
(2014) 06 AP CK 0155

In the Andhra Pradesh High Court

Case No : Writ Petition Nos. 5732, 5740 and 8571 of 2014

Srinath Infra Projects (India) Pvt. Ltd.

APPELLANT

Vs

The Government of A.P.

RESPONDENT

Date of Decision : 02-06-2014

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
— Section 14, 153, 8, 80, 80(1)(b)
Constitution of India, 1950 — Article 14, 226

Citation : AIR 2014 AP 6 : (2014) 4 ALD 770 : (2014) 6 ALT 288

Hon'ble Judges : Ramesh Ranganathan, J

Bench : Single Bench

Advocate : G. Pedda Babu, Advocate for the Appellant; V.T.M. Prasad, Learned Standing Counsel for K. Manideepika, and Ghanta Rama Rao, learned Senior Counsel for Ghanta Sridhar, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Ramesh Ranganathan, J.—The proceedings of the Commissioner of Endowments dated 06.01.2014, whereby the bid of Sri. B. Srinivasa Rao (5th respondent) for plot Nos. 4/1, 4/2, 6/1, 6/2, 6/3, 6/4, 7/1 and 7/2 in Lakshmi Narasimha Enclave, Vidyanagar situated in D. No. 19 and 55 of Koritipadu, Guntur Rural Mandal, Guntur District belonging to the 3rd respondent temple was confirmed in his favour, is under challenge in these three Writ Petitions as being contrary to the terms and conditions of the auction, illegal, arbitrary, void and without authority of law. A consequential direction is sought to the respondents to confirm sale of the said plots in favour of the petitioners who are the second highest bidders in the said auction for the respective plots.

2. Facts, to the extent necessary, are that the subject temple owned Ac. 8.25 cents of land, in D. Nos. 19 and 55 of Koritipadu village, Guntur Rural Mandal, Guntur District, which were converted into plots for sale by tender-cum-public auction. The 2nd respondent, by proceedings dated 25.05.2004, invited

objections for sale, of the aforesaid extents of land of the subject temple, by way of public auction. A gazette notification No. 114 dated 05.06.2004 was issued in this regard. The 2nd respondent, by his proceedings dated 02.02.2005, accorded permission to sell the subject land by way of public auction. Pursuant to the request of the Commissioner of Endowments, vide letter dated 26.11.2006, the State Government issued instructions, vide Memo dated 22.12.2006, to the 4th respondent to make a layout and sell the subject land by public auction in accordance with the provisions of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (hereinafter called the Act). The subject lands were, thereafter, divided into plots, a lay out was sanctioned by the 4th respondent, and the colony was named as Laxmi Narasimha Enclave. The 4th respondent issued auction notice dated 24.11.2009, for sale of the plots in the said enclave, fixing the upset price at Rs. 14,500/- per square yard. The petitioners claim that, except for plot No. 5, none of the other plots were sold in the said auction. The 4th respondent is said to have issued another notice on 10.08.2010, inviting bids through the tender-cum-auction mode, fixing the upset price as Rs. 14,500/- per square yard. The petitioners contend that, in the said auction, only plot No. 22 was sold. A third auction notice was issued on 11.12.2013 inviting bids, through the tender-cum-auction procedure, fixing the upset price at Rs. 23,000/- per square yard. The petitioners submitted their bids for different plots; their bids and that of the 5th respondent were short listed; and an auction was conducted between them wherein, as compared to the bids submitted by the petitioners, the bids submitted by the 5th respondent was higher.

3. The petitioners would submit that, while condition No. 24 of the conditions of tender-cum-auction, permits only one plot to be allotted to each bidder, the 5th respondent was allotted as many as eight plots; Sri. B. Giri Babu (the brother of the 5th respondent) submitted his bid for several plots all of which were allotted to him on the ground that he was the highest bidder; the 2nd respondent lacks authority or jurisdiction to relax or modify the tender-cum-auction conditions after the auction is held, more so in view of condition No. 22; the 5th respondent is entitled, in terms of condition No. 24, only for one plot; and the authorities are bound to call the next highest bidders of the other plots, offer them the respective plots at the price quoted by the highest bidder, and sell the plot to them if they agree to pay the said price. The petitioners assert that they are ready and willing to take their respective plots for the price quoted by the 5th respondent. They are aggrieved by the endorsement of the 4th respondent informing them that their bids were rejected by the Commissioner of Endowments, the same were allotted to the highest bidder and the E.M.D., offered by them, in the form of demand drafts, were being returned.

4. In his counter-affidavit, the 2nd respondent submits that Sri. Lakshmi Narasimha Swamy Devasthanam, Mangalagiri was endowed with Ac. 8.25 cents of land; after following the procedure, stipulated u/s 80 of the Act, the subject lands were proposed to sale by way of tender-cum-public auction; the task of

conducting the auction was entrusted to the VGTM Urban Development Authority after making a lay out; for the 48 plots put to sale, as many as 108 persons submitted their tenders; after the tenders were opened, an auction was conducted for the plots; the 5th respondent participated in the auction and offered the highest bid amount; the bids offered by the 5th respondent, in the public auction, were higher than the bids offered by the petitioners; the highest bids were accepted, and the auction was confirmed in favour of the 5th respondent; Under Rule 14 of the A.P. Religious and Hindu Religious Institutions and Endowments Alienation of Immovable property Rules, 1987 (hereinafter called the Rules), the Commissioner is the competent authority either to confirm or refuse the sale; condition No. 24, if construed literally, would require the bid of the second highest bidders to be considered for the second plot; this would result in the institution being put to loss to the extent of the difference in the bid amounts offered by the second highest bidder and the highest bidder; condition No. 15 enables the Commissioner of Endowments to accept a single bid or the highest bid; restricting the highest bidder to only one plot would result in less competition among the bidders, and the institution would not receive a proper bid amount; the institution would not thereby get a better price as the number of participants would be less in number; participation of the 5th respondent, in the auction for other plots, has resulted in an increase in the bid amount; as a result, the institution has benefited by Rs. 20,91,356/-; he had relaxed auction condition No. 24 in the interest of the institution; VUDA was empowered to allot the plot to the second highest bidder at the rate offered by the first highest bidder in case the highest bidder failed to pay the bid amount; this condition is subject to confirmation by the Commissioner; this condition attracts sale by private negotiations which is not permitted by law; the authorities are, therefore, not bound to call the next highest bidders of other plots, and offer them the plots at the rate quoted by the highest bidder, and allot them if they agree to pay the said price; the 2nd respondent had rightly returned the EMD paid by the petitioners; condition No. 24, restricting allotment of one plot to one person, is not in the interest of the institution and was, therefore, relaxed; the highest bid amount was confirmed in the interests of the institution; in respect of nine plots, only a single bid was received; from out of these 9 plots, four plots received a reasonable bid amount of Rs. 29,000/- per square yard; condition No. 15 confers powers on the Commissioner to approve a single bid also; and, as the bid amounts fetched in the public auction was fair and reasonable, these bids were confirmed.

5. In the counter-affidavit, filed by the 3rd respondent, it is stated that the Commissioner of Endowments is the competent to accept or reject the bids for sale of lands; condition No. 15 of the tender conditions stipulates that the Commissioner is competent to accept or reject bids in favour of the highest bidders in the interest of the 3rd respondent-temple; the Commissioner relaxed condition No. 24 of the auction conditions, and issued proceedings dated 06.01.2014, in the exercise of the powers vested in him under Sections 80, 8

and 153 of the Act and Rule 14 of the Rules; the 5th respondent was the highest bidder for eight plots, and had deposited 2/3rd of the bid amount with the 4th respondent along with the auction deposit; the petitioners bids were less than the bids submitted by the 5th respondent; their EMDs were, therefore, returned; since the petitioners have received their EMD, they are estopped from challenging the orders of the Commissioner of Endowments dated 06.01.2014; having signed and accepted the tender conditions, and having received the EMD, the petitioners lack the locus standi to challenge the orders of rejection; as their bids are the second highest, the petitioners have no right to claim that the plots should be allotted to them at the price quoted by the 5th respondent; it is the subject temple which is the owner of the land; the 4th respondent has merely conducted the auction, and has no right or title over the property; sale deeds are now required to be executed by the temple in favour of persons who submitted the highest bid; the conditions stipulated by the VGTM UDA for conducting auction, including condition No. 24, was as per its bye-laws whereunder only one bidder is eligible for one plot; and the said condition, inserted in the present auction of temple lands, can be exempted by the Commissioner of Endowments in the interests of the temple.

6. In his counter-affidavit, the 5th respondent would submit that the 2nd respondent had issued the impugned proceedings, confirming sale of various plots, in the best interests of the institution; the same is beneficial to the 3rd respondent institution as it would fetch the maximum possible revenue on disposal of the plots of land in favour of the highest bidders; he had participated in the auction pursuant to the auction notice dated 11.12.2013, and was the highest bidder in respect of eight plots; the 2nd respondent had relaxed condition No. 24, and had permitted the 3rd respondent to sell more than one plot as it was in the best interests of the institution; the 3rd respondent would get the highest possible amount by allotting plots to the highest bidder; the 2nd respondent has not acted arbitrarily or illegally in relaxing condition No. 24; condition No. 23 has no application as there is no default on the part of the highest bidder in payment of instalments; the decision to sell property, belonging to the 3rd respondent, was taken as it was found that retaining the said property was not economical to the 3rd respondent institution; the said property was sought to be disposed of by way of auction to ensure the highest possible revenue to the 3rd respondent temple; condition No. 24 has no nexus to the object sought to be achieved i.e., fetching the highest possible amount by selling the said plots in a public auction; relaxation of condition No. 24 has facilitated augmentation of the financial resources of the temple, and is consistent with the purpose for which the plots were sold by way of public auction; by his proceedings dated 28.12.2013 the 4th respondent informed the 2nd respondent that, taking condition No. 24 into consideration, the 5th respondent was entitled only for allotment of one plot; as condition No. 24 has been relaxed, in order to obtain more revenue to the 3rd respondent-temple, they were permitted to sell more than one plot to him as he was the highest bidder in respect of those plots;

his brother was the highest bidder in respect of eight plots; the 2nd respondent had permitted sale of eight plots to his brother as he was also the highest bidder; in the exercise of his powers under Sections 80, 8 and 153 of the Act and Rule 14 of the Rules, the 2nd respondent issued proceedings dated 06.01.2014 confirming the sale; there is no illegality or arbitrariness in the action of the 2nd respondent; he has paid the entire amount due to the 3rd respondent-temple in respect of the said plots; no further action could be taken in view of the interim stay granted by this Court; no case has been made out by the petitioner; and the Writ Petition is liable to be dismissed.

7. In their reply affidavit, the petitioners state that the Commissioner of Endowments is competent to accept or reject the bids for sale of temple lands; he has not been conferred the power to relax the auction conditions either under Sections 80, 8 and 153 of the Act or Rule 14 of the Rules; no such power of relaxation was reserved in the auction conditions also; relaxation of condition No. 24 is arbitrary, illegal, without jurisdiction and without authority of law; the said condition was relaxed only to favour the 5th respondent; it is not in the interest of the temple; the demand draft, submitted by them as EMD, was returned along with the endorsement letter dated 23.01.2014 of the 4th respondent in a sealed cover; there was no option but to receive the same; this cannot be a ground to deny them the plot, if the petitioners are entitled thereto; plots for which no bids were received in the auction held earlier on 27.12.2013, and which were later auctioned on 11.03.2014, fetched between Rs. 29,500/- to Rs. 37,400/- per square yard though they were inferior in advantages; the average price, fetched in the auction held on 11.03.2014, was Rs. 36,000/- per square yard; the auction held on 11.03.2014, in the presence of the 3rd respondent, was even before a counter-affidavit was filed by the 3rd respondent in the present writ petition; if the 3rd respondent, or the other respondents, were really concerned about the interests of the institution, they should have confirmed only one plot in favour of the 5th respondent, and one plot each in favour of the petitioners, and re-auctioned the other plots; these plots would have fetched nearly Rs. 4,000/- more per square yard than the price offered by the 5th respondent in the previous auction; the 3rd respondent temple would have, as a result, received an additional sum of more than Rs. 1 crore; it is evident that the interests of the institution was not borne in mind by the official respondents while confirming sale of plots in favour of the 5th respondent; the auction conditions do not state that condition No. 24 is formal in nature; condition No. 24 is mandatory; if the conditions of auction are formal, then the same should have been made known, to all the bidders and the general public, before the tenders were submitted, and not after the tender process was completed; if they were aware that condition No. 24 would be relaxed, not only the petitioners but several other individuals would have participated in the auction, and submitted their bids for several plots; the 3rd respondent would, thereby, have received more revenue than the bid offered by the 5th respondent; several bids were rejected earlier on the ground that there was only a single bid; it is evident that the 2nd respondent has not

acted bonafide in the interests of the institution; he had exercised powers at his whims and fancies in confirming all the bids submitted by the 5th respondent; and it is evident that the action of the respondent is arbitrary and illegal.

8. Both Sri. G. Pedda Babu and Sri. N. Vijay, Learned Counsel for the petitioners, would submit that condition No. 24 of the auction conditions prohibits a person, participating in the auction, from being allotted more than one plot; even in cases where one person submits the highest bid for more than one plot, he is entitled to be allotted only one plot; the remaining plots must be offered to the 2nd highest bidders of the respective plots at the price offered by the highest bidder; the Commissioner has waived this condition though he lacks jurisdiction to do so; he confirmed sale of eight plots in the 5th respondents favour, and eight more plots in favour of the 5th respondents brother, contrary to condition No. 24; and the action of the Commissioner is not only contrary to the provisions of the Act and the Rules made thereunder, but is also in violation of the conditions of auction.

9. On the other hand the Learned Government Pleader for Endowment, Sri. V.T.M. Prasad, Learned Standing Counsel for the subject institution and Sri. G. Rama Rao, Learned Senior Counsel appearing on behalf of the 5th respondent, would submit that condition No. 24 is formal in nature and can be waived by the Commissioner; the 5th respondent was the highest bidder for all the eight plots allotted to him; confirming the sale in favour of the highest bidder is in larger public interest as it would maximise the revenues of the religious institution; sale of public property for the highest price would augment the revenues of the temple; the auction conditions do not provide for the plots to be sold to the second highest bidders in cases where the highest bidder is ready and willing to pay the highest bid amount, and purchase the plots; and condition No. 24 is ultra vires Article 14 as it would deprive the subject temple of their revenues being maximised, on the subject plots being sold to the highest bidders.

10. Before examining the rival contentions it is necessary to briefly note the relevant provisions of the Act and the Rules. Section 8 of the Act relates to the powers and functions of the Commissioner. Under sub-section (1) thereof, subject to the other provisions of the Act, the administration of all Charitable and Hindu Religious Institutions and Endowments shall be under the general superintendence and control of the Commissioner, and such superintendence and control shall include the power to pass any order which may be deemed necessary to ensure that such institutions and endowments are properly administered, and their income is duly appropriated for the purposes for which they were found or exist. Section 14 of the Act relates to vesting of all properties in the institution or endowment and, thereunder, all properties belonging to, or given or endowed to a charitable or religious institution or endowment, shall vest in the charitable or religious institution, or endowment, as the case may be. Section 80 of the 1987 Act relates to alienation of immovable property and, sub-sections (1) to (8) thereof, read as under:-

(1)(a). Any gift, sale, exchange or mortgage of any immovable property belonging to or given or endowed for the purpose of any charitable or religious institution or endowment shall be null and void unless any such transaction, not being a gift, is affected with the prior sanction of the Commissioner.

(b). The Commissioner, may, after publishing in the Andhra Pradesh Gazette the particulars relating to the proposed transaction and inviting any objections and suggestions with respect thereto and considering all objections and suggestions, if any received from the trustee or other person having interest, accord such sanction where he considers that the transaction is

i). prudent and necessary or beneficial to the institution or endowment;

ii). in respect of immovable property which is unnecessary for the institution or endowment to own and maintain; and

iii). the consideration therefor is adequate and proper.

(c). Every sale of any such immovable property sanctioned by the Commissioner under clause (b) shall be effected by tender-cum-public auction in the prescribed manner subject to the confirmation by the Commissioner within a period prescribed.

(2)(a) no lessee, mortgagee with possession or licensee of any land or building belonging to the institution or endowment and which is appurtenant to or which adjoins the institution or endowment or any tank, well, spring or water course appurtenant to the institution or endowment whether situated within or outside the prakarams, mandapams, court-yards or corridors of the institution or endowment, shall make use of the land, building or space so as to mar the artistic appearance or view or the religious atmosphere of the institution or endowment. The Commissioner, shall, by order and for reasons to be recorded therein, terminate or cancel the lease, mortgage, or licence, as the case may be, of any person who contravenes the aforesaid provision, after giving the person an opportunity of making his representation against the proposed termination or cancellation and require such person to deliver possession of the land, building or space, as the case may be, to the trustee before the date specified in the order.

(b). Where such person fails to deliver possession as aforesaid, before the date specified, the Commissioner may direct the Deputy Commissioner concerned to take action under the provisions of Chapter-XI.

(c). Nothing in this sub-section shall be construed as disentitling the person who is dispossessed of any property under this sub-section from recovering any amount which is lawfully due to him from the institution or endowment under the lease, licence or mortgage, as the case may be.

(3). The utilisation or investment of the amount realised by any transaction under sub-section (1) and in the case of a mortgage, the discharge of the mortgage within a reasonable period, shall be made by the trustee, subject to

the approval of the Commissioner.

(4). A copy of the order made by the Commissioner under this section shall be communicated to the Government and to the trustee and shall be published in such manner as may be prescribed.

(5). The trustee may, within ninety days from the date of the communication of the order under sub-section (4), and a person having interest may, within ninety days from the date of the publication of such order, prefer an appeal to the Government to modify the order or set it aside.

(6). Notwithstanding anything contained in the first proviso to clause (c) of sub-section (1), the Government may call for and examine the record of the Commissioner in respect of the order passed by him under this section to satisfy themselves as to the legality or correctness of such order or regularity or property thereof and if, in any case it appears to the Government that such order should be modified, annulled, reversed or remitted for reconsideration, they may pass order accordingly.

(7). The Government may stay the execution of any such order pending the exercise of their powers under sub-section (6) in respect thereof.

(8). Nothing in this section shall apply to the leasing or licensing of any land or building or space mentioned in sub-section (2) for the purpose of providing amenities to pilgrims or of vending flowers or other articles, used for worship or holding for specified periods, fairs or exhibitions during festival connected with the institution or endowment.

11. Section 153 of the Act relates to the power to make rules and, under sub-section (1) thereof, the Government may, after previous publication and by notification in the Andhra Pradesh Gazette, make rules for carrying out all or any of the purposes of the Act.

12. In the exercise of the powers conferred u/s 80 read with Section 153 of the Act the Governor of Andhra Pradesh made the Rules. The said Rules prescribe a detailed procedure for alienation of the immovable properties of religious institutions. Rule 2 requires a notice to be given for sale of any immovable property belonging to religious institutions, the particulars to be mentioned therein, the time within which objections and suggestions should be sent, the persons on whom a copy of the notice is to be served, and publication of the notice in the gazette and at other places. Rule 4 requires a copy of the order of the Commissioner, according permission for the sale of immovable properties of the religious institution, to be communicated to the trustee or trustees and persons having interest, and to be published in the manner laid down in Rule 3. Rule 6 stipulates that every sale of immovable property, permitted by the Commissioner u/s 80(1)(b) of the Act, shall be effected, by tender-cum-publication, by the Executive Officer of the Institution or, where there is no Executive Officer, by the Chairman of the Board of Trustees in the presence of

the Assistant Commissioner in whose jurisdiction the property is situated where the probable value of the sale does not exceed Rupees One Lakh. In cases where the probable value exceeds Rs. One lakh, such a sale is required to be conducted in the presence of the Deputy Commissioner in whose jurisdiction the property is situated. Rule 7 requires the Executive Officer, or the Chairman of the Board of Trustees, to invite sealed tenders for the purchase price of the property specifying the particulars prescribed in Rule 2. Fifteen days notice, prior to the date of sale, is required to be given for submitting sealed tenders; and such tenders are required to be opened after completion of the auction. Rule 7 stipulates that the highest price offered in the tenders or auction, as the case may be, shall be taken into consideration for the purpose of finalising the highest bid obtained in the tender-cum-public auction. The said Rule also requires the upset price of the auction to be fixed taking into consideration the value as per the basic value register or the valuation certificate given by the Mandal Revenue Officer. Rule 8 relates to publication of the tender notice. Rule 9 requires the Executive Officer or the Chairman of the Board of Trustees, before conducting the sale, to cause publication of the notice thereof in the manner provided in Rule 3. Rule 11 requires the sale to be conducted in a conspicuous place in the locality where the property is situated. Under the proviso thereto the Government is empowered, if it is satisfied that holding of the auction at a place, other than the one in which the properties proposed to be sold are situated, will not be detrimental to secure a proper bid or it will be help to secure a better bid or to prevent local collusion among the bidders, permit such auction at a place other than the place where the property is situated. Rule 12 requires the Executive Officer or the Trustee, before the auction is conducted, to specify the conditions of sale after getting the same approved by the Commissioner. Rule 13 prohibits any representation, for stopping or postponing the sale, being entertained at the time of auction unless a stay order has been obtained from the Commissioner, or the Government, as the case may be, for stoppage or postponement of the sale. Objections received, if any, at the time of auction are required to be forwarded to the Commissioner along with the sale papers for his confirmation. Rule 14 requires the Commissioner, within three months from the date of the sale, to either confirm or refuse the same; and for such confirmation or refusal to be communicated to the Executive Officer or the Trustee concerned. Rule 15 requires the expenses, for registration of sale, exchange or mortgage, to be borne entirely by the person or persons in whose favour the sale is effected. Rule 16 obligates the Executive Officer or the Chairman of the Trust Board, immediately after the transaction of the sale is effected, to invest the amount covered by the sale proceeds in interest yielding deposits in such firms or Bank or Treasury, keeping in view the provisions of the Income Tax Act and as per the Rules in force. The said investment is required to be sent to the Regional Joint Commissioner for safe custody after making necessary entries in the Register of investments. Rule 17 requires the Departmental Officer, who supervises the sale in public auction, to ensure and satisfy himself about the investment of the sale proceeds as per Rules, immediately after the transaction is effected.

13. The Government or its instrumentalities cannot sell its property for a consideration less than the highest that can be obtained for it unless, of course, there are other considerations which render it reasonable and in public interest to do so. (Meerut Development Authority v. Assn. of Management Studies; Kasturi Lal Lakshmi Reddy v. State of J&K; Himachal Pradesh Housing and Urban Development Authority v. Universal Estate). Where the Government or its instrumentalities are dealing with the public, they cannot act arbitrarily at their sweet will and, like a private individual, deal with any person they please. Their action must be in conformity with standards or norms which are not arbitrary, irrational or irrelevant. The power or discretion of the Government in such matters must be confined and structured by rational, relevant and non-discriminatory standards or norms and, if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory. (Ramana Dayaram Shetty v. International Air Port Authority of India; Ram and Shyam Co. v. State of Haryana). Where disposal of public property is for augmentation of revenue and nothing else, the State and its instrumentalities are under an obligation to secure the best market price available in a market economy. All their attempts must be to obtain the best available price while disposing of their property. Ram and Shyam Co. 5).

14. State-owned or public-owned property is not to be dealt with at the absolute discretion of the Executive. Certain precepts and principles must be observed. Public interest is the paramount consideration. Public property has to be dealt with for public purposes and in public interest. Disposal of public property partakes the character of a trust in that, in its disposal, there should be nothing hanky panky. One of the methods of securing the public interest, when it is considered necessary to dispose of a property, is to sell the property by public auction or by inviting tenders. This is ordinary the rule, though not an invariable rule. (Ram & Shyam Company 5). There may be situations where there are compelling reasons necessitating departure from the rule, but then the reasons for the departure must be rational and should not be suggestive of discrimination. (Meerut Development Authority Vs. Association of Management Studies and Another,). A transparent and fair method of selection must be adopted so that all those eligible get a fair opportunity. No attempt should be made to scuttle the claim of worthy applicants. (Centre for Public Interest Litigation v. Union of India). Transparency and compliance with Article 14 of the Constitution would, inter alia, be ensured by holding public auction upon issuance of advertisements in well known newspapers, (Nagar Nigam, Meerut v. Al Faheem Meat Exports Pvt. Ltd.; and P. Narayana Reddy v. Government of Andhra Pradesh), where a State asset is sought to be sold. (Villianur Iyarkkai Padukappu Maiyam v. Union of India).

15. Section 80(1)(b) of the Act empowers the Commissioner to accord sanction

for the sale of immovable properties of religious institutions only when he considers that the transaction is (i). prudent and necessary or beneficial to the institution or endowment; (ii). it is unnecessary for the institution to own and maintain the immovable property; and (iii). the consideration therefor is adequate and proper. Even if the Commissioner is satisfied that the aforesaid factors are attracted, he is required to cause publication, of the particulars relating to the proposed transaction, in the A.P. Gazette and invite objections and suggestions with respect thereto. It is only after he considers all the objections and suggestions received, is he entitled to accord sanction for the sale of immovable properties of the religious institution.

16. While Section 80(1)(c) requires sale of immovable properties of religious institutions, as sanctioned by the Commissioner, to be effected by tender-cum-public auction in the manner prescribed by the Rules made under the Act, the sale is required, thereafter, to be confirmed by the Commissioner within the period prescribed under the Rules. As Rule 12 of the Rules requires the conditions of sale, of the immovable properties of the temple, to be approved by the Commissioner before the auction is conducted, it is evident that the Commissioner has chosen not to reserve any power in himself to waive or relax the auction conditions after the auction has either commenced or has been completed. On the other hand condition No. 22 of the conditions of tender cum auction stipulates that the Vice-Chariman, VGTM-UDA shall have the right to alter, modify or delete any of the above mentioned conditions. The power to alter, modify or delete the conditions of auction is conferred, under condition No. 22, only on the Vice-Chairman VGTM-UDA and not on the Commissioner of Endowments. Rule 14 of the Rules empowers the Commissioner, within three months from the date of the sale, to either confirm or refuse to confirm the sale, and not to relax or waive the conditions of sale.

17. Ordinarily, in arriving at a commercial decision, such as sale of public property, considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such relaxation. It may not accept the offer even though it happens to be the highest. But the State, its instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them, and cannot depart from them arbitrarily. Though their decision is not amenable to judicial review, the Court can examine the decision making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. (*Air India Ltd. v. Cochin International Airport Ltd.*). The power conferred on the Vice-Chairman VGTM-VDA, to alter, modify or delete any of the conditions of auction must also satisfy the test of reasonableness. Conferment of power does not justify its whimsical or arbitrary exercise. The power conferred by condition No. 22 could have been exercised by the Vice-Chairman VGTM-UDA

only prior to the date of submission of tenders or commencement of the auction. Alteration of the conditions thereafter would have resulted in eligible tenderers not being afforded a fair opportunity, and the claim of worthy applicants being scuttled thereby. Such exercise of power, to alter the conditions of auction, would, then, have been arbitrary, unreasonable and in violation of Article 14 of the Constitution of India.

18. A very high degree of care, and meticulous adherence to the requirements of the bid, is inherent in a bidding process. The competent authority is under an obligation not only to maintain a high degree of transparency and to deal fairly, but also to maintain the sanctity and integrity of the entire process. It is incumbent upon the competent authority to ensure that different yardsticks are not adopted; and there is not even the remotest possibility of discrimination, arbitrariness or favouritism. (*Siemens Public Communication Networks (P) Ltd. v. Union of India*). It is unnecessary to delve on this aspect any further for it is not even the case of the respondents that the conditions of auction have been altered or modified or deleted by the Vice-Chairman VGTM-UDA, much less after commencement of auction proceedings.

19. Suffice it to note that in putting the immovable properties of the subject temple to sale, at the auctions held on 27.12.2013, neither the Act nor the Rules made thereunder, or even the conditions of auction, conferred any power on the Commissioner of Endowments to either waive or relax the rigour of the auction conditions. Condition No. 24 of the auction conditions restricts allotment of one plot to one person. It stipulates that, if an applicant is successful in two plots, only one plot of his choice will be allotted. It does not stand to reason that the Commissioner of Endowments should on his own accord, and without statutory sanction or conferment of power under the conditions of tender-cum-auction, arrogate to himself the power to relax the rigour of, or waive, condition No. 24 of the conditions of auction after the auction has been held and concluded. While augmentation of revenue would be the paramount consideration, in the sale of immovable properties of religious institutions, the requirement of condition No. 24 also necessitated compliance. The said condition would have been satisfied and revenues of the subject temple maximised, if not more than one plot was allotted to each of the highest bidders, and the other plots were allotted to the next highest bidder at a price not lower than the bid quoted by the highest bidder for the plot, which was not being allotted to the highest bidder only because he was already allotted a plot. Condition No. 23, of the conditions of tender-cum-auction, stipulates that, in case the applicant fails to pay the instalments in time or if the allotment is cancelled due to any reason, that plot will be allotted to the next highest bidder at the same rate of the highest bidder, and the power vests with the Urban Development Authority. While condition No. 23, whereby a plot can be allotted to the next highest bidder at the same price at which the highest bidder has submitted his bid, would no doubt apply only in cases where the highest bidder has failed to pay the instalments in time or if the allotment is cancelled due to any reason, it does indicate that, even in case of

allotment of a plot in terms of condition No. 24, it is not obligatory for the respondent officials to allot the plot to the second highest bidder if he is unwilling to pay the bid amount offered by the highest bidder for the said plot. The revenues of the religious institution would be maximised, and larger public interest served, only if the price quoted by the highest bidder is stipulated as the price which the second highest bidder should pay for allotment of the plot in his favour. This would not only ensure compliance with condition No. 24 (of not more than one plot being allotted to one bidder), but would also ensure that the religious institution does not suffer any monetary/financial loss thereby. Adoption of such a procedure would not amount to a sale by private negotiations, as the plot is being allotted to the second highest bidder in the auction, that too at the price which the highest bidder has offered. Condition No. 15, of the conditions of tender-cum-auction, provides that the highest bidders highest bid shall be subject to the order of confirmation of the Commissioner, Endowments Department, Hyderabad and the Commissioner, Endowments Department, Hyderabad has full rights to accept or reject the single bid and the highest bid. Condition No. 15 is merely a reiteration of Rule 14 of the Rules whereunder power is conferred on the Commissioner of Endowments to either confirm or refuse to confirm the sale of the plots. The power conferred on the Commissioner, both under Rule 14 of the Rules and condition No. 15, has to be exercised fairly and reasonably and not at his whims and fancies.

20. It matters little that the conditions of auction stipulated by VGTM Urban Development Authority is as per its bye-laws, since Rule 12 of the Rules requires the conditions of auction to be approved by the Committee before auction is conducted by the Executive Officer or the Trustee. Having approved the auction conditions (including condition No. 24) it is not open to the respondents to contend that these conditions, prepared by the VGTM UDA as per its bye-laws, does not necessitate adherence to by the Commissioner of Endowments. The best interest of the institution is served by maximising its revenues which can be achieved by selling the plots at the highest bid received in the auction. It hardly matters whether the plot is sold to the highest bidder or to the second highest bidder, provided the sale price is the price quoted by the highest bidder in the auction. I find considerable force in the submission made, on behalf of the petitioners, that if the public at large were made aware that condition No. 24 would be waived, several others may also have participated in the auction and submitted their bids for several plots.

21. In permitting allotment of more than one plot to the 5th respondent, the Commissioner of Endowments has not only violated condition No. 24 of the conditions of auction, he has also favoured the 5th respondent thereby. The Government is not free, like an ordinary individual, in selecting recipient for its largesse and it cannot choose to deal with any person it pleases in its absolute and unfettered discretion. The Government need not deal with anyone, but if it does so, it must do so fairly and without discretion and without unfair procedure. (Ram and Shyam Co. 5). The Government or its officers cannot act in a manner

which would benefit a private party at the cost of the State. Such an action would be both unreasonable and contrary to public interest. (Kasturi Lal Lakshmi Reddy 2; Ram and Shyam Co. 5). More often than not detriment to what belongs to many, collectively, does not cause pangs to any, for no one is personally hurt directly. That is why public officials and public-minded citizens entrusted with the care of public property must be alert and vigilant in such matters. Public property must be zealously protected. (Chenchu Rami Reddy Reddy v. Government of A.P.). Public authorities should act fairly, their actions should be legitimate, their dealings above board, and their transactions should be without aversion or affection. Nothing should be suggestive of discrimination. Nothing should be done by them which gives an impression of bias, favouritism or nepotism. (Haji T.M. Hassan Rawther v. Kerala Financial Corporation). Appearance of public justice is as important as doing justice. Nothing should be done which gives an appearance of bias, jobbery or nepotism. (Sachidanand Pandey 6). If actions of persons holding public or political offices" are tainted by breach of trust, corruption or other extraneous consideration, they would damage the interests of the country. (V.C. Shukla v. State (Delhi Administration)). Every holder of a public office, by virtue of which he acts on behalf of the State or a public body, is ultimately accountable to the people. All powers, so vested in him, must be exercised for public good and promoting the public interest. Every holder of a public office is a trustee. Action of the State or its instrumentalities should not, even apparently give an impression of bias, favouritism and nepotism. (NOIDA Entrepreneurs Association v. NOIDA). The adverse impact of lack of probity in discharge of public duties can result in varied defects, not only in the decision-making process but in the final decision as well. Every officer in the hierarchy of the State, by virtue of his being a public officer or a public servant, is accountable for his decisions to the public as well as to the State. This concept of dual responsibility should be applied with rigour in larger public interest. (Delhi Airtech Services Private Limited v. State of Uttar Pradesh). The principles of public accountability and transparency in State action are applicable to cases of executive exercise of power, besides requiring that such actions also not lack bona fides. Public officers are answerable for both their inaction and irresponsible actions. If what ought to have been done is not done, responsibility should be fixed on the erring officers; then alone, the real public purpose of an answerable administration would be satisfied. (Delhi Airtech Services Private Limited 17; Centre for Public Interest Litigation 7).

22. The submission of Sri. Ganta Rama Rao, Learned Senior Counsel appearing on behalf of the 5th respondent, that condition No. 24 of the conditions of auction is ultra vires Article 14 as it would deny the religious institution the opportunity to maximise its revenues, must only be noted to be rejected. It cannot be lost sight of that it is not the 5th respondent, but the petitioners i.e., the second highest bidders in the auction, who have invoked the jurisdiction of this Court. As the burden to establish that an auction condition is in violation of Article 14 of the Constitution lies heavily on the person invoking the jurisdiction

of this Court under Article 226 of the Constitution, it would be wholly inappropriate for this Court to undertake such an examination at the instance of the 5th respondent in the Writ Petition. Even otherwise the 5th respondent participated in the auction with his eyes open and being fully aware of the conditions of auction, including condition No. 24. Having participated in the auction it is not open to the 5th respondent to now turn around and contend that condition No. 24 is illegal. A party cannot be permitted to blow hot-blow cold, fast and loose or approbate and reprobate. Where one knowingly accepts the benefits of an order, he is estopped from denying the validity of, or the binding effect of, such an order upon himself. (*Nagubai Ammal v. B. Shama Rao*; *CIT v. V. MR. P. Firm Muar*; *Ramesh Chandra Sankla v. Vikram Cement*; *Pradeep Oil Corpn. v. MCD*; *Cauvery Coffee Traders v. Hornor Resources (International) Co. Ltd.*; *V. Chandrasekaran v. Administrative Officer*; and *Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd.*). A person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn around and say it is void for the purpose of securing some other advantage. (*Verschures Creameries Ltd. v. Hull and Netherlands Steamship Co. Ltd.*; *Halsburys Laws of England*, 4th Edn., Vol. 16; *R.N. Gosain v. Yashpal Dhir*; *P.R. Deshpande v. Maruti Balaram Haibatti*). The doctrine of approbate and reprobate would apply, and disentitle the 5th respondent from raising such a contention, much less such a contention being examined in proceedings under Article 226 of the Constitution of India at the instance of the fifth respondent in the Writ Petition.

23. I find no merit in the submission urged on behalf of the respondents that the petitioners, having received the EMD, are estopped from questioning the action of the Commissioner of Endowments in permitting eight plots being allotted to the 5th respondent contrary to condition No. 24 which restricts allotment of only one plot to each person. The petitioners had no choice but to receive the EMD sent to them by post in a sealed cover. The mere fact that they received the EMD does not preclude them from questioning the action of the Commissioner on the ground that condition No. 24, of the conditions of the auction, was violated by him in confirming eight plots in favour of the 5th respondent.

24. The Commissioner is not obligated to accept every bid for Rule 14 of the Rules enables him to refuse the same. The object of holding an auction is generally to raise the highest revenue. The Government or its officials are entitled to reject the highest bid if they think that the price offered was inadequate. But after rejecting the offer, it is obligatory upon the Government to act fairly, and not arbitrarily. (*Ram and Shyam Co. 5*). Instead of accepting the bids of the fifth respondent for more than one plot, (his bid was accepted for eight plots), contrary to condition No. 24, it was always open to the Commissioner to issue another notification inviting bids afresh if he was satisfied that the plots should not be allotted, to the second highest bidders for the plot, at the price offered by the highest bidder. From the reply affidavit, filed by the

petitioners, it does appear that, in the subsequent auction held on 11.03.2014, the bids received for the unsold plots in the very same lay out fetched a price far higher than the price received from the bidders in the auction held on 27.12.2013. The action of the official respondents, in allotting eight plots to the 5th respondent and eight more plots to the 5th respondents brother, is in violation of condition No. 24 of the conditions of auction. In the absence of any power being conferred on the Commissioner, either under the Act or the Rules or even the auction conditions, to either waive or relax the rigour of condition No. 24, exercise of power by him to allot more than one plot to one participant in the auction must be held to be arbitrary and illegal.

25. It is made clear that the restriction imposed by condition No. 24, of allotment of only one plot to the 5th respondent, does not obligate the Commissioner to offer the other plots to the second highest bidders (including the petitioners herein) at the price quoted, for each of the respective plots, by the 5th respondent. It is always open to the Commissioner, if he considers it to be in the interest of the subject religious institution, to cancel allotment of the other plots, and put the plots to auction afresh in accordance with the provisions of the Act and the Rules made thereunder. It is only to the limited extent that the 5th respondent has been allotted more than one plot is the impugned action of the Commissioner of Endowments being set aside as arbitrary, illegal, and in violation of condition No. 24 of the conditions of auction.

26. The Writ Petitions are disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. No costs.