

A THE COMMITTEE OF MANAGEMENT OF
PANCHAIYAPPA'S TRUST
v.
OFFICIAL TRUSTEE OF MADRAS AND ANOTHER

B NOVEMBER 17, 1993

[M.N. VENKATACHALIAH, CJ, S.C. AGRAWAL
AND DR. A.S. ANAND, JJ.]

C *Official Trustees Act 1913—Secs. 25,26—Public Trust—Grant of long term lease in respect of immovable property vested in official trustee—Power of High Court to make order in respect thereof—Principles underlying the exercise of supervisory jurisdiction of the High Court—Equivalent to the standard for fiduciary conduct expected from a trustee—Must be guided by the consideration, to make the trust get the maximum advantage of a transaction without prejudice to the security and safety of the trust property. Transactions*
D *relating to trust property—Postulate wide publicity—Grant of lease must be either at a public auction or by inviting sealed offers—Must ensure participation of all interested parties to secure the best price.*

E *Application for grant of lease with respect to trust property—Can be moved only by persons beneficially interested in the trust property or by the trustees.*

F *Indian Trusts Act 1882—Secs. 15,36—Fiduciary conduct expected from a trustee—Bound to deal with the trust property as carefully as a man of ordinary prudence would deal with his own property—All acts must be for the realisation, protection or benefit of the trust property.*

G The appellant, a public trust, was a residuary legatee under a will dated 21-5-1948, executed by one K. The testator, bequeathed to the said trust, several properties, including a plot of land admeasuring 13566.66 sq.ft. situated at No. 21, harrington Road, Madras.

H In January, 1986, the respondent No. 2, a partnership firm, consisting of three unemployed medical graduates, filed before the High Court of Madras an application seeking directions, to the official trustee to enter into a lease agreement with them, with respect to the said plot of land. The applicants prayed therein, that they be granted the said plot of land on a

lease (a) for an initial period of 50 years with an option to it to renew the lease for a further period of 50 years. (b) For an initial rent of Rs. 4500 per annum for the first year and for every succeeding year an increase by 5% on the rent payable in respect of every preceding year, in order to enable them to construct and run a medium sized Nursing Home on the said plot.

The application was opposed by the appellant on the grounds that (a) the grant of such a long term lease is neither in the interest of the trust nor beneficial to it, (b) it would be detrimental to the interests of the Trust, as it would amount to tying down the property in the hands of the applicants; (c) the rent offered by the respondent No. 2 was very low. (d) Since the solvency of the applicants was not clear, it would be highly risky to lease out the property to them, however laudable their objects may be.

Subsequently, a supplemental report was filed by the official trustee, respondent no. 1, stating therein that although the respondent no. 2 has no legal right to insist on lease, however the same could be granted, under the orders of the Court, on terms and conditions beneficial to the trust estate, or in the alternative the official trustee be permitted to lease out the said property at a public auction after giving due publicity.

By its order dated 2.5.1986 the Single Judge of the High Court granted the lease in favour of respondent No.2 on a monthly rent of 2,000 per annum, for an initial period of 30 years with an option of renewal lease period according to then prevailing circumstances and other terms and conditions imposed by the Court. The said order was in appeal upheld and confirmed by an order of the Division Bench of the High Court.

The respondent No. 2 then filed an application before the High Court, seeking certain modifications with reference to the terms and conditions of the lease imposed by the order of the Single Judge.

The appellant as well as the respondent No. 1 contested the said application on the ground that the respondent No. 2 not having filed any appeal against the order of the learned single judge cannot seek to have the said order modified especially when the same has been affirmed and upheld by the Division Bench of High Court.

The Division Bench rejected the objections raised by the appellant

A and permitted the modifications in the terms and conditions of the lease, laid down in the order of the single judge dated 2.5.1986.

Aggrieved, the appellant filed appeals before the Supreme Court.

Allowing the appeals, this Court

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HELD : 1. The standard for fiduciary conduct expected from a trustee is stricter than the morals of the market place. It has been kept for at a higher level than that trodden by the crowd. [723-G-H]

Meinharal v. Salman, (1928) 1249 N.Y. 458, referred to.

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2.1 So long as the property is vested in the official trustee it will be the duty of the official trustee to take such steps and conduct himself in such a manner as to make the trust get the maximum advantage of any transaction without prejudice to the security and safety of the trust property. [724-B]

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2.2 If official trustee himself wants to lease the property, the normal procedure to be adopted is by public auction. There is need for publicity so that at large have notice, and a furtive method adopted for settling a matter of this moment, behind the back of those interested and anxious to compete, is unjustified. [719-C, 724-E]

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2.3 As far possible sales of public property, when the intention is to get the best price, ought to take place publicly. Public auction with open participation and a reserve price guarantees public interest being fully subserved. [724-F-G]

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Muniswamy v. Official Trustee, (1980) 1 MLJ 223, followed.

K.N. Guruswamy v. State of Mysore and Ors., [1955] 1 SCR 305; *Fertilizer Corporation Kamgar Union (Regd.) v. Union of India*, [1981] 2 SCR 52; *State of UP v. Shiv Charan Sharma and Ors.*, [1981] Supp. SCC 85; *Ram, and Shayam Co. v. State of Haryana*, [1985] 3 SCC 267 and *Chenchu Rami Reddy and Another v. State of A.P. & Ors.*, [1986] 3 SCC 391, referred to.

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3. What is true about the property belonging to religious and charitable endowments and institutions would equally apply to trust property. There appears to be no reason why the procedure of public

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auction should not be adopted when the lease is to be granted under an order passed by the High Court in exercise of jurisdiction under Sec. 25 of the Official Trusts Act, 1883. If lease is granted by the Court on the basis of an application submitted by an applicant without notice to others who may also be interested in the lease the consequence would not be very different from that when a lease is granted in the secrecy of an office. In order to ensure participation by every person interested in making an offer, it is necessary that there should be wide publicity about the proposal to give the lease and the lease is granted either by inviting bids at a public auction or by inviting sealed offers by a specific date. [725-H, 726-E-G]

4. The procedure followed by the Courts below in passing the order for grant of lease in favour of respondent No. 2 does not fulfil this requirement. Moreover, the alternations in the terms and conditions of the lease made by the Courts, are prejudicial to the interests of the trust. In the pretext of modification respondent No. 2 secured substantial alterations in the terms and conditions as contained in the original order dated 2.5.86 passed by the Single Judge which had been upheld in appeal by the Division Bench of the High Court of Madras. Under the guise of the modification respondent No. 2 obtained review of the order which had become final. This was impermissible in law. [726-H, 727-E-G, 729-F-G]

5. Sec. 26 of the Official Trustees Act prescribes that any order under the Act may be made on an application of any person beneficially interested in any trust property or by a trustee thereof. The Act does not envisage an application being moved by any other person. Since respondent No. 2 were neither beneficially interested nor were trustee thereof, their application was clearly not maintainable and the High Court was in an error in entertaining the said application. [722-G-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4168 and 4169 of 1988.

From the Judgment and Order dated 28.10.87 & 22.4.87 of the Madras High Court in C.M.P. No. 14618/87 & O.S.A. No. 167 of 1986.

S. Sivasubramaniam, R. Mohan, R. Nedumaran and Dr. P.B. Rao, for the Appellant.

V. Krishnamurthy, V. Balachandran, S. Srinivasan, Yashank Adhyaru

A and P.H. Parekh for the Respondents.

The Judgment of the Court was delivered by

B S.C. AGRAWAL, J. These appeals relating to grant of a long term lease in respect of immovable property vested in the Official Trustee as executor and trustee raise questions relating to the exercise of the supervisory jurisdiction by the High Court under Section 25 of the Official Trustees Act, 1913, herein referred to as 'the Act'.

C Under a will executed by the one C. Kandawamy Naidu on May 21, 1948, the testator made various bequests in favour of his children as well as other persons and bequeathed the rest of his properties to the Trustees of Pachaiyappa's Chairities subject to the conditions, payment and restrictions mentioned therein. The Official Trustee of Madras has been appointed as the executor and the trustee of the will and he has been empowered to sell and dispose of the properties, immovable as well as
D movable. O.P. No. 278 of 1948 is the original proceeding instituted in the Madras High Court on the basis of the said will by the Official Trustee. Among the properties vested in the Official Trustee under the will is a vacant plot of land measuring about 5.65 grounds (13566.85 sq. ft.) situated at No. 21, Harrington Road, Madras. On the western side of the said plot
E of land, there is a building. The ground floor of the said building has been let out to Pachaiyappa's Trust for the Office of the Trust. The first floor of the building is in occupation of another tenant.

F On January 29, 1986, R.V.A. & Co., (respondent No. 2), a partnership firm consisting of three unemployed medical graduates, filed an application (CMP No. 495 of 1986) in O.P. No. 278 of 1948, wherein it was prayed that the Official Trustee be directed to enter into a lease agreement with the applicant firm for an initial period of 50 years with an option to the said applicant firm to renew the lease for a further period of 50 years on such terms and conditions which the Court may deem fit to impose. In
G the affidavit of M.K. Rajasekar, one of the partners, filed in support of that application, it was stated that the partnership had been formed with the object of constructing and running a Nursing Home at Madras with a view to provide employment to the partners who were unemployed medical graduates. In the said affidavit, it was also stated that the applicants wish to take the *plot of land* on long lease with a view to construct a medium
H size hospital with about 30 rooms and they wanted the lease of the property

initially for a minimum period of 50 years with an option to renew for a like period on the expiry of 50 years. In the said affidavit, it was also stated that after the expiry of the lease period the applicants undertake to deliver the vacant possession of the promises with all the improvements made in the site leased out to them. As regards rent it was stated that Rs. 4,500 per annum was a fair rent payable for the vacant land for the first year and that for every succeeding year the rent could be increased by 5% on the rent payable in respect of every preceding year. A B

The said application was opposed by the appellant. In the counter affidavit filed on its behalf it was stated that the grant of lease for 50 years was not in the interest of the Trust and not beneficial to it and it would be detrimental to the interests of the Trust to lease the property for a long period as it would amount to tying down property in the hands of the applicants. It was also stated that the solvency of the applicants was not clear and that it would not be prudent to lease the trust property for a long period however laudable the objects of the partnership may be and it would be highly risky to lease out the property as sought for. C D

The Official Trustee also filed a report wherein he admitted the availability of the vacant space for lease and stated that he had no objection to the court directing reasonably long term of lease for the vacant site but according to him the rent offered by respondent no. 2 was very low and that the period of lease could not be as long as 50 years but it could be a lease for 15 or 20 years. E

The Official Trustee filed a supplemental report on April 25, 1986 wherein it was stated that the applicants have no legal right to insist on a lease and that the applicants could be granted lease only if the Court was satisfied that the applicants are agreeable to the terms and conditions which would really benefit the trust estate and that the applicants who want the indulgence of a long term lease in their favour by an order of the Court should be prepared to offer attractive terms for grant of lease in their favour. Thereafter the Official Trustee set out the factors which may be taken into consideration if at all the court was inclined to grant the long term lease in favour of the applicant. The said factors were : F G

- (1) The initial rent of Rs. 4,500 per annum (Rs. 375 per month) offered by the applicants is very low and that even at the rate of 10 paise per sq. ft. the rent for the area of 13566.85 ft. comes to about Rs. 1,336 per annum. H

- A (2) The period of lease of 50 year with an option to renew for another 50 years is definitely not in the interest of the trust estate and that the lease period can at best be for 15 years.
- (3) The rent for the site has to be increased each year by 10%.
- B (4) That applicants may be directed to deposit a sum of Rs. 50,000 with the Official Trustee as security deposit for the fulfilment of the proposed project which could be forfeited in the event of applicant failing to carry out the project or to show adequate progress in pushing through the project within a period of one year but it would be refunded without interest if the project as envisaged in the applications is completed in full.
- C (5) The applicants may be required to deposit Rs. 10,000 as advance repayable without interest when the applicant vacates the property.
- D (6) The tenancy would stand terminated in the event of the applicants failing to pay rent continuously for a period of more than 3 months.
- E (7) The superstructure to be put up by the applicant must be surrendered to the trust estate at the time when they vacate without claiming any compensation for the same.
- (8) The applicants would have no right to sub-lease.

F The Official Trustee further stated that if for some reason or other the Court holds that the lease in favour of the applicants cannot be granted then the Official Trustee may be permitted to lease the property by public auction through M/s. Murray and Company or some other public auctioneer on terms quite favourable to the Trust Estate after giving due publicity.

G The said application of respondent No. 2 was disposed of by a learned Single Judge of the High Court (K.M. Natarajan, J.) by order dated May 2, 1986 by treating it as an application under Section 25 of the Act. The learned Single Judge came to the conclusion that it is beneficial and in the best interest of the Trust to lease out the property to others. While H considering the offer made by respondent No. 2, the learned Single Judge

held that the monthly rent can be fixed at 15 paise per sq. ft. which works out to Rs. 2034 for 13566.85 sq. ft. and it could be rounded to Rs. 2,000 per month and that the rent was to be increased by 5% every year for a period of first five years and thereafter by 10% every year on the rate of the monthly rent of the preceding year. With regard to the period of lease the learned Single Judge was of the view that the period can be fixed at 30 years with liberty to the applicants to apply for extension of the lease period according to the then prevailing circumstances to the court and abide by the other terms and conditions to be imposed by the Court or such other order of the Court. As regards the objections of the appellant the learned Single Judge observed that even though the appellant Trust is a residuary legatee they have to *locus standi* in the matter of granting lease of the trust property. According to the learned Single Judge in view of Section 25 of the Act and the decision of the Division Bench of the Madras High Court in *Muniswami Naidu v. Official Trustee*, (1980) 1 MLJ 223, it is only the Official Trustee who has to take necessary steps to secure the maximum advantage for the Trust without prejudice to the security and safety of the said Trust subject to the supervisory jurisdiction of the High Court. By his order aforesaid, the learned Single Judge directed the Official Trustee to lease out the vacant site on the eastern portion of the premises bearing Door 21, Harrington Road, Madras to the extent of 13566.85 sq. ft. (5.65 grounds) subject to the following terms and conditions :

"(1) Initially the rent is fixed at Rs. 2,000 per month from the date of execution of the lease deed and the same is to be increased by 5 per cent each year on the preceding year rate of rent for a period of five years and thereafter 10 per cent.

(2) The period of lease is 30 years with liberty to the applicant to apply before the expiry of the lease period to the court for such further period and such terms as fixed by the Court, according to the then prevailing circumstances, and abide by the order of the court.

(3) The applicant should deposit at the time of execution of the lease a sum of Rs. 30,000 with the Official Trustee as security deposit for the fulfilment of the project and if he fails to carry out the project or fails to show adequate progress in pushing through this project within a period of one year from the date of the lease,

A the Official Trustee is entitled to forfeit the entire sum of Rs. 30,000 to the Trust Estate.

(4) After the project is completed in full as envisaged in the application, the applicant is entitled to get refund of the said sum of Rs. 30,000 from the Official Trustee.

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(5) The applicant has also at the time of execution of the lease to deposit a sum of Rs. 10,000 as advance with the Official Trustee, and the same is repayable without interest at the time when the applicant vacates the premises.

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(6) If the applicant fails to pay the rent continuously for a period of three months, the tenancy will stand terminated and the official trustee is entitled to recover possession of the demised premises with the superstructure.

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(7) The applicant has to put up a north-south wall of 23 cm. thickness to a length of 63.70 metres at his cost as mentioned in the report filed by the Assistant Engineer within a period of one year, without claiming any reimbursement or adjustment in the rent payable.

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(8) The applicant should also provide necessary gateway for the use of the tenements in the western side as suggested by the Asst. Engineer in his report within the said period of one year.

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(9) The applicant must surrender the superstructures and other constructions to be put up by them to the trust at the time when they vacate without claiming any compensation for the same.

(10) The applicant has no right to sub lease the premises to any person.

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(11) The applicant must at his cost provide suitable alternative arrangements for the tenant of the ground floor of the building in the western side (now Pachaiyappa's Charities) to get water from the well. Failure to comply with of the terms and conditions the lease is liable to be terminated by official Trustee."

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Feeling aggrieved by the said order of the learned Single Judge, the

appellant filed an appeal (O.S.A. No. 167/86) which was disposed of by a Division Bench of the said High Court (V.Ramaswami & Bellie, JJ.) by judgment dated April 22, 1987. It was submitted on behalf of the appellant that, as a residuary legatee, the appellant, is not opposed to grant of lease as such but the lease should have been given by public auction and reliance was placed on the observations of the Division Bench of the Madras High Court in *Muniswami Naidu v. Official Trustee*, (supra). Rejecting the said contention, the learned Judges held :

"If the Official Trustee himself wants to lease out the property, the normal procedure to be adopted is by auction, but when a specific application is made to the High Court and the learned Judge who hears the application is satisfied that the terms are fair and just and there is no need for going for a public auction, it cannot be said that the learned Judge was without jurisdiction in directing the grant of the lease."

The learned Judges held that the learned Single Judge had taken into consideration the rent, nature of the property, the situation and the purpose for which the lease is asked for and had come to the conclusion that the direction as prayed should be given subject to the terms and conditions mentioned by the learned Single Judge and that there was no ground to interfere with the same. On behalf of the Official Trustee, it was, however, pointed out that although the order was passed by the learned Single Judge on May 2, 1986, respondent No. 2 had not come forward with payment and execution of the lease deed and that a specific time limit should be fixed within which respondent No. 2 should obtain the lease and execute the lease deed. Accepting the said contention the learned Judges fixed a period of four months from the date of the judgment as the period within which respondent No. 2 should approach the Official Trustee to have the lease deed settled and executed.

In view of respondent No. 2 having failed to take any action in pursuance of order dated May 2, 1986, passed by the learned Single Judge, one Md. Ummer Sheriff filed an application (CMP No. 5600 of 1986) in O.P. No. 278 of 1948 for cancellation of the directions regarding grant of lease in favour of respondent No. 2 and for direction that the lease be granted to him. He expressed his willingness to pay a monthly rent of Rs. 3,000 and to a security deposit of Rs. 35,000 and an advance amount of Rs.

- A 15,000. In the said application, an affidavit was filed by M.K. Rajasekar, a partner of respondent No. 2, indicating that the lease granted in favour of respondent No. 2 may be cancelled as they do not want to take the lease.

Subsequently, an application (C.M.P. No. 14618/87) was filed by respondent No. 2 in O.S.A. No. 167 of 1986 whereby it was prayed that the order dated April 22, 1987 in O.S.A. No. 167/86 may be modified by issuing suitable direction with reference to the conditions of lease imposed by order dated May 2, 1986 by the learned Single Judge in respect of the following matters :

- C "(i) to delete the provisions with reference to the enhanced rate of rent contained in clause 2;
- (ii) to provide for the period of lease as 99 years or in any event for 50 years with an option to renew for a further period of 50 years instead of 30 years as provided in clause 3;
- D (iii) modifying clause 7 for the termination of the tenancy on the failure of the lessee to pay the rent continuously for one year instead of 3 months;
- E (iv) deleting the provisions of clause 10 with reference to the surrender of superstructure and other construction put up by the lessee at the time when the lessee vacate without claiming compensation; and
- (v) deleting the prohibition contained in clause 11 not to sub-lease the premises leased."

- F The said application was opposed by the appellant as well as the official Trustee. The appellant submitted that the application was not maintainable since the terms and conditions as contained in order of the learned Single Judges dated May 2, 1986 had been affirmed in appeal by the Division Bench of the High Court. The Official Trustee submitted that
- G respondent No. 2 having not filed any appeal against the order dated May 2, 1986 could not seek to have the said order modified especially when the said order had been affirmed by the Division Bench by order dated April 22, 1987. It was also submitted on behalf of the Official Trustee that in view of the affidavit dated April 30, 1987 filed by M.K. Rajasekar (in CMP No.
- H 5600 of 1986) that he does not want to take the lease this application has

become infructuous. Md. Ummer Sheriff filed a separate application (CMP No. 16607 of 1987) in CMP 14618 of 1987 wherein it was prayed that the Official Trustee be directed to enter into a lease agreement with him. In the affidavit of Md. Ummer Sheriff dated October 16, 1987 in support of that application the offer of monthly rent of Rs. 3000 per month was reiterated and the deponent expressed his willingness to abide by all the necessary conditions terms and restrictions imposed by the Court.

The application for modification (CMP No. 14618 of 1987) filed by Respondent No. 2 was disposed of by the Division Bench of the High Court by order dated October 28, 1987. The Learned Judges rejected the objection raised by the Official Trustee that respondent No. 2 having failed to file an appeal against the order of the learned Single Judge dated May 2, 1986 could not seek its modification. The learned Judges were of the view that since the application would not have been maintainable if it had been filed before the learned Single Judge and, instead of allowing the question of merger of the earlier order of the learned Single Judge in the appellate order being argued before the learned Single Judge, it was desirable that the matter was dealt with by the Bench. As regards the affidavit of M.K. Rajasekar filed on behalf of respondent No. 2 stating that they had no inclination to accept the lease, the learned Judge held that the said affidavit had been filed without the knowledge of the disposal of the appeal and that Respondent No. 2 had, thereafter filed an affidavit in these proceedings stating that they are willing to take the lease on just and fair terms and that they only want modification of the terms. Dealing with the application for modification on merits, the learned Judges allowed the said application and permitted the following modifications in the terms and conditions laid down in the order dated May 2, 1986:

- (1) Under Clause (2) the increase of rent would be at the rate of 5% on the original rent of Rs. 2,000 for every three years;
- (2) Under clause (3) the period of the lease would be 50 years instead of 30 years with an option to renew for a further period of 50 years ;
- (3) Under clause (7) the tenancy would be liable to be terminated on the failure of the lessee to pay rent continuously for a period of one year instead of three years as originally provided;

- A (4) Under clause (10) relating to surrender of the superstructure and other construction at the end of the lease the lessee shall give vacant possession to the lessor at the end of the lease but it would be open to the lessor to opt to purchase the property in case if it desired the property as it is at the then prevailing market value to be fixed by the Public Works Department or at a figure which may be mutually agreed upon between the parties.
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(5) Clause (ii) prohibiting sub-letting deleted.

- C Feeling aggrieved by the judgment dated April 22, 1987 in O.S.A. 167 of 1986 and the order dated October 28, 1987 on C.M.P. No. 14618 of 1987 passed by the Division Bench of the High Court, the appellant has filed these appeals. C.A. No. 4169/88 is directed against the order dated April 22, 1987 passed in O.S.A. No. 167 of 1986 and C.A No. 4168 of 1988 has been filed against the order dated October 28, 1987 passed on the application. (C.M.P. No. 14618 of 1987) for modification.
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We will first take up C.A. No. 4168 or 1986 which is directed against judgment dated April 22, 1987 affirming the order dated May 2, 1986 passed by the learned Single Judge for grant of lease in favour of Respondent No. 2.

- E As mentioned earlier the application that was filed by respondent No. 2 for grant of lease was treated and disposed of as an application under section 25 of the Act which reads as under :

- F "Power of High Court to make orders in respect of property vested in Official Trustee. - The High Court may make such orders as it thinks fit respecting any trust property vested in the Official Trustee, or the income or produce thereof."

- G Section 26 of the said Act prescribes that any order under the Act may be made on the application of any person beneficially interested in any trust property or by any trustee thereof. The Act does not envisage an application being moved by any other person. Respondent No. 2 were neither beneficially interested in the trust property nor were they trustees thereof. The application filed by Respondent No. 2 was thus clearly not maintainable and the High Court was in error in entertaining the said application. The proper course was that Respondent No. 2 should have
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approached the Official Trustee with their proposal for grant of lease and if the Official Trustee, after examining the same, found it to be in the interest of the Trust, he could move the Court for appropriate directions. A

Apart from maintainability of the application filed by Respondent no. 2, we find that in deciding to grant the lease in favour of Respondent No. 2 the High Court has failed to protect the interests of the Trust Estate. In this context, it is necessary to mention that the appellant, who is the residuary legatee under the will and is beneficially interested in the property sought to be leased, had objected to the proposed lease. The Official Trustee, took the stand that he would have no objection to grant of lease if the court was satisfied that respondent No. 2 was agreeable to terms which would really benefit the trust estate. His stand was that if respondent no. 2 wanted the indulgence of a long term lease in their favour by an order of the court they should be prepared to offer attractive terms for the grant of the lease in their favour. The Official Trustee also indicated the factors which may be taken into consideration by the Court. The High Court has, however, imposed terms for grant of lease which are more favourable to Respondent No. 2 as compared to the terms suggested by the Official Trustee. B C D

In this regard it may be mentioned that in view of Section 9 of the Act when the Official Trustee has been appointed trustee under a will he holds the property vested him upon the trust expressed in the will. Under Section 7 of the Act, the Official Trustee acts as an ordinary trustee and has the same powers, duties and liabilities and is entitled to the same rights and privileges and is subject to the same control and orders of the Court as any other trustee acting in the same capacity. According to the Indian Trust Act, 1882 a trustee is bound to deal with the trust property as carefully as a man of ordinary prudence would deal with such property if it were his own (Section 15) and a trustee can be do all acts which are reasonable and proper for the realisation, protection or benefit of the trust property (Section 36). Describing the standard for fiduciary conduct expected from a trustee, Cardozo, J. has said : E F G

"A trustee is held to something stricter than the morals of the market place. Not honesty alone but the punctilio of an honor the most sensitive, is then the standard of behaviour. Only thus has the level of conduct for fiduciaries been kept at a higher level H

- A than that trodden by the crowd." (See *Meinharal v. Salman*, (1928) 249 N.Y. 458 at page 464.

In *Muniswami Naidu v. Official Trustee* (supra), while referring to the duties of Official Trustee, it has been held :

- B "So long as the property is vested in the Official Trustee it will be the duty of the Official Trustee to take such steps and conduct himself in such a manner as to make the trust get the maximum advantage of any transaction without prejudice to the security and safety of the trust property itself."

- C In the said case, it has been further held that if the Official Trustee him self wants to lease out the property the normal procedure to be adopted is by public auction. The said view is in consonance with the law laid down by this Court in the Context of alienation of public property.

- D In *K.N. Guruswamy v. State of Mysore and Ors.*, [1955] 1 SCR 305 the Court was dealing with the sale of a liquor contract. It was observed that matters of "consequence to the State revenue cannot be dealt with arbitrarily and in the secrecy of an office." The Court has emphasized the need for publicity so that people at large have notice. It was held that "the furtive method adopted of settling a matter of this moment behind the backs of those interested and anxious to compete is unjustified." (p.312)

E In *Fertilizer Corporation Kamgar Union (Regd.) v. Union of India*, [1981] 2 SCR 52, it is has been observed (Chandrachud, C.J.):

- F ".....We want to make it clear that we do not doubt the *bonafides* of the authorities, but as far as possible, sales of public property, when the intention is to get the best price, ought to take place publicly. The vendors are not necessarily bound to accept the highest or any other offer, but the public at least gets the satisfaction that the Government has put all the cards on the table."

- G Relying on the said observations this Court in *State of U.P. v. Shiv Charan Sharma & Ors. etc.*, [1981] Supp. SCC 85, has held that "public auction with open participation and a reserved price guarantees public interest being fully observed".

- H In *Ram & Shayam Co. v. State of Haryana & Ors.*, [1985] 3 SCC 267,

it has been laid down :

"On the other hand, disposal of public property partakes the character of a trust in that in its disposal there should be nothing hanky panky and that it must be done at the best price so that larger revenue coming into the offers of the State administration would serve public purpose viz. the welfare State may be able to expand its beneficent activities by the availability of larger funds.But where disposal is for augmentation of revenue and nothing else, the State is under an obligation to secure the best market price available in a market economy. An owner of private property need not auction it nor is he bound to dispose it of at a current market price. Factors such as personal attachment, of affinity, kinship, empathy, religious sentiment or limiting the choice to whom may be willing to sell, may permit him to sell the property at a song and without demur. A welfare State as the owner of the public property has no such freedom while disposing of the public property." (p.277)

In *Chenchu Rami Reddy & Anr. v. Govt. of A.P. & Ors.*, [1986] 3 SCC 391, while dealing with sale of property of a religious endowment governed by the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966, this Court has held that what is true of public property is equally true about the property belonging to the religious institutions and endowments and has further pointed out :

"....the trustees or persons authorised to sell by private negotiations, can, in a given case, enter into a secret or invisible underhand deal or understanding with the purchasers at the cost of the concerned institution. Those who are willing to purchase by private negotiations can also bid at a public auction. Why would they feel shy or be deterred from bidding at a public auction? Why then permit sale by private negotiations which will not be visible to the public eye and may even give rise to public suspicion unless there are special reasons to justify doing so? And care must be taken to fix a reserve price after ascertaining the market value for the sake of safeguarding the interest of the endowment." (pp.307-308)

The aforesaid observations in the context of public property and property belonging to religious and charitable endowments and institutions

A would equally apply to trust property as in the present case.

The Division Bench of the High Court has held that although the Official Trustee, if he were to lease out to property, should have done so by public auction but since lease was being granted under order passed by the High Court after being satisfied that the terms are fair and just, there was no need to go for a public auction. This raises the question - how would the Court satisfy itself the terms are just and reasonable? For such satisfaction the Court must have adequate material to make a proper assessment. This cannot be possible on the basis of the terms offered by the applicant approaching the Court. Whether the said terms are just and reasonable, and in the interest of the trust, can be determined by making a comparative assessment of competing offers and, therefore, it is necessary that the persons interested in taking the lease must have an opportunity to make an offer. Public auction is the means for enabling such persons to make their offers. In the matter of exercise of its supervisory jurisdiction under Section 25 of the Act the High Court has to be guided by the same consideration which governs the administration of trust property by the official Trustee, namely, "to make the trust get the maximum advantage of a transaction". Since public auction after adequate publicity ensures participation of those who are interested and anxious to compete, it normally secures the best price. There appears to be no reason why this procedure of public auction should not be adopted when the lease is to be granted under an order passed by the High Court in exercise of the jurisdiction under Section 25 of the Act. It is no doubt true that an order under Section 25 of the Act is passed in a judicial proceeding conducted in open Court under public gaze. This necessarily postulates adequate publicity of the matter under consideration to enable persons having an interest to appear and put forward their point of view before the Court. If lease is granted by the Court on the basis of an application submitted by an application without notice to others who may also be interested in the lease the consequence would not be very different from that when a lease is granted in the secrecy of an office. In order to ensure participation by every person interested in making an offer it is necessary that there should be wide publicity about the proposal to give the lease and the lease be granted either by inviting bids at a public auction or by inviting sealed offers by a specified date.

The procedure followed by the learned Single Judge in passing the order for grant of leave in favour of respondent No. 2 does not fulfil this

requirement. It cannot be disputed that respondent No. 2 had a laudable object in constructing a hospital with 30 rooms. But there can be other applicants with equally laudable objects or other applicants having the same object who could offer better terms. This could only known if wider publicity had been given to the proposal and offers had been invited. This appears to have been suggested by the Official Trustee also in his Supplemental Report dated April 25, 1986 wherein he sought permission to lease the property by public auction through M/s Murray and company or some other auctioneer on terms quite favourable to the Trust Estate after giving due publicity. We are unable to appreciate why the learned Single judge did not choose to adopt the said course.

The learned Single Judge was also not right in holding that the appellant has no *locus standi* in the matter. Apart from being a tenant on the ground floor of the building adjacent to the vacant plot of land the appellant trust, is also the residuary legtee under the will and has a beneficial interest in the trust property sought to be leased. The appellant was, therefore, entitled to raise objections regarding grant of lease in favour of respondent No. 2 on the ground that the said lease was not in the interest of the trust property and the said objections could not be brushed aside on the view that the appellant had no *locus standi*.

Furthermore we find that while directing grant of lease in favour of Respondent No. 2 the learned Single Judge has altered the conditions as suggested by the Official Trustee in the matter of - (i) lease period (ii) rate of increase of rent and (iii) the amount of security deposit. The Official Trustee had suggested a maximum lease period of fifteen years but under clause (2) of the conditions the lease period has been fixed at 30 years with an option to renew. The Official Trustee had suggested increase in rent @ 10% per year but in clause (1) of the conditions the said increase was reduced to 5% for the first five years. The Official Trustee had suggested a security deposit of Rs. 50,000 but in clause (3) of the conditions it was reduced to Rs. 30,000. All these changes were prejudicial to the interest of the Trust Estate. The learned Judge has not given any reason why conditions as suggested by the Official Trustee could not be imposed.

The Division Bench, while upholding the order of the learned Single Judge has not taken note of these infirmities in the said order. For the reasons aforementioned we are unable to uphold the order dated May, 2, 1986 passed by the learned Single Judge as well as the judgment of the

- A Division Bench dated April 22, 1987 affirming the said order of the learned Single Judge in appeal. C.A. No. 4169 of 1988 must, therefore, be allowed.

We would now come to C.A. No. 4168 of 1988 which is directed against the order passed by the Division bench on application filed by Respondent No. 2 for modification of the order dated April 22, 1987 in OSA 167 of 1986. In this context it has to be noted that by judgment dated April 22, 1987 the Division Bench had dismissed the appeal and affirmed the order dated May 2, 1986 passed by the learned Single Judge. Respondent No. 2 had not chosen to file an appeal against the said order of the learned Single Judge and they allowed the said order to become final. By the application for modification Respondent No. 2 sought modification of important terms and conditions relating to (i) period of lease, (ii) rate of increase of rent (iii) surrender of superstructure at the time the lessee vacates the land and (iv) right to sub-let the premises. The modifications were such as to alter the character of the order sought to be modified. Moreover the modifications that were sought even went beyond the terms that were offered by respondent No. 2, in the affidavit of M.K. Rajasekar filed in support of the application for grant of lease. In paragraph No. 11 of the said affidavit, it was stated :

- E "I further state that after the expiry of the lease period the applicant undertake to deliver vacant possession of the said premises with all the improvements made in the site lease out to the applicant."

Clause (9) of the terms and conditions imposed by the learned Single Judge was in the following terms :

- F "The applicant must surrender the superstructures and other constructions to be put up by them to the Trust at the time when they vacate without claiming any compensation for the same."

G By the application for modification which has been allowed by the learned Judges of the Division Bench of the High Court clause (9) of the conditions has been substituted and it has been provided :

- H "As provided in the transfer of property Act, this clause will be modified to the effect that at the end the tenancy, the lease shall give vacant possession to the lessor. But, however, it will be open to the lessor to opt to purchase the property in case if it desired

the property as it is, at the then prevailing market value, to be fixed by the Public Works Department or at a figure which may be mutually agreed upon between the parties." A

Similarly in paragraph No. 14 of the affidavit of M.K. Rajasekar it was stated :

"I, therefore, state that the applicants offer to pay a rent of Rs. 4,500 for the building site for the first year and for every succeeding years by increasing the rent by five percent on the rent payable in respect of every preceding year." B

The learned Single Judge in clause (1) of the terms and conditions directed :

(1) "Initially the rent is fixed at Rs. 2000 per month from the date of execution of the lease deed and the same is to be increased by 5 per cent each year on the preceding year rate of rent for a period of five years and thereafter 10 per cent." C D

In the application for modification the modification that was sought was: "an uniform increase of 5 per cent for every five yrs" and the modification that has been allowed is increased of 5% on the original rent for every three years. E

Notable among the other modifications which have been permitted are : (i) the period of the lease has been raised from 30 years to 50 years with an option to renew for another 50 years, and (ii) deletion of the prohibition relating to sub-lease. It would thus appear that on the pretext of modification Respondent No. 2 has secured substantial alteration in the terms and conditions as contained in the original order dated May 2, 1986 passed by the learned Single Judge which had been upheld in appeal by the Division Bench. In other words under the guise of modification Respondent No. 2 have obtained review of the order which had become final. This was impermissible in law. The order passed by the Division Bench does not give any indication as to why it became necessary to give there concessions to respondent No. 2. It has not been shown that nobody else was prepared to take the lease on the terms and conditions laid down in the order dated May 2, 1986 and that without making those modifications the plot of land could not be given on lease. On the other hand we F G H

- A find that there was another offer by Md. Ummer Sheriff offering to take the lease on the same terms and conditions with a higher rent of Rs. 3000 per month. The order dated October 28, 1987 passed by the Division Bench on the application for modification (CMP No. 14618/87) cannot, therefore, be upheld and C.A. 4168 of 1988 filed against the said order also deserves to be allowed.

B

- C Before parting with the case we feel constrained to say that the order dated May 22, 1986 passed by the learned Single Judge which was affirmed in appeal by the Division Bench as well as the order dated October 28, 1987 passed by the Division Bench on the application for modification leave an impression that the learned Judges were more concerned with the interests of Respondent No. 2 than those of the trust estate though the primary duty of the Court was to safeguard the interest of the Trust which was being administered by the Official Trustee and in doing so they not only ignored the objections raised by the residuary legatee who was the beneficiary under the Trust, but also did not accept the suggestions made by the Official Trustee in the interest of the trust. In the matter of grant of leases and licences and award of contracts by the executive the decisions of this Court require the authorities to apply standards or norms which are not arbitrary, irrational or irrelevant. People expect much higher standards from the judiciary and rightly so. It would be a sad day if an impression gains ground that the judiciary is not free from the malaise that afflicts other fields of State activity. We need say no more at this stage.
- D
- E

- F In the result, the appeals are allowed, the judgment dated April 22, 1987 passed by the Division Bench in O.S.A. No. 167/86 as well the order dated May 2, 1986 passed by the learned Single Judge on C.M.P. No. 495/86 in O.P. No. 278/48 and the order dated October 28, 1987 passed by the Division Bench on C.M.P. No. 14613/87 in O.S.A. No. 167/86 are set aside. The parties are left to bear their own costs.

T.W.

Appeals allowed.