
(1995) 07 MAD CK 0012

In the Madras High Court

Case No : O. S. A. No"s. 52, 61 and 431 of 1995 and Application No. 432 of 1995

Joshi Amba Shankar Family Trust

APPELLANT

Vs

Gowrishankar and 16 Others
Gowrishankar and
Another Vs Joshi Ambashankar Family Trust and 14 Others

RESPONDENT

Date of Decision : 11-07-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 1, Order 23 Rule 1
Income Tax Act, 1961 — Section 230(A)(1)

Citation : (1995) 07 MAD CK 0012

Hon'ble Judges : Srinivasan, J;AR. Lakshmanan, J

Bench : Division Bench

Advocate : V. Ramachandran for M/s. K. Mani, Anitha Ramachandran, Malika Srinivassn. S.V. Sudkar,s in O. S. A No. 52/95 and Mr. G. Subramanian, for M.V. Chandran, Mr. G. Subramanian, for M.V. Chandran, for the Appellant; G. Subramanian for M.V. Chandran, Advocate and for the Respondents 11 to 16 in O. S. No. 52/95, Mr. S. Sampathkumar, for M/s. Sarapathkumar and Associates Advocates for the Respondents 1 and 2 in O. S. A. Nos. 52/95 and 61/95 and Applicants in Application No. 432/95 and the Respondents 3 to 19 in O. S. A. No. 52/95 and Die Respondents 4 to 19 in O. S. A. No. 61/95 and the Respondents 2 to 9 in Application No. 432/95 Not Appearing in Person Or By Advocate, Mr. V. Ramachandran for M/s. K. Mani, Anitha Ramachandran, Malika Srinivassn . S.V. Sudkar Respondent 3rd in OSA. No. 61/95 and Respondent1st in Application No. 432/95, for the Respondent

Final Decision : Allowed

Judgement

Srinivasan, J.—These two appeals are against the order of a learned single judge of this Court dt. 2nd February, 1995 in Application No.

801 of 1991. The earlier appeal is by the first respondent in the said application and the later appeal is by respondents 10 to 15 therein. The

appeals were heard together as they raise common questions. For the sake of convenience, the parties will be referred in this judgment according

to their rank in the application. The first respondent trust was created by one Ambasankar Joshi by a deed of Declaration of Trust on 15th

January, 1934. Three items of immovable properties comprising building and land were set apart for carrying out the objects of the trust. The

purpose of the Trust is to help poor relations of the author of the Trust and for some charitable and pious purposes. The author of the Trust has

laid down the manner in which the income from the trust properties should be utilized for the purpose of the trust. One fourth of the net income

shall be spent for the purpose of rice and other grains or vegetables if convenient for giving alms to the poor of what ever class or creed who may

appear and beg at premises No. 14, Samudra Mudali Street, Park town, Madras, one of the trust properties and if the amount is sufficient, to feed

also poor Brahmins on some important days and occasions as the Trustee thinks fit. Another 1/4th of the net income shall be spent of

Gosamrakshana"". The remaining income shall be devoted for the relations of the author as specified therein. If there is any balance after meeting

the special allowances to the male and female relations of the author of the Trust, it shall be reserved as a Reserve Charity Fund to meet any

special or unexpected or unforeseen urgency and to meet any new or special charity as the Trustee thinks fit. In the first instance, the author of the

Trust himself became the sole Trustee. On his death, his descendants entered into an agreement on May 1, 1957 by which they agreed to

reconstitute the management of the trust for the purpose of proper functioning thereof. Subsequent to the agreement, the trust was functioning as

per the terms of the agreement without any dispute, claim or contest by any person. The properties of the trust became old and dilapidated. The

income there from was found to be insufficient to carry out the object of the trust. The trustees felt a difficulty in continuing the trust for want of

sufficient funds and thought of disposing of the properties and investing the proceeds in such securities as would yield better income. As there was

no express power of alienation under the Declaration of Trust, the Trustees filed Originating Summons under Order 13, Rule 1(e) and (g) of the

Original Side Rules in this Court, which was taken on file as C. S. No. 530/79. The prayer was for modification of the terms of the Trust so as to

empower the trustees to sell, convert, call in or otherwise realise the properties of the trust and also raise money by way of loan, mortgage, charge

or pledge. There was also a prayer for separation of charitable and no charitable parts of the Trust fund and separate management of the two portions.

2. During the pendency of the said proceedings, the Court appointed an Advocate-Commissioner to inspect the properties and ascertain the condition and the value thereof. The Commissioner submitted a report dated 2nd March, 1983 setting out the approximate value of all the three

properties. In the present proceedings we are concerned only with the house and ground in No. 429, Mint Street, which now bears New Door

No. 162. The value of the said property was estimated by the Commissioner at Rs. 2,00,000/- as on that date. In paragraph 3 of his report, he

has described the condition of the building. The relevant portion reads as follows:-

It is significant to note that this building is very much damaged by the even and heavy fire used for cooking purposes. It is also to be noted that

portion of the S/E side has loosely come off and dangling precariously and likely to fall down at any time, crushing the workers below. Therefore,

the two of the suit properties, except that of No. 14, Samudra Mudali Street, are in a dangerous condition and thus, the lives of the inmates are at

stake. So, the building requires urgent repairs. The entire construction of this building also is with lime mortar only with sea sand and no cement is

used, (see annexures B & 4 Photos).

3. In Annexure "B", the Commissioner has set out the details of the tenants in the premises,, the main tenant being the applicant in the present

proceedings. The total rent realised from the building was only Rs. 745/- per mensem. The applicant was paying Rs. 275/- per mensem..

4. By order dated 28.11.1983, this Court allowed the application and directed modification of the declaration of Trust. In so far as the prayer for

permission to sell the properties was concerned, the Court directed that the power shall be exercised only with the permission of the Court and the

concurrence of the 3/4th of the total number of trustees in office.

5. The trustees called for offers and got certain offers. As per the list dt. 12.8.1983 the highest offer was for Rs. 3,15,000/- for this property. The

trustee filed an application in A. No. 68 of 1984 for ordering sale of properties at the highest price offered. By order dated 9.2.1984, this Court

permitted the sale of two of the trust properties including the one involved in these proceedings at the highest price offered.

6. The trustees were inviting offers and were not satisfied with the offers received by them. On 5.12.1989, respondents 10 to 15, who are brothers

and members of a joint family, made an offer to purchase the property for Rs. 9,00,000/-. That offer was accepted by the trustees by a resolution

dated 7.12.1989 and they entered into an agreement on 15.12.1989. At the time of agreement, a sum of Rs. 1,50,000/- was paid as advance to

the trust by respondents 10 to 15. On 15.1.1990 the Trust applied for Income Tax - Clearance Certificate u/s 230(A) (I) of the Income Tax Act.

As required by the relevant provisions of law, a draft sale deed was also enclosed.

7. On 23.1.1990, the applicants, wrote a letter to the trust offering to purchase the property for Rs. 14,20,000/-. The letter is in the following

terms:-

On order dated 9th February 1984 in Application No.68 of 1984 in C. S. No. 530 of 1979 on the Original side of the High Court at Madras His

Lordship Mr. Justice Sengottuvelan was pleased to permit the Trust, the Applicant in the above Application to sell the immovable property

together with the superstructure thereon bearing door No. 162 (Old No. 420) Mint Street, Madras 79 at the highest price offered.

As offers were not called for by due publication in the press for which we were waiting so far, we are now offering for the said property together

with the superstructure, fittings and fixtures, bearing door No. 162 (New) Mint Street, Madras-79 a sum of Rs. 14,20,000/- (Rupees Fourteen

lakhs and twenty thousand only) which price is negotiable We have been in occupation of the said premises for over a half century running a Hotel

Industry, a portion thereof being occupied for our personal residential purposes, paying rent to the Trust regularly and without default during all

these years. Since we are keenly interested in the property we therefore request you to consider the offer, which is negotiable favourably. Kindly

acknowledge and let us have a favourable reply at the earliest. Thanking you,

8. The trust sent a reply on 26.2.1990 to the applicants that the offer will be placed before the meeting of the Trustees and the decision taken will

be informed to them. On 16.3.1990, the Trust filed an application in A. No. 1660 of 1990 for permission to sell the property for the highest offer

of Rs. 9,00,000/- or such higher offer that they may receive for the sale of the property and execute and register the necessary deed of sale in

favour of the offeror. In the affidavit filed in support of the application it is said that subsequent to the order of the Court in 1984 authorizing the

trustees to sell the property for the highest price offered, the trustees were making attempts to sell the same, but because of the bad condition of

the building and the occupancy of the same by number of tenants, they are facing one problem or the other, to find a proper purchaser. It is also

stated that purchasers were not willing to make offers unless vacant possession was given and the price offered was not commensurate. It is further

stated that pursuant to the concerted efforts taken by the trustees, they were able to secure some offers for the buildings. The names and addresses

of the persons who offered to purchase the property and the amounts offered have been set out in the affidavit. The lowest offer is Rs. 6,75,000/-

and the highest is Rs. 9,00,000/- offered by respondents 10 to 18. In paragraph 11 of the said affidavit, it is stated that apart from calling for

offers, the Trustees made enquires and are satisfied that taking into account the nature and condition of the building, the number of tenants

occupying the building and the fact that the property is sought to be sold in ""as is where is"" condition along with the tenants without vacant

possession being given to the purchaser, the price offered is reasonable. There is no reference in the affidavit to the offer made by the applicants to

purchase the property for Rs. 14,20,000/- in their letter dated 23.1.1990. The Court passed an order on 29-3-1990 permitting the Trustees to sell

the property to respondents 10 to 15, whose offer was the highest and to execute and register the document. The Trustees were also directed to

invest the proceeds as majority of them deem fit and proper. Pursuant to the said order, two sale deeds were executed each for Rs.4,50,000/-,

with reference to undivided one half share in the property. one sale deed is in favour of respondents 10 to 12 and the other is in favour of

respondents 13 to 15, on 12-4-1990. The details thereof are unnecessary for the purpose of this proceeding.

9. In June 1990, the Trust informed the applicants that the property has been sold to respondents 10 to 15 and requested them to pay the rent

directly to the purchasers. The purchasers also sent a letter dated 11-6-1990 to the applicants calling upon them to pay the rent to them. The

applicants attorned in favour of the purchasers and commenced paying the rent to them.

10. On 3-7-1990, the applicants sent a notice through their advocates to the Trust, trustees and the purchasers alleging that all the trustees and

purchasers have played a fraud on the Court, registration department and the income tax Department by contriving to sell the property for Rs.

9,00,000/- stating it to be the highest offer suppressing the fact that the applicants offered to purchase for Rs. 14,20,000/-. It was also alleged that

the purchasers were quite aware of the applicants' offer as they were personally informed by them through the 11th respondent. A reply was sent

by the Trust and the trustees on 9-7-1990 denying the allegations contained in the notice of the applicants. The following averments in the said

reply are quite relevant and significant for the present purpose:-

Our client made enquiries with the trustees with regard to your statement that your client had offered to buy the property for Rs. 14,20,000/- by

his letter dated 23rd January 1990. Our client has been informed by the trustees that though your client had issued the letter, he did not evince any

interest in finalizing the transaction nor did he take any further steps for effecting purchase. It is also slated by the vendors (Trustees) that your client

had sought complete vacant possession and stipulated other conditions making it clear that he was not keen on buying the property but only

wanted to stop any sale of the property so that he could continue in the premises as a tenant. Your client is occupying the premises ""on a nominal

rent and he was always interested in continuing in the premises on the same terms.,

X X X

Our client further states that the trustees had informed him that your client had claimed from them some amount to vacate the premises, which the

trustees had declined. After our client purchased the property when they demanded vacant possession, your client again demanded payment of Rs.

2 lakhs which was refused by our client, who threatened to take legal action for evicting him from the premises.

11. A separate reply was sent by the purchasers also. There were no rejoinders by the applicants to the reply notices. In the order under appeal,

the learned single judge has wrongly stated that rejoinder was sent by the

applicants on the very same day. There is nothing on record to show that a rejoinder was issued by the applicants.

12. But the applicants filed on 28-7-1990 Application No. 801 of 1990, out of which these appeals arise. The prayer in the application is to set

aside the order passed in Application No. 1660 of 1990 permitting the sale in favour of respondents 10 to 15. In the affidavit filed by the first

applicant in support of the application it is alleged that in the beginning of the year 1990, the deponent learnt that the Trust was going to sell the

Schedule property and the deponent offered to purchase the same for Rs. 14,20,000/- and that the Trust ought to have informed this Court about

the same. Paragraphs 7 and 8 of the affidavit read as follows:-

7. The first respondent ought to have informed this Hon''ble Court my offer of Rs. 14,20,000/- as otherwise the Hon''ble Court would not have

permitted for the sale for Rs. 9,00,000/-. Obviously a fraud has been committed and false affidavit has been filed to misdirect this Hon''ble Court.

8. Respondents 10 to 15 were quite aware of my offer much before the filing of the application and they have colluded with respondents 1 to 9 in

knocking away the Schedule Property for Rs. 9,00,000/-.

13. In the counter affidavit filed by the Managing Trustee, all the facts stated earlier leading to the passing of the order permitting sale of the

property have been set out in full. It is stated categorically that the trustees have acted bona fide and there was no fraud or collusion. Paragraphs 7,

9, 10 and 13 of the counter affidavit read as follows:

7. However, since an offer was made by the Applicants, the Trustees discussed the matter. In the course of the discussion, it was made known to

the applicants that the sale of the property would be as is where is condition and the Applicants were required to confirm that the offer would be

for sale without vacant possession. The applicants promised to come back, but never responded thereafter. The Applicants did not follow up the

matter further and it was very evident from the conduct of the applicant that they were only trying to protract the matter and put fork in the agreed

sale to Seshmal Jain and five others.

X X X

9. I state that the applicants were aware of the offer of Seshmal Jain and five

others and the agreement entered into with them. The attempt of the applicants was only to sabotage the said proposed sale. The Applicants were occupying substantial portion of the property for a nominal rent of Rs. 275/- and they had succeeded in their attempt at preventing the sale of the property for the past so many years. Even after obtaining the Court permission in 1984, they were able to prevent the sale by dissuading intending purchasers. They merely wanted to continue in the property paying a nominal rent, which would be possible only if they continued to own the property.

10. I state that the applicants were aware of every step that was being taken towards the sale of the property.

X X X

13. Adverting to para 7, I state that at the time the application was made to this Honourable Court, there was no valid offer by the Applicants as alleged. The Applicants had made an offer on the 23rd January 1990, but had wanted vacant possession. Since that was not possible, they had not pursued the offer. It was evident from the conduct of the Applicants that they were not serious about the alleged offer made on 23rd January 1990. The trustees have acted bona fide. I stoutly deny the averment that a fraud was committed or a false affidavit filed as alleged by the Applicants nor was this Honourable Court misdirected.""

14. In the counter affidavit filed on behalf of respondents 10 to 15, they have claimed to be bona fide purchasers, who had no knowledge whatever of the alleged offer made by the applicants. Paragraphs 7 and 8 of that counter affidavit read as follows:-

7. It is pertinent to state that I understood from the Trustees that the Applicant had claimed amounts from them to vacate the premises and they have declined to pay any amount. After the purchase, we demanded vacant possession of the premises from the applicant for which the applicant demanded several lakhs for which we refused to pay and also we told them that failing to give vacant possession, we will be constrained to take legal action for evicting the applicant. Enraged on mist, the applicant has filed this application with the male fide intention of causing trouble, inconvenience and financial loss to us and to the Trustees. We have filed an application for eviction of the petitioner from the premises u/s 14(1)(b)

of the Rent Control Act in R. C. O. P. No. 2443/90 since the building is very old.

8. We are not award of any offer given by the petitioners for an alleged sum of Rs. 14,20,000/- till we received the notice dated 3-7-1990 from

the applicant's advocate. On receipt of the notice, when we made enquires with the Trustees, we learnt that the applicant had given such a letter,

but wanted vacant possession and did not evince any interest in finalising the transactions nor did he take any former steps for effecting purchase.

We further learnt that the applicant wanted to have complete vacant possession and stipulated other conditions making it clear that he was not

keen on buying the property, but only wanted to stop the sale of the property.

The applicants did not file any reply affidavit denying the contents of the counter affidavits, even though the matter was pending for more than two

years thereafter.

15. Ultimately, the Application was allowed by order dated 2-2-1995 and the Trust had been directed to execute and register a sale deed in

respect of the property in favour of the applicants on receiving a sum of Rs. 19,40,000/- and pay a sum of Rs. 9,00,000/- to respondents 11 to 15

together with costs of the stamp papers and the registration charges. The order has also directed the trust and the trustees to pay a sum of Rs.

10,000/- by way of costs to respondents 11 to 15. We do not find anything in the order as to why the aforesaid two directions to refund the sum

of Rs. 9,00,000/- with cost of stamp papers and registration charges and to pay the cost of Rs. 10,000/- passed in favour of respondents 11 to 15

only. The 10th respondent is also one of the purchasers and the directions should have been in his favour also. In fact, from the beginning of the

order, the learned Judge has been referring only to respondents 11 to 15 as the purchasers overlooking that respondents No. 10 is also a

purchaser along with the others.

16. The reasoning of the learned judge is that the trustees ought to have disclosed the offer made by the applicants in black and white for Rs.

14,20,000/- when they filed the application before Court. It is also observed by the learned judge that the non-disclosure of the said offer creates

highly doubtful circumstances on the part of the trustees in filing the application and that there is nothing on record to show that the applicants have

demanding vacant possession from respondents 1 to 8. The learned judge had

also observed that till the final orders were passed by the Court, the trustees were bound to bring to the notice of the Court if any offer was received by them even subsequent to the filing of the application and here the application has been filed totally concealing the offer made by the present applicants. The learned Judge has pointed out that though an application for clearance certificate under the income tax "Act was filed on 15-1-1990 only and everything had taken place subsequent to the offer made by the applicants. The contention of the purchasers that they were bona fide purchasers without notice of the offer of the applicants has been rejected by the learned Judge for the following reason: -

There is absolutely no evidence to show that the respondents 11 to 15 had made enquiries to the respondents 1 to 8, regarding the receipt of any other offers for the purchase of the property. There is no averment in their counter affidavit also to that effect. Hence respondents 11 to 15 had failed to make due enquiries with regard to the offer for the purchase of the property. Under such circumstances, it is not open to them to contend that they are bona fide purchasers without notice of the offer made by the applicants herein.

Even here, we would like to point out that the reasoning is hardly acceptable. There is no duty on the part of the purchasers to make an enquiry with the trustees every now and then to find out whether there is any other offer to purchase the property and their failure to do so will not negative their bona fides.

17. The learned judge has proceeded to refer to an affidavit filed by the applicants on 19-1-1994 making an offer to pay a total sum of Rs. 19,40,000/-, which is more than double the amount of purchase money. The learned Judge has taken the view that the offer made by the applicants is the highest offer and since the trust omitted to bring to the notice of the Court before ever they sought the permission to sell the property in favour of respondents 11 to 15, the application is allowed and the order in Application No. 1660 of 1990 is set aside. The learned judge has also issued the directions referred to above as regards the refund of the sale price to respondents 11 to 15 and payment of costs to them.

18. Aggrieved by the said order, the Trust -as well as the purchasers have

preferred these appeals. Several contentions have been urged on behalf of the appellants regarding the maintainability of the application at the instance of the applicants. Reliance is placed on the contents of Order 13, Rule 1 of the Original Side Rules and it is submitted that the applicants do not fall within any of the categories mentioned therein. It is argued that the applicants cannot maintain an application under Order 13, Rule 1, Original Side Rules. Secondly, it is contended that an order passed by a learned single judge of this Court cannot be set aside on an application by another learned single judge and the remedy of the applicants, if at all, is to have filed an appeal against the said order after obtaining leave from the Court. Thirdly, it is argued that the trustees have power to sell the property and the purchasers are bona fide purchasers for valuable consideration. Even if the trustees had committed any error or breach of trust, that cannot affect the purchasers and the sale cannot be set aside. The next argument is that the proceeding raises several complicated questions of law and fact and they cannot be decided summarily under Order 13, Rule 1, O.S. Rules and the remedy of the applicants, if at all, is to have filed a suit. It is next contended that the applicants having atoned the tenancy in favour of the purchasers have no bona fides in approaching the Court challenging the sale. It is contended that the conduct of the applicants should be taken note of before deciding whether they are entitled to any relief. Yet another contention is that the sale was concluded by the order dated 9-2-1984 in Application No. 68 of 1984 and there was no necessity whatever for the trustees to have filed Application No. 1660 of 1990 and by setting aside the order passed on the said application on 29-3-1990, the applicants cannot have the sale in favour of the purchasers set aside.

19. On behalf of the trust and trustees, it is argued that the learned judge is in error in holding that they have played a fraud on Court. It is contended that they have acted bona fide throughout and having regard to the condition of the property and the value thereof as determined by the Advocate-Commissioner appointed in C. S. No. 530 of 1979, the offer of Rs. 9,00,000/- made by respondents 10 to 15 was quite reasonable and acceptable when there was a concluded agreement between the parties and on that basis draft sale deeds were prepared and filed along with

applications u/s 230(A)(1) of the income tax Act. Our attention is also drawn to Rule 44A of the Income- tax Rules and Form No. 34A

prescribed therein.

20. Learned counsel for the applicants has contended that the order for sale in favour of respondents 10 to 15 has been obtained by playing a

fraud on Court by not disclosing their offer to purchase the property for Rs. 14,20,000/- and, therefore, the order passed by the Court should be

recalled. Reliance is placed upon the judgment of the Supreme Court in Nani Gopal Paul v. T.Prasad Singh & Ors. (JT 1995 (3) S.C. 387),

wherein the Court has observed that the Supreme Court or the Appellate Court would not remain a mute or helpless spectator to an obvious and

manifest illegality committed in conducting court sales. Our attention is also drawn to the observations of the Supreme Court in S.P. Chengalvaraya

Naidu (Dead) By L.Rs. v. Jagannath (Dead) By L. Rs. & Ors. (JT 1993 (6) S.C. 331) to the effect that a litigant cannot be permitted to gain

advantage over another by playing a fraud on Court as well as on the opposite party. It is also contended that the Court has inherent power to

recall any order which has been obtained by playing a fraud. Reference is made in this connection to P.Satynarayana.v Land Reforms Tribunal

(AIR 1980 Andhra Pradesh 149). It is also argued that in the case of public property, sale should be only by way of public auction and not by

private negotiations. It is submitted that if the trust had brought to the notice of the Court the offer of the applicants to purchase the property for

Rs. 14,20,000/-, the Court would have made an order only in their favour and not directed a sale in favour of respondents 10 to 15 for Rs.

9,00,000/-.

21. As pointed out earlier, the only ground on which the sale is sought to be set aside is that the trustees have played fraud on Court by not

disclosing the higher offer of the applicants and colluding with respondents 10 to 15. Unless that ground has been established by the materials on

record, there is no question of setting aside the order passed in Application No. 1660 of 1990 or the consequential sale. We have already referred

to the letter dated 23-1-1990 written by the applicants to the trust offering to purchase the property for Rs. 4,20,000/- and the reply of the

Managing Trustee dated 26-2-1990 that the offer will be placed before the

meeting of the trustees. Thereafter, when Application No. 1660 of 1990 was filed before Court on 16th March, 1990, there was no reference to the said offer in the affidavit of the Managing Trustee. The question is whether the failure to make a reference to the said offer would amount to fraud on the part of the trustees.

22. Explanation for not disclosing the said offer in the said application is given by the Managing Trustee in the counter affidavit in paragraphs 7, 9, 10 and 13 which have already been extracted in this judgment. As pointed out earlier, there is no reply affidavit by the applicants in spite of the fact that the counter affidavit was filed in August, 1990 and the application was pending till February, 1995. Apart from the fact that there is no reply affidavit by the applicants, there are materials on record to support the version found in the counter affidavit. Before filing the present application, the applicants issued a notice through a lawyer on 3.7.1990. A reply was sent by the trustees on 9.7.1990. The relevant paragraphs in the said reply have already been extracted. There was no rejoinder to the said reply notice. The learned single judge has wrongly proceeded on the assumption that even on the very same day, a rejoinder was sent by the applicants. There is no record in support of the same.

23. In the counter affidavit filed by respondents 10 to 15, they have referred to the demand made by the applicants for a huge amount when they wanted vacant possession. There is no rejoinder to that averment also.

24. Apart from what is stated above, the following circumstances would also show that the case put forward by the applicants that they made a bona fide offer to purchase the property for Rs. 14,20,000/- is not true. In the affidavit filed in support of the application, it is averred that in the beginning of the year 1990, the deponent learnt that the trust was going to sell the property. That statement is clearly false as evidenced from the letter dated 23.1.1990 itself. We have extracted the letter in full. In the first paragraph of the letter, the applicants have given full details of the order dated 9th February, 1984 passed by this Court permitting to sell the property at the highest price offered. In the second paragraph it is stated that the applicants were waiting for due publication in the Press calling for offers. If that is so, there is no question of the applicants learning for the first time in the beginning of 1990 that the trust was going to sell the property.

Secondly, learned counsel for the applicants admitted before us that the trustees approached all the tenants in the building and required them to make their offers to purchase the property and that his clients had no money and, therefore, they did not make any offer. That statement of learned counsel lets the cat out of the bag. It is obvious that the applicants were keen in not purchasing the property, but were only trying to prevent any effective sale in favour of a third party. It is not as if the applicants caught hold of sufficient funds all on a sudden after 15.1.1990, when the trustees applied for income tax Clearance Certificate. The fact that the applicants are occupying a substantial portion of the property for a meagre rent of Rs. 275/- would also indicate that they would not have been interested in purchasing the building for a huge amount and spending a huge amount for effecting repairs thereto. It is well known that it is very difficult to get a tenant evicted in view of the present tenancy legislation. If really the applicants had a genuine intention to purchase the property, they could have done so at a much lower price even between 1984 and 1989. If all the facts and circumstances referred to above are considered cumulatively, it is clear that the version given by the trustees that the applicants did not make a serious offer and were not interested in pursuing the same is true and acceptable. In that situation, when they came to court with the application A. No. 1660 of 1990, there was no necessity for them to refer to an inchoate offer, which was not bona fide. They were bound to refer to genuine offers made to them. The nondisclosure of the offer made by the applicants in their letter dated 23.1.1990 was not, therefore, due to any fraudulent intention on the part of the trustees. It has not vitiated their application or the order passed by the Court.

25. There is no material on record to show that there was collusion between the trustees and respondents 10 to 15. Excepting the bare and vague allegation made in one sentence by the applicants, there is nothing before the court to warrant even an inference that respondents 10 to 15 acted in collusion with the trustees. In the absence of fraud or collusion, the order passed in Application No. 1660 of 1990 is quite valid and it cannot be set aside or recalled.

26. The rulings referred to by learned counsel for the applicants have no bearing in the present case. In Mani Gopal Paul's case (JT 1995(3) S.C.

387), the Division Bench of the High Court found as a fact that the sale was vitiated by illegality and there were several higher offers, but which

were not considered by the learned single judge. In such circumstances, the Supreme Court made the said observation relied on by the applicants.

In S.P. Chengalvaraya Naidu's case (JT 1993 (6) S.C. 331), it was found as a fact that a vital document was withheld from the court and a

decree was obtained by playing a fraud on court. In all those cases it was found on facts that fraud was played on court and the parties had gained

advantage on account of such fraud. The dicta in those rulings would come into play only if it is found that the trustees have played a fraud on court

and obtained the order in Application No. 1660 of 1990. As we have now found as a fact that there was no necessity for the trustees to have

disclosed the offer made by the applicants in their letter dated 23.1.1990 as it was not a bona fide one, there is no question of the order of the

court being vitiated by fraud.

27. The finding of the learned single judge that the purchasers viz., respondents 10 to 15 are not bona fide purchasers is clearly erroneous. We

have already referred to the reasoning of the learned judge and pointed out that it is unsustainable. Learned counsel for respondents 10 to 15 is

quite justified in contending that the learned single judge has in a way found that they are bona fide purchasers by relying upon the direction to the

trustees to pay a sum of Rs. 10,000/- by way of costs to respondents 10 to 15. We do not, however, want to place reliance on that direction and

hold that the riding is in favour of respondents 10 to 15, as there is a categorical finding against them in paragraph 8 of the order. We are now

setting aside the finding of the learned judge that respondents 10 to 15 are bona fide purchasers for value without notice of the offer of the

applicants in their letter dated 23.1.1990.

28. It follows, therefore, that Application No. 801 of 1991 filed by the applicants deserves to be dismissed and the appeals have to be allowed. In

the view we have taken on the facts of the case, we do not think it necessary to deal with the technical contentions raised by counsel for

respondents 10 to 15. However, we are bound to point out that the contention that the applicants are not persons falling within any of the

categories mentioned in Order 23, Rule 1 of the Original side Rules has

considerable force. Equally so the contention that the sale in favour of the purchasers cannot be affected by the failure of the trustees to disclose the one of the applicants in their affidavit in Application No. 1660 of 1990 even if it amounts to a fraud. The rulings of the Andhra Pradesh High Court and of the Supreme Court may be applicable only to cases in which a party complaining of fraud has lost his rights because of the fraud and not to cases in which a benefit has been obtained by a third party who has nothing to do with the fraud. A question may also arise whether the applicants who are not the beneficiaries of the trust are entitled to question the same, merely on the ground that their higher offer was not disclosed to the court. There is also considerable force in the contention that the trust in the present case is a private family trust and not a public trust. In any event, as seen from the objects of the trust, one half of the income has to be spent for the family members of the author of the trust. It may be a composite trust but it is not necessary for us to go into that question in this case. Suffice it to point out that number of intricate questions of law and fact may arise if we find on the facts of the case that the trustees were guilty of fraud as alleged by the applicants. In view of our finding against the applicants, it is not necessary for us to consider those questions.

29. However, one aspect of the matter has to be borne in mind before disposing of this appeal. In 1994, the applicants filed an affidavit in court offering to pay a total sum of Rs. 19,40,000/- for purchasing the property. That offer has been accepted by the learned single judge and the trustees have been directed to sell the property to the applicants. Whether the offer made in 1990 by the applicants was bona fide or not, the offer made in this court in a solemn affidavit has to be considered in view of the fact that the property is a trust property and a moiety of the income there from has to be spent for feeding poor people and "Go-Samrakshana" (Protection of cows). In the course of arguments, we wanted to ascertain whether the purchasers would be willing to pay the said amount of Rs. 19,40,000/- offered by the applicant. They have filed an affidavit on 7.7.1995 expressing their willingness to pay Rs. 19,40,000/- No doubt, they have aided that the court has to take into consideration the fact that they paid Rs. 9,00,000/- as early as on 12.4.1990 which is fetching interest to the trust. They also referred to the circumstances that they

spent considerable amounts for evicting certain tenants and prosecuting litigations against five other tenants besides obtaining permission to develop the property from the concerned statutory authorities.

30. Now, the question arises which of the parties has to be preferred and whose offer has to be accepted. Normally, the fact that the applicants

are in possession of a good portion of the property as tenants for a long time would have weighed with us and we would have been inclined to

accept their offer. But, we have pointed out already that the applicants have not chosen to state the truth before this Court in their affidavit and we

have found that their offer made in the letter dated 23.1.1990 is not bona fide. They have been deliberately sitting on the wall and waiting for the

trustees to get a good offer and proceed to sell the property. Admittedly, the applicants were aware of the order of this Court passed on 9.2.1984

and they did not bother to make their offer for six long years when the trustees were trying their best to find out a good purchaser.

31. On the other hand, respondents 10 to 15 were total strangers and as early as on 15.12.1989 they paid a sum of Rs. 1,50,000/- at the time of

agreement as advance. They paid the balance on 12.4.1990. Since then they have been deprived of the interest on the said amounts. They have

taken proceedings for eviction against the tenants and admittedly two of the tenants have been evicted. The proceedings against the remaining

tenants are pending before the Rent Control authorities. Respondents 10 to 15 have also obtained sanction for development of the property from

the statutory authorities. The applicants atoned the tenancy in favour of respondents 10 to 15 without a demur when they sent a communication to

them. In the above circumstances, we are of the opinion that the interests of justice require that respondents 10 to 15 should be preferred to the

applications.

Consequently, we direct respondents 10 to 15 to pay a sum of Rs. 10,40,000/- being the difference between the amount already paid by them as

sale price for the properties and the sum of Rs. 19,40,000/- the said amount shall be paid to the trust on or before 30.9.1995. With the above

directions, the appeals are allowed. The order of the learned single judge dated 2.2.1995 is set aside. The applicants shall pay the costs of the

appellants. In each appeal, the counsel's fee is fixed at Rs. 5000/-.