

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 30<sup>TH</sup> DAY OF SEPTEMBER, 2024**

**PRESENT**

**THE HON'BLE MRS JUSTICE ANU SIVARAMAN**

**AND**

**THE HON'BLE MR JUSTICE G BASAVARAJA**

**WRIT APPEAL NO. 593 OF 2024 (BDA)**

**C/W**

**WRIT APPEAL NO. 883 OF 2022 (BDA)**

**IN W.A. NO.593/2024**

**BETWEEN:**

SRI RAVISH HASTANTRAM  
AGED ABOUT 40 YEARS  
S/O SRI H B NAGARAJAIAH SETTY  
R/AT: # 1232, 11<sup>TH</sup> 'A' CROSS,  
22<sup>ND</sup> MAIN, HSR LAYOUT,  
SECTOR I, BENGALURU 560102  
REP. BY HIS GPA HOLDER  
SRI HARISH H,  
AGED ABOUT 43 YEARS  
S/O SRI H B NAGARAJAIAH SETTY,  
R/AT: # 1232, 11<sup>TH</sup> 'A' CROSS,  
22<sup>ND</sup> MAIN, HSR LAYOUT,  
SECTOR I, BENGALURU 560102.

...APPELLANT

(BY SMT. SUSHEELA, SENIOR ADVOCATE A/W  
SRI. NAGESH VINAY S., ADV.)

**AND:**

1 . SRI. SACHIN NAGARAJAPPA  
AGED ABOUT 42 YEARS,  
S/O Dr. A. H. NAGARAJAPPA  
NO.95, I BLOCK, 2ND STAGE,  
NAGARABHAVI, BANGALORE-560072,

REPRESENTED BY HIS PA HOLDER  
DR. A H NAGARAJAPPA,  
S/O LATE AREHALLI HALAPPA,  
NO.95, I BLOCK, 2ND STAGE,  
NAGARABHAVI,  
BANGALORE-560072.

- 2 . THE BANGALORE DEVELOPMENT AUTHORITY  
REPRESENTED BY  
THE COMMISSIONER,  
KUMARA PARK WEST,  
T. CHOWDAIAH ROAD,  
BANGALORE-560020.
- 3 . THE FINANCE MEMBER,  
BANGALORE DEVELOPMENT AUTHORITY,  
KUMARA PARK WEST,  
T. CHOWDAIAH ROAD,  
BENGALURU-560020

...RESPONDENTS

(BY SRI. VIJAYAKUMAR R., ADV. FOR R1,  
SRI. G.S.KANNUR, SENIOR COUNSEL A/W  
SRI. K.KRISHNA, ADV. FOR R2.)

THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA  
HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER OF THE  
LEARNED SINGLE JUDGE PASSED IN WP No-11179/2020  
DATED 21.06.2022 AND DISMISS THE WRIT PETITION.

**IN W.A.NO.883/2022**

**BETWEEN:**

- 1 . BANGALORE DEVELOPMENT AUTHORITY  
BY ITS COMMISSIONER  
KUMARA PARK WEST  
SANKEY ROAD,  
BANGALORE-560020

2 . FINANCE MEMBER  
BANGALORE DEVELOPMENT AUTHORITY  
KUMARA PARK WEST  
SANKEY ROAD,  
BANGALORE-560020  
(APPELLANTS 1 AND 2 OF SAME AUTHORITY  
AND BOTH ARE REPRESENTED BY  
SECOND APPELLANT,  
FINANCE MEMBER, BDA)

...APPELLANTS

(BY SRI. G.S.KANNUR, SENIOR COUNSEL A/W  
SRI. K.KRISHNA, ADV.)

**AND:**

SRI SACHIN NAGARAJAPPA  
S/O DR. A H NAGARAJAPPA  
AGED ABOUT 41 YEARS  
NO.95, I BLOCK, 2<sup>ND</sup> STAGE,  
NAGARABHAVI, BANGALORE-560072

REPRESENTED BY HIS PA HOLDER  
DR. A H NAGARAJAPPA  
S/O LATE AREHALLI HALAPPA  
AGED ABOUT 71 YEARS  
NO.95, I BLOCK, 2<sup>ND</sup> STAGE  
NAGARABHAVI, BANGALORE-560072

...RESPONDENT

(BY SRI. VIJAYAKUMAR R., ADV.)

THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA  
HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER OF THE  
LEARNED SINGLE JUDGE PASSED IN WP No-11179 of 2020  
DATED 21.06.2022 AND DISMISS THE WRIT PETITION.

THESE APPEALS HAVING BEEN HEARD AND RESERVED  
FOR JUDGMENT ON 11.09.2024, COMING ON FOR  
"PRONOUNCEMENT OF JUDGMENT" THIS DAY,  
**BASAVARAJA J.**, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS JUSTICE ANU SIVARAMAN  
and  
HON'BLE MR JUSTICE G BASAVARAJA

**CAV JUDGMENT**  
**(PER: HON'BLE MR JUSTICE G BASAVARAJA)**

1. These intra-court appeals are preferred against the order dated 21<sup>st</sup> June 2022 passed by the learned Single Judge in Writ Petition No.11179 of 2020.

2. Writ Appeal No.883 of 2022 is filed by the Bangalore Development Authority (for short hereinafter referred to as "BDA"), challenging the order passed by the learned Single Judge in Writ Petition No.11179 of 2020. One Ravish Hasantaram has preferred Writ Appeal No.593 of 2024 challenging the order passed by the learned Single Judge in the above mentioned writ petition, contending that he has purchased the property in question in public e-auction conducted by the Bangalore Development Authority.

3. Facts leading to Writ Appeal No.883 of 2022 are that, the appellant-Bangalore Development Authority (for short hereinafter referred to as "BDA") issued e-Auction notification dated 4<sup>th</sup> September 2020, to auction several of its corner sites and intermediate sites under BDA (disposal of corner sites and commercial sites) Rules, 1984 (for short hereinafter referred to as "Rules"), as per the terms and conditions stipulated therein.

3.1. In respect of e-Auctioning site No.276, HSR-IV Sector is concerned, the initial bidding price was fixed at Rs.1,50,000/- per square metre and a minimum raise of bid price in multiples of Rs.500/- per square metre. Rule 7 of the Rules provides that BDA has the right to confirm or cancel any sale in e-Auction without assigning any reasons. It was specifically mentioned at condition No.13 to the said notification that, BDA reserves the right to accept or reject a bid made by the successful bidder, without assigning any reason. The respondent participated in the said e-Auction and has submitted his bid for two sites, i.e. site No.176 and site No.276, the respondent has quoted the highest bid at Rs.1,54,000/- per square metre. The said bid of the respondent was placed before the e-Auction Committee. The e-Auction Committee has not accepted the said bid of the respondent and intimation for rejection of said bid was communicated to the respondent on 28<sup>th</sup> September 2020 along with statement of objection. As per the terms of e-Auction, the Earnest Money Deposit is to be deposited by the bidder with the e-Governance and not with BDA Account. As regards the earnest money amount deposited in respect of site No.276 is concerned, BDA has sent suitable advice to the e-

Governance Department on 03<sup>rd</sup> October, 2020 for refund of the initial deposit of Rs.4,00,000/- deposited by the respondent and the same has also been refunded to the respondent. The respondent filed writ petition and sought for quashing of the intimation of rejection of his bid dated 28<sup>th</sup> September, 2020 in respect of the site in question and to direct the appellant to confirm his bid in respect of the site in question and to execute the conveyance deed by accepting the e-Auction amount of Rs.5,57,33,000/-. The said Writ Petition came to be allowed, quashing the intimation letter and further directing the appellant-BDA to confirm the bid of the respondent as per the tender at Rs.1,54,000/- per square metre. Being aggrieved by the said order passed by the learned Single Judge, BDA is before this Court in Writ Appeal No.883 of 2022.

3.2. Facts leading to filing of Writ Appeal No.593 of 2024 are that, in response to the publication of the e-Auction notification dated 4<sup>th</sup> September 2020, the respondent participated in the e-Auction and submitted bid for site No.276 situate in HSR layout. The respondent had quoted his bid at Rs.1,54,000/- per square metre the said bid was placed before the e-Auction Committee and the Committee rejected the bid of the respondent as the bid amount was lesser than 5% of the

initial bidding price. The e-Auction Committee communicated the rejection of the said bid of the respondent No.1 through endorsement dated 28<sup>th</sup> September 2020 and intimated the same to respondent No.1, so also, refund of earnest money deposit to respondent No.1 has been approved by the e-Governance Committee. Respondent No.1 filed writ petition No.11179 of 2020, seeking quashing of the intimation of rejection and for a direction to the respondent authorities to execute Conveyance Deed with respect to the sites in question. The petition came to be allowed and the respondents therein were directed to execute a deed of conveyance in favour of respondent No.1 with respect to the sites in question. It is contended by the appellant that in the Writ Appeal No.883 of 2022 preferred by the BDA, the appellant in Writ Appeal No.593 of 2024 is neither a party in the Writ Petition nor in the Writ Appeal.

3.3. As per the reliable information that was available to the appellant, the respondent authorities had put up auction notification for sale of the sites for the first time on 04<sup>th</sup> September, 2020; on 28<sup>th</sup> December 2020; on 10<sup>th</sup> February 2023. The respondent-BDA, for the fourth time on 20<sup>th</sup> September 2023, had put up the e-Auction advertisement for

auction of the aforesaid site listed at Sl.No.29 in the advertisement. Only during the fourth e-Auction, the appellant opted to participate and accordingly in the fourth e-Auction, the respondent was declared a successful bidder by the BDA. It is further stated that on 16<sup>th</sup> October 2023, the Finance Member of the BDA has issued a No Objection Certificate to the appellant to avail loan facilities from any financial institution and accordingly, appellant availed loan amount of Rs.13.15 crore from the State Bank of India, Koramangala Branch and the loan agreement was entered into with the Bank. The appellant had made payment of Rs.2,60,26,250/- and Rs.7,82,21,700/- on 07<sup>th</sup> October, 2023 and on 27<sup>th</sup> November 2023, respectively. That said bank transfers are also acknowledged by the respondent-BDA by issuing remittance challan to the appellant.

3.4. It is further submitted on 18<sup>th</sup> December 2023, registered Sale Deed was executed by the respondent authorities in favour of the appellant after payment of total sale consideration of Rs.10,57,05,000/- and on 19<sup>th</sup> December 2023, BDA has issued Possession Certificate to the appellant. In pursuance of the Absolute Sale Deed in favour of the appellant, the appellant has also paid a sum of Rs.1,19,635/-



towards katha registration charges and the appellant has paid the property tax to Bruhat Bengaluru Mahanagara Palike with respect to schedule property for the year 2023-2024.

3.5. It is contended that, while dealing with the developmental activities in the site in question, an unknown/stranger came to the property and gave the copy of the order passed in Writ Petition No.11179 of 2020 dated 21<sup>st</sup> June 2022, wherein, the petitioner in the said petition, has been made a party in this Appeal as respondent No.1. The appellant was shocked and surprised by the act of respondents 2 and 3 who have continued to auction the same site by way of public e-Auction and have not taken any steps with regard to the orders passed in Writ Petition No.11179 of 2020, be it getting the operation of the said order either to set aside or to modify in the manner known to law. The respondents have not even notified the appellant about the order in the petition during the e-Auction notification and this has resulted in the appellant buying the property which has litigation associated with it. The appellant approached respondents 2 and 3 who gave evasive reply. The Appellant made repeated approach to the respondents 2 and 3 who informed that Writ Appeal No.883 of 2022 has been filed the respondent-BDA before the Court.

Being aggrieved by the said acts of the respondent and the order dated 21<sup>st</sup> June, 2022 passed by the learned Single Judge in Writ Petition No.11179 of 2022, the complainant made representation dated 30<sup>th</sup> January 2024. When the authorities did not take any positive action, the appellant got issued legal notice dated 16<sup>th</sup> February 2024, and even then the respondent authorities have not taken any action to set right the things. Hence, having no other application and alternative and efficacious remedy, the appellant filed Writ Petition No.9646 of 2024. On all these grounds, it is sought for allowing the appeal.

4. Sri G.S. Kannur, learned Senior Counsel appearing for counsel for the appellant for the Bangalore Development Authority would submit that the order passed by the learned Single Judge is contrary to BDA (Disposal of corner sites and commercial sites) Rules, 1984 and is without considering the factual aspects and material on record. The learned Senior Counsel submits that the State Government has framed the aforesaid Rules and has empowered the BDA to accept or reject the highest bid without assigning any reason to the highest bidder and the BDA has followed the Rules. He further submits that the purpose of auctioning of public properties is to get the

best possible prices for the properties. There is absolutely no illegality in cancelling the auction bid when the authority decides that the price offered by the bidder is inadequate. There was no concluded contract between the respondent No.1 and the authorities with respect to the site in question. The highest bid offered by the respondent No.1 was Rs.1,54,000/- per square metre. The e-Auction Committee has taken its decision not to accept a bid if the bid is less than 5% of the minimum bidding rate fixed. Therefore, the e-Auction Committee has not accepted the bid of the petitioner in respect of the site in question, so also, other similar 20 sites notified in the e-Auction notification. The finding of the learned Single Judge for cancellation is illegal, erroneous and contrary to the Rules and accordingly, the same is liable to be set aside. On all these grounds, the learned Senior Counsel sought to allow the appeal. To fortify his submissions, the learned Senior Counsel places reliance on the following decisions:

1. STATE OF ORISSA v. HARINARAYANA JAISWAL - AIR 1972 SC 1816;
2. STATE OF PUNJAB AND OTHERS v. MEHAR DIN made in Civil Appeal No.5861 of 2009 decided on 02nd March, 2022.

5. Smt. Susheela, learned Senior Counsel appearing for the appellant in Writ Appeal No.593 of 2024 submitted that Order passed by the learned Single Judge is liable to be set aside. Reiterating the averments made in the Writ Appeal, the learned Senior Counsel would submit that the appellant is declared to be the successful bidder in respect of the property in question and that on 18<sup>th</sup> December, 2023, the BDA has executed registered Sale Deed for sale consideration of Rs.10,57,05,000/- and BDA has also issued Possession Certificate to the appellant pursuant to the sale deed and the auction purchaser has also paid the tax to the BBMP for the year 2023-2024. The appellant is not a party to the writ petition No.11179 of 2020 and hence he has filed a separate application seeking permission to file the present appeal.

6. The learned Senior Counsel would submit that after noticing the fact as to the order passed by the learned Single Judge, the appellant has approached the BDA authorities and the authorities did not take any positive action. The appellant got issued legal notice dated 16<sup>th</sup> February, 2024 and in spite of the said notice, the authorities have not taken any action to set the things right. Hence, being aggrieved by the order of the learned Single Judge, the appellant has preferred this appeal.

On all these grounds, the learned Senior Counsel prays for allowing the appeal by setting aside the order of the learned Single Judge. To buttress her submissions, she places reliance on the judgments of the Hon'ble Supreme Court in the case of DHANRAJ V. VIKRAM SINGH AND OTHERS - 2023 SCC OnLine SC 724.

7. On the other hand, Sri R. Vijayakumar, the learned Counsel appearing for the respondent No.1, would support the order of the learned Single Judge and sought to dismiss the appeal. To fortify his submissions, he places reliance on the following decisions:

1. K. KUMARA GUPTA v. SRI MARKENDAYA AND SRI OMKARESWARA SWAMI TEMPLE AND OTHERS 2022 LiveLaw (SC) 182;
2. EVA AGRO FEEDS PRIVATE LIMITED v. PUNJAB NATIONAL BANK AND ANOTHER - Civil Appeal No.7906 of 2021 disposed of on 06<sup>th</sup> September, 2023;
3. V.N. KRISHNAMURTHY AND ANOTHER v. RAVI KUMAR AND OTHERS - (2020)9 SCC 501

4. ROMA SONKAR v. MADHYA PRADESH STATE PUBLIC SERVICE COMMISSIONER AND ANOTHER - (2018)17 SCC 106.

8. It is further contended that it is at a point of time when the judgment of the Learned Single Judge was in force, that the auction was conducted and the sale deed was registered in favour of the appellant in Writ Appeal No.593 of 2024.

9. We have considered the arguments advanced by the learned Counsel appearing for the parties and perused the order impugned, passed by the learned Single Judge.

10. Before appreciating the material on record, it is appropriate to mention about Rule 7 of the BDA (disposal of corner and intermediate sites), Rules, 1984, The same reads as under:

*"7. The authority shall have the right to confirm or cancel any sale in auction without assigning any reason and when the sale is cancelled, the amount received from the auction purchaser as deposit shall be refunded to him."*

11. In exercise of the powers conferred by Section 69 of the BDA Act, 1976 (Karnataka Act 12 of 1976), the Government of Karnataka has framed the above Rules as

amended by GSR 36 dated 17<sup>th</sup> March, 1995 and Notification No.UDD 179 MNJ 2007 dated 27<sup>th</sup> July, 2011.

12. Further, it is also necessary to extract the relevant portion of General Terms and Conditions for e-Auction Notification issued by the BDA. The condition at Sl.No.13 of the Notification, reads thus:

*"13. BDA reserves the right to accept or reject the bid made by successful bidder without assigning any reasons."*

13. A plain reading of the said Rule makes it clear that the Rule does not provide for hearing before rejection of the bid. Further, as per the terms and conditions notified in the e-Auction Notification, the BDA reserves the right to accept or reject the bid made by the successful bidder, without assigning any reasons.

14. At this juncture, it is necessary to refer to the judgments of the Hon'ble Supreme Court on the issue in question. In the case of UNION OF INDIA AND ANOTHER v. DEOKI NANDAN AGGARWAL reported in AIR 1992 SC 96, at paragraphs 14 of the judgment, the Hon'ble Supreme Court has observed as under:

*"14. ... It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot re-write, re-cast or re-frame the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the Court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The Court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities."*

15. The abovesaid view is reiterated again by the Hon'ble Supreme Court in the case of STATE OF GUJARAT AND OTHERS v. DILIPBHAI NATHJIBHAI PATEL AND ANOTHER reported in (1998)3 SCC 234.

16. In the case of THE COMMISSIONER OF SALES TAX, UTTAR PRADESH, LUCKNOW v. M/S. PARSON TOOLS AND PLANTS, KANPUR reported in AIR 1973 SC 1039, at paragraphs 11 and 12 of the judgment, it is observed thus:



*" 11. Be that as it may, from the scheme and language of Section 10, the intention of the Legislature to exclude the unrestricted application of the principles of Sections 5 and 10 of the Limitation Act is manifestly clear. These provisions of the Limitation Act which the Legislature did not, after due application of mind, incorporate in the Sales-tax Act, cannot be imported into it by analogy. An enactment being the will of the legislature, the paramount rule of interpretation, which overrides all others, is that a statute is to be expounded "according to the intent of them that made it". "The will of 'the legislature is the supreme law of the land, and demands perfect obedience". "Judicial power is never exercised" said Marshall C. J. of the United States, "for the purpose of giving effect to the will of the Judges; always for the purpose of giving effect to the will of the Legislature; or in other words, to the will of the law".*

*12. If the legislature wilfully omits to incorporate something of an 'analogous law in a subsequent statute, or even if there is a casus omissus in a statute, the language of which is otherwise plain and unambiguous, the Court is not competent to supply the omission by engrafting on it or introducing in it, under the guise of interpretation, by analogy or implication, something what it thinks to be a general principle of justice and equity...."*

17. In the case of SANGEETA SINGH v. UNION OF INDIA AND OTHERS reported in (2005)7 SCC 484, at paragraphs 5 and 6 of the judgment, it is observed thus:

*"5. It is well settled principle in law that the Court cannot read anything into a statutory provision or a stipulated condition which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intent. Similar is the position for conditions stipulated in advertisements.*

*6. Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the Legislature enacting it. (See Institute of Chartered Accountants of India v. M/s Price Waterhouse and Anr. (AIR 1998 SC 74). The intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in Crawford v. Spooner (1846 (6) Moore PC 1), Courts, cannot aid the Legislatures' defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. (See The State of Gujarat and Ors. V. Dilipbhai Nathjibhai Patel and Anr. 1998 (2) SC 253). It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. (See Stock v. Frank Jones (Tiptan) Ltd. (1978 1 All ER 948 (HL). Rules of interpretation do not permit Courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found*

*within the four corners of the Act itself. (Per Lord Loreburn L.C. in Vickers Sons and Maxim Ltd. v. Evans (1910) AC 445 (HL) quoted in Jumma Masjid v. Kodimaniandra Devaiah and Others (AIR 1962 SC 847)."*

18. In the case of STATE OF ORISSA v. HARINARAYANA JAISWAL (supra), at paragraphs 17 and 19 of the judgment, it is held as under:

*"17. Even apart from the power conferred on the Government under Sections 22 and 29, we fail to see how the power retained by the Government under cl. (6) of its order dated January 6, 1971 can be considered as unconstitutional. As held by this Court in Cooverjee Bharucha's case (supra), one of the important purpose of selling the exclusive right to sell liquor in wholesale or retail is to raise revenue. Excise revenue forms an important part of every State's revenue. The Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. Hence quite naturally, the legislature has empowered the Government to see that there is no leakage in its revenue. It is for the Government to decide whether the price offered in an auction sale is adequate. While accepting or rejecting a bid, it is merely performing an executive function. The correctness of its conclusion is not open to judicial review. We fail to see how the plea of contravention of Article 19(1)(g) or Article 14 can arise in these cases. The Government's power to sell the exclusive privileges set out in Section 22 was not denied. It was also not disputed that those privileges could be sold by public auction. Public actions are held to get the*

*best possible price. 'Once these aspects are recognised, there appears to be, no basis for contending that the owner of the privileges in question who had offered to sell them cannot decline to accept the highest bid if he thinks that the price offered is inadequate.- There is no concluded contract till the bid is accepted. Before there was a concluded contract, it was open to the bidders to withdraw their bids- see Union of India and ors. v. M/s. Bhimsen Walaiti Ram. By merely giving bids, the bidders had not acquired any vested rights. The fact that the Government was the seller does not change legal position once its exclusive right to deal with those privileges is conceded. If the Government is the exclusive owner of those privileges, reliance on Article 19(1)(g) or Article 14 becomes irrelevant. Citizens cannot have any fundamental right to trade or carry on business in the properties or rights belonging to the Government, nor can there be any infringement of Article 14, if the Government tries to get the best available price for its valuable rights. The High Court was wholly wrong in thinking that purpose of Sections 22 and 29 of the Act was not to raise revenue. Raising revenue as held by this Court in Cooverjee Bharucha's case (supra) was one of the important purposes of such provisions. The fact that the price fetched by the sale of country liquor is an excise revenue does not change the nature of the right. The sale in question is but a mode of raising revenue. Assuming that the question of arbitrary or unguided power can arise in a case of this nature, it should not be forgotten that the power to accept or reject the highest bid is given to the highest authority in the State i.e. the Government which is expected to safeguard the finances of the State. Such a power cannot be considered as an arbitrary power. If that*

*power is exercised for any collateral purposes, the exercise of the power will be struck down. It may also be remembered that herein we are not dealing with a delegated power but with a power conferred by the legislature."*

18. xxx xxx xxx

*19. It was next urged that having had recourse to the auction method once, the Government was precluded from either calling for tenders or to sell by negotiation. The High Court has accepted that contention. We are unable to agree with the High Court in its conclusion. Neither the provisions of the Act nor the order issued by the Government lend any support to such a conclusion. Once the Government declines to accept the highest bid, the auction held became useless. Similar is the effect when the Government refused to accept the highest tender. That left the Government free to have recourse to other methods. The power given to the Government by the Act to sell the exclusive privilege in such other manner as it thinks fit is a very wide power. That power is unrestricted. It undoubtedly includes the power to sell the privileges in question by private negotiation."*

19. In the case of STATE OF PUNJAB AND OTHERS v. MEHAR DIN (supra), the Hon'ble Supreme Court hat paragraphs 19 and 26 of the judgment, has observed as under:

*"19. The scope of judicial review in the matters of tenders/public auction has been explored in depth by this Court in a catena of cases. Plausible decisions need not be*

*overturned and, at the same time, latitude ought to be granted to the State in exercise of its executive power. However, allegations of illegality, irrationality and procedural impropriety would be enough grounds for Courts to assume jurisdiction and remedy such ills.*

*20 to 25 xxx xxx xxx*

*26. This being a settled law that the highest bidder has no vested right to have the auction concluded in his favour and in the given circumstances under the limited scope of judicial review under Article 226 of the Constitution, the High Court was not supposed to interfere in the opinion of the executive who were dealing on the subject, unless the decision is totally arbitrary or unreasonable, and it was not open for the High Court to sit like a Court of Appeal over the decision of the competent authority and particularly in the matters where the authority competent of floating the tender is the best judge of its requirements, therefore, the interference otherwise has to be very minimal."*

20. In the case of V.S. GOPALASWAMY AND OTHERS v. BANGALORE DEVELOPMENT AUTHORITY AND ANOTHER rendered in Writ Petitions No.33146-150 of 1993 decided on 22<sup>nd</sup> November, 1996, following the Division Bench judgment of this Court rendered in V.R.N. RENUKA v. CHIEF SECRETARY, GOVERNMENT OF KARNATAKA rendered in Writ Appeal No.166 of 1994 decided on 16<sup>th</sup> February, 1994, examining the effect of postponement of confirmation of sale under Rule 6, held that

the decision of the BDA is not open to challenge as the authority has taken a decision not to accept the highest bid of the successful bidder as per proceedings dated 24<sup>th</sup> August, 1993 in exercise of its power under Rule 7 of the Rules. Following the judgment of the co-equal Bench, in the decision rendered in V.R.N. RENUKA (supra), the learned Single Judge in Writ Petitions No.33146-150 of 1993 has observed that the auction sale of sites is primarily a matter of contract. The BDA can regulate the manner in which it will auction its sites. The auction purchaser has no right to require the BDA to sell its sites by auction in a particular manner. Further, it is observed that, the retention of the power to decide whether to accept the bid or confirm a sale by the Authority functioning through its statutorily constituted committee cannot be termed as unreasonable, whimsical or arbitrary.

21. It is settled principle of law that the Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulations making body.

22. In the case on hand, the respondent in Writ Appeal No.883 of 2022-Sachin Nagarajappa was the highest bidder for Rs.1,54,000/- per square meter, which is less than 5% of the

minimum bid, i.e. Rs.1,50,000/- per square meter. The said bid of the respondent was placed before the e-Auction Committee and the Committee has not accepted the said bid and the intimation of rejection was communicated to the respondent. It is submitted that the initial amount of Rs.4,00,000/- deposited by the respondent has also been refunded to him. The respondent has not disputed the general terms and conditions for e-Auction, including the condition at Sl.No.13 of the General Terms and Conditions for e-Auction published by the BDA nor has challenged the validity of General Terms and Conditions. The respondent has also not challenged the constitutional validity of Rule 7 of the BDA (disposal of corner sites and intermediate sites) Rules, 1984. Having accepted General Terms and Conditions of the e-Auction, the respondent has participated in the e-Auction and the e-Auction Committee has rejected the bid offered by the respondent. As the BDA has got right to reject the bid under Rule 7 of the Rules without assigning any reasons, so also, the respondent having accepted the general terms and conditions of e-Auction and participated in the auction proceedings, now he is estopped from saying anything against the general terms and conditions of the Auction as also with regard to Rule 7 of the Rules.



23. The respondent in Writ Appeal No.883 of 2022 is a successful bidder in terms of the e-Auction offered at Rs.1,54,000/- per square meter which comes to Rs.5,61,33,000/-, the BDA has executed sale deed in favour of Ravish Hastantram the appellant in Writ Appeal No.593 of 2024, for sale consideration of Rs.10,57,05,000/-. The BDA has also issued possession certificate and katha also got changed into the name of the said Ravish Hastantram. The respondent has also paid the property tax to BBMP for the year 2023-24. Accordingly, the BDA has sold the property under e-Auction for more than Rs.10.00 crore, which is profitable to BDA. The BDA being the public authority and auctioning public property for the benefit of public purpose, is always expected to get best possible price for the properties which is beneficial to the Authority. Therefore, the State Government framed Rule 7 of the Rules empowering the Auctioning authority to confirm or cancel any sale without assigning any reason.

24. Under the given set of circumstances, absolutely there are no material to show that they are allegations of fraud and/or collusion and/or cartel and/or any other material irregularity or illegality in the action of the BDA in rejecting the bid. Further, there are no pleadings as to arbitrariness or

favourism of the BDA in rejecting the bid of the respondent. After rejecting the bid offered by the respondent, the BDA has also sold the property in question for Rs.10,57,05,000/- which is double the amount of the bid amount offered by the respondent. The act and conduct of the BDA appears to be bona fide and in the interest of public and also to the benefit of BDA, which in turn, is for the benefit of the general public. Therefore, the decisions relied upon by the learned counsel for the respondents are not applicable to the case on hand. Under the circumstances, we are of the view that Rule 7 of the Rules must be given a pragmatic interpretation. In view of the said Rule, the BDA reserves the right to accept or reject the bid made by successful bidder without assigning any reasons. We do not find any arbitrariness, irrationality, bias, mala fide or perversity on the part of the BDA in rejecting the highest bid offered by the respondent.

25. In the case on hand, the respondent has offered the bid amount and the same was rejected by the e-Auction Committee. Therefore, there is no concluded contract between the Appellant-BDA and the respondent. Therefore, the reasoning of the Learned Single Judge cannot be accepted.

26. Last but not the least, the principle of *casus omissus* that a matter which should have been done, but has not been provided for in a statute, cannot be supplied by Courts as to do so will be legislation and not construction, will squarely apply to the case on hand.

27. Keeping in mind the decisions relied upon the learned counsel for the appellant, as also the provision of Rule 7 of the Rules and Clause 13 of the General Terms and Conditions of e-Auction Notification by the BDA, we are of the considered opinion that the endorsement in question issued by the BDA to the respondent is in accordance with law. That apart, neither the Rule 7 of the Rules nor the General Terms and Conditions of e-Auction Notification is not challenged by the respondent. Accordingly, the Order impugned passed by the learned Single Judge is contrary to the provisions of Rule 7 of the Rules and also the General Terms and Conditions of the e-Auction Notification and the same is not sustainable under law. For the aforesaid reasons, we are unable to agree with the reasons stated by the learned Single Judge. In the result, we proceed to pass the following:

**ORDER**

- i) Writ Appeal No.883 of 2022 is allowed. Order dated 21<sup>st</sup> June, 2022 passed by the learned Single Judge in Writ Petition No.11179 of 2020 is set aside;
- ii) In view of the findings given in Writ Appeal No.883 of 2022, Writ Appeal No.593 of 2024 of which the appellant is not a party to the proceedings in Writ Appeal No.883 of 2022, does not survive consideration and the same is disposed of.
- iii) Pending IAs, if any, stand disposed of.

**Sd/-  
(ANU SIVARAMAN)  
JUDGE**

**Sd/-  
(G BASAVARAJA)  
JUDGE**

Inn