latter was not executed in the manner indicated by Article 299(1). Mr. Roy suggests that the power is not invalid in law because Article 299(1) does not apply to any agreement made by the State as a litigant. The learned Advocate-General of U.P., on the other hand, submits that power executed by the State in favour of a lawyer being governed by Order 27, Rule 2, read with Order 3, Rule 4, is outside the purview of Article 299(1). In other words, according to him, Article 299(1) has no application? to a power not because Article 299(1) does not apply to the State as a litigant but because the execution of power is wholly governed by the Code of Civil Procedure. In the instant case, the power was received by the lawyer for the State of Bihar from the Additional Legal Remembrance who was authorised to act for the Government in respect of any judicial proceeding. The Additional Legal Remembrance was, therefore, the recognised agent under Order 27, Rule 2, and under Order 3, Rule 4 a lawyer appointed by the recognised agent can act on behalf of a party. Therefore, says the learned Advocate-General of U.P., the power filed on behalf of the State of Bihar is a legally valid piece of document. We are inclined to accept this argument on behalf of the State of Bihar ^rather than the argument advanced by Mr. Roy on behalf of the Respondents.

254. Now, let us consider how far Article 299(1) applies to an agreement or compromise contemplated by Order 23, Rule 3. A decree in accordance with the agreement or compromise is to be passed if the Court is satisfied that the suit has been adjusted by a lawful agreement or compromise. The Court is bound to enquire whether the agreement or compromise it is asked to record is lawful or not. If an agreement is opposed to public policy, the Court certainly will not record such agreement and pass a decree in accordance with such agreement. Generally speaking, if the Court finds that the agreement is void on the face of it no decree will be passed in accordance with such agreement. The validity of an agreement contemplated by Order 23, Rule 3 must be tested by applying the relevant provisions of the Indian Contract Act and other rules of substantive law governing contracts. The CPC affords no guide in this respect. Article 299(1) of the Constitution makes special provisions in relation to contracts made in the exercise of the executive power of the Union or a State. If such a contract contravenes the provisions of Article 299(1), it is necessarily void. It is unthinkable that the Court will pass a decree in accordance with a contract made

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in exercise of the executive power of the State in disregard of the requirements of Article 299(1) in a suit to which the State is a party. It is difficult to accept the proposition that the State is incapable of making a contract in exercise of its executive power in relation to a suit to which the Court is a party, or to put it in a different form, it cannot be said that a contract made by the State so that a decree in terms thereof might be passed in a suit to which the State is a party, can under no circumstances be regarded as a contract made in exercise of its executive power. The State as a litigant retains intact all its executive powers and a contract made in exercise of its executive power may or may not be for the purpose of settling a pending litigation to which the Court is a party. Simply because a contract is made by the State with a view to settling a legal dispute to which it is a party it cannot be said that such a contract is outside the purview of Article 299(1).

255. A difficult question arises when the Government Pleader enters into a compromise on behalf of the State. In the absence of specific authority a pleader ordinarily employed cannot enter into a compromise on behalf of the client and, if he does so, the compromise is not binding on the client unless the latter acquiesces in or ratifies the same. If the Court is asked by the Government Pleader to pass a decree on the basis of a contract presented to the Court to which the State is a party, it is the duty of the Court to see whether the agreement is lawful or not, and one of the tests of legality is whether the agreement has been made in accordance with Article 299(1).

256. A strict interpretation ought to be placed upon the terms empowering the pleader to enter into a compromise. A power to file a compromise does not include a power to make a compromise or sign it. The authority given to a lawyer to compromise a suit does not necessarily give him an authority to negotiate the terms thereof without reference to his client. Hence, it is clear that the pleader does not enjoy unrestricted power to compromise a suit and this is true even in the case of the Government Pleader. The Court has plenary powers to enquire into the justice or the bona fides of a settlement reported to it, and where grave injustice is likely to result by allowing the compromise to stand, it can interfere and set it aside. That being the position it is unthinkable that when it is represented to the Court that a particular dispute between the State and its opponent has been adjusted by mutual agreement the Court will not enquire whether the agreement on behalf of the State has been made in accordance with the requirements of Article 299(1).

257. On general principle there is no reason why an agreement made by a State for the adjustment of a suit under Order 23, Rule 3, should not be regarded as a contract within the meaning of Article 299(1) of the Constitution. The executive power of a State extends to the making of contracts for any purpose. Article 299(1) says that all contracts made in exercise of the executive power of the State shall be expressed to be made by the Governor. All contracts certainly include a contract for the adjustment of a suit. It is needless to point out that the

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word ''agreement'' in Order 23, Rule 3 has been used in the sense of ''contract''. A State cannot enter into a contract except through some human agency. Some responsible officer usually acts as the agent of the State. In the matter of an adjustment of a suit the Government Pleader generally acts on behalf of the State. If a contract made by an officer on behalf of the State requires to be made in the manner laid down in Article 299(1), there is no reason why a contract for the adjustment of a suit made by the Government Pleader should not be executed in that manner.

258. Even assuming that an agreement made by the Government Pleader for the adjustment of a suit and filed in Court need not comply with the requirements of Article 299(1), the agreement set out in para. 7 of the plaint is not an agreement of that kind. The disputed agreement was not filed in Court and it was not made by the Government Pleader., According to the Plaintiff, the disputed agreement was made on behalf of the State of Bihar by the Land Reforms Officer with the advice of the Advocate-General, the Legal Remembrance and the Government Pleader. Therefore, the disputed agreement cannot be regarded as valid unless it complied with the requirements of Article 299(1). Simply because the object of the disputed agreement is to end all litigations between the State of Bihar and the Respondents, it cannot be said that its validity does not depend upon its fulfilling the requirements of Article 299(1). The contract set out in the plaint admittedly has not been made on behalf of the State of Bihar in accordance with the provisions of Article 299(1). Hence it follows, even if the Plaintiff succeeded in proving the contract as set out in the plaint it would have been necessary to declare the contract as void for non-compliance with the provisions of Article 299(1), because those provisions are mandatory.

259. A counsel, as distinguished from a pleader, can no doubt compromise a suit in the absence of any limitation on his authority. Express authority, as in the case of a pleader, is not required. A counsel has authority to do what he considers best for his client in the management and conduct of the suit and if in the exercise of such authority he enters into any agreement with the opposite side, it will be binding on the client unless any limitation was imposed upon his authority and unless such limitation was communicated to the opposite side. He can give consent to the prayer for adjournment made by the opposite party. He has the power to make admissions and authority to abandon an issue or a claim. But, his power to enter into a compromise, as stated above, is very much restricted. A state as a litigant is certainly bound when the Government Pleader gives his assent to a petition for adjournment by the opposite party or when he makes some concession or admission on behalf of the State or when he abandons any issue or claim, but that does not mean that the State will be bound by any agreement entered with into by him with the opposite party in disregard of the provisions of Article 299(1) of the Constitution. We have already stated that we cannot accept the proposition of Mr. Roy that Article 299(1) has no application to any agreement made for the purpose of adjusting a suit to which the State is a party or that the State as litigant is not the Government within the meaning of

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Article 299(1).

260. We now pass on to the question of res judicata urged at great length on behalf of the State of Bihar both before the trial Court as well as before us. To appreciate this point it is necessary to state certain facts.

261. The Defendant-Respondent No. 39, Rajkumar Basant Narain Singh, younger brother of Raja Bahadur, is the sole Plaintiff in T.S. No. 70 of 1960 and 245 analogous suits mentioned in Group A in the first annexure to the plaint. These 246 suits were instituted in 1948. In spite of best efforts of the Court these suits could not be heard for nearly ten years. They were at last set down for hearing on July 27, 1957.

262. On July 22, 1957, Respondent No. 39 filed an application for adjournment for two months on the ground that the suits had been compromised.'' It was alleged that Raja Bahadur negotiated for a compromise with the State of Bihar that a compromise had been arrived at in respect of almost all the suits, that terms were confirmed by Raja Bahadur and that a formal order from the State to file a joint petition of compromise would be soon received. A copy of the agreement set out in para. 7 of the plaint was annexed to the said petition as a copy of the agreement of compromise.

263. The lawyer on behalf of the State of Bihar submitted that he knew nothing about this compromise. Thereupon the hearing of the suits was adjourned till July 29, 1957. On that date the State filed an application denying the allegation of compromise. On the same date the Respondent No. 39 filed an application under Order 23, Rule 3 for recording the compromise and passing a decree in accordance therewith. He was followed by the Plaintiffs in 9 other suits being the Defendants- Respondents Nos. 2, 4, 5, 6, 7, 8 and 25 before us, who also filed petitions under Order 23, Rule 3.

264. August 24, 1957, was fixed for the hearing of the petitions under Order 23, Rule 3 filed by the Respondents. The State filed a rejoinder on August 17, 1957, denying that a compromise had been reached. On August 20, 1957, the Respondents made an application praying that notices be issued to the Plaintiffs of the remaining 33 suits as mentioned in Groups B and C of annEx. A to the plaint on the allegation that those 33 suits too were covered by the compromise, but this application was not pressed.

265. On the application of the Respondents the District Judge passed an order on August 23, 1957, staying the further hearing of the suits filed by the Respondents, but the learned Subordinate Judge was informed on October 31, 1957, that the order of stay had been vacated. The hearing of the applications under 0.23 Rule 3 was adjourned till November 15, 1957. On November 11, 1957, the Respondents again prayed by an application for the issuing of notices to the Plaintiff in the remaining 33 suits. The Court directed this application to be heard along with the applications under Order 23 Rule 3 on November 15, 1957.

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266. The prayer for issuing notices to the Plaintiffs of the remaining 33 suits was rejected and December 2, 1957, was fixed for the hearing of the compromise matter. Thereafter, January 11, 1958, was fixed for the hearing of the compromise matter. The hearing was again adjourned till January 20, 1958.

267. The Respondents prayed for time on January 20, 1958, but the prayer was rejected find the parties were directed to proceed with the hearing of the matter. For want of time the hearing of the compromise matter was postponed till the next day, January 21, 1958. On that date, that is, on January 21, 1958, the Respondents did not turn up in spite of repeated calls, and then the lawyer submitted before the Court that they had no further instruction to proceed with the matter. Thereupon, the learned Subordinate Judge passed the following order rejecting the application to record a compromise:

On behalf of the State of Bihar, Sri Bajrang Sahay, Advocate, and on behalf of the applicants Sri N. K. Ghosh...and Sri N. C. Roy...are present. Sri N. K. Ghosh...and Sri N. C. Roy...submit that they have no further instructions to proceed with the hearing of the petitions under Order 23, Rule 3 of CPC The applicants do not turn up on repeated calls. Since the petitions under Order 23, Rule 3 of CPC are not pressed and there is no evidence in proof of the allegations made therein, the petitions under Order 23, Rule 3 of CPC are rejected?.

268. Against this order the Respondents filed as many as ten appeals in the High Court at Patna but all of them were dismissed. Applications for leave to appeal to the Supreme Court were rejected on August 1, 1958.

269. The Respondents, thereafter, moved the Supreme Court for special leave to appeal which was refused on August 18, 1958.

270. Then the Respondents filed- applications under Order 9, Rule 9 and Section 151 before the learned Subordinate Judge, Hazaribagh, for the restoration of the petitions under Order 23, Rule 3 that were rejected on January 21, 1958. These applications for restoration were rejected by the learned Subordinate Judge by his order dated September 8, 1958.

271. Thereafter, the Respondents made fresh applications on September 30, 1958, under Order 23, Rule 3 on the same set of facts and on the same cause of action for recording the alleged compromise. The learned Subordinate Judge rejected these applications as he thought that the second set of applications under Order 23, Rule 3 on similar facts were not maintainable.

272. The Respondents thereafter presented five appeals to the High Court at Patna against the order of the learned Subordinate Judge.... It was contended in support of these appeals that the former applications were dismissed for default and not on merits, and that since the provisions of Section 11 of the CPC had no application, the subsequent application though on cognate facts and of the same cause of action were not barred. On the other hand, the learned Government Advocate argued on behalf of the State of Bihar that though Section 11, Code of

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Civil Procedure, in terms did not apply, the general principle of res judicata governed these applications and that when the applicants did not adduce any evidence, though specially directed by the Court, to prove the alleged compromise and allowed the applications to be dismissed for default and unsuccessfully appealed against the order of dismissal, the order stood as binding between the parties and to re-open the dispute and then to annul all the previous orders passed by the Courts of competent jurisdiction would offend against the principles of constructive res judicata. A Division Bench of the Patna High Court accepted the contention on behalf of the State of Bihar find relied on the following cases in support of their decisions in Mungul Pershad Dichit v. Girija Kanta Lahiri ILR Cal. 51; Ramnarain v. Basudeo ILR Pat. 595; Raj Lakshmi Dasi and Others Vs. Banamali Sen and Others, and Mohanlal Goenka Vs. Benoy Krishna Mukherjee and Others, .

273. Kanhaiya Singh J. presiding over the Division Bench made the following observations:

The principles deducible from the above decision^ is that Section 11 is not exhaustive of the general principles of res judicata.... Applying these principles to the present cases it will appear that the binding force of the impugned decision of the learned Subordinate Judge depends upon the general principles of res judicata and not upon Section 11 of the Code. In my opinion, although Section 11 does not apply in terms to the present cases, there is no reason why the principles underlying that section should not apply to the applications under Order 23, Rule 3....

With these observations his Lordship passed an order for the dismissal of the appeals with cost. For the full text of the judgment of the Patna High Court reference may be made to the decision of that High Court in Bansidhar Estata Collieries and Industries Ltd. v. State of Bihar AIR 1959 Ext. 119. The decision of the Patna High Court on the earlier application under Order 23, Rule 3 has been reported in Basant Narayan v. State of Bihar A.I.R. 1055.pat. 458.

274. Let us consider the effect of the judgment of the Patna High Court in Bansidhar Estate Collieries and Industries Ltd. v. State of Bihar AIR 1959 Ext. 119 . Some of the Respondents before us including the Respondent No. 39 applied under Order 23, Rule 3 for recording the compromise embodied in Ex. 1(a), that is to say, the agreement set out in the plaint and for passing a decree in accordance therewith. Those applications were rejected as they were not pressed and there was no evidence in proof of the allegations made therein. The order rejecting the said application was passed by the learned Subordinate Judge, Hazaribagh, on January 21, 1958, and this was affirmed by the High Court on appeal. These Respondents again applied under Order 23, Rule 3 for recording the compromise and passing a decree in accordance therewith. The learned Subordinate Judge dismissed the second set of applications on the same set of facts and on the same cause of action on the ground that the second set of applications under Order 23, Rule 3 on -similar facts were not maintainable. This

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order, rejecting the second set of applications, was passed by the learned Subordinate Judge on October 3, 1958. Five consolidated ^miscellaneous appeals were filed in the Patna High Court against this order dated October 3, 1958. In the opinion of the High Court the binding force of the impugned decision of the learned Subordinate Judge, dated October 3, 1958, depended upon the general principles of res judicata. In other words, according to the Patna High Court the second set of applications were barred by the general principles of res judicata. This means that the order of the learned Subordinate Judge dated January 21, 1958, rejecting the applications under Order 23, Rule 3 affirmed on appeal by the High Court was conclusive between the parties, that is to say, between the Respondents filing the petitions and the State of Bihar. Therefore, the said order of January 21, 1958, must be deemed to have been passed on merits. That is to say, the, said order must be deemed to have been passed on a finding that "there was no agreement of compromise between the State of Bihar and the Respondents who applied under Order 23, Rule 3, Code of Civil Procedure.

275. In the instant suit the Defendant-Respondent No. 39, one of the Respondents who applied under Order 23, Rule 3 on July 29, 1957, had his written statement on January 11, 1960, and he made a deliberate Mis-statement in para. 12 which runs as follows:

That this Defendant under legal advice pursued the compromise matter in their respective suits but was unsuccessful in getting the matter heard and disposed of on merits, and the Defendant No. 1 herein has adopted all possible tactics to get the compromise petitions dismissed on other grounds other than on merits.

The compromise petitions were dismissed not on account of tactics adopted by the State of Bihar but because of laches on behalf of the Petitioners themselves. Moreover, the Patna High Court by applying the general principles of res judicata to the second set of petitions under Order 23 Rule 3 in effect held that the first set of petitions under Order 23, Rule 3 had on July 29, 1957, and rejected on January 21, 1958, were heard on merits and then dismissed....

276. The present suit cannot be decreed unless the Court is satisfied that there was an agreement of compromise not only between the Plaintiff and the State of Bihar but also between each one of the pro forma Defendants- Respondents and the State of Bihar. As between the Defendant-Respondent No. 39 and the other Defendants- Respondents who applied under Order 23, Rule 3 before the Subordinate Judge, Hazaribagh, on July 29, 1957, and the State of Bihar this question, namely, whether-there was any binding contract of compromise between the State of Bihar and the said Defendants-Respondents is concluded by the general principles of res judicata. In other words, it must be held that as between the State of Bihar and the Defendants- Respondents who applied under Order 23, Rule 3 no agreement of compromise was concluded either on July 16, 1957, or on any other date.

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277. It has been stated in para. 9 of the plaint that the compromise was a composite agreement between the several parties as enumerated in the agreement and the State of Bihar. As it has already been decided by the Subordinate Judge, Hazaribagh, that no compromise can be recorded as between some of the parties as enumerated in the agreement and the State of Bihar on the terms set out in para. 7 of the plaint, that no decree can be passed in those suits in accordance with the alleged compromise and that there was in fact no such agreement between the State of Bihar and some of the parties enumerated in the alleged agreement, the Plaintiffs in the present suit cannot specifically enforce the contract set tip by the Plaintiff.

278. Clause (13) of the agreement set out in the plaint says that before the filing of any compromise petition in Court all the compromise petitions must be got ready and signed by the parties and -their lawyers to the satisfaction of the Deputy Commissioner, Hazaribagh, and made over to him and filed simultaneously in all the Courts. This clause seems to be an essential part of the alleged contract. In the suits covered by the petitions under O- 23, Rule 3 rejected by the Subordinate Judge, Hazaribagh, on January 21, 1958, and on October 3, 1958, no such compromise petition can be filed. Therefore, Clause (13) cannot be given effect to. This clause forms an integral part of the agreement set out in the plaint and is not severable. Hence, the entire agreement must fail even if it be assumed that any such agreement was entered into between the Plaintiff and the State of Bihar.

279. Mr. Roy appearing on behalf of the Respondent No. 2 says that in view of Clause (13) the applications filed in the Court of the Subordinate Judge, Hazaribagh, under Order 23, Rule 3 in some of the suits were entirely misconceived and that consequently the dismissal of those applications by the learned Subordinate Judge on January 21, 1958, cannot prevent the Plaintiffs in those suits from filing similar applications simultaneously with the rest of the parties including ''the State of Bihar on the ground of res judicata. We cannot accept this argument. The said applications were dismissed not on the ground that they had been filed in contravention of Clause (13) but on the ground that the applicants had failed to establish the contract of compromise. The principle of res judicata operates even when a decision is made erroneously by a competent Court or even in a proceeding instituted under misconception. We are, therefore, of opinion that the question of passing a compromise decree in the suits covered by the applications in the Hazaribagh Court under Order 23, Rule 3 on the basis of the alleged agreement cannot be re-opened and are concluded by the general principles of res judicata. And if no compromise decree can be passed in those suits the question of passing any compromise decree in the Plaintiff''s suit No. 12 of 1954 in the Court of the Subordinate Judge, Hazaribagh, cannot arise. If the Plaintiff in his Hazaribagh suit cannot ask the Hazaribagh Court to pass a compromise decree, he cannot ask for the specific performance of the agreement of compromise in the present suit.

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280. The next point for consideration is whether apart from res judicata the agreement as set out in the plaint is capable of specific performance. First of all, the position is to be examined from the point of view of the original Plaintiff, namely Ramgarh Farms and Industries Ltd. Clause (4) of the agreement set out in the plaint relates to the Plaintiff. That clause is in these terms:

The Plaintiff of Title Suit No. 12 of 1954, viz. Ramgarh Farms and Industries Ltd, hereby waives all contentions against the validity of the Bihar Land Reforms Act and Section 4(h) thereof and admits the position that Ramgarh estate has validly vested in the State of Bihar. The State of Bihar in its turn recognizes the lease of buildings made, in its favour and also the raiyaii leases of lands held by the-Plaintiff company which are involved in the above title suit subject to the provisions of Bihar Private Forest Act, the "Chotanagpur Tenancy Act and the Bhoodan Yajna Act.

The Bihar Land Reforms Act was held to be valid except Section 4(b) and Section 23(f) by the Supreme Court in State of Bihar v. Kameshwar Singh A.J.R. 1952 S.C. 252. The compromise, according to the Plaintiff, was effected on July 16, 1957, long after the decision of the Supreme Court as to the validity of the Bihar Land Reforms Act. Similarly, Section 4(h) was declared to be valid by the Supreme Court in Kamakshya Narain Singh v. Collector and D.C., Hazarihagh AIR 1956 S.C. 63 in October 1955, that is to say, long before the date when, according to the Plaintiff, the compromise was effected. As to whether the estate of Ramgarh had vested in the State of Bihar there was really no dispute between the proprietor and the State. The only dispute between the parties is whether the estate vested on November 3, 1951 or on January 28, 1955. It was decided by the learned Subordinate Judge, Hazaribagh, in T.S. No. 24 of 1953 that the estate had vested on January 25, 1955, and not on November 3, 1951, as claimed by the State of Bihar. An appeal against that decision, preferred by the State of Bihar, was pending on the alleged date of the compromise.

281. From what has been stated above it is clear that the Plaintiff, Ramgarh Farms and Industries Ltd. confers no benefit whatsoever on the State of Bihar by waiving all contentions against the validity of the Bihar Land Reforms Act and Section 4(h) thereof and by admitting the position that the Ramgarh estate had validly vested in the State of Bihar. The Plaintiff, on the other hand, received substantial benefit as a result of the State of Bihar recognizing the raiyaii leases and the leases of buildings. A compromise or agreement of this nature cannot be regarded as lawful within the meaning of Order 23, Rule 3, Code of Civil Procedure. Nor can it be said that the suit, namely T.S. No. 12 of 1954, has been adjusted wholly by such compromise or agreement. According to Clause (13) of the agreement all the compromise petitions are to be filed simultaneously, but that does not mean that there will be only one compromise petition comprising all the suits mentioned in the agreement, that clearly means that a separate petition has got to be filed in each case. Now, if an application is made under Order 23, Rule 3 in T.S. No. 12 of 1954 for recording the compromise set out in

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Clause (4) of the agreement and for passing a decree in accordance therewith, the application is sure to be thrown out on the ground that the agreement is not lawful for want of consideration. If that be so, no decree for specific performance can be granted for the enforcement of Clause (4) of the agreement which specifically relates to T.S. No. 12 of 1954.

282. The question of specific performance may be examined from another point of view. Clause I of Section 22 of the Specific Relief Act, 1877, is a case where the circumstances under which the contract is made are such as to give the Plaintiff an unfair advantage over the Defendant though there may be no fraud or misrepresentation on the Plaintiff''s part. Section 22 says that in a case like this the Court may properly exercise a discretion not to decree specific performance. The agreement contemplated by Clause (4) of the compromise undoubtedly gives to the Plaintiff an unfair advantage over the Defendant, namely the State of Bihar. We are inclined to exercise our discretion not to decree specific performance of this agreement. If specific performance of this agreement is not decreed, then the entire suit is bound to fail, because the present suit has been filed on the footing that the Plaintiff is and has always been ready to perform his part of the agreement in Clause (4) thereof.

283. A decree for specific performance should be refused also for other reasons to be noted presently. The primary object of the suit out of which the present appeal arises is to obtain a permanent injunction restraining the Defendants including the State of Bihar from prosecuting the title suits set out in the annexures to the plaint so that the said suits may not be heard on merits. Some of the Defendants tried in vain to have the compromise recorded and a decree passed in accordance therewith. Title Suit No. 29 of 1955 (State of Bihar v. Bokaro and Ramgarh Ltd.) instituted by the State challenging the amendments of the leases in favour of the Defendant was fixed for peremptory hearing on February 10, 1959, before the Subordinate Judge, Hazaribagh. The present suit being T.S. No. 16 of 1959 was instituted in the Second Court of the Subordinate Judge at Alipore on February 9, 1959, and on that very day the Plaintiff obtained an ad interim order of injunction with the result that the hearing of T.S. No. 29 of 1955 could not be taken up. Other suits were fixed for hearing before the Subordinate Judge, Hazaribagh, on subsequent dates, but the hearing could not be taken up because of the said order of an ad interim injunction.*

284. In para. 13 of the plaint it has been stated that some of the Defendants, other than the Defendant No. 1,-the State of-Bihar have in breach of Clause (13) of the terms of compromise, which provide that all parties would act together and file compromise petitions simultaneously, filed and others are attempting to file the terms of compromise individually in their separate suits and that the Plaintiff apprehends the action of the said Defendants in filing compromise petitions or proceeding with their suits individually will prejudice their case as well as the case of the Plaintiff. The Plaintiff has therefore submitted that the said Defendants should, therefore, be restrained from proceeding with their suits in

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breach of the said Clause (13) of the terms of compromise. According to the Plaintiff, if the said Defendants are allowed to move individually, that will not only prejudice the case of the Plaintiff but also the case of the said Defendants. The Plaintiff is anxious not only to protect its own interest but also the interest of the Defendants other than the State of Bihar. It is for this reason that it has asked for injunction restraining the said Defendants from proceeding with their suits. The Plaintiff might as well ask for injunction against itself.

285. Strangely enough most of the pro forma Defendants are silent about the allegations against them in para. 13 of the plaint and all of them in their written statements have submitted that the suit should be decreed in terms of the relief prayed for by the Plaintiff. The Defendants Nos. 6, 25 and 26 have stated in their joint written statement that the allegations in para. 13 of the plaint are substantially correct. Their case is that they under legal advice pursued the compromise matter in their respective suits but were unsuccessful in getting the matter heard and disposed of on merits as the State of Bihar adopted all possible tactics to get the compromise petitions dismissed on other grounds than on merits.

286. The pro forma Defendants in fact supported the claim of the Plaintiff that they should be restrained by an injunction from proceeding with their suits in breach of Clause (13) of terms of compromise. Only the pro forma Defendant No. 2 has been transposed to the category of the Plaintiff. On principle the rest of the other pro forma Defendants could have been so transposed. As Plaintiffs they could not have asked for injunction against themselves. The legal position is not affected by their being impleaded as Defendants. They are in substance Plaintiffs. Therefore, the prayer for injunction restraining not only the State of Bihar but also the pro forma Defendants cannot be regarded as bona fide. That being the position no decree for specific performance can be given in favour of the Plaintiff.

287. Again, a decree for specific performance can be given where the Defendant is required to do something which he promised to do. In all the clauses of the terms of compromise the State of Bihar is not required to do anything, it is merely required to recognise as valid certain transactions. Recognizing as valid certain past transactions cannot be regarded as a promise to do something in future. No decree for specific performance can be granted where the Defendant merely agrees to recognise as valid certain past transactions.

288. Clause (13) clearly indicates that the object of this composite agreement is to enable the parties to each of the suits mentioned in the agreement to file a petition under Order 23, Rule 3 stating that the suit has been wholly adjusted by a lawful agreement so that the agreement may be recorded and a decree passed in accordance therewith. The petition shall contain only that part of the composite agreement as is applicable to the particular case. For instance, the parties to T.S. No. 12 of 1954, namely Ramgarh Farms and Industries Ltd. v. The State of Bihar, should file a joint petition under Order 23, Rule 3, Code of Civil

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Procedure. In that petition they will set out Clause (4) of the composite agreement and say that this is the agreement by which the suit has been wholly adjusted and the petition shall contain a prayer that the said agreement be recorded and a decree passed in accordance therewith. The different clauses in the composite agreement relate to different suits. Clause (13) simply says that all the petitions are to be filed simultaneously in all the Courts. The agreement was entered into with that end in view. If any party to the compromise refuses to join the compromise petition under Order 23, Rule 3, Code of Civil Procedure, and if he cannot be compelled to do so through Court by reason of subsequent happenings, then the foundation of the agreement) disappears. In that event the agreement in question cannot be enforced. In the instant case, by reason of the decision of the Patna High Court in Bansidhar Estate Collieries and Industries Ltd. v. The State of Bihar (Supra), no compromise petition under Order 23, Rule 3, Code of Civil Procedure, can be filed in those suits covered by the said decision. If compromise petition cannot be filed in those suits, such petitions cannot be filed in the other suits as well, because in the matter of filing compromise petitions the contract is not severable. If the compromise petitions cannot be filed at all by reason of subsequent events then the contract is frustrated, because the purpose of the agreement, namely, to have compromise decrees in all the suits mentioned therein, fails. A contract, which becomes void prior to the institution of the suit for specific performance, cannot be specifically enforced. The present suit should therefore have been dismissed by the trial Court on that ground.

289. It may be pointed out that in the trial Court the Learned Counsel for the Plaintiffs did not press for mandatory injunction and the learned Judge too refused to grant mandatory injunction as he thought that mandatory injunction could not be issued in the manner prayed for. As the prayer for mandatory injunction was? hot pressed for and as the learned Judge too refused to grant mandatory injunction in the manner prayed for,'' the suit ought to have been dismissed altogether. The learned Judge, however, has granted permanent injunction restraining the Defendants from prosecuting the title suits mentioned in annexes. A and B to the plaint. But, a permanent injunction of this nature will not put an end to the series of litigations between the State of Bihar and Raja Bahadur and his transferees. The suits will remain pending in the Hazaribagh Court, because the Alipore Court cannot give any direction to the Hazaribagh Court as to what order the Hazaribagh Court shall pass with regard to them. The Defendants may be restrained from proceeding with the suits, but that cannot operate as the dismissal of those suits. Moreover, this order of injunction is clearly in conflict with the order passed by the Patna High Court in the Bansidhar Estate Collieries'' case (Supra), because the Patna High Court in substance directed the Subordinate Judge of Hazaribagh to proceed with the suits covered by that decision. The order of injunction granted by the trial Judge is liable to be set aside also on that ground.

290. It may also be pointed out that the present suit is in substance a suit for

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declaration and not a suit for specific performance of a contract. Section 56(b) of the Special Relief Act, 1877, provides that an injunction cannot be granted to stay proceedings in a Court not subordinate to that from which the injunction is sought. The Court of the Subordinate Judge, /Hazaribagh, certainly is not subordinate to the Court of the Additional District Judge, Alipore. Moreover, it may be pointed out that the suit was being tried by a Subordinate Judge since its institution on February 9, 1959, upto April 3, 1962, when the suit was withdrawn by the District Judge to his file as there was no chance of the suit being heard by the Subordinate Judge in near future and, thereafter, transferred to the Court of the Additional District Judge. That being the position the learned Judge of the trial Court acted illegally in granting permanent injunction restraining the Defendants from prosecuting the title suits pending before the Subordinate Judge, Hazaribagh, in contravention of the provision of Section 56(b) of the Specific Relief Act. Any relief by way of permanent injunction not being available to the Plaintiff in the present suit, the suit is in substance one for pure declaration, hence the suit should have been dismissed in limine.

291. To sum up, the Plaintiff has failed to establish that there was any concluded contract between the State of Bihar and Raja Bahadur as the representative of the Plaintiff and the pro forma Defendants and that Raja Bahadur was duly authorised by the Plaintiff and the pro forma Defendants to carry on negotiations for compromise with the State of Bihar. The contract, as set out in the plaint, is also hit by Article 299(1) of the Constitution. Further, the Defendants who applied under Order 23, Rule 3 before the Subordinate Judge, Hazaribagh, for recording the alleged compromise and for a decree in accordance therewith are precluded by the general principles of res judicata from re-agitating that there was a concluded contract between them and the State of Bihar, because the order passed by the learned Subordinate Judge on those applications on January 21, 1958, affirmed by the High Court, conclusively determined that question between the State of Bihar and those Defendants. In view of Clause (13) of the disputed agreement, as the said Defendants are precluded* from re-agitating that question either by an application under Order 23, Rule 3 or by a suit, the Plaintiff too is precluded from urging that there was a concluded contract of compromise between the Plaintiff and the State of Bihar either by an application under Order 23, Rule 3 or by the present suit. Again, the Plaintiff having based his claim for specific performance on Clause (4) of the disputed agreement no decree for specific performance can be granted to the Plaintiff, because that clause while conferring substantial benefit upon the Plaintiff gives nothing in return to the State of Bihar. Again, the primary object of the present suit being to prevent the hearing of the Hazaribagh suits on merits, the Court should exercise its discretion by not granting a decree for specific performance. Again, the Court below was not justified in granting permanent injunction for staying proceedings in a Court not subordinate to the Alipore Court. Lastly, the suit should have been dismissed in limine being in substance a suit for pure declaration.

292. Before we part with this case we may note a technical objection taken by

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Mr. Roy on behalf of the Respondent No. 2. The power filed on behalf of the State of Bihar along with the memorandum of appeal states at one place that the lawyer filing the appeal is authorised ''to file appeal against the Appellant''. This anomalous position has been brought about as a result of scoring out the appropriate words and retaining the words that are redundant in the printed form of power filed. Mr. Roy argues that it must be held that no valid appeal has been filed on behalf of the State of Bihar as the lawyer filing the appeal was not authorised to file any appeal against the Respondents. This being a case of patent ambiguity, says Mr. Roy, Section 93 of the Evidence Act is a bar to the removal of this ambiguity by extraneous evidence. He, therefore, submits that this appeal should be thrown out on the ground that it has not been filed by any duly authorised lawyer. This argument of Mr. Roy is too technical to deserve serious consideration. This is a case of obvious mistake in not scoring out the words that are redundant and in not retaining the words that are appropriate in the printed form. The Court has got inherent power to give relief in a case like this. Besides, the power read as a whole leaves no room for doubt that the lawyer concerned was duly authorised to present this appeal. _ Again, the present appeal was once allowed to by withdrawn and then restored after a contested hearing for, several days. It is now too late in the day to contend that there is no validly instituted appeal on behalf of the State of Bihar.

293. Mr. Rao, appearing on behalf of the Plaintiff-Respondent No. 1 reiterated the argument advanced by Mr. Roy on behalf of the Respondent No. 2. ''Mr. Chowdhury, on behalf of the Respondent No. 3, contended that the agreement set out'' in the plaint was not a contract but an adjustment, and hence it was not hit by Article 299. He did not indicate the points of distinction between a contract and an adjustment. In our opinion, the legal position is not altered simply because a transaction, in substance a contract, is described as an adjustment. He next contended that the State has got two personalities, one dormant and the other vibrant. He said that the Revenue Minister and the Finance Minister represented the vibrant personality and that, as they approved the draft agreement of compromise, it must be held that there was a concluded contract between the State of Bihar and the Respondents. It is not disputed that the two Ministers were in favour of a compromise, but from that it does not necessarily follow that the State of Bihar in fact entered into an agreement of compromise with the Respondents through Raja Bahadur. We have already given our reason for holding that the Plaintiff has failed to establish the contract pleaded in the plaint.

294. Mr. Chowdhury laid emphasis on the remark of the learned Judge that the evidence on the question of contract was practically ex parte. We have already shown that this remark of the learned Judge is unjustified. Mr. Chowdhury contended that the official file should have been proved. This contention is without any substance because the entire official file was called for by the Plaintiff and filed at its instance. He raised certain points as regards the impact of Section 4(h) of the Bihar Land Reforms Act on the contract in question said as to

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the competence of the State of Bihar to enter into a contract of compromise as pleaded in the plaint in spite of the Bihar Land Reforms Act. It is needless to point out that it is. not necessary to consider these points for the purpose of deciding the present appeal.

295. For the reasons stated above the appeal should succeed. The appeal is, accordingly, allowed on contest. The judgment and decree of the trial Court are hereby set aside and the suit dismissed. The Appellant will get the costs of this Court from the contesting Respondents and the costs of the trial Court from the Respondents Nos. 1 and 2. All ad interim orders, including the order of injunction, are hereby set aside.

Laik J.

296. I agree.

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