Karnataka High Court Tam Tam Pedda Guruva Reddy vs State Of Karnataka And Another on 26 May, 1998 Equivalent citations: ILR 1998 KAR 3331, 1998 (6) KarLJ 99 Bench: V M Kumar ORDER 1. The allegations contained in these writ petitions in brief are as follows: The 2nd respondent issued Annexure-A notification under Rule 31-A of the Karnataka Minor Mineral Concession Rules, 1994, hereinafter referred to as the Rules, notifying the particulars of the land intended to be granted by tender-cum-auction to intending bidders. The last date of auction was 23-9-1995. The petitioner, being interested in item No. 1 in Annexure-A, made an offer of Rs. 60.10 lakhs with respect to Sl. No. 1 therein. Detailed description of Sl. No. 1 was provided specifying the minor mineral, total area and the specific boundaries. The said bid was the highest. As required, the petitioner had deposited Rs. 6,30,000/- by way of earnest money. The petitioner's bid was accepted and he deposited the balance amount of Rs. 53,80,000/- within the period prescribed. As per communication dated 13-11-1995, the tender-cum-auction was confirmed in favour of the petitioner. The 2nd respondent called upon the petitioner to execute the lease deed in Form-F within three months thereof. The petitioner was directed to pay Rs. 14,000/- being survey and demarcation charges and 50% of the dead rent payable under Rule 18(2). The dead rent is fixed with reference to the mineral in the area covered (vide Rule 31-F(2). Treating 29 acres as the area covered by mineral, the 50% dead rent was fixed at Rs. 2,17,500/-. Thereupon, Annexure-B was written by the 2nd respondent on 20-12-1995, calling upon the Senior Geologist, Department of Mines and Geology, Mysore District, to conduct joint survey along with Revenue Authorities and demarcate the area as per the enclosed notified sketch and submit a report on the exact deposit available in the granted area with specific reference to the boundaries and check bandhis. Annexure-C is the report submitted by the Senior Geologist on 16/19-2-1996 showing that in the total extent of 29 acres sold, granite deposit was found only in 5 acres. The petitioner thereupon submitted Annexure-D wherein, after referring to Annexure-C report, he, inter alia, submitted that as the area sold contained only 5 acres of black granite, the 2nd respondent may hand over 29 acres of area having black granite. He submitted Annexure-E representation to the Minister for Mines and Geology. The petitioner claimed that item No. 1 in Annexure-A for which the petitioner submitted tender-cum-auction was described as an area of 29 acres of black granite and his bid was made on the said representation made by the respondent accordingly. Because it was represented to him as such, his bid amount was fixed at Rs. 60.10 lakhs for 29 acres of black granite. In his representation, he also stated as hereunder: 2. It was pointed out that various representations had been made to handover the entire 29 acres containing the black granite to the petitioner. It has been pointed out that the petitioner acted on the representation held out by the respondents and offered his bid of 60.10 lakhs. As per Rule 8-B, the quarrying leases to quarry the specified or non-specified minor mineral in an area belonging to the State Government and available for grant should be notified for disposal by tender-cum-auction and when once such notification is issued, the bidders will act on the information given by the department and offer bids. It has been pointed out that the bidders

honestly believe that the notification has been issued by the department after carrying out the preliminary investigation and after obtaining a report of the availability of the black granite in the area of 29 acres. It was also pointed out that the persons who apply for grant of quarry lease under Rules contained in Chapter III select an area and apply for the same enclosing a sketch. Such applicants would have carried on their own investigations and applied for the area. Such applicants have got an option to surrender part of the area under Rule 19 of the Rules. Such liberty and option is not available to a bidder who offers his bid for the area notified under Rule 31-A. It has been pointed out that according to Rule 17, the boundaries will have to be specified which should run vertically downwards below the surface towards the centre of the earth. It is on the basis of availability of granite the department has to publish a notification under Rule 31-A. It turns out that the department has not followed the principles laid down by the rules before publishing a notification as per Annexure-A. The department seems to have proceeded on assumption that granite is available in 29 acres. It is submitted that the department cannot wriggle out of its responsibility in not handing over 29 acres containing black granite to the petitioner. 3. Thereupon, the petitioner received Annexure-F whereunder he was informed that he has been granted time till 15-4-1996 to execute the lease deed. To this the petitioner submitted Annexure-G reply. Therein, he stated as follows: 4. The action of the respondents and the department indicates that the department notified the entire area on the basis that it contains black granite. As the area had not been marked on the field, a person like a petitioner is wholly guided by the notification issued under Rule 31-A. It is only on 9-2-1996 when the Senior Geologist conducted the survey and reported that granite is available only in five acres the petitioner found out that the 2nd respondent and its office has not carried on the investigation before publishing a notification. 5. After receiving Annexure-G reply, the department called upon the Senior Geologist, Mysore, to re-survey and fix the boundaries. He conducted fresh survey and submitted Annexure-H report. The report demarcated thereafter indicated a larger area of 12 acres containing black granite as against 5 acres earlier indicated. It has now come to that the area available is only 12 acres of black granite; but despite the nonavailability of 29 acres of black granite, the respondent instructed the petitioner to execute the lease deed; he thereafter fearing that the handing over of the land would be delayed, executed Annexure-K lease deed under protest after writing the letter Annexure-J addressed to the respondent. These are the allegations contained in the Writ Petitions and he seeks the following relief on the basis of the said allegations. The petitioner has sought therefore the relief in the nature of mandamus commanding the respondent to handover the balance 17 acres of land alleging as follows: The petitioner alleges that black dyke is available in S. No. 218 of Gumballi village, Chamarajanagar Taluk and S. No. 170 of Yeragamballi village, Chamarajanagar Taluk. The petitioner would be satisifed if the respondents granted the remaining 17 acres in S. No. 218 of Gumballi village and S. No. 170 of Yeragamballi village. In the alternative, the petitioner prays for a direction to the respondents to refund a sum of Rs. 59.50 lakhs with Bank interest which is the amount paid by him for the lease

in terms of the tender excluding the security amount. The petitioner has urged the following contentions in this behalf: The action of the respondents and the department indicates that the department notified the entire area on the basis that it contains black granite. As the area had not been marked on the field, a person like a petitioner is wholly guided by the notification issued under Rule 31-A. It is only on 9-2-1996, when the Senior Geologist conducted the survey and reported that granite is available only in the five acres, the petitioner found out that the second respondent and its office had not carried on the investigation before publishing a notification, The petitioner represented that due to mistake committed by the department he is unable to take the benefit of the quarry lease for 29 acres. It was pointed out that the department had not executed a quarry lease because of its own wrong. The petitioner had to pay interest of Rs. 4,80,800-00 for the period between 1-11-1995 to 10-4-1996. The total interest payable is Rs. 5,01,416-00. It was also pointed out that the petitioner had invested Rs. 1,43,23,800-00 towards machinery. This machinery was lying idle and the loss of profit is Rs. 2,10,00,000-00. The total loss incurred by the petitioner is Rs. 3,58,22,016-00. The petitioner submitted, in addition to the amounts deposited, he has to pay the royalty on the mineral extracted by him. If the proper lease is not executed, the petitioner is entitled to claim damages. Therefore, he claims that the authorities should handover 29 acres containing black granite to the petitioner. The petitioner should not be penalised for offering the highest bid acting on the representation of the respondents and because of the mistake and the wrong done by the respondents. Whenever a lease is granted under Chapter III of the Rules, the respondents are receiving Rs. 5,000/- per acre as security deposit. If the amount is calculated on that basis the security deposit amount for 12 acres would be Rs. 60,000/-, whereas, the petitioner is made to pay Rs. 60.10 lakhs. If the respondents cannot fulfil their obligation under Rule 31-A and other connected rules, they should accept the security deposit of Rs. 60,000/- calculated at the rate of Rs. 5,000-00 per acre and refund the balance of the amount viz., Rs. 59,50,000-00. If the respondents are incapable of fulfilling their obligation, they will be liable to pay this amount as damages. The State Government has made a classification between the leases granted under Chapter III of the Rules and leases granted by tender-cum-auction under Chapter IV-A of the Rules. Whenever leases are granted under Chapter III, the State Government collects only security deposit at the rate of Rs. 5,000/- per acre and application fee of Rs. 2,000/-. Priority is prescribed by Rule 12 and the applicant should be eligible to get the grant. A maximum area is specified. The committee appointed under Rule 11 should make a recommendation. Thereafter, the State Government may grant the lease. The grantee is liable to pay royalty and dead rent as per Rule 36. The applicant does not have a vested right to the grant of a lease. But, in the case of a lease granted under Chapter IV-A, the person who submits the tender need not apply under Rule 9. Rule 11 which speaks of the recommendation of the committee and grant of the lease by the Government is inapplicable. But, Rules 36 to 41 pertaining to payment of royalty and dead rent are made applicable. Therefore, when the highest bidder is accepted the person who makes that bid gets a vested right to the grant of

the lease. This lease pertains to the area mentioned in the notification issued under Rule 31-A and it is obligatory that the extent of the area mentioned in the notification should contain the specified minor mineral in respect of which the tenders are called for. 6. A detailed statement of objection has been filed on behalf of the respondents stating, inter alia, as hereunder: It is stated that as the petitioner himself wrote after the confirmation of the auction expressing his eagerness to execute the lease deed it was executed and as such there is no question of the refund of Rs. 59.50 lakhs as now claimed. As per Annexure-R2, it is clear that the petitioner has given consent for fixing the boundaries. After these representations, the petitioner cannot now withdraw from the terms and conditions. It was stated that there was no assurance on the part of the State Government that black granite was available in the entire 29 acres. He participated in the auction as per the notification with full knowledge of this fact and he was aware of the terms and conditions of the auction as also the area to be auctioned. When the area is auctioned, the successful bidder will have right to excavate the minerals found in the area auctioned which has to be carried out in a systematic way stipulated under the Mining Act and Rules. For systematic and scientific quarrying, the area has to be developed with proper approach roads and temporary sheds have to be erected for storing quarrying material, labour sheds, etc. The present black granite deposit extends North-West-South-East direction for a length of about 1,000 ft., and over a width of about 200 ft. The dyke rock dips towards North-East direction and extends to greater depths. This black granite deposit is exposed at the top of a hillock whose height is about 100 ft., from the ground surface. To quarry the black granite deposits found in the area, approach roads have to be made, waste rock and soil has to be removed, benches have to be formed for systematic and scientific quarrying. The waste rock and the soil has to be deposited in the area in such a way that it does not affect the ecology and environment etc. To quarry in such a systematic way, the quarry has to be properly developed by making the above mentioned developmental works. For doing this, an additional non-mineralised area is also required for the lease holder. If such an additional non-mineralised area is not available under the lease, then he will be forbidden from developing the quarry and disposing of the waste material. Since the black granite deposit dips in a north-easterly direction, as the quarrying progresses the occurrence of deposit will be in the north-easterly direction. The black granite deposit which is exposed at the surface now towards all along the south-western portion of the lease will gradually move towards north-eastern direction at depth. Therefore, for systematic and scientific quarrying additional nonmineralised zone at the surface has to be included, so that, the black granite deposit available in the area could be exploited to the fullest extent up to a reasonable depth. 7. A detailed rejoinder has been filed denying these allegations, by the petitioner. The petitioner asserts that he was not aware of the fact that the area proposed to be auctioned contained only 12 acres of minerals, that the action of the respondents is in total disregard of the rules, that the petitioner became aware of the smaller extent only when the report of the Geologist was received, that the respondents are bound to honour their legal obligation and should not drive a

citizen to file suit to impose the same, that the petitioner has taken the adjoining 6 acres of Sri Mahadevappa to dump waste and for use needed for incidental purposes. Further, it was never disclosed that the area may contain lesser extent of black granite than notified. The petitioner further elaborated the averments in the writ petitions in the rejoinder. 8. I have heard Mr. M.R. Achar, learned Counsel for the petitioner and Mr. Kantharaju, learned Government Advocate for the respondents, at length. 9. The whole dispute now has arisen due to the difference in the area embedded with of minerals assumed to be available as per auction notification, by the petitioner from what exactly was found available in the area. The main contention of the petitioner is that the respondents had notified to sell minor mineral, namely, black granite spread in an area of 29 acres in Sy. No. 248. Whereas the respondents contend that they merely notified to sell the black granite found available in the 29 acres of land in Sy. No. 248. According to them, the area occupied by black granite is unspecified and is situate within the 29 acres of notified land. As could be seen, it is their case that they did not intend to represent to the public that the entire 29 acres of land notified in Annexure-A as Sl. No. 1, contained black granite; but the petitioner contends that the notification was an overt representation in that behalf to the prospective bidders holding that the black granite existed in 29 acres and as such the respondents cannot resile therefrom. We will now examine this question first, before going into other contentions. 10. Annexure-A is the notification issued under Rule 31-A(1) of the Rules. The material entries relevant for the purpose of the case are as follows: Name of the minor Black granite mineral of the area Block No. 1, 29 acres and boundaries boundaries: (omitted) Now, with the furnishing of the above details, can a person legitimately infer/assume that the entire area contained black granite and that the invitation of the tender-cum-auction was on that basis? 11. To understand this issue, we will have to advert to the provisions of the various rules. In this behalf, Rule 8-B(1) of the Rules may be adverted. It reads thus: "8-B. Notifying the area for grant of lease by tender-cum-auction.–(1) Notwithstanding anything contained in these rules the competent authority may by notification direct that quarrying leases to quarry specified or non-specified minor mineral in any area belonging to the State Government and available for grant, as may be specified in such notification, shall be granted by tender-cum-auction in accordance with the provisions of Chapter IV-A", The rule provides that the "quarrying leases to quarry specified or nonspecified minor mineral in any area belonging to the State Government and available for grant, as may be specified in such notification, shall be granted. . . . . ". We should also advert to Rule 31-A(1) as well in this behalf. The rule reads thus: "31-A. Notification for grant of quarrying lease.– (1) For the purpose of grant of quarrying lease by tender-cum-auction in respect of the area notified under Rule 8-B the Director shall issue a notification containing the following particulars, namely:– (i) Name of the minor mineral. (ii) Survey Number, extent of the area and boundaries. (iii) Name of the Village, Taluk and District. (iv) The period of lease. (v)The last date for receipt of tender, the time at which and the place in which the auction will be held and (vi)General conditions governing the tender-cum-auction". Now, when Rule 8-B authorises

the grant of quarrying lease for specified/non-specified minor minerals, it also contemplates describing of the area which is sought to be leased. The intention of the rule is to govern leasing of land to exploit minor minerals; it does not contemplate leasing of land for prospecting of minor minerals. Rule 31-A(1) and (2) specifically contemplates the description of that area with extent and boundaries so as to identify the area which has the minor minerals. Now, we may advert to Rule 31-F(2) which provides that: ".....The intending bidders shall register themselves by paying a non-refundable registration fee of Rupees Five hundred only and an earnest money deposit of an amount equal to one year dead rent for the mineral in area covered in notification.....". Rule 36 provides that the dead rent is as per Schedule I and Royalty as per Schedule II. Schedule I reckons dead rent on the basis of acreage, whereas royalty as per volume. Essentially, the dead rent is to be reckoned with reference to the area occupied by the minor mineral. The quantum of dead rent under Rule 31-F(2) is 'worked out on the basis of Rule 31-A(1) notification. In such cases, it is normal to expect that the lessor has an idea of the commodity being leased, so as to assess whether the value offered is just. It is only on that basis that the dead rent is fixed. Therefore, when the lessor notified the area for which the dead rent is to be fixed, again it is conveying of the relevant information to the bidder to enable him to fix the bid amount. If that be so, it is reasonable to assume that an intending bidder forms a reasonable conclusion on the basis of the details furnished and held out in the public notification. 12. Now, the minor mineral admittedly belongs to the State. The right to quarry is leased out by the State. At that stage of leasing, it is only to be assumed that the lessor alone will be in possession of the details of the commodity that is being offered for quarrying. The details to be included in the notification as provided in Rule 8-B read with Rule 31-A(1) makes it abundantly clear that the lessor is clearly holding out to the prospective lessee as to what is the material that is being offered as per the quarrying lease. By providing to indicate the boundaries, the statute enjoins the lessor to be precise as to the extent of the area where the minor mineral is found arid is intended to be quarried. The rules do not say that the lessor may state that they intend to permit quarrying: ".....All the minor mineral that is found in the area in the named survey numbers and within the fixed boundaries.....". Such a notification will be very vague and would be in the adverse interest of the State. Therefore, obviously the rules expect the State, namely, the lessor, to make a representation regarding the existing fact as to the quantity of minor mineral which is a fact purely within the knowledge of the lessor. In this behalf, we may advert to the following passage from Century Spinning and Manufacturing Company Limited and Another v Ulhasnagar Municipal Council and Another : "Public bodies are as much bound as private individuals to carry out representations of facts and promises made by them, relying on which other persons have altered their position to their prejudice. The obligation arising against an individual out of his representation amounting to a promise may be enforced ex-contractu by a person who acts upon the promise: when the law requires that a contract enforceable at law against a public body shall be in certain form or be executed in the manner prescribed by statute,

the obligation if the contract be not in that form may be enforced against it in appropriate cases in equity. In Union of India v M/s. Anglo-Afghan Agencies, this Court held that the Government is not exempt from the equity arising out of the acts done by citizens to their prejudice, relying upon the representations as to its future conduct made by the Government. . ..". There is thus a clear representation made by the State regarding the existing state of affairs of the quantum of minor minerals being auctioned. By the notification issued under Rule 31-A, the respondents are holding what it proposes to transfer by lease in the matter of lease of minor mineral. 13. This takes us to the next question as to whether the petitioner can hold the respondents on their representation and enforce the offer held out to the petitioner by means of Annexure-A. It is not now in dispute that the doctrine of promissory estoppel is now not only a shield but can be used as a sword furnishing a cause of action. (See Gujarat State Financial Corporation v Lotus Hotels Private Limited and D.C.M. Limited and Anothers v Union of India and Another . If that is so, if the respondents have held out that they intended to lease out 29 acres of black granite, and a person acted to his prejudice on the said representation, then the respondents cannot be allowed to back out therefrom. This is a case where the respondents by the notification, Annexure-A issued under Rule 31-A(1), caused the petitioner to act on the representation held out on certain facts which facts are exclusively within the knowledge of the respondents. The issuance of the notification is not an ultra vires action on the part of the 2nd respondent, because, as per Rules 8-B and 31-A, he is the competent authority to issue the notification. The rules also intend that such details have to be furnished in the notification itself, to enable the contracting party to make their bid. It is thus an exercise of an executive function by the 2nd respondent vested in him under the rules. In this behalf, the following passage from Union of India and Others v Godfrey Philips India Limited , may be adverted: "The doctrine of promissory estoppel as explained above was also held to be applicable against public authorities as pointed out in Motilal Sugar Mill's case, supra. This Court in Motilal Sugar Mill's case, supra, quoted with approval the observations of Shah, J., in Century Spinning's case, supra, where the learned Judge said:"Public bodies are as much bound as private individuals to carry out representations of facts and promises made by them, relying on which other persons have altered their position to their prejudice"."If our nascent democracy is to thrive different standards of conduct for the people and the public bodies cannot ordinarily be permitted. A public body is, in our judgment, not exempt from liability to carry out its obligation arising out of representations made by it relying upon which a citizen has altered his position to his prejudice". The Court refused to make a distinction between a private individual and a public body so far as the doctrine of promissory estoppel is concerned. 12. There can therefore be no doubt that the doctrine of promissory estoppel is applicable against the Government in the exercise of its governmental, public or executive function and the doctrine of executive necessity or freedom of future executive action cannot be invoked to defeat the applicability of the doctrine of promissory estoppel. . . ". If so, the respondents cannot resist the claim of the petitioner set up on the principles of

promissory estoppel if the petitioner did act on the representation. The representation held out is not what is prohibited under law. The 2nd respondent is not wanting in authority to make such a representation made in Annexure-A as well. Whether the petitioner has acted on the representation has then to be adverted to incidentally. That the petitioner is the highest offeree is not in dispute. Rules 31-E and 31-G make it clear that an offeree once making the bid cannot retract. Dead rent at Rs. 2,17,500/- was collected as if the minor mineral area is 29 acres. The following averment in Annexure-G submitted on 14-4-1996 makes it clear the commitments incurred by the petitioner in view of the representation held out by the respondents that the area containing black granite is 29 acres: "The interest on the amount deposited by me is calculated at the rate of 18% (Bank Rate) from 01-11-1995 to 10-04-1996, it would be Rs. 4,80,800-00, The interest on demarcation charges and 50% dead rent would be Rs. 20,416-00. The total interest charges are Rs. 5,01,216-00. I have invested heavily on machinery such as Poclain, Air Compressors and Excavators, etc., an amount of is Rs. 1,43,20,800-00. This machinery is lying idle because, I am not able to take the benefit of the lease. The loss of profit at the rate of Rs. 8,750-00 per cubic metre is Rs. 2,10,00,000-00. The total loss incurred by me is Rs. 3,58,22,016-00. In addition to this, I have deposited the bid amount and dead rent and survey charges". These averments, which are not seriously disputed, are enough to show that the petitioner has prejudicially altered his status acting on the representation held out by the respondents. 14. That the respondent can be relieved from the application of doctrine of promissory estoppel only if it places before the Court any material, circumstance or grounds on which it seeks to resile from the promise it made, making it known as to how the public interest would be jeopardised as against the private interest. In this behalf, it has to be stated that the Government have failed miserably to plead any such circumstances. 15. The contention of the respondents largely was that there was no promise at all held out, much less any implied representation. This contention, I am of the view, cannot be advanced by the respondents in the facts and circumstances of the case. Annexure-A, in clear terms, indicates that Sl. No. 1 carved out of Sy. No. 248 has black granite deposit in 29 acres. Probably, the respondents could have argued that the competent person did not ascertain the mineral content in the area as required under the rules before inviting tender-cum-auction and for his failure to act in accordance with rules, no liability can be fastened on the 1st respondent. Such a contention cannot lie in the mouth of the respondents. Firstly, the respondents are auctioning very precious minor mineral. It should, in the first place, know what is the value of the commodity being sold. It cannot play the role of a blind man assessing an elephant. The respondents should first be in a position to know what should be the reasonable price to be fetched so as it is in a position to know whether the offer made by the intending bidder is reasonable. It means, it is to be implied that what it holds out is the correct information to enable the bidder to make a correct inference. Again, this contention has to fail for the short reason that Annexure-A, notification shows that the very same Sy. No. 248 has been subdivided into three blocks viz., Sl. No. 1 of 29 acres (the one now in dispute), Sl.

No. 2 of 24 acres, and Sl. No. 3 of 8 acres. Specific identifying boundaries are also given. The mineral in all these blocks is black granite. A sketch is also appended to the notification which is signed by the Director of Mines and Geology. This is a positive representation made by the respondents that the bifurcation is made as items (1), (2) and (3) with the aid of Mines and Geology Department after ascertaining the minor mineral contents and, therefore, the representation regarding the mineral content is authentic. It is not to be expected by a bidder that the State, like an unscrupulous businessman, would be trying to gain an undue advantage over the bidder by practising "suppressio veri" and "suggestio falsi". 16. The further submission of the learned Government Advocate is made relying on Bareilly Development Authority and Another v Ajay Pal Singh and Others, to the effect that it being a non-statutory contract, the petitioner cannot maintain a writ petition under Article 226 of the Constitution for a breach thereof. According to him, Rules 31-E and 31-G enjoins that the tender once submitted shall not be withdrawn and that the person submitting the tender shall give an undertaking to fulfill the stipulation that such tender shall not be withdrawn. If that be so, it is all the more reason why, the petitioner can insist that the tender conditions be strictly abided by the respondents-the offerer. As regards the decision in Bareilly Development's case, supra, relied on, the same can have no application, as it relates to non-statutory contracts, whereas the lease in question is formed under the statue. Refer to the following paragraph therein in this behalf: "There is a line of decisions where the contract entered into between the State and the persons aggrieved is non-statutory and purely contractual and the rights are governed only by the terms of the contract, no writ or order can be issued under Article 226 of the Constitution of India so as to compel the authorities to remedy a breach of contract pure and simple: Radhakrishna Agarwal v State of Bihar, Premji Bhai Parmar v Delhi Development Authority and Divisional Forest Officer v Bishwanath Tea Company Limited" 17. In this case, the auction is concluded on the fall of the hammer. But, the title in the goods pass only after confirmation of the sale. As such, as per the Rule, there is a contract to the contrary postponing the passing of the title in the goods. This is legally permissible. In this behalf, we may advert to what is stated in Consolidated Coffee Limited v Coffee Board, Bangalore: "On the other question there is no difficulty in coming to the conclusion that Section 64 is subject to a contract to the contrary, especially in light of the above discussion. In the first place Section 64 occurs in Chapter VII which contains"miscellaneous" provisions and Section 62 which occurs in the same Chapter clearly provides that where any right, duty or liability would arise under a contract of sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties or by usage, if the usage is such as to bind both the parties to the contract. Ordinarily, the rights, duties and liabilities arising under a contract of sale by implication of law spoken of in Section 62 refer to the rights, duties and obligations referred to in Chapter III containing provisions which lay down rules as to transfer of property as between seller and buyer and transfer of title but there is no reason why Section 62 should not apply to rights, duties and obligations arising under Section 64 in regard to auction

sales. In other words, Section 64 would be subject to Section 62. Moreover, there is intrinsic material in Section 64 itself which shows that the provisions thereof could be subject to a contract to the contrary. For instance, sub-section (1) thereof provides that where goods are put up for sale in lots then each lot is prima facie deemed to be the subject of a separate contract for sale, which means, terms between the parties may provide to the contrary or circumstances may indicate to the contrary. Again, subsection (5) provides that the sale may be notified to be subject to a reserved or upset price which means that the auctioneer may not fix a reserved price, further, it is well-settled that if such a reserved price has been fixed then notwithstanding the fact that the highest bid has been accepted by the auctioneer and that the sale relates to specific or identifiable goods no concluded contract comes into existence if the highest bid so accepted falls short of the reserved price and the property in the goods will not pass. Sub-sections (3) and (4), if carefully scrutinised, also indicate that there could be a contract to the contrary. Moreover, once it is accepted that auction sales to which Section 64 applies could be unconditional or conditional and that the auctioneer can prescribe his own terms and conditions on the basis of which the property is exposed to sale by auction it must be held that the acceptance of any bid as well as the passing of the property in the goods sold thereat would be governed by those terms and conditions". In such a situation, as per Section 64(2) of the Sale of Goods Act, the title in the goods do not pass on the fall of the hammer. The sale is incomplete and if it is discovered that there has been a misrepresentation on the part of the vendor regarding the goods sold, then it is open to the purchaser either to accept the goods purchased or repudiate the transaction. 18. In this case the petitioner has not repudiated the contract as a whole. On the contrary, he has expressed his desire to abide by the contract and to enforce the same to the fullest extent as represented by the respondents to be sold. The question then would be whether this Court, in a proceeding under Article 226 of the Constitution, grant the relief sought for by the petitioner. 19. Before proceeding further, I would refer to an order passed by this Court which is produced by the petitioner. The petitioner has brought to the notice of this Court an interim order passed by this Court in an identical situation. The said order passed in W.P. No. 17802 of 1997 reads as follows:"Having regard to the nature of the grievance put forth by the petitioner, the learned High Court Government Pleader stated that the respondents have no objection for identifying an alternative land in the same Survey Number to be selected by joint inspection. The petitioner's Counsel states that he has already suggested the alternative land in the same Survey Number in Annexure-L. In view of the above, petitioner to be present in the Office of the third respondent for joint inspection and identification of alternative land on 24-11-1997". The petitioner has stated on oath that the deficit area of 17 acres is available in Sy. No. 248 of Melamale village or Sy. No. 218 of Gumballi village, Chamarajanagar Taluk and Sy. No. 170 of Yeragamballi village of Chamarajnagar. These averments are not denied by the respondents. These are the contents of representations of the petitioner in Annexures-D, E and G. The petitioner craves leave of this Court to grant similar relief as the one referred to above. I do not think that

the said interim order can be given effect to in this case. Nevertheless, the order indicates the stand of the respondents in a similar situation. In this case, it is shown that the respondents have made a specific representation to the petitioner, on the basis of which the petitioner has altered his situation prejudicially. It is also seen that the representation held out can be enforced against the respondents. The sale has not concluded on the fall of the hammer, as it has to be confirmed thereafter. The confirmation has taken place later and in the meanwhile, the petitioner has not repudiated the sale, but he has claimed for the enforcement of the contract as a whole. In the light of what is stated above and in the preceding paragraphs, the petitioner is entitled to have these representations submitted by him, namely, Annexures-D, E and G, considered and decided in accordance with law, keeping in mind that the sale concluded was with respect to quarrying lease over 29 acres of black granite in Sy. No. 248 referred to in Annexure-A. 20. The petitioner has made out clearly that his offer of Rs. 60.10 lakhs had been for the lease of 29 acres of land described as per Annexure-A. If that is concluded as an enforceable contract, invoking the principles of promissory estoppel, then necessarily the relief prayed for in Annexures-D, E and G has to be granted. If the said claim becomes incapable of being granted due to no fault of the petitioner then clearly, this is a case that falls under Para 2 of Section 56 of the Contract Act. The said section reads thus:"Compensation for loss through non-performance of act known to be impossible or unlawful.–Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise". The respondents as per Annexure-A held out to lease 29 acres of black granite. This, the respondents could have known by reasonable diligence, as impossible to be included in Serial No. 1 in Annexure-A; but the petitioner in view of the description of separate Serial Nos. 1, 2, 3 and the sketch appended, would not have considered the same to be impossible to be granted. In such circumstances, the petitioner has made out a case for the grant of the alternative relief, i.e., refund of Rs. 59.50 lakhs with Bank interest prevalent on Fixed Deposits as on the date of deposit of the amount with the respondents. This relief has to be granted, as otherwise, this Court will be becoming an instrument to the Government to make an unconscionable gain. However, I make it clear that the petitioner is entitled to the alternate relief, only in the event the respondents decline to grant the prayer in the annexure referred to above and fail to make good the entire 29 acres of black granite as auctioned in pursuance to Annexure-A. 21. This case illustrates how the casual dealing of competent authorities, dealing with very valuable properties of the State, has brought about avoidable loss and hardship to both sides. It is in the interest of the State to apprise the responsible Officers of the Department of the need to adhere to the requirement of the rules and specify specifically the property it intends to lease out. Such precise declaration would bring about a situation whereby unnecessary litigation be avoided. The argument developed in the statement of objections that in order to excavate a small strip of land,

large vacant appurtenant land is needed, does not appeal to this Court. It is certainly the look out of the bidder, to find space for constructing roads, dumping mud, etc., and the Government need not take care of these responsibilities of the auction purchasers. 22. Before parting with the case, I would remind the authorities that it is well to remember that"One may commit a contract, just as one may commit a tort; in each case one thereby exposes oneself to liability to another, though there is a difference that the former creates a liability nisi while the latter creates a liability absolute". The State is not expected to, as stated earlier, practice"suppressio veri" and "suggestio falsi". The authorities while contracting should always contemplate its performance rather than its breach and it should not enter into a kind of contract to pay damages. With these directions and observations, the writ petitions are disposed of. No costs.