

(2014) 02 GAU CK 0046

In the Gauhati High Court

Case No : Writ Petition (C) No. 6357 of 2012

Tolaram Bafna Artificial Limb and Caliper Centre, Premchand
Tolaram Bafna Charitable Trust, Acharya Tulsi Orthopaedic
Hospital and Sri Subhkaran Jain (Bafna) **APPELLANT**

Vs

The State of Assam and Narayana Hrudayalaya Pvt. Ltd. **RESPONDENT**

Date of Decision : 07-02-2014

Acts Referred:

Constitution of India, 1950 — Article 14 21 226 227 299

Citation : (2014) 1 GLD 393 : (2014) 1 GLT 837

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : A.K. Bhattacharjee and Mr. N. Deka, for the Appellant; D. Saikia, AAG, Assam, Mr. D. Das Mr. S. Saikia and Mr. N. Gogoi, for the Respondent

Final Decision : Allowed

Judgement

Biplab Kumar Sharma, J.—The challenge in the writ petition is the Annexure-XIII Request for Proposal (RFP) dated 03/02/2012 followed by the Memorandum of Understanding dated 11/06/2012 entered into between the Government of Assam in the Health and Family Welfare Department headed by the Mission Director, National Rural Health Mission (hereinafter referred to as NRHM), Assam and the respondent No. 4 Narayan Hrudayalaya, a private limited Company, as according to the petitioners such a course of action adopted by the respondents is contrary to the earlier promise made out to them in respect of running of the particular hospital, namely, Tolaram Subhkaran Bafna District Hospital.

SEQUENCE OF EVENTS:

The petitioners numbering 3 are charitable trust registered under the Societies Registration Act, 1860 and are represented by their Chairman and Managing Trustee. They have filed the writ petition challenging the action of the Government of Assam in the Health Department in entering into a Memorandum of Understanding (MOU) dated 11/06/2012 with the respondent No. 4 for setting

up a Super Specialty Hospital and handing over the Tolaram Bafna District Civil Hospital for the purpose.

2. The petitioner No. 1 was established on 28/03/1991 with the object of providing helping hands to the handicapped persons of North East Region by providing the Polio Effected Persons with Calipers and Artificial Limbs. The treatment rendered is free of cost and as stated in the writ petition prior to handing over the establishment to the Government of Assam, it had treated about 5,000 handicapped persons.

3. Pursuant to the discussions held with the Government of Assam officials, the petitioners No. 1 and 2 submitted an expression of interest to handover the premises of the petitioners No. 1 and 2 which included constructed area of 4 of the petitioners No. 1 and 2 which included constructed area of 4411 Sq. ft. and vacant space of 3275 Sq. ft. to the Govt. of Assam for setting up the Kamrup District Hospital with the condition that the same would be named as "Tolaram Subhkaran Bafna District Hospital" Kamrup with the further condition that the said name would not be changed at any point of time. The expression of interest was conveyed vide letter dated 03/10/2006 (Annexure-I). By Annexure-II letter dated 03/10/2006, the petitioner No. 3 also had submitted an expression of interest to handover the ownership of the constructed premises of the petitioner No. 3 including a 25 bedded hospital, operation theatre, physiotherapy, x-ray centre etc. to the Government of Assam for opening of the said district hospital with the condition that the present building would be named as "Acharya Tulsi Orthopedic Centre" and that the same would be developed by the Government of Assam as Trauma-cum-Polio Surgery Centre. Be it stated here that the 25 bedded hospital was constructed over the land belong to the petitioner No. 4.

4. On receipt of the aforesaid letters of expression of interest, the Deputy Commissioner, Kamrup vide his Annexure-III letter dated 07/10/2006 addressed to the Government of Assam in the Health and Family Welfare Department informing about the proposals submitted by the petitioners and requested for necessary approval thereof. In the letter, it was clearly indicated that in order to get access to the donated land and for construction of the residential complex, for developing the hospital to 100 bedded hospital, a plot of land measuring 2B 0K 4 Ls covered by Dag No. 68 of the same village will have to be acquired and the cost thereof will have to be borne by the Government. Along with the letter, a sketch showing the location was also enclosed. This aspect which finds mentioned herein, the same is the crux of the matter involved in this proceeding.

5. Pursuant to the aforesaid development, a committee was constituted by the Government of Assam vide its letter dated 15/12/2006 for fixing the terms and conditions and preparation of deed etc. The committee held its meeting on 08/12/2006 in presence of the petitioner No. 4. The meeting was attended amongst others, by the Additional Director on behalf of the Director of Health Services and the Joint Director of Health Services, Kamrup District. During the discussion, the Deputy Commissioner placed the aforesaid letters submitted by

the petitioners (Annexure-I & II) expressing their interest to handover the premises under their occupation and also the Annexure-III letter dated 07/10/2006 addressed to the Government of Assam in the Health and Family Welfare Department. On the basis of the said letters, the committee finalized the draft terms and conditions and signed the same. Thereafter the petitioners entered into a Memorandum of Understanding with the Government of Assam on 08/01/2007 for handing over their properties to the Government of Assam for the purpose of setting up the Kamrup District Hospital in the name and style of "Tolaram Subhkaran Bafna District Hospital, Kamrup", which was not be changed under any circumstances at any point of time. Annexure-V is the MOU dated 08/01/2007.

6. After signing the aforesaid MOU, the petitioner No. 4 executed Gift Deed No. 318/2007 dated 08/01/2007 donating the plot of land measuring 4 Kathas covered by Dag No. 109 of KP Patta No. 27 of Village- Silamahekhaiti, Mouza-Silasindurigupa, North Guwahati Revenue Circle, District-Kamrup, in favour of the District Health Society, Kamrup, represented by the Deputy Commissioner, Kamrup, in his capacity as the Chairman of the said society. The gift deed was executed for the purpose of construction of Kamrup District Civil Hospital. Another Gift Deed No. 319/2007 was also executed on 08/01/2007 donating the plot of land measuring 1 Bigha 4 Katha covered by Dag No. 113 of KP Patta No. 33 of the same location. In addition to the said gift deeds, the petitioner No. 4 also relinquished his possessory right over Govt. plot of land measuring 1 Bigha 2 Katha 3 Lessas covered by Dag No. 108, which was under his possession for the last more than 30 years.

7. After the aforesaid exercise carried out by and between the parties on 10/11/2007, the Chief Minister of Assam laid the foundation stone of a 200 bedded district Civil Hospital in the presence of other dignitaries including the Health Minister of Assam. As stated in the writ petition, the ceremony was widely covered by the media. Play cards/leaflets and invitation cards were also published for the occasion. In the play cards/leaflets, details of the proposed hospital and its infrastructure was highlighted specifically stating therein that there would be a 200 bedded District Hospital. The said play cards/leaflets were highlighted about the infrastructures to be provided with further details of the proposed constructions. According to the petitioners, the said leaflets also contain the copy of the letter dated 31/08/2007 issued by the Government of Assam in the Health and Family Welfare Department to the Accountant General, Assam, communicating the decision of the Government of Assam, sanctioning the creation of 86 posts of Doctors and staff for running the District Civil Hospital. Thereafter, the Government of Assam vide its letter dated 12/11/2007, named the Hospital as Tolaram Bafna Civil Hospital, Kamrup, Amingaon.

8. When the matter rested thus, the petitioners could learn that there was a move initiated by the Government of Assam to hand over the hospital to the respondent No. 4. Situated thus, the petitioners vide letter dated 11/10/2010

informed the respondent No. 4 about the factual background of the hospital with the request to take note of the same before entering into any MOU with the Government of Assam. The petitioners also addressed a letter dated 11/10/2010 to the Government of Assam for strict compliance of the terms and conditions of setting up of the aforesaid hospital and not to deviate from the same by handing over the hospital to any third party. According to the petitioners, on receipt of the said letter dated 11/10/2010 (Annexure-XI), the Government of Assam put hold a hold on the process of handing over the hospital to the respondent No. 4.

9. In paragraph 16 of the writ petition, the petitioners have stated that the hospital was developed to a 500 bedded hospital with the name "Tolaram Bafna Kamrup District Civil Hospital" and the said hospital was inaugurated on 21/02/2011 by the Health Minister, Government of Assam. The entire 500 bedded hospital building was the District Civil Hospital in the name and style Tolaram Bafna Kamrup District Civil Hospital. A marble plate engraved in the wall in the main entrance of the said building was unfurled by the Health Minister as a mark of inauguration of the 500 bedded "Tolaram Bafna Kamrup District Civil Hospital". Along with the writ petition, the petitioners have annexed the copies of the photographs to show that on 21/02/2011, the entire hospital complex along with the new buildings therein was inaugurated clearly mentioning therein that the same would be 500 bedded "Tolaram Bafna Kamrup District Civil Hospital". However, the respondent No. 2 issued the impugned RFP on 03/02/2012 calling upon the interested parties in a 2 (two) bid system for setting up and operationalising a Super Specialty Hospital in private-public partnership mode in the Kamrup District and the existing 500 bedded hospital building of the Tolaram Bafna Kamrup District Civil Hospital with all its facilities and equipments purchased for the hospital was proposed to be handed over on a long term lease of 30 years.

10. The petitioners have also referred to the newspaper reports dated 09/11/2012 reporting about the proposed taking over of Tolaram Bafna Kamrup District Civil Hospital by the respondent No. 4 and that the hospital would be shut down very soon. Thereafter, the petitioners could learn about the MOU dated 11/06/2012 entered into by the Government of Assam with the respondent No. 4 for opening a Super Specialty Hospital at Amingaon. The petitioners vide letter dated 10/11/2012 enquired from the respondents No. 1 and 2 about the same and as to whether the respondent No. 4 has been apprised of the earlier MOU dated 08/01/2007, by and between the petitioners and the Government of Assam. When the copy of the MOU dated 11/06/2012 was not given to the petitioners, they vide letter dated 23/11/2012 sought for certain information from the Public Information Officer in the office of the Deputy Commissioner, Kamrup (Rural) as per the provisions of the Right to Information Act, 2005 including the copy of the MOU dated 11/06/2012. The petitioners also wanted to have the information as to whether the respondent No. 4 had been apprised of the MOU entered into between the petitioners and the Government of Assam. Simultaneously, the petitioners also informed the respondent No. 4 about the

earlier MOU dated 08/01/2007 and also about naming of the hospital as "Tolaram Bafna Kamrup District Civil Hospital". However, nothing could prevail upon the respondents.

11. According to the petitioners, the aforesaid action on the part of the respondents is illegal, arbitrary and opposed to the administrative fair play coupled with the principles of Promissory Estoppel and legitimate expectation. It will be pertinent to mention here that the petitioners are not adverse to the establishment of a Super Specialty Cardiac Hospital by the respondent No. 4, but their grievance relates to handing over of the hospital and/or the part thereof to the respondent No. 4 for the purpose, which according to them is in clear violation of the earlier MOU and the terms and conditions thereof entered into by them with the Government of Assam.

12. Referring to the purpose for which the District Civil Hospital was established and also the purpose for which the land, building and infrastructure etc. were handed over to the Government of Assam, the petitioners have contended that the entire action on the part of the respondents is in clear violation of the terms and conditions of the MOU and that the same would lead to compromise with the purpose for which the entire project for setting up the District Civil Hospital was mooted and finalized. In this connection, the petitioners have made the following statements in paragraphs 22 to 28 of the writ petition:--

22. That the petitioner states that the super specialty hospital and a district civil hospital cannot be put on the same footing inasmuch as, a district civil hospital is established for the purpose of rendering free medical treatment to the citizens by the Government, as a Welfare state and admittedly there is no other civil hospital in the Kamrup district prior to the establishment of the aforesaid hospital. However, in the proposed super specialty hospital no such free treatment would be rendered. As per the RFP only 50% of the total beds would be provided to the citizens at a concessional rate, which would be arrived at during the bidding process and such beds would be provided only to persons below the poverty line (BPL) or a State Government employee, existing or retired, a freedom fighter or a person above 70 years of age. The successful bidder would be free to determine the rates for the remaining 50% of the beds in the hospital. Thus, the very object of a district civil hospital is defeated by the present RFP and the entire object seems to be to benefit the private party/successful bidder. It may be mentioned that the petitioners have very recently downloaded the RFP from the website and only after scrutiny of the same have come to know of the details of the plans of the respondent authorities.

23. That the petitioners state that the petitioners had donated their properties worth more than 2.5 crores to the Government of Assam, with the hope that the charitable works which were being done by the petitioners would be carried by the Government and the name of the father of the petitioner No. 4 would be immortalised. The respondents by their impugned action are now illegally trying to deprive the petitioners of their right to property guaranteed under Article 300-

A of the Constitution of India and as such the same warrants the appropriate interference of this Hon''ble Court. Further, even as per the MOU dated 8.1.2007, if the land is used for any purpose other than the one stipulated in the MOU, the land would revert back to the original owner i.e. the petitioners. Thus, as per the MOU, the respondent authorities are now liable to hand over vacant possession of the land to the petitioners.

24. That the petitioners state that the respondent authorities have also not completely honoured their commitments under the MOU inasmuch as, the Trauma Centre proposed to be constructed has not been done even after about 6 years from the date of signing the MOU.

25. That the petitioners state that as per the respondent authorities, in the RFP have sought to project a picture that the district civil hospital is not at all effected by the proposed super specialty hospital and that the district civil hospital is a 50 bedded hospital, which would be run by the Government of Assam. The MOU dated 8.1.2007 is absolutely clear and specific that the 25 bedded hospital of the petitioner No. 3 would be improved and modernised into a trauma cum polio surgery centre and the same would be a part of the district civil hospital, which would be named "Acharya Tulsi Orthopedic Centre". Therefore, the stipulation in the RFP that the 50 bedded hospital adjacent to the existing building would continue to be run by the Government is absolutely misleading. It is reiterated that the 50 bedded hospital is only a part of the district civil hospital and the entire 500 bedded hospital, which is being proposed to be handed over to Narayan Hrudayalaya Institute of Cardiac Sciences, Bengaluru is the district civil hospital named Tolaram Bafna Civil Hospital, Kamrup.

26. That the petitioners state that from the very inception the petitioner No. 1 had been providing free medical aid to physically handicapped and polio effected persons and with that vision in mind, the petitioners felt that the people would be better served if such services being rendered is given by the Government at a larger scale and accordingly the petitioners decided to hand over the existing hospital with all its infrastructure, to the Government of Assam, as the petitioners believed that the State would be in a better position to carry on the good work. However, if the district civil hospital is handed over to a private party for conversion into a super specialty hospital, the very object of the petitioners would be defeated. Further, the 500 bedded district civil hospital would have catered to the need of the people of the area as well as to people from the lower Assam districts and the said hospital would have also lessened the burden of the Gauhati Medical College and the Mahendra Mohon Choudhury Hospital.

27. That the petitioners state that the impugned action appears to be politically motivated. The respondents are duty bound to honour their commitment made to the petitioners and they cannot be permitted to violate the Memorandum of Understanding dated 8.1.2007. The respondents are bound by the terms and conditions of the said Memorandum of Understanding and shall have to adhere to the said terms and conditions. The impugned action has been done in a

mechanical manner, without due and proper application of mind and the same warrants the appropriate interference of this Hon''ble Court. The respondents cannot be permitted to act at their whims and fancies as has been sought to be done in the instant case. The impugned action is nothing but a colourable and arbitrary exercise of powers for collateral purposes.

28. That the petitioners state that it is mandatory on the part of the respondents to have a district hospital in every district and by the proposed impugned action, the respondents are trying to do away with the existing district hospital, which is impermissible in law. The respondent authorities cannot give the property donated by the petitioners, on lease to a private party as the same will change the entire colour and nature of the property. Therefore, the proposed action plan is liable to be interfered with by this Hon''ble Court. The Government cannot be permitted to change the entire set up of the district civil hospital including the name of the hospital, which would not only be contrary to the MOU dated 8.1.2007 but will also be to the prejudice of the petitioners and the poor people, who would have got free treatment in the district civil hospital, as the same will not be provided in a hospital run by a private organisation.

13. The writ petition was first entertained on 21/12/2012 with the issuance of notice and interim order to the effect that status quo in respect of the status and name of the hospital should be maintained.

STAND OF THE RESPONDENT No. 2

14. The respondent No. 2 has filed counter affidavit in which it has been stated that the 50 bedded District Hospital at Amingaon will continue to function as a Government running hospital and that the MOU arrived at by and between the Government of Assam and the respondent No. 4, towards establishing a Super Specialty Hospital in the new building situated over the land covered by Dag No. 68, 79, 108 and 107 has got nothing to do with the said hospital. According to the said affidavit, the new building has been constructed alongside the Tolaram Bafna Kamrup District Civil Hospital and is owned by the Government of Assam and that the same has been handed over to the respondent No. 2 for establishing a Super Specialty Hospital. In paragraph 16 of the affidavit, it has been stated that although initially it was concede to develop the hospital into 500 bedded hospital but subsequently it was seen that construction of a Super Specialty Hospital with provisions of 300 beds would be beneficial for the patients and accordingly it was decided to handover the same to the respondent No. 4.

STAND OF THE PETITIONERS IN FURTHER AFFIDAVITS FILED

15. In the affidavit-in-reply filed by the petitioners on 06/02/2013 while reiterating and reaffirming the statements made in the writ petition, it has been stated that while handing over the existing building with its infrastructures to the Government of Assam for setting up of Tolaram Bafna Kamrup Civil Hospital, there was a 25 bedded well-equipped hospital. According to the petitioners, the respondents have tried to project that 500 bedded Acharya Tulsi Orthopedic

Centre is the Tolaram Bafna Kamrup Civil Hospital. It has been stated that with the impugned action of the respondents, the 500 bedded Tolaram Bafna Kamrup Civil Hospital is being reduced to a 50 bedded hospital. As stated in the said affidavit, initially, a 200 bedded hospital was projected and subsequently the same was designed to have a 500 bedded hospital. It has been denied that the building constructed alongside the Tolaram Bafna Kamrup Civil Hospital is a separate entity. According to the petitioners, the entire structures including the old and the new building constructed over the plot of land covered by Dag No. 68, in which the Super Specialty Hospital is now proposed, is very much a part of Tolaram Bafna Kamrup District Civil Hospital. In paragraph 13 of the said affidavit, it has been stated thus:--

13. That with regard to the statements made in paragraph 21 of the affidavit-in-opposition of the respondent No. 2 the petitioners state that though on the face of it the establishment of a super specialty hospital may seem to be step forward but in fact it is not so as the said hospital is being set up by a private party and not by the Government and a private party would definitely look to earn profit, which would defeat the purpose of the district civil hospital. Therefore a district civil hospital cannot be compared to a super specialty hospital. The ownership of the land was never in dispute even at the time of signing the MOU dated 8.1.2007. The Government having entered into the said MOU with the petitioners cannot now be permitted to take a stand that just because some portion of the hospital building is not situated over the land donated by the petitioners, the Government can hand over the said building to a private party at its whims and caprices and that too after the petitioners had changed their position by handing over their valuable property with the pious object of setting up a district civil hospital. The action of the respondents is barred by Principle of Promissory Estoppel and therefore the impugned action warrants the appropriate interference of this Hon''ble Court.

16. Referring to the Annexure-XVII & XVIII agreement and lease dated 16/08/2012 and 26/11/2012 executed by the Government Assam with the respondent No. 4, it has been stated that as per the description of the land therein, the land and building, the possession of which have been given to the respondent No. 4 are in Dag No. 68, 79, 108 and part of 107 under Patta Nos. 24 and 37. For a ready reference, the description of the land as extracted in the affidavit-in-reply, is reproduced below:--

DESCRIPTION OF THE LAND

All that plot of land together with structures situated in Gao - Shila Mahakhaity, Mouza - Shil Sinduri Ghopa, District - Kamrup, on which a building along with quarters have been constructed to offer health Services to people have been in ownership and possession of the Govt. of Assam/Jt. Director of Health services, Kamrup since long. The Govt. of Assam has issued permission to Jt. Director, Kamrup to hand over possession of the portion of land and building constructed to be handed over to NRHM for the purpose of establishment of super specialty

hospital. In view of the order, NRHM has taken over possession of the land described in the scheduled below and by this lease deed hands over the possession of land and building to M/s. Narayana Hrudayalaya Pvt. Ltd. for the said purpose for a period of 30 years.

1. Dag No. 68, Patta No. 24 (2 Bigha, 4 lessa)
2. Dag No. 79, Patta No. 24 (1 Bigha, 2 lessa)
3. Dag No. 108 (1 Bigha, 2 katha, 3 lessa)
4. Part of Dag No. 107, Patta No. 37

17. Further statement made in the affidavit-in-reply is that the petitioners were running the Tolaram Bafna Artificial Limb and Calipere Centre and Acharya Tulsi Orthopedic Hospital, besides carrying of other social activities from the said premises, which were subsequently handed over to the Government of Assam along-with all infrastructures and vacant land with the clear understanding that the Tolaram Bafna Kamrup Civil Hospital would be established. According to the petitioners, the said position could not have been altered. Referring to the sequence of events in paragraph 18 of the affidavit-in-reply, the petitioners have stated that the respondents having deviated from the promise made out to the petitioners, the same has led to violation of the principles underlined in Article 14 and 21 of the Constitution of India and so also administrative fair play and principles of natural justice.

ADDITIONAL AFFIDAVIT FILED BY THE PETITIONERS ON 25/02/2013

18. By this affidavit, the petitioners have brought on record certain facts so as to contend that the move of the Government to handover the hospital and/or the part thereof to the respondent No. 4 is in violation of the earlier position which emerged pursuant to the sequence of events including the MOU referred to above. Referring to the application dated 23/11/2012 made to the Public Information Officer in the office of the Deputy Commissioner, Kamrup (R), it has been stated that the informations furnished are not satisfactory. Significantly, this affidavit categorically states that on the date of filing of the writ petition i.e. 19/12/2012, the new building constructed over Dag No. 68 for Tolaram Bafna Civil Hospital was not handed over to the respondent No. 4 and that the hospital was functioning from the said new building also with the following departments:--

1. Out Patient Department,
2. X-ray Department,
3. Blood Bank,
4. 10 (ten) bedded emergency ward,
5. Pharmacy,
6. Reception.

19. That apart, there were 200 beds placed for the patients in the first and second floor of the newly constructed building of the hospital. The newly purchased hospital equipments, instruments and furniture's were also there in the first floor and the second floor. In paragraph 7 of the said affidavit, the petitioners have contended that the respondents have created letters dated 30/10/2012 and 17/11/2012 (Annexure-IV to the affidavit-in-opposition) showing handing over of the newly constructed buildings to the respondent No. 4. It has been stated that till filing of the writ petition, there was no handing over of possession of the new building of Tolaram Bafna Civil Hospital to the National Rural Health Mission i.e. respondent No. 2. Referring to the interim order dated 21/12/2013, directing to maintain status quo, it has been stated that after passing of the said interim order, the 200 beds, hospital equipments, instruments and furniture's, which was placed in the first and second floor of the newly constructed building of the hospital were removed and taken in a truck. Out-patient Department (OPD), X-ray Department, Reception and Pharmacy, which were functioning normally were also shut down. However, part of the hospital which was functioning from the old building continued and still continuing. According this affidavit, the internal lay-out of the buildings is being changed by breaking the wall etc. and constructing new walls, partitions etc. As per this affidavit, the works relating to fixtures and making of furniture's were still going on in full suing inspite of the aforesaid interim order. It has further been stated that the colour of the newly constructed buildings have been changed. Significantly, in this affidavit, apprehension was expressed that the sign board of Tolaram Bafna Civil Hospital affixed in the building might be removed. Along with the affidavit, the petitioners have annexed photographs to depicts the changes being made in the building along with the change of colour, etc.

FURTHER AFFIDAVIT DATED 06-03-2013

20. After filing of the aforesaid affidavit, the petitioners have filed another affidavit on 06/03/2013 to bring on record the subsequent developments after passing of the interim orders. It has been stated that inspite of the said interim order, changes are being made inside the hospital even to the extent of removing the name plate of Tolaram Bafna Civil Hospital, Kamrup, Amingaon, Guwahati-781031, both in Assamese and English, which was engrafted by concrete on the top of the newly constructed building. According to this affidavit, the signboard has been removed on 26/02/2013 with the installation of the signboard of Narayana Hrudayalaya Hospital, Guwahati on 01/03/2013. It has further been stated that the respondents are going to commence the OPD of the Cardiology Section of the said hospital belonging to Tolaram Bafna District Civil Hospital. Along with this affidavit, the petitioners have annexed the photographs to support the contentions raised therein.

COUNTER AFFIDAVIT OF RESPONDENT No. 1

21. The respondent No. 1 i.e. the Government of Assam in the Health and Family Welfare Department has filed counter affidavit on 07/02/2013, without

specifically dealing with the various contentions raised in various paragraphs of the writ petition and the subsequent affidavits filed by the petitioners which have been referred to above. In this affidavit, it has been stated that the newly constructed six-storied Super Specialty Hospital is a completely separate building constructed in the adjacent plot bearing Dag No. 68 and is not an existing wing/part of the Tolaram Bafna Kamrup District Civil Hospital. It has been stated that the agreement has been arrived at with the respondent No. 4 to mitigate the hardship being faced by the patients of the State, who are required to go far of places for their treatment. Significantly, in paragraph 5 of the said affidavit, it has been stated that the Government has tentatively decided that in the event of any difficulty in establishing and starting the proposed Super Specialty Hospital due to any condition of the MOU dated 08/01/2007, it would not hesitate to invoke the particular condition towards reverting back the land to the petitioners that was donated by them. However, there is no mention about existing building and the infrastructures as to whether the same would also be returned to the petitioners.

REPLY AFFIDAVIT OF PETITIONERS

22. The petitioners have filed a further affidavit on 21/03/2013 as reply affidavit to the affidavit-in-opposition filed by the respondent No. 1. In the said affidavit, it has been stated that the stand of the respondent No. 1 is not correct and that the new building, in fact, was constructed as a part of the civil Hospital named after Tolaram Bafna as Tolaram Bafna District Civil Hospital. It is the specific stand of the petitioners that the land covered by Dag No. 68 was acquired by the Government of Assam in the name of the said hospital and all grants, funds, equipments etc. were received in the name of the hospital. It has also been stated that the building permission was obtained from the Guwahati Metropolitan Development Authority (GMDA) in the name of the Tolaram Bafna District Civil Hospital. Significantly, the petitioners have referred to the letter dated 21/11/2011, which the respondent No. 2 had written to the Chief Executive Officer, GMDA to give formal permission to the respondent No. 4 in respect of the said new building in order to facilitate other essential certificates required for establishing the Super Specialty Hospital, which according to the petitioners is in gross violation of statutory building rules and regulations of the GMDA. It is the specific case of the petitioners that there is a ramp connecting the Orthopedic Centre with the main hospital building which has not been shown in the said map annexed to the said affidavit-in-opposition.

STAND OF THE RESPONDENT NO. 4

23. In the counter affidavit filed by the respondent No. 4 it has referred to the MOU with the Government of Assam. According to this respondent, they have validly entered into the MOU and the agreement with the Government of Assam and that the writ petition filed by the petitioner is misconceived.

REPLY AFFIDAVIT OF PETITIONERS

24. The petitioners have filed affidavit-in-reply to the aforesaid affidavit-in-opposition filed by the respondent No. 4 in which also it has been stated that the new building was constructed only for the purpose of Tolaram Bafna Civil Hospital and thus could not have been handed over to the respondent No. 4. In the further affidavit filed by the petitioners on 19/08/2013, the petitioners have contended that inspite of the interim order passed by this Court, the respondents did not maintain status quo and continued with construction work in the hospital premises. In this connection, the petitioners have annexed certain photographs showing construction works. The respondent No. 4 has filed an affidavit-in-reply to the said additional affidavit, stating therein that the interim order was modified on 08/04/2013 permitting the respondent No. 4 to run the OPD services.

FURTHER AFFIDAVIT OF RESPONDENT No. 1

25. Amidst the hearing of the case, the respondent No. 1 filed another affidavit-in-opposition on 04/10/2013 giving the statistics about the number of indoor patients admitted in the Tolaram Bafna Kamrup District Civil Hospital since last five years, so as to contend that the hospital beds were never filled up to its fullest capacity at any point of time and not even to the extent of 25% of the total capacity. This position has been depicted that there was no necessity to increase the number of beds. According to this affidavit, at no point of time, there has been any decision taken by the Government of Assam in the Health and Family Welfare Department to run the Tolaram Bafna Kamrup District Civil Hospital from the newly constructed six-storied building adjacent to the said hospital. According to this affidavit, the newly constructed six-storied building was utilized informally only for the purpose of storage in 2/3 rooms for a couple of months before the said building was handed over to the respondent No. 4. This affidavit further states that the new building was utilized for holding various meetings and also for conducting training of ANM trainees, Doctors etc. It has also been stated that no furniture/equipments were installed to run the indoor or OPD services in the new six-storied building and no medical and paramedical staff were recruited to run the district hospital.

REPLY AFFIDAVIT OF PETITIONERS

26. In response to the said affidavit, the petitioners have filed a reply affidavit on 28/10/2013 denying the aforesaid stand of the respondent No. 1, stating that the said affidavit-in-opposition is not acceptable as the same was filed at the stage of reply argument by the learned counsel for the petitioners. However, as a measure of abundant caution, it has been stated that it is incorrect to say that the Government of Assam had never taken the decision to run the Tolaram Bafna Kamrup District Civil Hospital from the newly constructed building at Dag No. 68. In this connection, the petitioners have referred to the facts stated in the earlier affidavits to show that the land was acquired and the building was constructed only for the purpose of the Tolaram Bafna Kamrup District Civil Hospital. The fact of inauguration of the 500 bedded Tolaram Bafna Kamrup District Civil Hospital on 21/02/2011 has also been referred to.

ISSUE INVOLVED AND THE ARGUMENTS ADVANCED

27. Amidst the aforesaid narration of facts with the claim and counter claim, the issue to be decided is as to whether the new six-storied building constructed over the plot of land bearing Dag No. 68 is a part of the Tolaram Bafna Civil Hospital which was established pursuant to the above mentioned course of action adopted by and between the parties. If the answer is in the affirmative, the question that will arise is as to whether the action on the part of the official respondents to hand over the same to a third party i.e. the respondent No. 4 is justified or not.

28. While it is the stand of the petitioners that the new building was constructed after acquiring the land in the name of Tolaram Bafna Civil Hospital and that the new building also started functioning as such, but the respondents have taken different stands in the matter in their affidavits. In one of the affidavits, it has been stated that although initially a tentative decision was taken to run the 500 bedded civil hospital but later on, it was found prudent to establish a Super Specialty Hospital to cater the needs of the people. In another affidavit, its stand is that in case of violation of any of the provisions of MOU that has been entered into with the petitioner it would not hesitate to handover the land earlier donated by the petitioners. However, there is no mention about the building and the infrastructures and other hospital equipments. The third stand taken is that even if the new hospital building was constructed and the land was acquired for Tolaram Bafna Civil Hospital, but the Government can always take a policy decision to utilize the same for some other purpose.

29. During the course of hearing of the writ petition, the learned counsel representing the State respondents and the respondent No. 4 also raised the plea of non-maintainability of the writ petition in view of the Arbitration Clause in the MOU. All these aspects will have to be considered in reference to the facts and circumstances and the principles of law on which the learned counsel for the parties extensively argued in reference to certain case laws.

30. I have heard Mr. A.K. Bhattacharyya, learned senior counsel assisted by Mr. K. Agarwal and Mr. N. Deka, learned counsel for the petitioners. I have also heard Mr. D. Saikia, learned AAG, Assam and so also Mr. D. Das, learned senior counsel assisted by Mr. S. Saikia and Mr. N. Gogoi, learned counsel for respondent No. 4. I have also considered the entire materials including the records produced by the State Government. It will be pertinent to mention here that by filing MC No. 807/2013, the petitioners had prayed for production of the following records.

31. By order dated 11/09/2013, direction was issued to produce the aforesaid records along with the documents containing the terms and conditions finalized and signed by the members present in the meeting of the Committee, which has been referred to in Annexure-IV to the counter affidavit, which is dated 08/12/2006, about which reference has been made above. Pursuant to the said order, the State Government has produced the records in the form of File No.

KRA 28/2006 pertaining to LA Case No. 27/2006 along with another file marked as "2". However, no records have been produced pertaining to building permission; funds for construction and the records pertaining to the letter dated 21/11/2011 issued by the respondent No. 2 to the Chief Executive Officer, GMDA, about which mention has been made above.

32. Mr. A.K. Bhattacharyya, learned senior counsel for the petitioners referring to the aforesaid facts and placing reliance on certain decisions, in his usual forceful argument submitted that the entire action on the part of the respondents is in gross violation of the principles of natural justice, promissory estoppels, legitimate expectation and administrative fair play. As regards the plea of alternative remedy by way of taking recourse to the arbitration clause in the MOU, he submitted that it is not a case of resolution of any dispute through arbitration. According to him, nothing having been disputed in respect of any terms and conditions of the agreement by and between the parties and the respondents also having not disputed the same, it will be in-appropriate to fall back on the arbitration clause incorporated in the MOU.

33. Referring to the facts involved leading to filing of the writ petition, he also submitted that the respondents having not denied those facts either by filing proper affidavits or by producing the records, the said admitted facts should be decisive in favour of the petitioners and against the respondents. The decisions on which he placed reliance centre around the ratio relating to promissory estoppels, legitimate expectation and administrative fair play etc including the decisions to counter the plea of disputed questions of fact involved in the proceeding requiring the parties to invoke the arbitration clause. The decision on which he has placed reliance are as follows:--

1. Sri-La-Sri Subramania Desika Gnanasambanda Pandarasannadhi Vs. State of Madras and Another,
2. Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others,
3. Union of India (UOI) and Others Vs. Godfrey Philips India Ltd.,
4. ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others,
5. Assistant Commissioner of Commercial Taxes (Asst.) Dharwar and Others Vs. Dharmendra Trading Company and Others,
6. Sharma Transport Rep. by D.P. Sharma Vs. Government of Andhra Pradesh and Others,
7. State of Bihar and Others Vs. Kalyanpur Cements Ltd.,
8. Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others,
9. National Buildings Construction Corporation Vs. S. Raghunathan and Others,

34. Countering the above argument, Mr. D. Saikia, learned AAG, Assam, in his

persuasive pursuits, submitted that there being no mention about the particular land and the building centering around which the dispute has been raised in the MOU, the petitioners are not entitled to get any indulgence from this Court, that too in the writ jurisdiction. Referring to the various factual aspects of the matter including the ceremonies pertaining to laying down of the foundation and the inauguration of building, he submitted that even if the said ceremonies are taken on their face value, same cannot lead to the conclusion that the land was acquired and the building was constructed for Tolaram Bafna Civil Hospital. According to him since the existing building including the building constructed over the vacant land donated by the petitioners would cater the needs of the people, merely because a six storied building was constructed over the land bearing Dag No. 68, the petitioners cannot harp upon that the said building also pertains to Tolaram Bafna Civil Hospital, more particularly, when there was no decision as such to make the same a part of the existing Tolaram Bafna Civil Hospital.

35. Emphasizing the need for a Super Specialty Hospital to be run by the respondent No. 4, he submitted that it is not a case for invocation of the principles of promissory estoppels and legitimate expectation. On being pointed out about the photographs annexed to the writ petition and the additional affidavits filed by the petitioners depicting inauguration of a 500 bedded hospital in the name and style of Tolaram Bafna Civil Hospital, he submitted that even if the building was inaugurated for Tolaram Bafna Civil Hospital but the same cannot debar the Government from taking a further decision to handover the building to the respondent No. 4 for a better purpose. He also placed reliance on the following decisions pertaining to principles involving promissory estoppels, disputed questions of fact, delay in invoking the writ jurisdiction, etc. The decisions are as reported in:--

1. Jasbir Singh Chhabra and Others Vs. State of Punjab and Others,
2. Monnet Ispat and Energy Ltd. Vs. Union of India (UOI) and Others,
3. Bannari Amman Sugars Ltd. Vs. Commercial Tax Officer and Others,
4. Shrijee Sales Corporation and Another Vs. Union of India (UOI),
5. M.P. Mathur and Others Vs. D.T.C and Others,
6. The Empire Jute Co. Ltd. and Others Vs. The Jute Corporation of India Ltd. and Another,
7. Krishan Lal Vs. Food Corporation of India and Others,
8. ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others,

36. Mr. Das, learned counsel representing the respondent No. 4 in his painstaking argument while reiterating the arguments advanced by Mr. D. Saikia, learned AAG, Assam, also submitted that there being delay coupled with the fact that

there is an arbitration clause in the MOU, the writ petition is not maintainable. According to him, the MOU and the agreement that has been entered into by the respondent No. 4 with the Government of Assam is legally valid and the grounds on which the writ petition has been structured are not valid ground to interfere with the same. The decisions on which he has placed reliance are as follows:--

1. The President, Poornathrayisha Seva Sangham, Thripunithura Vs. K. Thilakan Kavenal and Others,
2. Michigan Rubber (India) Ltd. Vs. The State of Karnataka and Others,
3. Jagdish Mandal Vs. State of Orissa and Others,
4. Tejas Constructions and Infrastructure Pvt. Ltd. Vs. Municipal Council, Sendhwa and Another,
5. Monnet Ispat and Energy Ltd. Vs. Union of India (UOI) and Others,
6. Bannari Amman Sugars Ltd. Vs. Commercial Tax Officer and Others,
7. Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others,

DECISIONS RELIED UPON BY THE PARTIES:

37. Before proceeding further in the matter, it will be appropriate to refer to the decisions on which the learned counsel for the parties have placed reliance. Sri La Sri Subramania Desika Gnansambanda Pandarasannidi (Supra) had been referred to by the learned counsel for the petitioner to counter the argument that the plea of promissory estoppels having not been raised in the writ petition, the same could not have been raised subsequently by filing further affidavits. This decision, however, has been referred to in addition to the plea that the plea of promissory estoppels is very much discernible from the pleadings in the writ petition. In paragraph 17 of the judgement, the Apex Court has held thus:--

17. That takes us to the consideration of the question as to whether the two reasons given by the High Court in support of this decision are valid. The first reason, as we have already indicated, is that the High Court thought that the plea in question had not been raised by the appellant in his writ petition. This reason is no doubt, technically right in the sense that this plea was not mentioned in the first affidavit filed by the appellant in support of his petition; but in the affidavit-in-rejoinder filed by the appellant this plea has been expressly taken. This is not disputed by Mr. Chetty, and so, when the matter was argued before the High Court, the respondents had full notice of the fact that one of the grounds on which the appellant challenged the validity of the impugned Order was that he had not been given a chance to show cause why the said notification should not be issued. We are, therefore, satisfied that the High Court was in error in assuming that the ground in question had not been taken at any stage by the appellant before the matter was argued before the High Court.

38. In M/s. Motilal Padampat Sugar Mills Co. Ltd. (Supra), the Apex Court dealing

with the principle relating to equity in reference to promissory estoppels or equitable estoppels, discussed the nature and scope and extent of its applicability. In paragraph 24 of the judgement, it has been observed thus:--

24. This Court finally, after referring to the decision in the Ganges Manufacturing Co. v. Surujmull (supra). The Municipal Corporation of the City of Bombay v. The Secretary of State for India (supra) and Collector of Bombay v. Municipal Corporation of the City of Bombay & Ors. (supra), summed up the position as follows:

Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the Judge of its own obligation to the citizen on an ex parte appraisalment of the circumstances in which the obligation has arisen.

The law may, therefore, now be taken to be settled as a result of this decision that where the Government makes a promise knowing or intending that it would be acted on by the promises and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promises, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. It is elementary that in a Republic governed by the rule of law, no one, howsoever high or low, is above the law. Everyone is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned: the former is equally bound as the latter. It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel. Can the Government say that it is under no obligation to act in a manner that is fair and just or that it is not bound by considerations of "honesty and good faith"? Why should the Government not be held to a high "standard of rectangular rectitude while dealing with its citizens"? There was a time when the doctrine of executive necessity was regarded as sufficient justification for the Government to repudiate even its contractual obligations, but let it be said to the eternal glory of this Court, this doctrine was emphatically negated in the Indo-Afghan Agencies case and the supremacy of the rule of law was established. It was laid down by this Court that the Government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action. If the Government does not want its freedom of executive action to be hampered or restricted, the Government need not make a promise knowing or intending that it would be acted on by the promisee and the promisee would alter his position

relying upon it. But if the Government makes such a promise and the promisee acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promise like any other private individual. The law cannot acquire legitimacy and gain social acceptance unless it accords with the moral values of the society and the constant endeavor of the Courts and the legislatures must, therefore, be to close the gap between law and morality and bring about as near an approximation between the two as possible. The doctrine of promissory estoppel is a significant judicial contribution in that direction. But it is necessary to point out that since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promisee and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because, on the facts, equity would not require that the Government should be held bound by the promise made by it. When the Government is able to show that in view of the facts as have transpired, public interest would be prejudiced if the Government were required to carry out the promise, the Court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and after this position and the public interest likely to suffer if the promise were required to be carried out by the Government and determine which way the equity lies. It would not be enough for the Government just to say that public interest requires that the Government should not be compelled to carry out the promise or that the public interest would suffer if the Government were required to honour it. The Government cannot, as Shah, J., pointed out in the Indo-Afghan Agencies case, claim to be exempt from the liability to carry out the promise "on some indefinite and undisclosed ground of necessity or expediency", nor can the Government claim to be the sole judge of its liability and repudiate it on an ex-parte appraisal of the circumstances". If the Government wants to resist the liability, it will have to disclose to the Court what are the facts and circumstances on account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether these facts and circumstances are such as to render it inequitable to enforce the liability against the Government. Mere claim of change of policy would not be sufficient to exonerate the Government from the liability: the Government would have to show what precisely is the changed policy and also its reason and justification so that the Court can judge for itself which way the public interest lies and what the equity of the case demands. It is only if the Court is satisfied, on proper and adequate material placed by the Government, the over-riding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government. The Court would not act on the mere ipse dixit of the Government, for it is the Court which has to decide and not the Government whether the Government should be

held exempt from liability. This is the essence of the rule of law. The burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the Court would insist on a highly rigorous standard of proof in the discharge of this burden. But even where there is no such over-riding public interest, it may still be competent to the Government to resile from the promise "on giving reasonable notice which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position" provided of course it is possible for the promise to restore status quo ante. If however, the promisee cannot resume his position, the promise would become final and irrevocable. Vide Emmanuel Ayodeji Ajayi v. Briscoe. (1964) 3 All ER 556

39. In Godfrey Philip India Ltd. (supra) also the Apex Court dealing with the principle of promissory estoppels and its applicability, held that the same would be applicable to a valid executive order of the Government except when it would be equitable to do so. While holding that the doctrine of promissory estoppels is applicable against the Government in the exercise of its Governmental, public or executive functions and the doctrine of executive necessity and freedom of future executive action could not be invoked to defeat the applicability of the doctrine of promissory estoppels, the Apex Court made the following observations:--

9. Now the doctrine of promissory estoppel is well-established in the administrative law of India. It represents a principle evolved by equity to avoid injustice and, though commonly named promissory estoppel, it is neither in the realm of contract nor in the realm of estoppel. The basis of this doctrine is the inter position of equity which has always, true to its form, stepped in to mitigate the rigour of strict law. This doctrine, though of ancient vintage, was rescued from obscurity by the decision of Mr. Justice Denning as he then was, in his celebrated judgment in Central London property Trust Limited v. High Trees House Limited, (1956) 1 All E.R. 256. The true principle of promissory estoppel is that where one party has by his word or conduct made to the other a clear and unequivocal promise or representation which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise or representation is made and it is in fact so acted upon by the other party, the promise or representation would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so, having regard to the dealings which have taken place between the parties. It has often been said in England that the doctrine of promissory estoppel cannot itself be the basis of an action: it can only be a shield and not a sword: but the law in India has gone far ahead of the narrow position adopted in England and as a result of the decision of this Court in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, it is now well-settled that the doctrine of promissory estoppel is not limited in its application only to defence but it can also found a cause of action. The decision of this Court in Motilal Sugar Mills case

(supra) contains an exhaustive discussion of the doctrine of promissory estoppel and we find ourselves wholly in agreement with the various parameters of this doctrine outlined in that decision.

40. In *ABL International Ltd. And another* (supra) has been relied upon to counter the argument of the respondents that the disputed question of fact cannot be gone into exercising writ jurisdiction. In this case, the Apex Court referring to its earlier decision held that the High Court can intervene under Article 226, if the State or its instrumentality acts in arbitrary manner even in a matter of contract.

41. In *Dharmendra Trading Company and others* (supra) also the Apex Court was concerned with the doctrine of promissory estoppels. Countering the contention of the appellants that the doctrine of promissory estoppels was not applicable to the case, the Apex Court held that if the Government want to resile from a promise or an assurance given by it on the ground that undue advantage was being taken or misuse was being made of the particular concession granted, the Court may permit the Government to do so only deriving the satisfaction that the allegations by the Government about the misuse or undue advantage was reasonably established.

42. In *Sharma Transport* (supra) also the Apex Court dealing with the doctrine of promissory estoppels discussed about its applicability and held that the Government should be hold to high standard of rectangular rectitude while dealing with citizens. It was also held that since the doctrine of promissory estoppels is an equitable doctrine, it must yield where the equity so requires.

43. In *Kalyanpur Cement Ltd.* (supra) dealing with the same principle of promissory estoppels, the Apex Court held that the Government cannot claim to be exempted from the liability of carrying out the promise on some indefinite and undisclosed grounds of necessity or expediency. In paragraph 79 of the judgement it has been observed thus:--

79. We are also unable to accept the submission that the decisions dated 06.01.2001 and 05.03.2001 had been taken due to the change in the national policy. This was sought to be justified by Dr. Dhavan on the basis of the Conferences of Chief Ministers/Finance Ministers. It is settled law as noticed by Bhagwati, J in *Motilal Padampat* (supra) that the Government cannot claim to be exempt from liability to carry out the promise, on some indefinite and undisclosed ground of necessity or expediency. The Government is required to place before the Court the entire material on account of which it claims to be exempt from liability. Thereafter, it would be for the Court to decide whether those facts and circumstances are such as to render it inequitable to enforce the liability against the Government. Mere claim of change of policy would not be sufficient to exonerate the Government from liability. It is only when the Court is satisfied that the Court would decline to enforce the promise against the Government. However, the burden would be upon the Government to show that

it would be inequitable to hold the Government bound by the promise. The Court would insist a highly rigorous standard of proof in the discharge of this burden.

(Emphasis supplied)

44. The Kumari Shrilekha Vidyarthi and others (supra) has been referred to, to counter the argument that the writ petition is not maintainable, there being disputed question of facts and the parties should take recourse to the arbitration provided for in the MOU. Dealing with the facts involved in the case, the Apex Court held that the scope of judicial review was permissible as the case do not require any elaborate consideration and that the scope of judicial review was permissible on the ground of arbitrariness or by reasonableness or irrational. It was further observed that since Article 14 was attracted, that by itself was sufficient to invalidate the particular circular.

45. In S. Raghunathan and others (supra), the Apex Court was concerned with the doctrine of legitimate expectation. Dealing with the said doctrine, it was held that the doctrine of "Legitimate Expectation" had its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country are expected to honour their statement of policy or intention and treat the citizens with full personal consideration without any iota of abuse of discretion. It was further held that the policy statement cannot be disregarded unfairly or applied selectively.

46. The decisions on which the learned counsel representing the State has placed reliance are aimed to dilute the argument on promissory estoppels and legitimate expectation and also to resist the writ petition on the ground of being involved of disputed questions of fact and delay and latches. Referring to the said decisions, it was argued that the doctrine of promissory estoppels and legitimate expectation is not applicable to the facts and circumstances of the case and also that there being delay and latches in invoking the writ jurisdiction coupled with the fact that the writ petition involved disputed questions of fact, the same is not maintainable. Similarly, the learned counsel representing the respondent No. 4 also argued about the non-maintainability of the writ petition being involved of disputed questions of fact and there being alternative remedy. According to him, the petitioners ought to have taken recourse to arbitration or proceeding before the Civil Court instead of invoking the writ jurisdiction.

47. In Kurien E. Kalathil (Supra) the Apex Court held that the writ Court not ordinarily the proper forum for resolution of disputes regarding the terms of contract. In Bannari Amman Sugars Ltd. (Supra), the Apex Court dealing with the doctrine of promissory estoppels and invocation thereof held that in order to invoke the doctrine of promissory estoppels, clear, sound and positive foundation must be laid in the petition itself and that the Courts are bound to consider all aspects including the results sought to be achieved and the public good at-large. In K. Thilakan Kavenal (Supra), in the facts and circumstances of the case, it was held that the High Courts should not have gone into the disputed questions of

fact. Jagdish Mandal (Supra) was a case pertaining to rejection of lowest tender by the Government on the ground that it was defective. It was held that while invoking the power of judicial review in matters as to tenders or award of contracts, the Courts will not interfere by exercising power of judicial review even if a procedural aberration or error in assessment or prejudice to a tenderer is made out. Dealing with the power of judicial review in the matter of administrative action, it was held that the same was entitled to prevent arbitrariness, irrationality, unreasonableness, bias and malafides.

48. In Jasbir Singh Chahabra (Supra) dealing with the doctrine of promissory estoppels, the Apex Court dealing with the particular decision of the State Government, held that the same could not be said to be malafides. That was a case relating to change in land use. The land meant for industrial use. However, the State Government approved the proposal of the State Corporation for earmarking 20-30% of the land for industrial housing in the existing and upcoming focal points and growth centers developed by the corporation. The object underlying the policy decision was to provide some land for residential purpose to those who had set up or were intending to set up industrial units and the workers already employed or to be employed in such units. Upholding such a policy decision and noticing the fact, the State Government did not sanction change of land use in the particular phases from industrial to commercial, held that while exercising power of judicial review, the Courts should not readily accept the charge of malus animus led against the State and its functionaries. In paragraph 34 of the judgement, it was observed thus:--

34. It is trite to say that while exercising power of judicial review, the superior courts should not readily accept the charge of malus animus laid against the State and its functionaries. The burden to prove the charge of malafides is always on the person who moves the Court for invalidation of the action of the State and/or its agencies and instrumentalities on the ground that the same is vitiated due to malafides and the courts should resist the temptation of drawing dubious inferences of malafides or bad faith on the basis of vague and bald allegations or inchoate pleadings. In such cases, wisdom would demand that the Court should insist upon furnishing of some tangible evidence by the petitioner in support of his/her allegations.

49. The decision in Krishan Lal (Supra) has been referred to, to buttress the argument that there being arbitration clause in the MOU, the petitioners should have invoked the same instead of writ jurisdiction. In the said decision while recording the arguments that the appellant ought to have resorted to arbitration clause instead of filing a writ petition in the High Court, the Apex Court while appreciating the said plea but keeping in mind the nature of the controversy and the decision thereof, held that relegating the parties to arbitration will not be feasible especially when the proceeding before the arbitration could also dragged on for another decades. In the given facts and circumstances, it was held that availability of alternative remedy for adjudication of the dispute could not be a

ground at the particular stage of the proceeding.

50. In *Tejas Construction and Infrastructure Pvt. Ltd.* (Supra) also dealing with the power of judicial review and the execution thereof in the contractual transactions of Government, it was held that in regard to judicial interference with Govt. contracts and in absence of any malafides or arbitrariness in the process of evaluation of bids, the case was not a fit case for interference by the Supreme Court.

51. The other decisions on which both Mr. D. Saikia, learned AAG, Assam and Mr. D. Das, learned senior counsel representing the respondent No. 4 have relied upon, are on the same principles relating to non-maintainability of the writ petition in view of available alternative remedy and the purported involvement of disputed questions of fact coupled with delay in invoking the writ jurisdiction etc. The decisions have also been pressed into service to emphasize a public interest. According to the learned State Counsel, the public interest in establishing the Super Specialty Hospital will override the private interest of the petitioners. According to him, the doctrine of promissory estoppels and legitimate expectation is not applicable to the present case and the decisions of the State Government is required to be upheld having regard to the larger public interest.

52. From the discussions of the case laws referred to above and the arguments advanced by the learned counsel for the parties, what has emerged is that while the petitioners have contended that after the particular promise made out to them by the respondents, they are now precluded from making use of the particular building for another purpose other than the purpose for which the same was constructed. According to the petitioners, the respondents are precluded from taking a different stand in the matter and that the doctrines pertaining to promissory estoppels and legitimate expectation are applicable towards granting appropriate reliefs to the petitioners. On the other hand, it is the stand of the respondents, both official and private, that the writ petition having been filed with disputed questions of fact after allowing the things to happen, the same is not maintainable, more particularly, when there is inbuilt provision relating to alternative remedy. According to the respondents, the doctrine of promissory estoppels and legitimate expectation are also not applicable to the case in hand and that the larger public interest will override all other considerations.

DISCUSSION ON RECORDS PRODUCED BY THE STATE RESPONDENTS:

53. As noted above, the State respondents have produced file No. KRA 28/2006 pertaining to LA Case No. 27/2006. The said file is marked as 1. They have produced another file marked as 2. However, the same is not on any subject. I have very carefully gone through both the files. It will be pertinent to mention here that in terms of the order passed on 11/09/2013 in MC 807/2013, the respondents were to produce the records indicated in the said order which included the file and documents pertaining to the building permission of Tolaram

Bafna District Civil Hospital and receipts of funds for construction of the same along with machineries and equipments etc. They were also required to produce the letter No. NRHM/SPL. Consultation/Misc/720/12-13 dated 21/11/2011 issued by the respondent No. 2 to the Chief Executive Officer, GMDA. However, the records do not contain the said files and the letter. What has been produced is the aforesaid two files relating to land acquisition proceeding in respect of Dag No. 68 in Patta No. 24, over which the six-storied building relating to the controversy involved in this proceeding was constructed. On perusal of the said two files, there is absolutely no manner of doubt that the land was acquired for construction of the Kamrup District Hospital, named after Tolaram Bafna.

ANALYSIS, CONCLUSIONS AND FINDINGS

54. As noted above, the whole process of establishing the Civil Hospital in the name and style of Tolaram Bafna District Hospital, Kamrup started with the expression of interest on the part of the petitioners to hand over the vacant land, constructed premises along with its infrastructures and also the Government land covered by Dag No. 108 which was under their possession for more than 30 years. Responding to the said expression of interest, the jurisdictional Deputy Commissioner by his Annexure-III letter dated 07/10/2006 intimated the Government of Assam in the Health and Family Welfare Department about the proposal made by the petitioners. In the said letter, it was specifically conveyed that for developing the hospital and for the purpose of getting access to the donated land, the plot of land measuring 2 B 0K 4 Lessas of Dag No. 68 would require to be acquired. Along with the said letter, a sketch showing the location was also enclosed, clearly indicating that to materialize the proposal, the land covered by Dag No. 68 would require to be acquired. Alongside the said land, Government land under Dag No. 68 under possession of the petitioners and as claimed in the writ petition, over 30 years was also shown.

55. Pursuant to the said development, the meeting of the Committee that was constituted by the Government of Assam vide its letter dated 15/12/2006, considered the proposal on the basis of the aforesaid letter dated 07/10/2006, preceded by letter dated 03/11/2006, conveying the proposal by way of expression of interest and accepted the same. Thus, it was agreed to accept the proposal mooted by the petitioners towards establishing Tolaram Subhkaran Bafna District Hospital, Kamrup. As per the MOU executed on 08/01/2007 (Annexure-V), apart from running the hospital in the name of Tolaram Subhkaran Bafna District Hospital, Kamrup. In the hospital complex, the existing building of the petitioners should be named as Acharya Tulsi Orthopedic Centre. As per the said MOU, there should be provision for fitment of essential limbs and calipers, totally free of costs to Leg Amputees and Polio patients and the existing facility could be continued by Tolaram Bafna Artificial Limbs and Caliper Centre. It was also provided that the existing infrastructure of Acharya Tulsi Orthopedic Centre would be developed by the second party to the MOU, namely, the Government of Assam, represented by the Deputy Commissioner, Kamrup and Director of Health

Services, Assam, as per the authorization made to them vide letter dated 05/01/2007 as Trauma Centre cum Polio Surgery Centre as a part of the said hospital. For the purpose, the required infrastructure was to be upgraded by the second party with latest/modern equipments. Clause-3 and 5 of the MOU provides as under:--

Clause 3 - Further the donor and the trusts do hereby bequeath and handover their land and building together with infrastructure and assets in aforesaid manner to the second party for setting up a District Hospital and there would not be any deviation from this pious object. In the event of use or transfer of land for any other purpose the land donated will be reverted back to the original owners.

Clause-5 - That the Government would run, manage and control the hospital smoothly and efficiently and it will be fully equipped with latest equipments and doctors in particular to provide medical treatment to the patients. No responsibilities whatsoever shall lie with the parties of the First Part at any point of time.

56. Clause - 8 of the MOU which is arbitration clause and Clause-9 confer jurisdiction to Courts are also quoted below:--

Clause 8- The parties hereto hereby assure and covenant each other that they have entered into this MOU in good faith and in furtherance of the pious objects to serve the society and patients and accordingly the parties shall make their best endeavour to resolve their disputes, differences mutually and in case of failure all questions relating to the interpretation and meaning of this Memorandum of Understanding and any dispute/differences arising between them shall be referred to joint arbitration of the Donor cum Managing Trustee or their nominee representative and Deputy Commissioner, Kamrup or his nominee representative and the arbitration proceeding shall be governed by the provision of Arbitration & Conciliation Act, 1996 or any amendment made thereto.

Clause 9 - The Gauhati High Court and its subordinate courts shall have exclusive jurisdiction to try any matter relating to this MOU.

57. Pursuant to the aforesaid MOU and as discussed above, two Deeds of Gift were executed by the petitioners donating the land shown in the schedule thereto in favour of the State respondents. Annexure-VIII is the letter dated 31/08/2007, by which the sanction for creation of new posts in the hospital was conveyed to the AG (A & E), Assam. As discussed above, foundation stone laying down ceremony in respect of the proposed construction of the new building was held on 10/11/2007 in presence of the State Chief Minister and the Health Minister. As stated in the writ petition, in the published play cards/leaflets, details of the proposed hospital and its infrastructures were provided stating therein that the existing building which had a 50 bedded hospital would be developed with further 150 beds. There is also no dispute that the new building was inaugurated on 21/02/2011. A marble plate engraved in the wall at the main entrance of the building with the inscription "Today on 21st February, 2011, 500 Bedded Tolaram

Bafna Kamrup District Civil Hospital new Building stands inaugurated". The Annexure-XII photographs annexed to the writ petition clearly bears the testimony of the same. Other photographs annexed to the writ petition are the photographs of inauguration ceremony with the background plate with the inscription "Inauguration of 500 Bedded Tolaram Bafna Kamrup District Hospital, Amingaon, Kamrup"; the Signboard with the inscription of the name as "Tolaram Bafna Kamrup District Civil Hospital" and the full view of the six-storied building with clear inscription of the name plate depicting it to be the "Tolaram Bafna Kamrup District Civil Hospital". As is evident from the said photographs and as agreed to by the learned counsel for the parties, there is interconnecting foot bridge with cover connecting the old existing building of the petitioners and the new building and in the background there is half constructed 4 (four) storied building over the plot of land donated by the petitioners.

58. At one stage of the argument, when the aforesaid position relating to the new building was pointed out to the learned AAG, Assam with the pointed question as to whether the said position relating to Tolaram Bafna Civil Hospital could not have been changed subsequently but offering the building to the respondent No. 4, the same was sought to be met with the argument that mere showing of the hospital as Tolaram Bafna Civil Hospital, Kamrup District, may not lead to the inference that the building was constructed for the hospital and that the same was inaugurated for the purpose. It was also sought to be brushed aside with the argument that such inauguration and showing of the building as Tolaram Bafna Civil Hospital could be because of the then ensuing election in the State.

59. In the counter affidavit filed against the writ petition, there is no denial of the aforesaid facts. As discussed above, in the short and concise affidavit-in-opposition filed on 24/01/2013, following are the basic stand of the respondents:--

3. That as regards to the statements made in paragraph 1 of the writ petition, the deponent respectfully begs to state that the contention expressed in the paragraph is not based on facts. The 50 bedded District Hospital at Amingaon is functioning and will continue to be a government run hospital. The understanding arrived at between the Government of Assam and Narayana Hrudayalaya is to be establish a super Specialty Hospital in the building situated on Dag No. 68, 79, 108, 107 in village Mohekhaity, Sindorighopa Mauza, North Guwahati Circle, Kamrup (R). As per the land records, Kamrup District Civil Hospital is the owner of the land. The Kamrup District Administration has handed over the said plot of land on which a building has been constructed by NRHM, Assam as per approval of the Government of Assam and Government of India in the Health and Family and Welfare Department. Therefore, the contention raised in the instant paragraph is incorrect.

6. That as regards to the statements made in paragraph 4 of the writ petition, the deponent begs to state that as per the latest land document, the building has

been constructed alongside T.R. Bafna Kamrup Civil Hospital and is owned by the Government of Assam in the Health and Family welfare Department. The Joint Director, Kamrup (R) has handed over the possession of the land/building to the NRHM for establishment of the Super Specialty Hospital.

12. That as regards to the statements made in paragraph 12 of the writ petition, the deponent begs to state that the said district hospital is functioning under the name and style "T.R. Bafna Kamrup Civil Hospital."

13. That as regards to the statements made in paragraph 13 of the writ petition, the deponent respectfully begs to state that the contention raised in the instant paragraph is incorrect and not based on facts. The T.R. Bafna Civil Hospital is functioning as the District Civil Hospital, Kamrup. The Government or the NRHM has no intention to hand over the land or building or the functioning of T.R. Bafna Civil Hospital to Narayan Hrudayalaya and any apprehension of the writ petitioner in this regard is baseless and imaginary. A super specialty hospital will be functional on the building situated alongside T.R. Bafna Kamrup Civil Hospital with the noble purpose/view of providing special medical care and treatment to the patients in five identified serious ailments which are given below.

? Cardiology

? Cardio-Thoracic Surgery

? Neurosurgery

? Neurology

? Dialysis Unit

16. That as regards to the statements made in paragraph 16 of the writ petition, the deponent begs to partially admit the same. Although, initially it was conceived to develop the hospital into a 500 bedded hospital, subsequently it was seen that construction of a super specialty hospital with provision of 300 beds will be sufficient to cope up with the increasing demands of the patients. Further, Narayana Hrudayalaya which was been extending high quality medical service at Bangalore and as well as other Indian cities will be able to provide similar high quality service to the people of the State. ATG present, the Congenital Heart Disease children of age group of 0-14 years are being sent to Bangalore, Kolkata for treatment at government cost. The associated hazards can be minimized to be great extent with the establishment of Super Specialty Hospital.

21. That as regards to the statements made in paragraph 23 of the writ petition, the deponent respectfully begs to state that the T.R. Bafna Kamrup Civil Hospital has been functioning and rendering service to the afflicted people. The establishment of a super specialty hospital is, in fact, a step ahead to provide super specialty medical services to the people. Further, the land and the building on which this super specialty hospital will function is owned by the Government

of Assam which, in turn has been handed over to NRHM. Therefore, the NRHM is legally and as per land records, is now owner of the land.

60. The said counter affidavit does not deny about acquiring the land in the name of Tolaram Bafna Kamrup District Civil Hospital, construction of the building for the hospital and the inauguration thereof, clearly showing the same to be the Tolaram Bafna Kamrup District Civil Hospital. The respondents have also not denied the fact stated in the further affidavits filed by the petitioners by which each and every development relating to the execution of the agreement with the respondent No. 4 and handing over possession of the new building to it have been brought on record. This aspect of the matter will be discussed a little later and before that a little reference to the records (2 files) produced by the State respondents will be appropriate to appreciate the facts better.

61. As noted above, there is absolutely no manner of doubt that the land pertaining to Dag No. 68 was acquired for the purpose of Tolaram Bafna Kamrup District Civil Hospital and six-storied building was also constructed for the same. The respondents have chosen not to produce the records pertaining to the building permission granted by the GMDA, utilization of funds for development of the building and infrastructure but the facts speaks for themselves. On perusal of both the files produced by the State respondents, it is found that proposal was mooted for acquiring the land covered by Dag No. 68 for the Tolaram Bafna Kamrup District Civil Hospital. The required notifications under LA Act were also issued. The file also contains the interdepartmental correspondences in the Public Works Department on the subject of construction of the Kamrup Civil Hospital, with copy endorsed to the Government of Assam in the Health and Family Welfare Department. There is also letter addressed to the Deputy Commissioner, Kamrup on the subject of payment of compensation for acquiring the land for the said hospital.

62. LA Case No. 27/2006 was initiated and notified requiring the land for public purpose clearly indicating as Construction of Kamrup Civil Hospital (Tolaram Subhakaran Bafna District Hospital). Vide notification dated 09/01/2007, the Deputy Secretary to the Government of Assam in the Revenue (LR) Department, notified that the land would be required for construction of Kamrup District Civil Hospital/Tolaram Subhakaran Bafna District Civil Hospital. All the correspondences contained in the file towards acquiring the land are in the name of Tolaram Subhakaran Bafna District Civil Hospital.

63. The second file which is without any number and subject, also contains documents pertaining to construction cost etc. in respect of the hospital building in the name of Tolaram Subhakaran Bafna District Civil Hospital, Kamrup. The documents contained in the file clearly indicate acquiring of the land under Dag No. 68 for the purpose of the hospital building and nothing else.

64. If we go by the above position as reflected in the files produced by the State respondents, there is absolutely no manner of doubt that the land under Dag No.

68 was acquired for Tolaram Subhkaran Bafna District Civil Hospital and the six storied building was also constructed in the name of the said hospital. This admitted position further finds support from the Annexure-III letter dated 07/10/2006 addressed to the Government in the Health and Family welfare Department by the Deputy Commissioner, Kamrup, in which it was categorically stated thus:-

For construction of the residential complex, for developing the hospital to 100 bedded and for the purpose of getting access to the donated land a plot of land measuring 2B-0K-4L of Dag 68 of the same village will have to be acquired. The acquisition cost will have to be borne by the Govt. A sketch showing the above mentioned locations is enclosed as Annexure-II.

65. As noticed above, the petitioners have brought on records the subsequent developments pertaining to the case after filing the writ petition. While entertaining the writ petition by order dated 21/12/2012, it was provided that status quo in respect of the status and the name of the petitioner hospital should be maintained. The said order still holds the field.

66. After filing of the counter affidavit on 24/01/2013, the petitioners filed affidavit-in-reply on 06/02/2013 bringing on record the subsequent facts of agreement dated 16/08/2012 executed by and between the Government of Assam and the respondent No. 4. Thereafter the petitioners filed an additional affidavit on 25/02/2013 bring on record their application dated 23/11/2012 to the Public Information Officer, office of the Deputy Commissioner, Kamrup (R), seeking informations relating to the subsequent developments by and between the Government of Assam in the Health and Family Welfare Department and the respondent No. 4. As contended in the said affidavit, on the date of filing the writ petition on 19/12/2012, the new building constructed for the purpose of establishment of the 500 bedded Tolaram Subhkaran Bafna District Civil Hospital was not handed over to the respondent No. 4 and that the civil hospital was functioning.

67. In paragraph 8 and 9 of the said affidavit, the petitioners have categorically stated that after closing the departments/units of the hospital, which were functioning from the new building, the beds and equipments etc. placed in the newly constructed building, have been handed over to the respondent No. 4 and that the internal lay out of the building was also being changed by breaking wall etc. It has been stated that the two letters dated 30/10/2012 and 17/11/2012 annexed to the counter affidavit were subsequently created showing handing over of the newly constructed building of Tolaram Bafna District Civil Hospital to the Mission Director, NRHM. According to the petitioners, till filing of the writ petition, there was no handing over of the new building to the NRHM. For a ready reference, the stand of the petitioners in paragraphs 7, 8, 9 and 11 of the said affidavit are quoted below:--

7. That this Hon''ble Court passed the interim Order of maintaining status quo on

21.12.2012 and it seems that in order to frustrate the aforesaid interim order, the Respondent authorities have created the Letter No. HLA 635/2010/159 dated 30.10.2012 and Letter No. NRHM/DHS (K)/Corres./12/2357 dated 17.11.2012 (Annexure-IV, Pages 17 and 18 of the Affidavit-in-opposition filed by Respondent No. 2 on 14.01.2013) showing the handing over of the newly constructed buildings of the Tolaram Bafna Civil Hospital at Amingaon to the Mission Director, NRHM. I say and assert that till filing of the Writ Petition there was no handing over of the new buildings of Tolaram Bafna Civil Hospital to NRHM.

8. That after passing of the interim order dated 21.12.2013, the aforesaid 200 beds, hospital equipments, instruments and furniture which were placed in the 1st and 2nd floors of the newly constructed buildings of the hospital were removed and were taken in a truck to a destination of which is not known to the petitioners. Outdoor Patient Department, X-Ray Department, Reception and Pharmacy which were functioning from the new buildings have been closed. However, part of the Hospital which was functioning from the old building continued and is continuing to function from the old building.

9. That I have come to know that after closing the departments/units which were functioning from the new buildings and taking away of the beds and equipments, etc. the newly constructed buildings of the hospital has been handed over to the Hrudayalaya for the purpose of establishment of a super specialty hospital. The internal lay out of the buildings is being changed by breaking wall, etc. and constructing new walls and partitions, etc. The work of fixture and making of furniture is going on in full swing. The colour of the newly constructed buildings is being changed. There is every likelihood that the sign board of Tolaram Bafna Civil Hospital may be removed within a short time. In fact the aforesaid fact has already been stated in paragraph 22 of the Affidavit-in-reply filed by the petitioners on 06.02.2013. However, by this Additional affidavit the details of the aforesaid activities of the Respondent authorities and Hrudayalaya are being brought to the notice of this Hon''ble Court. I crave leave of this Hon''ble Court to annex some of the photographs which have been taken on 19.02.2013 inside the newly constructed RCC building where the aforesaid works are going on.

11. That I have made queries regarding the functioning of the Hospital prior to closing down of the functioning of the said hospital from the new buildings and it has been informed that from the date of establishment till December, 2012 around 4,70,000 patients were treated in the hospital including OPD, 286 patients had undergone caesarian operation, 870 normal deliveries have taken place and the average visits of the patients were 200-250 persons daily. It has been learnt that after closing down of the functioning of the hospital from the new buildings, the visit of the patients in the old building has gone down. There has also been a problem in accommodating the Doctors, Nurses and other staff who were functioning from the new buildings. The facilities which could be made available to the patients prior to closing down of the functioning of the hospital from the new buildings cannot now be made available by the hospital to the

patients functioning from the old building and, as such, the patients of that area are suffering hardship and health hazard.

68. The aforesaid stand of the petitioners in their affidavit dated 25/02/2013 has not been denied by the respondents. Along with the said affidavit, the petitioners have annexed certain photographs dated 19/02/2013 showing changes inside and outside of the hospital building. In the said affidavit, an apprehension was expressed that there was every likelihood that the sign board of Tolaram Bafna Civil Hospital might be removed within a short time.

69. True to the aforesaid apprehension, the sign board, name plate etc. had been removed so as to be replaced by the name of the respondent No. 4. This facts have been brought on record by the petitioners through their affidavit filed on 06/02/2013, to which also there is no denial on the part of the respondents. Referring to the order of status quo dated 21/12/2012, the petitioners have contended that inspite of the said order, the respondents continued with the works pertaining to handing over of the hospital to the respondent No. 4 and also continued with the construction works inside the hospital building. In paragraph 7 of the said affidavit, it has been categorically stated that in the evening of 26/02/2013, the respondents removed the name plate of Tolaram Bafna District Civil Hospital, Kamrup, Amingaon, both in Assamese and English, which was engrafted by concrete on the top of the newly constructed building. The Annexure-XXII and XXIII photographs annexed to this affidavit clearly bears the testimony of the same. While Annexure-XXII photographs of the new building clearly indicate inscribed name of Tolaram Bafna Civil Hospital, Kamrup, both Assamese and English, the subsequent photographs dated 27/02/2013 show removal of the same with change of colour of the building. The Annexure-XXIII photographs dated 02/03/2013 show installation of the new name plate in the name of respondent No. 4.

70. As stated above, these factual aspects of the matter have also not been denied by the respondents although the respondent No. 1 filed the counter affidavit on 07/03/2013. In the said affidavit, the respondent N0.1 has stated that newly constructed six-storied building is a completely separate building and not an existing wing/part of the Tolaram Bafna Kamrup District Civil Hospital. It has been stated that the respondent No. 4 is a pioneer medical unit in the field of super specialty health care facilities in the country. According to this affidavit, the Government had tentatively decided that in the event of any difficulty in establishing and starting the super specialty hospital due to any condition in the MOU by and between the Government and the petitioners, the Government would not hesitate to invoke Clause-3 of the MOU quoted above towards returning back the land donated by the petitioners. However, there is no mention about return of the building and infrastructure and also the Government land which was under possession of the petitioners for over 30 years. For a ready reference, paragraph 3 and sub-para of paragraph 5 are quoted below:--

3. That the deponent begs to place herein the site plan of the Hospital Complex

comprising of the TRB Kamrup District Hospital, the Super Specialty Hospital, along with Doctor's quarters, staff quarters, Parking places etc., located in Amingaon. From the said site plan it is evident that the TRB Kamrup District Hospital is located and functioning in the land donated by the petitioners bearing Dag No. 109. Further, the newly constructed six storied Super Specialty Hospital is a completely separate building constructed in the adjacent plot bearing Dag No. 68 and is not an extended wing/part of the TRB Kamrup District Hospital as contended by the petitioners.

Sub-para of paragraph 5 : As such, the Government has tentatively decided that in the event of any difficulty in establishing and starting the proposed super specialty hospital due to any condition of the MOU dated 08/01/07 (Annexure-V to the writ petition), it will not hesitate to invoke the condition stipulated in clause 3 of the said M.O.U. i.e. if situation so arises the land which was donated by the writ petitioners will be reverted back to them. In other words, if situation so arise, the Government will return the donated land to the writ petitions in order to avoid any spanner in the matter. However, it may not be construed herein that the Government, has violated any of the terms and conditions of the said MOU dated 08.01.07.

71. After the aforesaid affidavit-in-opposition filed by the respondent No. 1, the petitioners have filed their affidavit-in-reply dated 21/03/2013, in which it has been stated that the respondents have even gone to the extent of giving away the quarters for nurses and Doctors located over the land covered by Dag No. 113 to the respondent No. 4. The land covered by Dag No. 113 is the land donated by the petitioners for establishing the Tolaram Bafna District Hospital. The fact that even the said land over which there are constructed quarters for Doctors and Nurses have been handed over to the respondent No. 4 is not in dispute. In this affidavit, it is the categorical stand of the petitioners that the land covered by Dag No. 68 was acquired for Tolaram Bafna District Hospital and the building was also constructed for the same. Referring to the site map annexed to the aforesaid counter affidavit, it has been stated that the ramp connecting the Orthopedic Centre with the main hospital building has not been shown therein. All these facts stated in the said affidavit have not been denied by the said respondents.

72. In the affidavit filed on 16/08/2013, there is categorical stand that the respondents continued with the construction works/renovation works inside the new hospital building despite the status quo order passed by this Court on 21/12/2012. Bringing on records certain photographs, such constructions/renovations have been brought on record to which there is no denial.

73. Amidst the hearing of the writ petition and when the hearing was almost concluded, the respondent No. 1 filed another affidavit-in-opposition on 04/10/2013 with the statement that in the newly constructed building there was no activities relating to the civil hospital to which the petitioners have filed affidavit-in-reply dated 28/10/2013 denying such stand. In the said affidavit, the

petitioners have referred to their earlier affidavits to which there was no denial on the part of the respondents. Significantly, the statements made in paragraph 3 of the said affidavit-in-opposition filed by the respondent No. 1 has been verified by the Deputy Secretary to the Government of Assam in the Health Department as true to his knowledge (part) without indicating which part is true to his knowledge and which part is true to records. That apart, no records pertaining to the same has also been produced.

74. In the affidavit filed by the respondent No. 1 on 07/03/2013, the above quoted statement has been verified as true to the knowledge of the deponent, who is the Joint Secretary, Health and Family Welfare Department. Such verification of affidavits filed by the officials of respondents will have to be considered in reference to the production of records as was ordered by this Court. In absence of any records supporting such averments made by the officials of the Government of Assam and such averments having been verified as "true to knowledge" coupled with the fact that the specific averments made by the petitioners in their affidavits bringing on records the developments including the change of name plates, carrying out alterations in the hospital building, change of colours and installations of the name plate of respondent No. 4 to the replacement of engrafted name plate of Tolaram Bafna District Civil Hospital will go to show that the respondents have virtually accepted the pleas raised by the petitioners and if that be so the petitioners have been able to make out a case as projected in the writ petition.

75. As observed by the Apex Court in *City and Industrial Development Corporation Vs. Dosu Aardeshir Bhiwandiwalla and Others*, the Writ Court is bound to consider all relevant parameters and authentic facts. The parameters may include issues of sufficiency of materials for adjudication including public policy and legality etc. It was further observed that the Government should conduct itself in a responsible manner and assist the High Court by placing the true and relevant facts by filing proper affidavits and documents. In paragraph 34 of the judgement it has been observed thus:--

34. It will not be appropriate to dispose of the matter without one word about the conduct of the State Government reflecting a highly unsatisfactory state of affairs. We express our grave concern as to the manner in which the State has conducted in this case. It is the constitutional obligation and duty of the State to place true and relevant facts by filing proper affidavits enabling the court to discharge its constitutional duties. The State and other authorities are bound to produce the complete records relating to the case once Rule is issued by the court. It is needless to remind the Governments that they do not enjoy the same amount of discretion as that of a private party even in the matter of conduct of litigation. The Governments do not enjoy any unlimited discretion in this regard. No one needs to remind the State that they represent the collect will of the society.

76. In *Bharat Singh and Others Vs. State of Haryana and Others*, dealing with

the issue of pleadings in the writ proceeding, the Apex Court held thus:--

13. ...In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the CPC and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us by the appellants is not entertainable. But, in spite of that, we have entertained it to show that it is devoid of any merit.

77. In *State of Assam Vs. Union of India (UOI) and Others*, the Apex Court held that the allegation of fact, if not denied/controverted in the counter affidavit, normally it shall be taken to be admitted by the respondents.

78. Every, State action in order to survive, must not be susceptible to the vice of arbitrariness. This is the crux of Article 14 and basic to the Rule of Law, the system which governs this country. In the instant case, not only the petitioners had donated the land and the building along with the infrastructures for the specific purpose in response to which the State also acquired the land and constructed the new building to augment the said purpose but the hospital in question also started functioning from the new building. There-after by sudden and arbitrary turn of events, the said situation and position was changed overnight, which this Court exercising its power of judicial review under Article 226 of the Constitution of India cannot endorse. The action on the part of the State respondents in the Health and Family Welfare department is wholly unreasonable, unfair and not in accordance with the declared promise made out to the petitioners and the social objects sought to be achieved. As the narration of facts as above has revealed, there is inconsistency and obscurity in the entire process and accordingly I have no hesitation to interfere with the impugned action on the part of the respondents.

79. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be done in accordance with law. Judicial discretion wherever is required to be exercised, has to be in accordance with law and set legal principles. Judicial review is permissible if the impugned action is against law or in violation of the prescribed procedure or is unreasonable, irrational or mala fide. The discretion which encourages illegality or perpetuate an illegality cannot be exercised.

80. As has been held by the Apex Court in *Roshan Deen Vs. Preeti Lal*, the High

Court exercising its supervisory and extra-ordinary jurisdiction under Article 226 and 227 of the Constitution of India is to advance justice and not to thwart it. The very purpose of such constitutional powers being conferred on the High Courts is that no man should be subjected to injustice by violating the law. The look out of the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice is resulted on account of any erroneous interpretation of law. If justice became the by-product of an erroneous view of law, the High Court is not expected to erase such justice in the name of correcting the error of law.

81. In the instant case, what has emerged from the discussion of the factual aspects of the matter above is that the respondents completely and wholesomely resiled back from its earlier promise made out to the petitioners and resorted to arbitrariness in seeking to make over the newly constructed building along with some other portion referred to above, standing in the name of Tolaram Bafna Civil Hospital to the respondent No. 4. The doctrine legitimate expectation has developed as a principle of reasonableness and fairness and is used against statutory bodies and Government authorities on whose representations or promise, parties or citizens act and some detrimental consequences ensue because of refusal of authorities to fulfill their promise or honour their commitments. The argument under the label of "estoppel" "legitimate expectation" are substantially the same. It is true that where public interest is likely to be harmed, neither the doctrine of "legitimate expectation" nor "estoppels" can be allowed to be pressed into service by any citizens against the said authorities. However, as discussed above, neither in the records produced by the State respondents nor in the pleadings, it is their case that any decision was taken by the Government as a matter of policy decision to deviate from the earlier promise made out to the petitioners for any public interest.

82. Once it is held that the new building was constructed for the Tolaram Bafna Civil Hospital after acquiring the land for the purpose, naturally the question will arise as to whether the respondents could have taken recourse to hand over the same to the respondent No. 4 on the plea that the building was constructed not for Tolaram Bafna Civil Hospital. On the face of it such stand on the part of the respondents is absolutely untenable. The foundation stone laying down ceremony was attended to by none other than the Chief Minister of the State and when the building was completed, the same was inaugurated in presence of the departmental Minister clearly showing the same to be a 500 bedded civil hospital in the name of Tolaram Bafna Civil Hospital. These facts cannot be brushed aside as activities relatable to the then ensuring elections. If this stand is allowed, it would be disastrous for the citizens to fall prey to the promises made by the power that be.

83. This now leads us to the question as to whether irrespective of the aforesaid position, the State Government in the Health and Family Welfare Department was within its competence and jurisdiction to take a further decision in the

matter as a public policy to utilize the new building for establishing a super specialty hospital and as to whether in the given facts and circumstances, such a course would be justified or not. As noted above, in the counter affidavit filed by the respondents, it is not the stand that as a matter of policy decision, it was decided to handover the constructed hospital building to the respondent No. 4. Apart from the fact that no such pleadings are available, no records pertaining to such policy decision have also been produced.

84. As has been held by the Apex Court in the aforesaid decisions including Kalyanpur Cement Ltd. (Supra), it is for the party to establish that the public policy demanded deviation from the promise made out to defeat the doctrine of promissory estoppels and legitimate expectation. In the instant case, the respondents have measurably failed to demonstrate that any such policy decision was taken by the Government of Assam and the petitioners were apprised of the same. It does not lie on the mouth of the Government of Assam that the building that was constructed for the hospital after laying down the foundation stone by none other than the Chief Executive of the State i.e. the Chief Minister with the subsequent inauguration of the building in presence of the Departmental Health Minister, to take the kind of pleas as has been taken in the writ petition. In one hand, they have contended that the building was never part of the civil hospital and on the other hand they have even gone to the extent of saying that the building was constructed for the Super Specialty Hospital.

85. Adding insult to the injury, the respondents have also contended that if the impugned action of the respondents have violated any conditions of the MOU, they are prepared to return the land to the petitioners, they had donated. However, there is no mention about the buildings, infrastructures, etc. the petitioners have donated along with the vacant land over which a new building has been constructed towards materializing the proposal.

86. It was argued that the land covered by Dag No. 108 being Government land, the petitioners cannot have any claim over it. As stated in the writ petition, without any denial thereof, the petitioners were in possession of the Government land for over 30 years. The said land forms very much part of the MOU. Needless to say that to divest the petitioners from the said land, the authorities would have required to follow proper procedure and not by hoodwinking the petitioners as has been done in the instant case. This is not for this Court to decide as to whether the petitioners could have claimed the said land on some legal basis including the plea of adverse possession, but at the same time they cannot be divested of their right from the said land, in the manner and method in which the same has been done.

87. Much has been emphasized about the maintainability of the writ petition as according to the respondents it involves disputed questions of fact. It has also been argued that there being an arbitration clause in the MOU, the petitioners should take recourse to the said provision. While it is true that disputed questions of fact cannot be adjudicated upon exercising writ jurisdiction but the

parties seeking remedy under writ, cannot be deprived of the said remedy falling back on the plea of "Disputed Questions of Fact" and/or "Alternative Remedy".

88. There is absolutely no disputed question of fact involved. It is a clear and simple case of violation of the doctrine of promissory estoppels and legitimate expectation and also the principles involved in administrative fairplay and non-arbitrariness in decision making process. Further the facts narrated above speaks for themselves. There is absolutely no manner of doubt that a particular land was acquired in the name of Tolaram Bafna Civil Hospital and the building was also constructed for the hospital. Apart from the fact that the foundation stone for construction of the building was laid down in the name of the said hospital, on completion of the building, same was also inaugurated in the name of Tolaram Bafna Civil Hospital. Things started moving adversely against the petitioners when there was a sudden move to hand over the newly constructed building to the respondent No. 4 for establishing a super specialty hospital. The very fact that while executing the agreement with the said respondent No. 4, the building has been referred to as the existing civil hospital, would go to show that it is the part of the Tolaram Bafna Civil Hospital, which was being handed over to the respondent No. 4. While there cannot be any objection towards establishing a super specialty hospital, but the same cannot be at the cost of the objective sought to be achieved by establishing the Tolaram Bafna Civil Hospital.

89. It is on record that the entire hospital was initially perceived as a 200 bedded hospital and it was inaugurated as such on 10/11/2007. Subsequently, the hospital was increased to a 500 bedded hospital, which was inaugurated on 21/02/2011. As stated in the affidavit-in-reply filed by the petitioners on 06/02/2013, at the time of handing over the petitioners' assets to the Government of Assam for setting up of Tolaram Bafna Civil Hospital, Kamrup, amongst others, a 25 bedded well equipped hospital which was located on the first floor of Acharya Tulsi Orthopedic Hospital was handed over. The infrastructure was increased to a 50 bedded hospital. Therefore, the stand of the respondents that the 50 bedded hospital will continue to run as a Government Hospital is contrary to the terms and conditions on the basis of which the assets were handed over to the Government and the new building was constructed. In the affidavits filed by the respondents, a projection is sought to be made that the 50 bedded Acharya Tulsi Orthopedic Centre is the Tolaram Bafna Civil Hospital. By such action, the respondents have also reduced the 500 bedded Tolaram Bafna Civil Hospital to a 50 bedded hospital. As noted above, initially the hospital was projected as a 200 bedded hospital and subsequently it was raised to a 500 bedded one and the entire hospital was named after Tolaram Bafna as the Tolaram Bafna Civil Hospital, Kamrup at Amingaon.

90. The petitioners have rightly contended that so far as the Government land under Dag No. 108 is concerned, relinquishment of the possession thereof as incorporated in the MOU dated 08/01/2007, cannot lead to a situation permitting the official respondents to lease out the same to the respondent No. 4. The

assertions made by the petitioners that the land was under their occupation for the last more than 30 years, has not been denied by the respondents. The petitioners having changed their position towards executing the MOU dated 08/01/2007 and in view of the subsequent action taken by the respondents towards developing the hospital to a 500 bedded hospital, the said position shall operate as estoppel against the respondents. It was the legitimate expectation of the petitioners that the object and purpose for which they had donated the land, building and infrastructure to the Government of Assam in the Health and Family Welfare Department, would be achieved and remain intact. However, the respondents by their subsequent action, not supported by any record deviated from their earlier stand in the matter and thereby violated the said doctrine, so well established in law.

91. If the writ petition does not involve any disputed questions of facts, the same cannot also be defeated on the ground of the particular clause in the MOU. As to what is the clause has been referred to above. As per the said clause, the MOU has been entered into by and between the parties in furtherance of the pious objects to serve the society and patients. The clause provides for making endeavour to resolve dispute, differences mutually and in case of failure, to refer the disputes/differences to the Joint Arbitrator. Bare reading of the said clause would go to show that the question of referring the dispute/differences that would arise between the parties. The said clause will have to be understood in the context of dispute relatable to the clauses of the MOU. In the instant case, there is no dispute as such by and between the parties, so as to invoke the arbitration clause.

92. Above apart, once a writ petition is entertained, the respondents file counter affidavit and the matter is argued on merit, it would be too late on the day to contend that the writ petitioner should have availed of the alternative remedy Smt. Kanak and Another Vs. U.P. Avas Evam Vikas Parishad and Others, The remedy referred to is also not statutory remedy. There is no rule with regard to certiorari as there is with mandamus that it will allow only where there is no other equally efficacious remedy. Even otherwise also, despite the existence of an alternative remedy, it is within the jurisdiction and discretion of the High Court to grant relief under Article 226 of the Constitution of India.

93. As regards the plea that the writ petition involves disputed questions of fact, as noted above, there is absolutely no disputed questions of fact. This Court is also not deprived of its jurisdiction to entertain a writ petition merely because in considering petitioner's right to relief question of fact may fall to be determined. Under Article 226, the High Court has jurisdiction to try issues, both of fact and law. It is only when the writ petition raises complex questions of fact, which may, for their determination, requires oral evidence to be taken, and on that count the High Court is of the view that the disputed statement may not be appropriately tried in a writ petition, the High Court may decline to try the petition. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 of

the Constitution of India merely because in considering the petitioner's right, questions of fact may fall to be determined. The question as to discretion, is to be exercised in conformity with the judicial principles.

94. Needless to say that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by the rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that the decision should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law.

95. It needs no emphasis that formation of necessary opinion or arriving at necessary satisfaction is the cornerstone of exercise of such discretionary powers. If a court on examining the records is satisfied that the concerned authority had never applied its mind to relevant facts and did not form any opinion that would be a sufficient ground by itself, to set aside the order *Jaichand Lall Sethia Vs. State of West Bengal and Others*, Such a conclusion might be drawn where a discretion is exercised in disregard of well-established principles governing such cases, because this would amount either to non exercise of discretion, or one not legally exercised *Hindustan Steels Ltd., Rourkela Vs. A.K. Roy and Others*,

96. Absence of reasonable nexus between the facts and circumstances taken into considerations in forming the opinion and the purpose for which the power is to be exercised, affords another ground to challenge the order passed on the basis of such opinion. What it implies is that there must be real and proximate connection between the grounds given and the object which the legislature had in view, or that the grounds must be such as a rational human being considers being connected in some manner with the object *The State of Bombay Vs. Atma Ram Sridhar Vaidya*, To put it differently, the facts must be such as could possibly and rationally support the conclusion drawn by the authority *State of Assam and Another Vs. Bharat Kala Bhandar Ltd. and Others*, So, if the grounds are such on the basis of which no one could reasonably form the requisite opinion or satisfaction, the same introduces an infirmity in the order *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*,

97. The above narration of facts stands on the face of it that the part of the *Tolaram Bafna Civil Hospital* is being handed over to the respondent No. 4. The doctrine of promissory estoppel and legitimate expectation will debar the Government in the Health and Family Welfare Department to take recourse to the same. If that be so, the issue raised in the writ petition cannot be frustrated referring to the aforesaid clause. Moreover, as noted above, alternative remedy cannot always stand on the way of exercising writ jurisdiction irrespective of facts and circumstances involved in the case debarring invocation of writ

jurisdiction. Clause-9 of the MOU also provides that this Court along with its subordinate Courts shall have exclusive jurisdiction to try any matter relating to the MOU.

98. This now leads us to last question on which the learned counsel for the State argued in reference to the stand of the official respondents in one of their affidavit that in the event of any difficulty towards setting up the Super Specialty Hospital, in view any condition in the MOU, the respondents would not hesitate to return the land to the petitioner. Such a stand on the part of the official respondents is really unfortunate. Apart from the fact that such a statement has been made in the said affidavit only in respect of the land and not in respect of the building, infrastructure, the newly constructed building and the Government land covered by Dag No. 108 and also the Doctors' and Nurses' quarters over Dag No. 113 belonging to the petitioners, having regard to the pious object for which the deal was struck towards establishing the Tolaram Bafna Civil Hospital and also the established principles relating to promissory estoppel and legitimate expectation and administrative fair play, such a stand on the part of the respondents is not sustainable in law.

99. For all the aforesaid reasons, this writ petition is allowed by granting the prayers made in the writ petition and consequently, the RFP dated 03/02/2012 and the Memorandum of Understanding dated 11/06/2012 entered into by the Government of Assam in the Health and family Welfare Department with the respondent No. 4, stands set aside and quashed. The position that was existing in respect of the Tolaram Bafna Civil Hospital prior to the said RFP and the MOU, shall stand restored, meaning thereby that the Tolaram Bafna Civil Hospital would continue to run both from the old and the new buildings and the respondent No. 4 shall strictly adhere to the objective sought to be achieved through the MOU by and between the parties i.e. the Government of Assam in the Health Family Welfare Department and the petitioners and all consequential actions thereof discussed above towards establishing and running the said hospital. There shall be no order as to costs.