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K. KUMARA GUPTA

v.

SRI MARKENDAYA AND SRI OMKARESWARA SWAMY
TEMPLE & ORS.

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(Civil appeal Nos. 791-792 of 2022)

FEBRUARY 18, 2022

[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

- Auction: Auction conducted on 26.06.1998 by the Executive Officer of the Temple Trust following due procedure under the provisions of the Endowments Act 1987 – Appellant was the highest bidder – After confirming the sale in favour of the appellant by the Commissioner, the appellant deposited the balance amount – Thereafter, sale deed was held confirmed and executed in the year 1998 – On challenge before High Court, re-auction of the property was ordered after a period of more than 23 years solely on the basis of the offer made by one JK in the year 1998 and the offer made by one LKR that they are ready to offer/pay a higher price than fetched in the public auction – On appeal, held: Neither did JK nor LKR had participated in the auction proceedings and made any offer – Both of them ought not have been permitted to raise any objection subsequently on the valuation when they had not participated in the public auction and made any offer – After the public auction is held and the highest bid is received and the property is sold in a public auction in favour of a highest bidder, such a sale cannot be set aside on the basis of some offer made by third parties subsequently – Further, unless and until it was found that there was any material irregularity and/or illegality in holding the public auction and/or vitiated by any fraud or collusion, it is not open to set aside the auction or sale in favour of a highest bidder – If there was any error in the decision-making process adopted by the authority, the remedy available was to question the sale deed in an appropriate proceeding available under the law and not by filing a petition under Art.226 of the Constitution of India – Moreover, respondents are not in a position to point out any material on which it can be said that what was offered by the appellant in the year 1998 was not a fair value – Hence, order of the High Court set aside – Endowments Act 1987 – Constitution of India – Art.226.*

Allowing the appeals, the Court

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HELD: 1. Once the appellant was found to be the highest bidder in a public auction in which 45 persons had participated and thereafter when the sale was confirmed in his favour and even the sale deed was executed, unless and until it was found that there was any material irregularity and/or illegality in holding the public auction and/or auction/sale was vitiated by any fraud or collusion, it is not open to set aside the auction or sale in favour of a highest bidder on the basis of some representations made by third parties, who did not even participate in the auction proceedings and did not make any offer. [Para 8.1][982-C-D]

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2. The sale was confirmed in favour of the appellant by the Commissioner, Endowments Department after obtaining the report of the Assistant Commissioner. Therefore, in the aforesaid facts and circumstances of the case, the High Court ought not to have ordered re-auction of the land in question after a period of 23 years of confirmation of the sale and execution of the sale deed in favour of the auction purchaser by observing that the value of the property might have been much more, otherwise, the object and purpose of holding the public auction and the sanctity of the public auction will be frustrated. Unless there is concrete material and it is established that there was any fraud and/or collusion or the land in question was sold at a throw away price, the sale pursuant to the public auction cannot be set aside at the instance of strangers to the auction proceeding. The sale pursuant to the public auction can be set aside in an eventuality where it is found on the basis of material on record that the property had been sold away at a throw away price and/or on a wholly inadequate consideration because of the fraud and/or collusion and/or after any material irregularity and/or illegality is found in conducting/holding the public auction. After the public auction is held and the highest bid is received and the property is sold in a public auction in favour of a highest bidder, such a sale cannot be set aside on the basis of some offer made by third parties subsequently and that too when they did not participate in the auction proceedings and made any offer and/or the offer is made only for the sake of making it and without any serious intent.

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- A In the present case, though JK immediately after finalising the auction stated that he is ready and willing to pay a higher price, however, subsequently, he backed out. If the auction/sale pursuant to the public auction is set aside on the basis of the such frivolous and irresponsible representations made by such persons then the sanctity of a public auction would be frustrated and the rights of a genuine bidder would be adversely affected. The so-called lucrative offer initially made by third parties appears to be made only to frustrate the auction proceedings with a mala fide intent. If there was any error in the decision-making process adopted by the authority, the remedy available was to question the sale deed in an appropriate proceeding available under the law and not by filing a petition under Article 226 of the Constitution of India. [Paras 8.2, 8.3][983-G-H; 984-A-E, G]

Jasbhai Motibhai Desai vs. Roshan Kumar, Haji Bashir Ahmed and Ors. (1976) 1 SCC 671 : [1976] 3 SCR 58;

- D *State of Uttaranchal Vs. Balwant Singh Chauhan and Ors. (2010) 3 SCC 402 : [2010] 1 SCR 678 – relied on.*

Valji Khimji and Company vs. Official Liquidator of Hindustan Nitro Product (Gujarat) Limited and Others (2008) 9 SCC 299 : [2008] 12 SCR 1; Paramananda Mahapatra vs. Commissioner of Hindu Religious Endowments, Orissa and Others, AIR 1966 SC 1544 : [1966] 1 SCR 791; Mahant Ram Saroop Dasji vs. S.P. Sahi [1959] Supp (2) SCR 583; Princess Fatima Fauzia and Anr. vs. Syeed UI-Mulk alias Nawab Saheb Chatthari & Ors. AIR 1979 AP 229; Divya Manufacturing Company (P) Ltd. vs. Union Bank of India and Ors. (2000) 6 SCC 69 : [2000] 1 Suppl. SCR 474; Chairman and Managing director, SIPCOT, Madras and Ors. vs. Contromix Pvt. Ltd. (1995) 4 SCC 595 : [1995] 1 Suppl. SCR 415; Union Bank of India vs. Official Liquidator H.C of Calcutta and Ors. (2000) 5 SCC 274 : [2000] 3 SCR 691; Navalkha and Sons vs. Sri Ramanya Das and Ors. (1969) 3 SCC 537 : [1970] 3 SCR 1 – referred to.

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<u>Case Law Reference</u>		A
[2008] 12 SCR 1	referred to	Para 4.6
[1966] 1 SCR 791	referred to	Para 5
[1959] Supp (2) SCR 583	referred to	Para 5
[2000] 1 Suppl. SCR 474	referred to	Para 5.3 B
[1995] 1 Suppl. SCR 415	referred to	Para 5.3
[2000] 3 SCR 691	referred to	Para 5.3
[1970] 3 SCR 1	referred to	Para 6.1
[1976] 3 SCR 58	relied on	Para 8.1 C
[2010] 1 SCR 678	relied on	Para 8.12

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 791-792 of 2022.

From the Judgment and Order dated 08.09.2019 of the High Court D
of Andhra Pradesh at Amaravati in Writ Appeal Nos. 790 and 1069 of
2018.

Harin P. Raval, Sr. Adv., Y. Rajagopala Rao, K. Pramod Kumar,
D. Gopi Krishna, Kartikey Kanojiya, Ms. Sukanya Singh, Advs. for the
Appellant. E

S. Niranjan Reddy, Siddhartha Dave, Sr. Advs., Abhijit Sengupta,
Mahfooz A. Nazki, Polanki Gowtham, Shaik Mohamad Haneef, T. Vijaya
Bhaskar Reddy, K. V. Girish Chowdary, Ms. Rajeswari Mukherjee,
Abhishek Sharma, Rajendra Singhvi, T. R. B. Sivakumar, Advs. for the
Respondents. F

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment
and order dated 18.09.2019 passed by the High Court of Andhra Pradesh
at Amaravati in Writ Appeal Nos. 790 and 1069 of 2018 by which the
High Court has allowed the said writ appeals and has directed the
authorities concerned to conduct a re-auction of the entire properties by
fixing the upset price higher than what has been fixed earlier, the auction
purchaser, who purchased the property in question in the year 1998, has
preferred the present appeals. G

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- A 2. The facts leading to the present appeals and the chronological dates and events are as under:-
- 2.1 That a proposal was published by the office of Commissioner, Endowments Department to auction the land in question belonging to Sri Markendaya and Omkareswara Swamy Devasthanam, Eluru, which was published in the newspaper on 10.03.1997. Notification to sell the subject land was published in the Andhra Pradesh Gazette on 22.05.1997. Nobody raised any objection against the said proposal. That the probable expected price of the land was fixed at Rs. 4,00,000/- per acre and the total extent of land was about 1.81 acre. That thereafter the Commissioner of Endowments Department granted permission to sell the land in question on 13.11.1997. The Executive Officer of the Temple Trust issued tender/ public notice to sell the land in question by way of an open auction in the presence of the Deputy Commissioner, Endowments on 22.05.1998. As per the notice, the date and time of the open auction was 24.06.1998 at 11.00 AM and the interested participants had to deposit Rs.20,000/- as EMD. Forty-five persons participated including the appellant herein – K. Kumara Gupta. At this stage, it is required to be noted that Shri L. Kantha Rao, original writ petitioner did not participate in the auction and nor did he deposit the EMD of Rs.20,000/-.
- 2.2 Thereafter the auction took place on 24.06.1998 in which 45 people participated. The appellant herein was declared as the highest bidder quoting price of Rs.5,55,000/- per acre against the expected price of Rs.4,00,000/. However, thereafter, the highest offer of the appellant was Rs.13,01,000/- per acre as per the bid submitted by the appellant herein. Thus, the appellant became the highest bidder fixing the price at Rs.13,01,000/- per acre. The appellant deposited Rs.7,85,000/- being 1/ 3rd of the bid amount immediately as per the tender conditions. It appears that thereafter the first round of litigation started at the instance of one Shri Jagat Kumar, who as such did not participate in the auction which was held on 24.06.1998. He made a representation on 20.07.1998 that the subject land has a potential of getting more money. Though, initially he had shown his readiness and willingness to pay the higher price but did not deposit the money. On the contrary, he expressed his willingness to buy only 1200 square yards but not the entire land put to auction. On the representation of the said Shri Jagat Kumar, the auction came to be cancelled vide order dated 24.07.1998. The appellant filed the revision under Section 93 of the Endowments Act, 1987 (hereinafter referred to

as the “Act of 1987”) against the order dated 24.07.1998 cancelling the auction. However, thereafter by order dated 22.12.1998, the order confirming the sale was issued by the Office of the Commissioner, Endowments Department in favour of the appellant. The Executive Officer of the Temple was directed to get the sale deed registered in the name of the highest bidder.

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2.3 That thereafter the appellant deposited balance amount of Rs.15,69,810/- vide four banker cheques dated 30.12.1998. The sale deed was executed in favour of the appellant by Executive Officer on behalf of the Temple vide Sale Deed dated 31.12.1998. As mentioned in the sale deed, the physical possession of the land in question was also delivered to the appellant.

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2.4 That at the relevant time, the sale deed could not be registered because of the non-availability of the Clearance Certificate from the Income Tax department. The sale deed was presented for registration before the Sub-Registrar, Eluru on 01.01.1999. On 01.01.1999, the Executive Officer of the Temple/Devasthanam filed an affidavit before the Income Tax Office for Clearance Certificate so that the sale deed could be registered. The Clearance Certificate was granted to the Executive Officer on 12.01.1999. Thus, the first round of litigation ended there.

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2.5 However, the second round of litigation begun at the instance of one Shri L. Kantha Rao, the original writ petitioner before the High Court, and one of the respondents in these appeals, who as such and as observed hereinabove did not even participate in the public auction proceedings. The said Shri L. Kantha Rao filed a Writ Petition No. 41 of 1999 before the High Court to direct the Executive Officer/ the Temple Committee not to execute the sale deed in respect of the auctioned land. Vide interim order dated 05.01.1999, the High Court granted interim stay of all further proceedings subject to the condition that he furnishes a bank guarantee of a sum of Rs.30 lakhs within two weeks from the date of the said interim order. That during the pendency of the aforesaid writ petition and in light of the interim order passed by the High Court in the aforesaid writ petition, being Writ Petition No. 41 of 1999, the office of the Commissioner, Endowments Department unilaterally passed an order dated 10.02.1999 cancelling the auction held on 24.06.1998. The Executive Officer of the Temple was instructed to conduct a re-auction for the land in question keeping the upset price of Rs.30 lakhs. As the

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- A order dated 10.02.1999 was passed without hearing the appellant, the appellant preferred revision before the Government under Section 93 of Act of 1987. The Government stayed the order dated 10.02.1999 of the Commissioner vide its order dated 08.03.1999. Questioning the order of the Government dated 08.03.1999 staying the order of the Commissioner dated 10.02.1999, the said Shri L. Kantha Rao filed another Writ Petition No. 11552 of 1999 before the High Court. That by order dated 11.03.1999, the Commissioner himself revoked his order dated 10.02.1999. That by order dated 09.07.1999, the High Court disposed of both the writ petitions, i.e., Writ Petition No. 41 of 1999 and Writ Petition No. 11552 of 1999. It appears that the High Court while disposing of the aforesaid writ petitions
- B observed that as the Commissioner had revoked the order dated 10.02.1999, the revision filed against the same had become infructuous and Government was not required to decide the issue on merits unless suo moto revision was taken up by the Government. However, liberty was granted to the said Shri L. Kantha Rao to file a revision against the original order passed by the Commissioner dated 22.12.1998 confirming the sale in favour of the appellant. The second round of litigation ended there.

- 2.6 Then the third round of litigation began. On the basis of the liberty granted by the High Court, the said Shri L. Kantha Rao filed a revision before the Government challenging the order dated 22.12.1998
- E although he was not a participant in the auction in which appellant herein was declared the highest bidder. By order dated 26.11.1999, the said revision came to be allowed quashing and setting aside the order dated 22.12.1998 and directing the Commissioner to refund the amount paid by the appellant and to conduct a re-auction. Even the said order dated
 - F 26.11.1999 was passed without hearing the appellant. The appellant filed Writ Petition No. 25407 of 1999 before the High Court challenging the order dated 26.11.1999. By a detailed judgment and order dated 02.02.2018, the learned Single Judge allowed the Writ Petition No.25407 of 1999 (which shall be dealt with hereinbelow). The said Shri L. Kantha Rao died on 01.03.2018. That the respondent No.1 herein – the Temple through its Executive Officer filed Writ Appeal No.790 of 2018 before the Division Bench challenging the judgment and order dated 02.02.2018 passed in Writ Petition No.25407 of 1999 on 16.03.2018. The wife of Shri L. Kantha Rao also filed Writ Appeal No. 1069 of 2018 challenging the judgment and order passed by the Learned Single Judge in Writ
 - H Petition No.25407 of 1999.

2.7 By the impugned common judgment and order, the Division Bench of the High Court has allowed the said appeals and has set aside the judgment and order passed by the learned Single Judge passed in Writ Petition No.25407 of 1999 and has directed the authorities concerned to conduct the re-auction of the entire land by fixing the upset price higher than what had been fixed earlier by observing that since more than twenty years had elapsed from the date of issuance of GO Rt. No. 1808 dated 26.11.1999 and price of the land in question had risen. The Division Bench of the High Court has further observed that as the appellant has agreed and even the learned Single Judge had directed the appellant to pay Rs.30 lakhs as the said Shri L. Kantha Rao furnished a bank guarantee of Rs. 30 lakhs and therefore, the Temple would get more than Rs.30 lakhs. While passing the impugned judgment and order, the Division Bench of the High Court has also observed that the writ petitioner as well as the appellant shall also be allowed to participate in the re-auction, if they are otherwise eligible. A

2.8 Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the Division Bench of the High Court, the original respondent No.4 before the High Court, the auction purchaser has preferred the present appeals. D

3. Shri Harin P. Raval, learned Senior Advocate has appeared on behalf of the appellant, Shri S. Niranjan Reddy, learned Senior Advocate has appeared on behalf of the respondent – Temple Trust and Shri Siddhartha Dave, learned Senior Advocate has appeared on behalf of the wife of Shri L. Kantha Rao – the original writ petitioner. E

4. Shri Harin P. Raval, learned Senior Advocate appearing on behalf of the appellant has vehemently submitted that in the facts and circumstances of the case the Division Bench of the High Court has committed a grave error in setting aside the auction/sale in favour of the appellant, which was held in the year 1998. F

4.1 It is submitted that as such the auction sale was conducted after wide publicity in the well-known newspapers and in fact, 45 people participated in the auction. It is submitted that the appellant was found to be the highest bidder and therefore the sale in favour of the appellant was confirmed and the appellant paid the full sale consideration and even the sale deed was also executed in favour of the appellant on 31.12.1998. It is submitted that as there was no illegality in conducting the auction, therefore, the Division Bench of the High Court ought not to G

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- A have set aside such a sale after a period of approximately twenty years from the date of conducting the public auction and the sale that too at the instance of a person, who never participated in the auction.

4.2 It is submitted that Division Bench of the High Court ought to have appreciated that as the said Shri L. Kantha Rao did not even

- B participate in the public auction and did not submit any offer, thereafter, he had no locus to challenge the public auction and/or the sale in favour of the appellant, who was found to be the highest bidder.

4.3 It is submitted that the Division Bench of the High Court ought to have appreciated that merely because somebody, subsequently to the

- C completion of the public auction and the sale deed has been executed in the favour of the highest bidder states that he is ready and willing to pay a higher amount than the highest bid amount, would frustrate the object and purpose of holding the public auction, if at such a person's instance, the auction/sale is interfered with in any manner. It is submitted that the

- D Division Bench of the High Court ought to have appreciated that at the relevant time, nobody restrained the said Shri L. Kantha Rao from participating in the public auction and submit his offer.

4.4 It is further submitted by Shri Raval, learned Senior Advocate appearing on behalf of the appellant that as such the Division Bench of the High Court has not at all observed and/or held that the auction was

- E illegal and/or there was any illegality in holding the public auction. It is submitted that the Division Bench of the High Court has passed the impugned judgment and order and has directed for re-auction solely on the ground that subsequently the said Shri L. Kantha Rao offered Rs. 30 lakhs, which was higher than the amount paid by the appellant even

- F when the learned Single Judge had also directed the appellant to pay a total sum of Rs.30 lakhs, which the appellant had agreed; therefore, the Division Bench of the High Court has presumed that the value of the land would have been much more than Rs.30 lakhs at the time when it was put up for auction/sale. It is submitted that the High Court has not at all appreciated the fact that as such the said L. Kantha Rao had no locus

- G to challenge the sale in favour of the appellant, who was the highest bidder firstly, on the ground that he did not participate in the public auction.

4.5 It is submitted that the Division Bench of the High Court has not properly appreciated the fact that the proceedings initiated by Shri L. Kantha Rao were by way of "Public Interest Litigation (PIL)" and

- H therefore after his death, his wife could not have continued the PIL

proceedings by way of writ petition before the High Court as a private litigation. It is submitted by learned Senior Advocate for the appellant that the entire litigation was at the instance of the second highest bidder namely, Shri M.M. Gupta, brother-in-law of Shri L. Kantha Rao, who had purchased the nearby lands to the auctioned land in the name of his family members at Rs.7,50,000/- per acre on 28.07.1998 and 22.09.1998 and who had an eye on the land in question.

4.6 It is submitted by Shri Raval, learned Senior Advocate appearing on behalf of the appellant that filing of objections and entertaining the same after the conclusion of the auction and after execution of the sale deed cannot be permitted at the instance of a stranger to the auction proceeding. It is submitted that in the present case, the sale deed was executed in favour of the appellant herein being the highest bidder in the public auction in which 45 persons had participated and therefore to maintain the sanctity of the public auction, the objections ought not to have been entertained that too by a person, who never participated in the public auction, more particularly, when no allegation of fraud was even pleaded, much less established or proved by the respondents. Reliance is placed on the decision of this Court in the case of **Valji Khimji and Company Vs. Official Liquidator of Hindustan Nitro Product (Gujarat) Limited and Others, (2008) 9 SCC 299** (paras 11, 12, 25 and 28).

4.7 It is further submitted by Shri Raval that as such the wife of the deceased Shri L. Kantha Rao could not have preferred an appeal as an heir of Shri L. Kantha Rao, a petitioner, who had filed the petition as a Public Interest Litigation. It is submitted that as such the litigation initiated on behalf of Shri M.M. Gupta the second highest bidder by Shri L. Kantha Rao, was in fact a private interest litigation only in the guise of a Public Interest Litigation to thwart the auction sale. It is submitted that the learned Single Judge had rightly reached to the conclusion that the respondents – writ petitioners had no locus standi to raise the objection as well as to file the writ petitions before the High Court as admittedly they did not participate in the auction.

4.8 It is further submitted that the Temple Trust never objected at any stage of auction or after the auction until the order/judgment dated 02.02.2018 was rendered by the learned Single Judge. It is submitted that the Executive officer of the Temple, who was aware of the entire proceedings including conducting of the public auction and after receiving

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- A the full and total consideration could not have challenged the judgment and order passed by the learned Single Judge rendered on 02.02.2018 at a belated stage, i.e., almost after twenty years from the date of the execution of the sale deed. It is submitted that filing of an appeal by the Temple Trust against the judgment and order dated 02.02.2018 before the Division Bench without any allegation of fraud or collusion against it reeks of mala fides and collusion, which ought not to have been allowed. In fact, the Division Bench of the High Court ought not to have entertained the same, is the submission.

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- C 4.9 Making the above submissions, it is urged that the Division Bench of the High Court has committed a grave error in quashing and setting aside the sale in favour of the appellant after a period of 23 years and when the appellant had paid the entire sale consideration on 30.12.1998 and was put in the possession on execution of the sale deed. It is contended that the Division Bench of the High Court has not properly appreciated the fact that as such the sale was confirmed in favour of the
- D appellant after the approval by the competent authority of the Endowments Department.

- E 5. Learned counsel appearing on behalf of the respondent No.3 has submitted that the respondent No.1 – Temple is a public religious institution and registered under Section 6(b)(ii) of Act of 1987. It is submitted that the Government under the Act of 1987 is necessarily bound to act for the benefit of the temples and ensure revenue maximization for the temples. That as held by this Court in a catena of decisions Government acts as a trustee of the said properties. It is submitted that as observed and held by this Court in a catena of decisions, the duty of the State is *parens patriae* in respect of the charitable
- F endowments and to ensure its due protection. Reliance is placed on the decisions in **Paramananda Mahapatra Vs. Commissioner of Hindu Religious Endowments, Orissa and Others, AIR 1966 SC 1544** and **Mahant Ram Saroop Dasji Vs. S.P. Sahi, 1959 Supp (2) SCR 583**.

- G 5.1 It is submitted that therefore the Government cannot act against the interest of the temple. That in the present case the auction was conducted on behalf of the Deity, which is in law a perpetual minor. Therefore, it is important to ensure that the trustees act strictly in accordance with the interest of the Deity. It is submitted that in the
- H present case, the consideration paid was inadequate as on the date of

auction. That initially the appellant offered Rs.13,01,000/- per acre, which was treated as the highest bid and the same was confirmed. That one Shri Jagat Kumar through representation dated 24.07.1998 stated that he was willing to offer Rs. 22,00,000/- per acre, i.e., Rs. 7 lakhs more than the price on which the bid was confirmed in favour of the appellant. Also one Shri L. Kantha Rao submitted a bank guarantee for an amount of Rs. 30 lakhs on 05.01.1999 pursuant to the directions passed by the High Court in Writ Petition No. 41 of 1999 on his submission that he was ready and willing to purchase the property in question at Rs. 30 lakhs. It is submitted that thereafter the State Government vide its order dated 26.11.1999 fixed the reserved at Rs.32 lakhs and allowed the parties to participate in the auction. It is submitted that the aforesaid facts evidently reveal that within a period of one year, the price of the property significantly increased by more than 125%. That the value of the property, as on date, is about 15 crores. It is submitted that therefore in the interest of the Deity, the impugned judgment and order passed by the Division Bench of the High Court may not be interfered with.

5.2 Relying upon the decision of the Division Bench of the High Court in the case of **Princess Fatima Fauzia and Anr. Vs. Syeed UI-Mulk alias Nawab Saheb Chathari & Ors., AIR 1979 AP 229**, it is submitted that as held the Division Bench of the High Court, the authorities ought to have permitted re-auction where, in case of a trust, the consideration is inadequate.

5.3 It is further submitted by the learned Senior Advocate appearing on behalf of the respondent No.3 that it is the duty of the Court to ensure that the price fetched is adequate – especially in the case of a Public Trust even though there is no suggestion of irregularity or fraud. Reliance is placed on the decision of this Court in the case of **Divya Manufacturing Company (P) Ltd. Vs. Union Bank of India and Ors., (2000) 6 SCC 69**.

5.4 It is further submitted by the learned Senior Advocate appearing on behalf of respondent No.3 that by the impugned judgment and order passed by the Division Bench of the High Court, no prejudice shall be caused to the appellant as the Division Bench of the High Court has directed that the money deposited including the amount incurred on account of purchase of stamp papers be refunded to the appellant and the appellant will also be getting the benefit of the prevailing bank interest on the deposited amount. Further, the appellant is also permitted to

- A participate in the re-auction. It is therefore prayed not to interfere with the impugned judgment and order passed by the Division Bench of the High Court considering the interest of the charitable institution.
6. Learned Senior Advocate appearing on behalf of respondent No.1 – Temple Trust / Devasthanam in addition to the submissions made
- B by the learned Senior Advocate appearing on behalf of respondent No.3 has submitted that in the matter of sale of public property/auction, the dominant consideration is to secure the best price for the property. It is submitted that the court should always keep the larger interest of the public in mind while interfering with the decision of the authority. Further,
- C the concept of locus standi has been widened by this Court while dealing with matters of public interest. It is submitted that it is the duty of the Court to see that the price fetched is adequate.
- 6.1 Learned counsel appearing on behalf of the respondent No.1 has relied upon the decisions of this Court in the case of **Chairman and Managing director, SIPCOT, Madras and Ors. Vs. Contromix Pvt. Ltd., (1995) 4 SCC 595; Union Bank of India Vs. Official Liquidator H.C of Calcutta and Ors., (2000) 5 SCC 274** and **Navalkha and Sons Vs. Sri Ramanya Das and Ors., (1969) 3 SCC 537** in support of his submission that in the matter of sale of public property/auction the dominant consideration is to secure the best price
- E for the property.
- 6.2 Making the above submissions and relying upon above decisions, it is prayed to dismiss the present appeals.
7. Heard the learned counsel appearing for the respective parties at length.
- F 8. At the outset, it is required to be noted that by the impugned judgment and order, the Division Bench of the High Court has ordered re-auction of the land in question by fixing the upset price more than what has been fixed earlier by observing that since more than 20 years have elapsed from the date of the issuance of G.O. dated 26.11.1999, it
- G is in the interest of the Temple that the property in auction is put to re-auction. However, it is required to be noted that the appellant purchased the property in question in a public auction, which took place on 24.06.1998. He was found to be the highest bidder, who offered Rs.13,01,000/- per acre. It is also required to be noted that in the said auction, which took place on 24.06.1998, in all 45 people participated.
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The auction was conducted after following due procedure under the provisions of the Act of 1987 and the auction was conducted by none other than the Executive Officer of the Temple Trust. It is also to be noted that after receiving a detailed report of Assistant Commissioner of Endowments, office of the Commissioner, Endowments Department vide order dated 22.12.1998 confirmed the sale in favour of the appellant. Consequently, the appellant deposited the balance amount. The sale deed came to be executed in his favour vide Sale Deed dated 31.12.1998. Even thereafter on the application made by the Executive Officer of the Devasthanam/Temple, the Income Tax Department granted Clearance Certificate to the Executive Officer on 12.01.1999. Therefore, as such the sale, which was held and confirmed in the year 1998 and for which the sale deed was executed on 31.12.1998, the Division Bench of the High Court has ordered re-auction of the property in question after a period of more than 23 years solely on the basis of the offer made by one Shri Jagat Kumar in the year 1998 (after the public auction was concluded) and the offer made by one Shri L. Kantha Rao that they are ready to offer / pay a higher price than fetched in the public auction already concluded and therefore, the Division Bench of the High Court has presumed that the value of the property must have been much more than the sale consideration realized in the public auction. However, the Division Bench of the High Court has not at all appreciated and considered the lack of bona fides on the part of the said Shri Jagat Kumar and even Shri L. Kantha Rao. It is to be noted that though in the month of July, 1998, i.e., after the public auction was held, the said Shri Jagat Kumar, who even did not participate in the auction proceedings initially came out with a case that he was ready and willing to pay a higher price for the auctioned land. But subsequently, he backed out and did not deposit any money. Neither did the said Shri Jagat Kumar nor Shri L. Kantha Rao had participated in the auction proceedings and made any offer. Therefore, as such both of them ought not have been permitted to raise any objection subsequently on the valuation when they had not participated in the public auction and made any offer. The Division Bench of the High Court ought to have considered whether these subsequent objectors had acted in a bona fide manner. At this stage, it is required to be noted that even Shri Jagat Kumar subsequently did not prosecute the matter further and subsequently it was only Shri L. Kantha Rao, who filed the revision before the Government by way of a "Public Interest Litigation". It is also to be noted that neither the Government nor even the Division Bench

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- A of the High Court have given any finding that the auction, which was conducted/held on 24.06.1998 was in any way irregular and/or illegal. Even the Division Bench of the High Court has as such not set aside the auction/sale in favour of the appellant, however, it has ordered re-auction by observing that as Shri L. Kantha Rao deposited a sum of Rs. 30 lakhs
- B pursuant to the interim order passed by the High Court in Writ Petition No. 41 of 1999 and as even the learned Single Judge had also directed the appellant to pay a total sum of Rs. 30 lakhs, which the appellant had agreed, the Division Bench of the High Court has observed that the value of the property can be said to be much more than what was realized in the public auction.
- C 8.1 Once the appellant was found to be the highest bidder in a public auction in which 45 persons had participated and thereafter when the sale was confirmed in his favour and even the sale deed was executed, unless and until it was found that there was any material irregularity and/or illegality in holding the public auction and/or auction/sale was
- D vitiated by any fraud or collusion, it is not open to set aside the auction or sale in favour of a highest bidder on the basis of some representations made by third parties, who did not even participate in the auction proceedings and did not make any offer. In this context, we rely on the following observations of this Court in the case of **Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Ors., (1976) 1 SCC 671** made in paragraphs 34, 37 and 49, which are as under:-
 - F “34. This Court has laid down in a number of decisions that in order to have the locus standi to invoke the extraordinary jurisdiction under Article 226, an applicant should ordinarily be one who has a personal or individual right in the subject-matter of the application, though in the case of some of the writs like habeas corpus or quo warranto this rule is relaxed or modified. In other words, as a general rule, infringement of some legal right or prejudice to some legal interest inhering in the petitioner is necessary to give him a locus standi in the matter, (see *State of Orissa v. Madan Gopal Rungta* [AIR 1952 SC 12]; *Calcutta Gas Co. v. State of W.B.* [AIR 1962 SC 1044]; *Ram Umeshwari Suthoo v. Member, Board of Revenue, Orissa* [(1967) 1 SCA 413]; *Gadde Venkateswara Rao v. Government of A.P.* [AIR 1966 SC 828]; *State of Orissa v. Rajasaheb Chandanmall* [(1973) 3 SCC 739]; *Satyanarayana Sinha Dr v. S. Lal & Co.* [(1973) 2 SCC 696]).
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37. It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories: (i) “person aggrieved”; (ii) “stranger”; (iii) busybody or meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold.

49. It is true that in the ultimate analysis, the jurisdiction under Article 226 in general, and certiorari in particular is discretionary. But in a country like India where writ petitions are instituted in the High Courts by the thousand, many of them frivolous, a strict ascertainment, at the outset, of the standing of the petitioner to invoke this extraordinary jurisdiction, must be insisted upon. The broad guidelines indicated by us, coupled with other well-established self-devised rules of practice, such as the availability of an alternative remedy, the conduct of the petitioner etc. can go a long way to help the courts in weeding out a large number of writ petitions at the initial stage with consequent saving of public time and money.”

In the aforesaid decision, it was also observed that despite adequate opportunity, if a person has not lodged any objection at an appropriate stage and time, he could not be said to have been in fact, grieved.

8.2 It is also required to be noted that the sale was confirmed in favour of the appellant by the Commissioner, Endowments Department after obtaining the report of the Assistant Commissioner. Therefore, we are of the opinion that in the aforesaid facts and circumstances of the case, the High Court ought not to have ordered re-auction of the land in question after a period of 23 years of confirmation of the sale and execution of the sale deed in favour of the auction purchaser by observing that the value of the property might have been much more, otherwise, the object

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- A and purpose of holding the public auction and the sanctity of the public auction will be frustrated. Unless there is concrete material and it is established that there was any fraud and/or collusion or the land in question was sold at a throw away price, the sale pursuant to the public auction cannot be set aside at the instance of strangers to the auction proceeding.
- B The sale pursuant to the public auction can be set aside in an eventuality where it is found on the basis of material on record that the property had been sold away at a throw away price and/or on a wholly inadequate consideration because of the fraud and/or collusion and/or after any material irregularity and/or illegality is found in conducting/holding the public auction. After the public auction is held and the highest bid is
- C received and the property is sold in a public auction in favour of a highest bidder, such a sale cannot be set aside on the basis of some offer made by third parties subsequently and that too when they did not participate in the auction proceedings and made any offer and/or the offer is made only for the sake of making it and without any serious intent. In the
- D present case, as observed hereinabove, though Shri Jagat Kumar immediately after finalising the auction stated that he is ready and willing to pay a higher price, however, subsequently, he backed out. If the auction/sale pursuant to the public auction is set aside on the basis of the such frivolous and irresponsible representations made by such persons then the sanctity of a public auction would be frustrated and the rights of a
- E genuine bidder would be adversely affected.

- F 8.3 Further, the Division Bench of the High Court ought to have appreciated that the objector – Shri L. Kantha Rao, who did not participate in the auction proceedings and submit any bid can be said to be a fence sitter having no stakes on his shoulder and had simply come forward just to nullify the registered sale deed executed in favour of the appellant by adopting an indirect method of making a public offer by way of filing a “Public Interest Litigation” before the High Court. The so-called lucrative offer initially made by Shri Jagat Kumar and the subsequent offer made by Shri L. Kantha Rao appears to be made only to frustrate the auction proceedings with a mala fide intent. As observed hereinabove, if there
- G was any error in the decision-making process adopted by the authority, the remedy available was to question the sale deed in an appropriate proceeding available under the law and not by filing a petition under Article 226 of the Constitution of India.

- H 8.4 The Division Bench of the High Court has observed that as the said Shri L. Kantha Rao submitted a bank guarantee of Rs. 30 lakhs

as he offered to pay Rs. 30 lakhs and even the learned Single Judge had also directed the appellant to pay a total sum of Rs.30 lakhs against his original offer and the appellant had agreed to pay the same, the High Court has presumed that the value of the property at the time of auction would have been much more. There was no concrete material before the Division Bench of the High Court to come to such a conclusion that what was received in the public auction in the year 1998 was a lesser amount and/or at the relevant time, the valuation of the property was much more than the highest bid received. Merely because the appellant might have agreed to pay a total sum of Rs.30 lakhs (after deducting whatever he paid earlier), by that itself, it cannot be presumed and/or held against the appellant that in the year 1998 what was offered by him was a lesser amount than the actual valuation. The appellant agreed to pay a higher price for the land in question in order to save his rights.

8.5 At the cost of repetition, it is observed that as such there was no material available with the Division Bench to the effect that the valuation of the property in the year 1998 was much more and that the highest bid of the appellant was for a lesser consideration than the actual value of the land.

8.6 In fact, the learned Single Judge had passed a detailed judgment and order quashing and setting aside the order passed by the Government dated 26.11.1999. Learned Single Judge specifically observed in paragraphs 8, 9, 12 and 14 as under:-

“8. The repeated orders of the second respondent passed time and again in this matter are found to be without assigning any cogent reasons. Under the Indian Contract Act, which is a Central Act, having an over riding effect upon the Endowments Act, more particularly when the matter pertains to contractual obligations between both the parties i.e., between the vendor and the vendee and also when the matter pertains to tender-cum-auction, where both parties have fulfilled their part of obligations and where no fraud played by the parties has been established, the action of the second respondent in canceling the sale deed is unwarranted. The conduct of the 4th respondent cannot be appreciated, where he has not participated in the tender-cum-auction and more so, he is not an effected party. Only after knowing the tender and auction amount, the 4th respondent appears to have either got tempted by the sale of the property or he has been

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- A planted by the persons having vested interest. This kind of conduct cannot be encouraged. It is an undisputed fact that petitioner, 45 persons filed tenders and participated in the auction, nothing prevented the 4th respondent from filing tender and participating in the auction.
- B 9. As stated supra, the respondents have not made out a case of fraud in conducting the sale and also they have not raised any objection at the time of conducting sale proceedings. The respondents conveniently causing interference, at a later stage cannot be accepted and they are estopped from raising objections after conducting the sale proceedings.....
- C 12. Respondent No.4 has not approached this Court with clean hands. He has no *locus standi*. He did not participate in the tender-cum-auction and when 45 persons participated in tender-cum-auction, nothing prevented the 4th respondent to participate in tender-cum-auction proceedings. Mere depositing the money saying that the amount would fetch more is of no argument that can be looked into without establishing malafides or fraud played by the vendor or vendee. No relief can be granted to respondent No.4 in the writ petition filed by the petitioner.
- E 14. Once the contractual obligation has been completed by both parties and sale deed is executed, the second respondent has no jurisdiction in the matter to cancel the same and it is the competent Court of law which has jurisdiction to decide the validity.”
- F 8.7 None of the aforesaid aspects have been dealt with and/or considered by the Division Bench of the High Court while passing the impugned judgment and order. Even it was the specific case of the appellant before the learned Single Judge that the order dated 26.11.1999 passed by the Government cancelling the sale and ordering for re-auction was passed without hearing him. The same is also not dealt with by the
- G Division Bench of the High Court.
- H 8.8 Now, in so far as the submission on behalf of the respondents that the value of the property as on today is Rs. 15 crores approximately and therefore in the interest of the Deity/Temple, the impugned judgment and order passed by the Division Bench of the High Court may not be interfered with by this Court is concerned, it is to be noted that by the

passage of time the value of the property is bound to increase. In the present case, subsequent to the auction and the sale, more than 23 years have passed, therefore, whatever was the value in the year 1998 would not be same at a future date and that too, after 20-23 years. What is required to be considered is, at the relevant time, when the sale was conducted, what was the value of the land/property. Learned Senior Advocate appearing on behalf of the respondents are not in a position to point out any material on which it can be said that what was offered by the appellant in the year 1998 was not a fair value. The base price was Rs.4,00,000/- per acre in the public auction, in which 45 persons participated and what was offered by the appellant, i.e., Rs. 13,01,000/- per acre was much higher than the base price. Under normal circumstances, unless there are allegations of fraud and/or collusion and/or cartel and/or any other material irregularity or illegality, the highest offer received in the public auction may be accepted as a fair value. Otherwise, there shall not be any sanctity of a public auction.

8.9 By the impugned judgment and order by ordering re-auction, the Division Bench of the High Court has permitted both, the appellant as well as the original writ petitioner to participate in the re-auction. It is to be noted that as such the original writ petitioner never participated in the public auction, which was conducted/held on 24.06.1998. Therefore, by such a liberty being granted, the High Court has given one another opportunity to the original writ petitioner, who has died, and/or to his heirs to participate in the re-auction, which liberty could not have been reserved. As a result, the writ petition filed by the deceased petitioner Shri L. Kantha Rao has ceased to be a “Public Interest Litigation” but it is a litigation with a private mala fide interest as the original writ petitioner had no locus to file such a case, not being a participant in the auction and being unable to point out any irregularity or illegality in the auction.

8.10 Even the Division Bench of the High Court ought not to have passed the impugned judgment and order in an appeal preferred by the Temple Trust for the simple reason that it was the Executive Officer of the Temple Trust, who had conducted the auction; it was the Executive Officer, who had obtained the Clearance Certificate from the Income Tax department and who executed the sale deed in favour of the highest bidder – appellant herein. At no point of time till the judgment and order was passed by the learned Single Judge, the Temple Trust had challenged the auction/sale on the ground that the amount realized was inadequate.

- A Therefore, the Temple Trust could not have challenged their own decision, which they had never challenged earlier.
- 8.11 Similarly, the appeal preferred by the heirs of Shri L. Kantha Rao also ought not to have been entertained. Shri L. Kantha Rao never participated in the auction. He never submitted any offer. The proceedings initiated by Shri L. Kantha Rao was in the nature of a Public Interest Litigation and therefore being heir of Shri L. Kantha Rao, his wife could not have been permitted to prosecute further with the Public Interest Litigation.
- 8.12 Now, in so far as the decisions relied upon by the learned Senior Advocate appearing on behalf of the respondents referred to hereinabove are concerned, there cannot be any dispute to the proposition of law laid down by this Court in the aforesaid decisions. However, in the facts and circumstances of the case narrated hereinabove, none of the decisions are of any assistance to the respondents. There was/is no material to show that the market value at the time of auction/sale in favour of the appellant was more than what was offered by the appellant as a highest bidder. The base price fixed was Rs. 4,00,000/- per acre against which the appellant being highest bidder offered Rs.13,01,000/- per acre. In all 45 persons participated in the auction, in which the appellant was found to be the highest bidder. There are no allegations of fraud and/or collusion. According to the appellant, the entire litigation started at the instance of Shri L. Kantha Rao when one Shri M.M. Gupta, brother-in-law of Shri L. Kantha Rao, who was the second highest bidder and who had purchased lands in the name of his family members near the auction land at Rs.7,50,000/- per acre on 28.07.1998 and 22.09.1998. Therefore, it is observed that the proceedings initiated by Shri L. Kantha Rao as such cannot be said to be a Public Interest Litigation but is squarely a private interest litigation in the garb of espousing a public cause, which also did not exist in the instant case. Therefore, in the facts and circumstances of the case, the Division Bench of the High Court ought not to have passed an order for re-auction of the property after a period of 23 years from the date of auction/sale to the detriment of the rights of the appellant who was the successful bidder in the auction sale. In this regard, we wish to rely on some of the observations made by this Court in the case of **State of Uttarakhand Vs. Balwant Singh Chaufal and Ors., (2010) 3 SCC 402**, cautioning the High Courts to be more discerning / vigilant and/or cautious while entertaining writ
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petitions apparently filed in public interest. In the said decision, it is observed and held that: (1) The Courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations; (2) The Courts should prima facie verify the credentials of the petitioner before entertaining a PIL; (3) The Courts should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL; (4) The Courts should be fully satisfied that substantial public interest is involved before entertaining the petition; (5) The Courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation; and (6) The Courts should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.

8.13 The submission on behalf of the respondents that as on today the value of the property is Rs.15 crores and therefore, this Court may not interfere with the impugned judgment and order passed by the Division Bench of the High Court is concerned, the aforesaid cannot be accepted. After a period of 20-23 years, the prices of lands are bound to increase. The auction was conducted and held in the year 1998 and was sold in favour of the appellant then on payment of the full sale consideration as per the highest bid offered by him. Therefore, the valuation as on the date of auction is the relevant consideration and not the value after so many years and over two decades after conducting the auction and confirming the sale.

9. In view of the above and for the reasons stated above, the impugned judgment and order passed by the Division Bench of the High Court is unsustainable and deserves to be quashed and set aside and is accordingly quashed and set aside. The judgment and order passed by the learned Single Judge in Writ Petition No.25407 of 1999 is hereby ordered to be restored. However, as the appellant had agreed to deposit the balance amount of Rs.6,45,190/- being the balance of Rs. 30 lakhs and considering the fact that the respondent is a Temple Trust / Devasthanam, we direct the appellant to pay to the respondent – Temple Trust / Devasthanam a further sum of Rs. 15 lakhs (Rs.6,45,190/- plus interest from 1998), to be paid by the appellant to the respondent –

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- A Temple Trust /Devasthanam by demand draft /banker cheque within a period of two weeks from today and take all consequential steps pursuant to the auction/sale being confirmed in his favour including getting registration of the sale deed in his name and taking possession of the land in question in case the same have not yet taken place till date.
- B Present appeals are accordingly allowed to the aforesaid extent. However, in the facts and circumstances of the case, there shall be no order as to costs.

Pending application(s), if any, also stands disposed of.

Devika Gujral
(Assisted by : Shevali Monga, LCRA)

Appeals allowed.