

PETITIONER:
OFFICIAL TRUSTEE OF TAMIL NADU

Vs.

RESPONDENT:
UDAVUMKARANKAL AND ORS.

DATE OF JUDGMENT 29/01/1993

BENCH:
SAWANT, P.B.
BENCH:
SAWANT, P.B.
KULDIP SINGH (J)

CITATION:
1993 AIR 1472 1993 SCR (1) 380
1993 SCC Supl. (3) 509 JT 1993 (1) 592
1993 SCALE (1) 566

ACT:
Official Trustees Act, 1913 :
Sections 15, 28-Powers and duties of Official Trustee-Action
taken bona fide-Breach of trust-Personal liability-Whether
arises.

HEADNOTE:
By a Court decree, schemes for administration of two estates
belonging to a couple were sanctioned. The subject matter
of the present appeal is the property comprised in the
estate of the wife. The said premises have been used as a
marriage hall.

The predecessor of the appellant made an application to the
High Court for permission to incur an expenditure of Rs. 6
lakhs for converting the tiled roof into RCC roof as also
for a modernisation plan involving about Rs. 17,500, so that
the marriage hall could fetch higher income. The High Court
accorded permission for the plan and the expenditure in-
volved. Thereafter some correspondence took place with some
Architects. But there was no further progress. In the mean
time the present appellant took charge of the trust and he
wrote to an Architect about the proposal and requested him
to inspect and report about its feasibility. The Architect
inspected the premises and reported that the building was
very old and in a dilapidated condition. He recommended the
demolition of the building and putting up of a new
construction. The appellant requested the Architect to
submit his estimates, plan and other details. Just prior to
these developments, the Deputy Official Receiver inspected
the premises belonging to both the trusts and submitted a
report that the buildings belonging to both the trusts be
demolished and reconstruction of the Marriage Hall and
construction of a shopping complex be taken up.

The appellant paid the scrutiny and demolition fee to the
Corporation as demanded by it and the building was
demolished. The Architect sent his estimate of Rs. 9.60
lakhs for the construction of the Marriage Hall. The
appellant filed an application before the High Court for its

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permission to transfer a sum of Rs. 7 lakhs from the other
Trust to enable him to incur a total expenditure of Rs. 10

lakhs and for ratification of the ,action taken by him. The hereditary trustees and the residual beneficiaries intervened and opposed the application. The matter was heard by a Single Judge and he held that the appellant had proceeded to demolish the marriage hall without getting specific orders of the Court and in undue haste, in an irresponsible manner and to the detriment of the trust. The Single Judge rejected the application and directed the appellant to construct the marriage hall within Rs. 6 lakhs sanctioned earlier. He further directed that expenditure in excess of Rs. 6 lakhs should be borne by the appellant himself. Being aggrieved by the said order, the appellant-official trustee filed an appeal which was dismissed by the Division Bench. Against this, the official trustee preferred the present appeal by special leave.

Allowing the appeal, this Court,

HELD : 1. It is evident from record that out of the three Architects who responded to the invitation of the predecessor of the appellant for replacement of the tiled-roof by R.C.C. slab, one architect did not even care to visit the site and examine whether the old structure could bear the weight of the R.C.C. slab. As regards the second architect, he did not refer to the fact whether the old structure was capable of bearing the weight of the R.C.C. slab. He merely stated that he had inspected the premises and then proceeded to indicate his charges for preparing the plan etc. It may, however, be presumed that since he had not referred to the condition of the building, he was of the opinion that the old building could bear the weight of the R.C.C. slab. It is only the third architect, who stated that it was worth demolishing the old building and constructing a new one in its place as per the Development Control Rules of the Madras Municipal Corporation. This was the state of affairs on the files of the Official Trustee when the appellant took charge. In the circumstances, there was nothing unnatural on the part of the appellant to have specifically addressed a letter to one more architect, pointing out to him, that it was proposed to convert the existing tiled-roof into RCC-roof, and requesting him to inspect the premises and submit a report specifically on the point as to whether the existing building could withstand the conversion or whether it had to be demolished and a new building constructed in its place. Anyone in his place acting as a responsible and a reasonable man

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would have done so. Since the new architect gave his report after inspecting the premises that no matter however much improvement was carried out in the building, the net result would be neither appreciable nor would it yield maximum returns for the investments made as the existing building was very old and in a dilapidated condition, there was nothing wrong if the appellant accepted the said report and proceeded to take immediate steps in the interest of the trust estate. The building was at least 76 years old, if not more, in 1988. Therefore, it is difficult to doubt the bona fides of the recommendations made by one of the three earlier architects or by the new architect. In any case, the bona fides of the appellant could hardly be questioned. [389A-H, 390A-E]

2. The rapid steps taken by the appellant can only be consistent with his intention to act as early as possible in the interest of the trust since by the new construction, the income of the trust was expected to be augmented. Further, the delay in construction was also likely to increase the cost of construction, apart from the loss of income that was

to result from such delay. Hence, the so-called haste cannot be looked upon only with suspicion or as contributing only to the mala fide intentions on the part of the appellant. It is also consistent both with a diligent and responsible conduct, on his part and with the best of his intentions to subserve the interests of the trust. [390F-H]

3.1. There is no doubt that the appellant knew that the earlier sanction obtained was only for replacement of the tiled-roof by R.C.C. slab. The sanction %*as also for incurring only an expenditure of Rs. 6 lacks and some other sundry expenses for providing minor facilities. Since the new proposal which he sanctioned consisted of the demolition of the entire building and of constructing a new one in its place which also involved a further expenditure of Rs. 4 lakhs or so, the proposal was completely different and it could not be acted upon on the basis of the old sanction. It was, therefore, absolutely necessary for the appellant to approach the Court before he embarked upon the new proposal, even though in doing so he was acting in the interests of the trust and no mala fides could be attributed to him. This is the only error committed by the appellant in the present case. However, in the facts and circumstances of the case, the error could not be said to have been actuated by any mala fide intentions on his part. The expenses that he had undertaken to incur were also within reasonable bounds looking at the proposal. His intention in promoting the

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proposal was in the interest of the Trust. [391A-D]

3.2. To the extent that the appellant did not take permission of the High Court before proceeding to demolish the existing structure and to construct a new one in its place, and before undertaking the expenditure of Rs. 4 lakhs over and above that sanctioned earlier, he did commit a breach of trust. But the appellant could not be made personally liable for the breach of trust committed by him, in view of the provisions of Section 15 of the Official Trustees Act, 1913. [391-H, 392AB]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 491 of 1993.
From the Judgment and Order dated 5.10.90 of the Madras High Court in O.S.A No. 271 of 1989.

K.K. Venugopal and P.P. Tripathi for the Appellant.

S. Muralidhar and Kailash Vasudev for the Respondents.

The Judgment of the Court was delivered by

SAWANT, J. Special leave granted.

By a decree in C.S. No. 363 of 1912, schemes for administration of two trust estates were sanctioned. One trust estate comprised Premises No. 246, R.K. Mutt Road, Mylapore, Madras belonging to one Poonambalam Pillai and the other trust estate comprised the adjoining Premises No. 247 belonging to his wife, Nagai Visalakshi Ammal. We are concerned in this appeal with the premises bearing No. 246 belonging to the trust estate of Poonambalam Pillai. These premises were being used as a marriage hall [Kalyanamandapam].

2. It appears that in both the said trusts, hereditary trustees were appointed. It is not clear from the judgments of the courts below as to when the Official Trustee in place of or in addition to the hereditary trustees came, on the scene. However, that is not relevant for the decision of the issue involved in the present appeal.

3. The predecessor of the present appellant Official

Trustee had made an application to the High Court being Application No. 2043 of 1988, 384

for permission to incur an expenditure of Rs. 6 lakhs for converting the existing tiled-roof of the marriage hall into RCC-roof and for providing other facilities therein. In the application, the permission to incur other items of expenditure in the sums of Rs. 4,750, Rs. 9,620 and Rs. 3,161.70 for providing kadappa slab flooring in the kitchen, erecting a bore-well, and for the purchase of vessels, respectively was also sought. The report which was filed along with the application stated that the marriage hall would fetch a higher income if it was modernised by converting the existing tiled-roof into RCC-roof and was provided with the other facilities. The report further gave an estimate of Rs. 6 lakhs prepared by the Assistant Engineer attached to the office of the Official Trustee, in respect of the said modernisation plan. Along with the report, the estimate and the plan of construction were also filed. From the report, it was seen that out of the total plinth area of 3822 s.f., only 2145 s.f. were sought to be covered with RCC-roof. The Court by its order dated 3.5.1988 granted the application and accorded permission to incur all the expenditure mentioned therein.

4. It appears that after the said sanction was given, one Kanakraj filed an application in the High Court for a direction to the Official Trustee to give a lease of the marriage hall to him on certain terms. That application was dismissed by the Court. While dismissing the application, the Court directed the Official Trustee to get the blue print and the approval of the concerned authorities and to commence the work of modernisation without any delay as ordered earlier on 3.5.1988.

5. Pursuant to the direction, the then Official Trustee sent a communication dated 1.12.1988 to six architects requesting them to give their quotations for preparing the plan, estimate and design for conversion of the tiled-roof into RCC-roof and for providing the other provisions as sanctioned by the Court. Of the six architects, only three responded. M/s C.R. Narayana Rao, Architects and Engineers, by their letter of 9.12.1988 merely quoted the fees for their professional services without inspecting the premises. M/s Madan Associates by their letter of 30.12.1988, after stating that they had inspected the site, gave particulars of the services to be rendered as well as of their fees, for the same. The third architect, Mr. C.H. Gopinatha Rao by his communication on 7.12.1988 stated that he had inspected the property on 6.12.1988 and that it was worth demolishing the structure and constructing a new building as per the Development Control Rules of the Madras Metropolitan Authority.

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6. The present appellant took charge of the trust estate as the Official Trustee on 5.1.89, and on 12.1.1989 wrote a letter to one Mohammed Ibrahim Sait, architect, informing him that it was proposed to convert the existing tiled-roof of the marriage hall into RCC-roof, and requested him to inspect the premises and submit his report as to whether the existing building could withstand such conversion or whether it had to be demolished and reconstructed. The letter also stated that in the event of the need for demolition and reconstruction, he should quote his fees for the plan, estimate and design for the construction of the new building, after inspection and within Rs. 6 lakhs. The architect, Shri Sait by his letter

of 2.2.1989, replied [which reply was received on 3.2.1989] that he had inspected the premises and that no matter however much improvement was carried out in the existing building, the net result would be neither appreciable nor would it yield maximum returns for the investments made, as the existing building was very old and in a dilapidated condition. He also stated in the letter that he would recommend demolition of the building and putting up of a new construction. He quoted his fees at 3-1/2 per cent of the total cost of the work. On 6.2.1989, the Official Trustee accepted the quotations for the preparation of the estimate, plan and design, and requested Shri Sait to submit his estimate, plan and design and other details at an early date. On 10.2.1989 again, the Official Trustee addressed another letter under the caption "very urgent" to Shri Sait whereby he sent the site-plan and the plan of the existing building along with a Xerox copy of the Will of Poonambalam Pillai for further action.

In the meanwhile, on 2.2.1989, i.e., even prior to the receipt of the reply from Shri Sait to the Official Trustee's letter of 12.1.1989 [which, as stated, was received on 3.2.1989], the Deputy Official Trustee submitted a report of his inspection of certain properties comprised in the trust estate in which he also stated that marriage hall was a choultry and was being let out for various functions and that there was a proposal to demolish and reconstruct that building and that the said proposal might also be extended to the property bearing No. 247 belonging to the other trust estate [viz., the trust estate of the wife of Poonambalam Pillai], by taking up the demolition and reconstruction of both the buildings thus constructing a shopping complex besides the marriage hall.

7. Thereafter, the Official Trustee by his letter of 10.4.1989 addressed to the Commissioner of the Metropolitan Corporation of Madras,
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sought permission to demolish the existing building of the marriage hall. The Corporation by its letter of 3.5.1989 directed the Official Trustee to deposit a sum of Rs. 10,240 towards scrutiny and demolition fee. It does not appear from this letter that the Corporation had in terms granted permission to demolish the building as the fee so demanded was only for taking further action on the application for demolition made by the Official Trustee. On 5.5.1989, Shri Sait sent an estimate of Rs. 9.60 lakhs for the proposed new construction of the marriage hall on 8.5.1989., the Official Trustee sent a cheque for Rs. 10,240 to the Revenue Officer of the Municipal Corporation of Madras and informed Shri Sait to the effect that the Corporation had sanctioned the demolition of the marriage hall. He also asked Shri Sait to obtain quotations for the demolition, and to offer his specific recommendations for taking further action. On 10.5.1989, Shri Sait demanded payment of Rs. 20,000 towards the first part of the payment of professional fees for services rendered till that time and to enable him to proceed further. On 12.5.1989, the Official Trustee sent a sum of Rs. 15,000 to Shri Sait. By letter dated 15.5.1989, one S.A. Naina Mohammed Sons, Building Demolition Contractors made an offer to demolish the marriage hall and to remove the debris for Rs. 15,000. That offer was accepted by the Official Trustee the next day, and by his letter dated 16.5.1989 addressed to the said Contractors he requested them to pay a sum of Rs. 15,000 and take up the work of the demolition. On 17.5.1989, the Official Trustee informed, the persons who had booked the choultry for

marriages earlier, that the allotments had been cancelled owing to the demolition and asked them to receive their refunds of the rent paid by them.

8. On 8.6.1989, a sum of Rs. 15,000 was collected from Shri Sait on behalf of the contractor- S.A. Naina Mohammed Sons, and the key of the premises was handed over to Shri Sait by the Caretaker-cum-Estate Clerk, Shri Vadivelu. This was approved of by the Official Trustee on 9.6.1989. The work of the demolition of the marriage hall commenced on 8.6.1989 and the building was completely demolished.

9. On 13.6.1989, the Official Trustee filed an Application No. 2592 of 1989 before the High Court. Along with the application, he also filed a report prepared on 6.6.1989. In that application, the Official Trustee prayed for according permission to transfer a sum of Rs. 7 lakhs from the other trust estate, viz. that of Nagai Visalakshi Ammal (wife of Poonam-

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balam Pillai) to the trust estate of Poonambalam Pillai, to enable him to incur a total expenditure of Rs.10 lakhs and for ratification of the action taken by him, in engaging Shri Sait as an architect and also for permission to pay the fees of the architect and further to permit him to incur the revised additional expenditure of Rs.4 lakhs in addition to the sum of Rs.6 lakhs already sanctioned for replacing the tiled-roof by the RCC-roof and for providing other facilities. In this report, the Official Trustee referred to the earlier order of 3.5.1988 and stated that though a sum of Rs. 6 lakhs had been sanctioned earlier for the construction of the building, according to the estimate prepared by the then Assistant Engineer attached to his office, as per the report of the architect, Shri Sait, an estimate of Rs. 9.60 lakhs was being submitted and thus an additional sum of Rs. 4 lakhs was required to dismantle the existing structure and to construct a new one in its place. It was further stated in the said report that as only a sum of Rs. 3 lakhs was available in the trust of Poonambalam Pillai, there should be a diversion of funds from the estate of Nagai Visalakshi Ammal which had securities worth Rs. 15 lakhs available with it. The report also stated that the Junior Engineer attached to the office of the Official Trustee was only a technical officer not having the benefit of the services of an technical assistant and, therefore, the services of an architect were engaged. The report mentioned the payment of Rs. 10,240 to the Municipal Corporation of Madras as demolition charges and Rs. 15,000 to the architect, Shri Sait. Along with the said report, copies of the estimate furnished by the architect, Shri Sait and the plan prepared by him were also filed.

10. It appears that though notice of the said application was no? given to the persons interested in the trust, the hereditary trustees as well as the residual beneficiaries intervened in the application, to oppose it. The learned Judge held that the Official Trustee had proceeded to demolish the marriage hall without getting specific orders of the Court and that he had done so in undue haste and to the detriment of the trust. The learned Judge further held that the Official Trustee had not placed all the facts before the Court and had also acted in an irresponsible manner in demolishing the building, and hence the relief prayed for could not be granted. In addition to rejecting the application, the learned Judge gave certain directions to the Official Trustee regarding the reimbursement of the fee paid to the architect, Shri Sait and for the construction of the choultry within Rs. 6 lakhs as

sanctioned earlier. He further directed that expenditure in excess of Rs. 6 lakhs for building the hall should be borne
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by the Official Trustee himself

11. The appellant-Official Trustee preferred an appeal against the said order to the Division Bench of the High Court which confirmed the same by the impugned decision.

12. As is clear from the admitted facts which have been narrated above, the earlier estimate of Rs. 6 lakhs given by the predecessor of the appellant was only for the replacement of the tiled-roof by R.C.C. slab. It was admittedly not for the demolition of the old building and construction of a new building in its place. It is not necessary to have the benefit of an expert opinion to appreciate that if for the replacement of the roof only, the cost as sanctioned by the Court itself was Rs. 6 lakhs, the cost for the demolition and construction of the new building estimated at Rs. 9.60 lakhs could not be said to be excessive. The estimate by all accounts appears to be reasonable. It does not also appear from the judgments of both the courts below that it was ever suggested by any party before them that the said estimate was either excessive or unreasonable. Nor is it argued even before us that it was excessive. Hence, when the appellant accepted the said estimate and sanctioned the demolition of the old building and the reconstruction of the new one for the said amount, it cannot be said that he was not acting bona fide. In this connection, it must further be remembered that the appellant came on the scene for the first time on 5.1.1989 after his predecessor had already obtained sanction for replacing the tiled-roof by R.C.C. slab and for other expenditure, and after he had invited the quotations from the architects concerned. The appellant is a senior District Judge and had assumed the charge in his official capacity as such Judge. There is no whisper against his integrity in the discharge of his duties as Judge and in fact as it transpires, this was his last posting before he retired in 1991.

13. However, both the courts below have held two factors as going against his conduct. The first is that he had not obtained the permission of the Court for demolition of the old building and construction of a new one in its place before he ordered the same, and the second is that he had sanctioned the proposal with haste. There is no doubt that, as the facts disclose, the earlier sanction granted by the Court by its order of 3.5.1988 was only for replacement of the tiled-roof by R.C.C. slab and for other minor provisions. The sanction was not for demolition of the entire building
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and for construction of a new one. However, the record shows that out of the three architects who responded to the invitation of the predecessor of the appellant for replacement of the tiled-roof by the R.C.C. slab, one architect did not even care to visit the site and examine whether the old structure could bear the weight of the R.C.C. slab. As regards the second architect, he did not refer to the fact whether the old structure was capable of bearing the weight of the R.C.C. slab. He merely stated that he had inspected the premises and then proceeded to indicate his charges for preparing the plan etc. It may, however, be presumed that since he had not referred to the condition of the building, he was of the opinion that the old building could bear the weight of the R.C.C. slab. It is only the third architect, viz., Shri Gopinatha Rao who

stated that it was worth demolishing the old building and constructing a new one in its place as per the Development Control Rules of the Madras Municipal Corporation. This was the state of affairs on the files of the Official Trustee when the appellant took charge. In the circumstances, there was nothing unnatural on the part of the appellant to have specifically addressed a letter to one more architect, viz., Shri Sait pointing out to him, as he did, that it was proposed to convert the existing tiled-roof into RCC-roof, and requesting him to inspect the premises and submit a report specifically on the point as to whether the existing building could withstand the conversion or whether it had to be demolished and a new building constructed in its place, as suggested by Shri Gopinatha Rao. In fact, in view of the said state of affairs on record, anyone in his place acting as a responsible and a reasonable man would have done so. Since Shri Sait, the new architect gave his report after inspecting the premises that no matter however much improvement was carried out in the building, the net result would be neither appreciable nor would it yield maximum returns for the investments made as the existing building was very old and in a dilapidated condition, there was further nothing wrong if the appellant accepted the said report and proceeded to take immediate steps in the interest of the trust estate. The courts below have no doubt made much of the fact that there was no other evidence except the report of Shri Sait to show that the building had become "very old" and was in a "dilapidated condition". That was certainly not the fault of the appellant. As stated above, out of the three earlier architects, one had not even inspected the site, the second did not refer to the state of the building in his quotations and the third had very much suggested the demolition of the old building and construction of a new one.

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It is true that the third architect while suggesting the demolition of the old and construction of a new one, did not say as to why he was making such a recommendation, viz., whether the building had become old and dilapidated and, therefore, was unable to bear the burden of the R.C.C. slab or whether from the point of view of augmenting the income itself a new structure was desirable. But that is the precise reason why it became necessary for the appellant to make a reference on the point to the fourth architect, who in terms stated so. If, according to the courts below there was no evidence except Shri Sait's report that the building had become old and dilapidated, there was equally no evidence to show that it was not dilapidated or was strong enough to bear the burden of the R.C.C. slab. The courts further forgot to take into consideration the fact that the building was in existence at least from 1912 if not from an earlier date, since the order of the Court creating the trust schemes refers to the said building. The courts below have also unfortunately not brought on record which it was possible for them to do, as to when the said building was in fact originally constructed. The building was thus at least 76 years old, if not more, in 1988. In the circumstances, it is difficult to doubt the bona fides of the recommendations made by one of the three earlier architects, viz., Shri C.H. Gopinatha Rao or by the new architect, Shri Sait. In any case, the bona fides of the appellant who acted on the said facts on record could hardly be questioned.

bona fides of the appellant are, as stated earlier, also influenced by the fact that the appellant had acted hastily

in ordering the demolition of the old building and construction of the new one on the site. But, if for the reasons pointed out earlier, the bona fides of the appellant could not be doubted, the rapid steps taken by the appellant can only be consistent with his intention to act as early as possible in the interest of the trust, since by the new construction, the income of the trust was expected to be augmented. Further, the delay in construction was also likely to increase the cost of construction, apart from the loss of income that was to result from such delay. Hence, the so-called haste cannot be looked upon only with suspicion or as contributing only to the malafide intentions on the part of the appellant. It is also consistent both with a diligent and responsible conduct on his part and with the best of his intentions to subserve the interests of the trust.

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15. There is no doubt that the appellant knew that the earlier sanction obtained was only for replacement of the tiled-roof by the R.C.C. slab. The sanction was also for incurring only an expenditure of Rs. 6 lakhs and some other sundry expenses for providing minor facilities. Since the new proposal which he sanctioned consisted of the demolition of the entire building and of constructing a new one in its place which also involved a further expenditure of Rs. 4 lakhs or so, the proposal was completely different and it could not be acted upon on the basis of the old sanction. It was, therefore, absolutely necessary for the appellant to approach the Court before he embarked upon the new proposal even though in doing so he was acting in the interests of the trust and no mala fides could be attributed to him. We find that this is the only error committed by the appellant in the present case. However, in the facts and circumstances of the case, the error could not be said to have been actuated by any mala fide intentions on his part. The expenses that he had undertaken to incur were also within reasonable bounds looking at the proposal. His intention in promoting the proposal could not be said to be other than honourable, and in any case it could not be said that it was not in the interests of the trust. In view of this, it was wrong on the part of the courts below to make the appellant himself pay for the excess expenditure involved in the proposal.

16. Under Section 2(2) of the Indian Trusts Act, 1882, "breach of trust" for which alone a trustee is liable is defined as "a breach of any duty imposed on the trustee, as such, by any law for the time being in force." Section 28(b) of the Official Trustees Act, 1913 states that :

"28. General Powers of administration. The Official Trustee may in addition to and not in derogation of any other powers of expenditure lawfully exercisable by him, incur expenditure-

[a].....
[b] with the sanction of the High Court on such religious, charitable and other objects and on such improvements as may be reasonable and proper in the case of such property".

It is, therefore, true, as stated earlier, that to the extent that the

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appellant did not take permission of the High Court before proceeding to demolish the existing structure and to construct a new one in its place, and before undertaking the expenditure of Rs. 4 lakhs over and above that sanctioned

earlier, he did commit a breach of trust. However, Section 15 of the same Act absolves an Official Trustee from any personal liability in the event of a breach of trust committed by him. The said section reads as follows:

15. Liability of Government. (1) The Government shall be liable to make good all sums required to discharge any liability which the Official Trustee, if he were a private trustee, would be personally liable to discharge, except when the liability is one to which neither the Official Trustee nor any of his officers has in any way contributed or which neither he nor any of his officers could by the exercise of reasonable diligence have averted and in either of those cases the Official Trustee shall not, nor shall the Government be subject to any liability.

(2) Nothing in subsection (1) shall be deemed to render the Government or any Official Trustee appointed under this Act liable for anything done by or under the authority of any Official Trustee before the commencement of this Act.'

In view of these provisions, it is clear that the appellant could not be made personally liable for the breach of trust committed by him. Although it is disputed on behalf of respondent No. 3 that this point was urged before the Division Bench, it is stated on behalf of the appellant that the point was very much canvassed before the Bench but was unfortunately not noticed by it. Whatever the controversy, we are of the view that in view of the clear provisions of the Act, the legal question cannot be ignored by us. This is particularly so when no further evidence is necessary to answer it.

17. In the circumstances, we are of the view that the impugned order of the High Court cannot be sustained. The appeal is accordingly allowed and the decision of the High Court is set aside. In the facts and circumstances of the case, there will be no order as to costs.

G.N.

Appeal allowed.