

SUPREME COURT OF INDIA

R. Sai Bharathi

Vs.

J. Jayalalitha

(S.Rajendra Babu and P.Venkatarama Reddi JJ.)

24.11.2003

JUDGMENT

RAJENDRA BABU, J.:

These two sets of criminal appeals arise out of two criminal cases filed against Respondents Nos. 1 to 6 and the fall out thereof unfolding against currents and cross currents of political vicissitudes. Facts leading to these appeals are as under:

The Government of Tamil Nadu formed a Tamil Nadu Small Industries Corporation Limited (for short 'TANSI'). It was registered under the Companies Act, 1956 as a Government Company. The entire shares, namely, 100% of the shares of the said Corporation, were held by the government. In the Memorandum of Association it is stated that the said company is formed 'to take over from the Government of Tamil Nadu any of their production and/or servicing units with the rights and liabilities of the Government of Tamil Nadu so far as they relate to such units'. Article 72 of Articles of Association empowers the Government to appoint all the Directors with the power to remove any Director from time to time. Article 79 empowers the Government to appoint and remove the Managing Director. Similarly Government can also appoint a Chairman and Vice-Chairman of the Board. The Chairman can reserve for the approval of the Government any proposals or decisions of the Board in respect of any of the matters regarding (a) increase or reduction of the capital of the Company; (b) loan granted by the Company or giving of a guarantee or any other financial

assistance to any person or concern; (c) winding up of the Company; and (d) any other matter which in the opinion of the Chairman be of such importance as to be reserved for the approval of the Government. In respect of any proposal or decision of the Board reserved for the approval of the Government no action shall be taken by the Company until approval to the same has been obtained.

The Government also exercises the power to issue directives or instructions as it may deem fit in regard to finances and the conduct of the business and affairs of the Company and the Directors shall duly comply with and give effect to such directives or instructions. TANSI has 10 Directors and all of them were the nominees of the Government of Tamil Nadu, including the Chairman-cum-Managing Director who was an IAS officer.

Article 77-a(4) provides that the Board shall not dispose of the land transferred to the Company by the Government other than to Tamil Nadu Government Departments/Undertakings/Boards or Government of India Departments/Undertakings/Board without the previous written approval of the Government. A Code of Conduct for Ministers was brought into force by G.O.Ms. Nos. 1350 on June 16, 1968 which was revised from time to time and clause 2(b) thereto provides that 'a Minister shall refrain from buying from, or selling to, the Government any immovable property except where such property is compulsorily acquired by the Government in the usual course and refrain from starting, or joining, any business'. After the formation of TANSI Corporation and transfer of Government Industrial Units to it, some of the units started incurring losses. Therefore a report was sent by TANSI to the Government to the effect that some of the industrial units are consistently incurring losses. On 30th September, 1985 the Government decided that eight units mentioned in the G.O.Ms. 832 can never be made viable whatever measures to be adopted to achieve the objects for which they were set up in the public sector and therefore their continuance will cause a drain on the finance of TANSI. TANSI Enamelled Wires, Guindy and TANSI Foundry, Guindy, situate in Thiru.vi.ka.Industrial Estate were two of the units among the eight identified as the units incurring losses mentioned in the said G.O. Therefore, the Government decided that TANSI should close down the 8 units and explore the possibility of disposing the properties by inviting offers through advertisements in newspapers.

In pursuance of the G.O., Ex.P-21, TANSI Foundry unit was officially close as per Ex.P.-33. Out of the total extent of 5.535 acres of land and 3267 sq.mts. of buildings in TANSI Foundry, an extent of 0.545 acres of land and 569 sq.mts. of building were transferred to Tamil Nadu Corporation for Development of Women on 15.5.1987 by TANSI after collecting Rs. 12.21 lakhs. Advertisements were issued on 31.8.1988 for disposal of the remaining extent of land and building and four offers were received. The offers of Ashwini Plastic and ENCOFED were recommended to the Government after the approval of the Board, but the Government did not give approval on the ground that it will be more advantageous to TANSI to call for fresh tenders after parcelling out the land into industrial plots in accordance with the Madras Metropolitan Development Authority rules and regulations. On 30.4.1990 Jaya Publications, an unregistered partnership firm in which J.Jayalalitha, Accused No. 1, and Sasikala, Accused No. 2, were partners, purchased land adjacent to the TANSI property in dispute from Hitex Equipment company vide sale deed, Ex.P.-57, at the assessed market value of Rs. 6 lakhs per ground which is at par with the guideline value of Registration Department. In the

general elections held on 13.5.1991 for the Tamil Nadu Legislative Assembly AIADMK party came to power and J.Jayalalitha, accused No. 1, became the Chief Minister. On 29.9.1991 Jaya Publications again purchased another adjacent land from Idhayam Publications vide sale deed (Ex.P-8) at the assessed market value of Rs. 7.32 lakhs per ground [270 sq. yards]. On 10.10.1991 an advertisement was published for disposal of TANSI Enamelled Wire Units adjacent to the TANSI Foundry in the Thiru.vi.ka.Industrial Estate. Pursuant to this advertisement R.R. Industries and two other companies submitted tenders for purchase. Ex.P-22 is the quotation given by R.R. Industries. The price of one square meter of land had been mentioned in that quotation as Rs. 1850, which works out to Rs. 4.12 lakh per ground.

On 14.10.1991 a meeting was held under the chairmanship of the Chief Minister J. Jayalalitha for the review of the performance of the TANSI and A-4 Minister for Rural Industries, A-3 Chairman-cum-Managing Director of TANSI, P.W. 11 Chief Secretary, P.W. 14 Secretary Industries Department and P.W. 16 Secretary, Finance Department attended the said meeting and several decisions were taken for the revival of TANSI. One of the decisions taken at the meeting is that TANSI may sell the properties of its unit which are defunct and TANSI Foundry unit was identified as a defunct unit and the estimated sale price was fixed at Rs. 1.5 crore, but without any land valuation report on record. It was also decided that TANSI must identify more such properties for sale and can send a proposal to the Government along with all details and topography sketches recommending the sale and that the vacant sites available for the running units can be plotted out into industrial lots for selling them at market value with a view to raise some resources. On 6.11.1991 Government directed all public sector undertakings to obtain prior approval of the Government in respect of all tenders for works, equipment, etc and all purchases whether by open tender or by limited tender enquiries etc. where the value of the contract exceeds Rs. 1 crore. It also directed that the proposals should be sent with the recommendation of the Board to the Administrative Department concerned and that Administrative Department may follow circuit procedures to circulate the file to concerned Minister, Minister for Finance and Chief Minister.

The Board of Directors of TANSI resolved to constitute a Sub-Committee consisting of the Directors for evaluating the offers received in respect of TANSI Enamelled Wires pursuant to the advertisement issued on 10.10.1991 and to make recommendations for the disposal of the assets of the closed units of TANSI. The members of the Sub-Committee appointed by the Board were Chairman-cum-Managing Director of TANSI, who is also the Director of TANSI, Abdul Hasan, the Director of TANSI and Joint Secretary, Industries Department, and C.Madakkannu, Chief Engineer (Buildings),PWD, who is also the Director of TANSI. Advertisements were caused to be published in leading newspapers on 21.11.1991 calling for offers through tenders for the purchase of the property of TANSI Foundry. A letter was addressed by the Managing Director (A-3) to the Sub-Registrar, Adayar (P.W. 1) intimating that they want to dispose of land in Thiru.Vi.Ka.Industrial Estate and requesting to furnish the guidelines price of the lands situate in Block No. 5 at Alandur. Sub-Registrar, Adayar replied (Ex.D-39) that there was no guideline value for survey numbers 86, 87, 88, 90, 91 Part, 92 Part and 93 Part, in Block No. 5 of Adayar Village which are the properties in dispute. He further stated that in the adjoining property in Block No. 6 of Thiru.Vi.Ka.Industrial Estate, the value of one sq.feet was Rs. 305/-, which worked out to Rs. 7.32 lakhs per ground. It is important to note that Block Nos. 1 to 6 of Adayar village are situated in Thiru.vi.ka.Industrial Estate. The Sub- Committee of TANSI met on 25.11.1991 to consider the offers for the disposal of

TANSI Enamelled Wires Unit for which an advertisement was published on 10.10.1991. The tender given by R.R. Industries and other two tenders given by other companies were placed before the Sub-Committee and it passed a resolution calling for a report regarding the guideline price of the land and a report from the Public Works Department regarding the value of the buildings.

After consideration of all the offers the Sub-Committee decided that TANSI may try again for better offer by giving advertisements. Again advertisements were published on 21.11.1991 and 22.11.1991 calling for tenders for purchase of the property of TANSI Foundry, four tenders were received at the TANSI office and they were opened in the presence of all the tenders on the same day. Ex.P-29 is the offer of Jaya Publications in which J. Jayalalitha, A-1 and Sasikala, A-2 are partners. Ex. P-13 is the offer of Aban Constructions and Ex. D-15 is the offer of ENCOFED. Tamil Nadu Small Industries Development Corporation (SIDCO) also submitted a tender. Jaya Publications offered to purchase the entire land at the rate of Rs. 3.01 lakhs per ground. Aban Constructions offered to purchase the landed property at the rate of Rs. 1,77,325/- per ground, but it offered to purchase only 1.72 acres and not the entire property. ENCOFED offered to purchase 2000 sq.mts of land at rate of Rs. 1,33,333 per ground while SIDCO offered to purchase the land at Rs. 502/- per sq.mt.

All the offers were placed before the Sub-Committee for consideration and it decided that A-3 who is the Chairman-cum-Managing Director, TANSI, should negotiate with Jaya Publications since the offer of Jaya Publications was Rs. 1,82,13,150/- which is the highest of all the four bids and they should take up the matter with the Board by a note in circulation for a decision regarding the disposal of the property. Ex. P-30 are the Minutes of the meeting of the Sub-Committee and the same were initiated by P.W. 8 and A-3. The Board considered the matter and it was noticed that the value offered for the land by the highest bidder was Rs. 1,62,93,150 which worked out to Rs. 3.01 lakhs and that though it was much lower than Rs. 7.30 lakhs which was the guideline value for Block No. 6 of Thiru.vi.ka.Industrial Estate, it was marginally higher than the value fixed by the Collector under Ex.D-20 as the Collector had fixed the price per ground for the property at Rs. 3 lakhs. The note further indicated that TANSI had already decided to sell 2.52 acres of land of the same unit to Tamil Nadu Sugar Federation at Rs. 3 lakhs per ground and, therefore, the price of Rs. 3.01 lakhs offered by Jaya Publications could be considered reasonable. It was also taken into consideration that Rs. 19.20 lakhs was offered by the highest bidder for the building and that heavy structures available at TANSI Foundry may be useful for a heavy engineering workshop and for a buyer who does not intend to put up a heavy engineering workshop, the value is only notional and at best is only a scrap value. Therefore, members of the Board recommended to the Government selling a portion of the land of about 2.98 acres at the rate of Rs. 1,350/- per sq.mt., that is, Rs. 3.01 lakhs per ground, and that the exact extent of the land to be sold could be measured at the time of handing over and the exact amount could be collected and the building measuring 2698 sq. mts. could be sold at a cost of Rs. 19.20,200/-. The resolution was unanimously adopted and signed by the Managing Director and other seven Directors. A proposal was sent to the Government on 30.12.1991 and the proposal of TANSI was examined by the Government. There were certain notings made therein that the rate of 3 lakhs per ground was much lower than the guideline value of Rs. 7.30 lakhs per ground as mentioned by Registration Department. Further, the file was marked to 'Minister (Rural Industries)', 'Minister for Finance' and 'Chief Minister'. It is stated that the markings to other Ministers were cancelled by the Minister (Rural Industries). The Minister for Finance approved the proposal on 14.1.1992. By G.O. Ms. No. 18 issued on 20.1.1992 the Government

approved the sale of TANSI Foundry property to Jaya Publications. Jaya Publications, in turn, was informed of the decision of the Government by Ex. P-36 with which a draft sale agreement for getting N.O.C. from the Income Tax Department, was enclosed.

An agreement for sale was entered into between TANSI and Jaya Publications on 4.3.1992 and the said document was registered conditionally because the value of the land and building was less than the market value and guideline value. Board of Directors of TANSI took note of the fact that the actual extent of land sold was 3.0786 acres when it was measured.

Under Section 47-A of the Indian Stamp Act (as in force in Tamil Nadu), Sub-Registrar, Adayar, P.W.1, referred to the Special Deputy Collector (Stamps) - A-5 - for fixing the market value of the TANSI Foundry land by his proceedings Ex. P-3 as the value was less. By proceedings dated 7.12.1992, Ex.P.-6, he fixed Rs. 3.00 lakhs per ground as the market value for the TANSI Foundry land.

In Writ Petition No. 472 of 1993 in the High Court of Madras relief is sought for setting aside the sale deeds executed in favour of Jaya Publications and Sasi Enterprises on the ground that the sale deeds are invalid documents and for resumption of land by the Government. We are not concerned with this writ petition in these proceedings.

A private complaint was lodged before the IX Metropolitan Magistrate Court, Saidapet, seeking to punish J. Jayalalitha, respondent No. 1 herein, for offence under Section 169 IPC for having purchased Government land in violation of Code of Conduct for Ministers. In view of several complaints and on the basis of media reports, the Government referred the matter to C.B.C.I.D. on which a crime came to be registered in crime No. 17 of 1996 Ex. P-75 is the First Information Report in the said crime. Investigation was taken up by P.W.27 and two cases were registered as Special C.C. No. 4 of 1997 and Special C.C. No. 13 of 1997 against the respondents.

A-1 was charged under Section 120-B IPC, Section 13(2) read with Section 13(1)(c) & 13(1)(d) of the Prevention of Corruption Act, and Sections 409, 169 and 420 read with Section 34 IPC. A-2 was charged under Section 120-B IPC, Sections 13(2) read with Section 13(1)(c) and (d) of the Prevention of Corruption Act read with Section 109 IPC, under Sections 409 read with 109 IPC, 169 read with 109 IPC and 420 read with 34 IPC. A-3 was charged under Section 120-B IPC, Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, Section 119 IPC read with Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, and under Sections 169 read with 109, 420 and 409 IPC. A- 4 and A-5 were charged under Section 120-B IPC, under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, under Section 119 IPC read with Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, and under Section 169 read with Section 109 IPC. A-6 was charged under Section 120-B IPC, under Section 119 read with 13(2) read with 13(1)(d) of the Prevention of Corruption Act and under Section 13(2) read with

13(1)(d) read with 109 IPC.

The Trial Judge convicted A-1 under Section 120-B read with 13(2) read with 13(1)(c) and (d) of the Prevention of Corruption Act. He also convicted A-1 under Sections 13(2) read with 13(1)(c) and 13(2) read with 13(1)(d) of the Prevention of Corruption Act and under Section 409 IPC and for each charge, A-1 was directed to suffer rigorous imprisonment for a period of three years and to pay a fine of Rs. 10,000/- with the direction that in default of payment of fine, A-1 will suffer simple imprisonment for three months. Similarly, the trial Judge convicted A-2 under Sections 120-B IPC read with 13(2) read with 13(1)(c) and (d) of the Prevention of Corruption Act, under Sections 13(2) read with 13(1)(c) of the Prevention of Corruption Act read with 109 IPC, under Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act read with 109 IPC and under Section 409 read with 109 IPC. A-3 to A-5 were convicted under Sections 120-B IPC read with 13(2) read with 13(1)(c) and (d) of the Prevention of Corruption Act and under Sections 13(2) read with Section 13(1)(d) of the Prevention of Corruption act and each of them was sentenced to suffer rigorous imprisonment for a period of three years and to pay a fine of Rs. 10,000/- in default of which each of them was directed to suffer simple imprisonment for three months for each charge. A-6 was convicted under Sections 120-B IPC read with 13(2) read with 13(1)(c) and (d) of the Prevention of Corruption Act and he was sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs. 10,000/- with a default sentence of simple imprisonment for three months. The learned trial Judge further directed that the sentences imposed upon the accused will run concurrently. A-1 was acquitted of the charge framed under Section 420 IPC and also the charge under Section 169 IPC. A-2 was acquitted of the charges framed under Section 169 read with 109 IPC and 420 read with 34 IPC. A-3 was acquitted under Sections 119 IPC read with 13(2) read with 13(1)(d) of the Prevention of Corruption Act and under Sections 169 read with 109 IPC, 420 IPC and 409 IPC. A-4 and A-5 were acquitted of the charges framed under Sections 119 IPC read with 13(2) read with 13(1)(d) of the Prevention of Corruption Act and Sections 169 read with 109 IPC. A-4 is stated to have died subsequent to the disposal of the appeal in the High Court and before these proceedings were filed in this Court. A-6 was acquitted of the charges under Sections 119 IPC read with 13(2) read with 13(1)(d) of the Prevention of Corruption Act and under Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act and 109 IPC. The charge under Section 420 IPC was dropped in view of the concession made on behalf of the State of Tamil Nadu in Criminal Appeal Nos. 395-397 of 2000 decided by this Court on 25.4.2002 and reported in 2000(4) SCC 444.

The accused preferred Crl. Appeal Nos. 972, 973, 974, 977, 981 and 987 of 2000 before the High Court. The High Court by a judgment pronounced on 4.12.2001 allowed Criminal Appeals by acquitting all the accused and dismissing the State appeal.

Summary of the Findings of the High Court are as follows:

1. There is no evidence to indicate that the Guideline Value had been fixed in respect of the property in question. In fact, the witnesses admitted that there was no guideline value for this property.

2. The charge framed by the Trial Court is based on the Guideline Value and it is not permissible to proceed on the basis of market value as the two concepts are different and, therefore, the procedure adopted by the Trial Court prejudices the accused. Prosecution has not established that market value of the land sold to firms of respondents Nos. 1 and 2 is Rs. 7.32 lakhs or more than the price fetched.

3. The properties were sold by tender process after due publicity in newspapers and the highest bid has been accepted. Hence the price offered and accepted cannot result in wrongful loss to one party and gain to another party in the absence of any vitiating circumstances.

4. The Guideline Value not having been established acceptance of Rs.3 lakhs per ground is reasonable on the basis of the evidence on record, particularly in view of the offer accepted pursuant to the tender process. Thus there is no wrongful loss to one party or gain to another party.

5. Price paid for small extents of land or additional stamp duty claimed on that basis are paid without demur cannot form a test for fixing the market value of the land in question.

6. The value mentioned in Ex. P.5 for the building or the super-structure ought to have been taken into consideration by the Trial Court as the same contained the necessary details and though it is stated that Exs.P.58 and P.59 were prepared after ascertaining relevant details, no material was placed in support of the same before the court and, therefore, it could not be said that the properties had been purchased at a lesser value than what is just.

7. The sale effected by TANSI Enamelled Wires to M/s Sasi Enterprises is not vitiated. The Sub-Committee rejected the offer of M/s R.R.Industries of Rs.4.12 lakhs on the basis of guideline value. It is only much later the Sub- Committee realised from Ex.D-39, letter of the Sub-Registrar, that the subject matter of sale therein is only of an extent of 240 sq. feet and is in respect of a small shed. There are other reasons also to reject the offer of R.R.Industries.

8. The charge of conspiracy could not be established as the properties in question were not purchased at a price lower than the Guideline or market value nor is there any independent material to conclude that there is any conspiracy to commit offences charged herein.

9. There is no link established to show that there is a conspiracy to sell the properties at a lesser

price so as to cause wrongful loss and wrongful gain to enable A-1 and A-2 to obtain the same.

10. In view of the finding recorded that there was no Guideline Value and by reason of the properties sold at Rs.3 lakhs per ground there was no pecuniary advantage to M/s Jaya Publications, the charges under Section 13(2) read with Sections 13(1)(c) and 13(1)(d) of the PA Act were not established.

11. In regard to A-3, the High Court held that the decision to offer the land in question was that of the Board and not his individual decision and he followed the decision of the Sub-Committee and, therefore, in view of the collective decision taken by the Board or the Sub-Committee he cannot be held to be guilty of any charge.

12. In regard to charge against A-4, none of the persons who endorsed the file had been attributed with corrupt motive and, therefore, there was no evidence worthy of consideration.

13. A-5, who was the Special Deputy Collector (Stamps), was only performing his statutory duty and fixed the value of the properties in question at Rs.3 lakhs per ground after notice to the concerned parties. Hence he cannot be held to be guilty of any charge. Moreover, since A-5 was an appellate authority under the statute, he cannot be held to conspire to fix the value at Rs.3 lakhs per ground, though it may fetch much higher value in the market.

Against the decision of the High Court in the said appeals, the State Government not having filed any petitions or appeals, a private party is permitted to file these appeals by special leave. Dr. Subramaniam Swamy with permission has filed a separate special leave petition and no leave is granted to him but he has been allowed to address arguments only. We have not separately noticed his arguments but considered the same in the course of our discussion.

The foundation of various charges is that the property in question was deliberately sold for less value with a view to confer pecuniary advantage to the firm consisting of A1 and A2 which resulted in wrongful loss to the Government Company and wrongful gain to A1 and A2.

Examination of the evidence on record would indicate that the witnesses had admitted that the properties in question had no guideline value and hence the charge framed that the properties were purchased below the guideline value is defective. Though charge was not based on market value, the learned trial Judge proceeded to consider the prosecution version by taking Rs. 7.32 lakhs as the 'market value' per ground and held that TANSI suffered loss; the High Court, however, having

examined as to what exactly was the market value of the properties in question, held in effect that the trial court took into account irrelevant materials and overlooked relevant evidence. As observed by the High Court, the property was sold by tender process and the bidders quoted their offers and the highest offer was that of firms of respondents Nos. 1 and 2 and under the circumstances, unless the tender process was shown to be vitiated, the price quoted by the highest bidder had to be normally taken as the market value. Market value being a variable factor and if a price was quoted and if it was not shown that the tender was vitiated, then the price quoted by the highest bidder had to be taken as the market value. It is the admitted case of the prosecution that Jaya Publications offered Rs. 3.01 lakhs per ground for the entire land and it offered to purchase the superstructure and machinery at Rs.19.20 lakhs and other bidders quoted less. On an earlier occasion when TANSI Foundry unit wanted to sell 3.26 acres of land to Tamil Nadu Co-operative Sugar Federation, the value of a ground was fixed at Rs. 3 lakhs by the Collector, Madras. It could be seen from Ex.D-20 which is a letter written by the Collector to the Commissioner of Land Administration to the effect that the maximum sale value in the village in Block No.5 of Thiru.vi.ka.Industrial Estate was Rs. 3,12,613 per ground based on the sale of a vacant land in S.No. 16/7 of Alandur village.

He recommended that the rate of Rs. 3 lakhs per ground could be fixed as the value for the TANSI Foundry land. That assessment of the Collector was accepted by the Commissioner of Land Administration as per Ex.P-61 who also fixed Rs. 3 lakhs as value per ground for the TANSI Foundry land. The trial Judge rejected the value of land indicated in Ex.D-20 and Ex. P-61 on the ground that TANSI agreed to sell the land to Tamil Nadu Co-operative Sugar Federation at that price in view of the condition that the Sugar Federation will put up 15000 sq.ft. of superstructure which would be sold to TANSI at the cost of construction, without paying any amount for the land on which the superstructure was to be put up. Therefore, he held that Ex D-20, which was accepted by the Commissioner of Land Administration under Ex. P-61, could not be correct basis to say that Rs. 3 lakhs per ground was the market value of the property of TANSI Foundry.

However, Tamil Nadu Co-operative Sugar Federation purchased the entire property without putting up a superstructure at the rate of Rs. 3 lakhs per ground.

It cannot also be said that Sugar Federation is a Government organisation and, therefore, the land was sold to it by TANSI at a commercial rate. It was a Federation formed by several co-operative societies which were registered under the Tamil Nadu Co-operative Societies Act and it could not be treated as a Government Organisation. Therefore, sale of 2.52 acres of land of TANSI Foundry to the Sugar Federation was a sale to a private party and the price of Rs. 3 lakhs per ground offered by the Sugar Federation could be taken into consideration for reflecting the market value of the property in question. Ex. D-20 and Ex. P-61 in connection with that sale indicating that the value of Rs. 3 lakhs per ground fixed by the Collector, Madras and Commissioner of Land Administration could be relied upon.

While on this point the High Court referred to the fact that in Ex.D.20, the Collector stated that the

market value of the land in Block No.4 works out to Rs.1,68,649 per ground and the disputed property which is situate in Block No.5 is only 180 meters from that land. The Collector, however, took into account the sale under Ex.P.60, according to which the sale price per ground is Rs.3,12,613.

The High Court then adverted to the argument of the learned Public Prosecutor that Ex.P.60 should be eschewed from consideration on the ground that it lies within the jurisdiction of a different revenue district and observed that if Ex.P.60 is to be ignored, the market value of the disputed property would only be Rs.1,68,649 and not even Rs.3,00,000.

In view of the failure of the prosecution to show that the guideline value is Rs. 7.32 lakhs per ground and in view of the positive evidence as brought out through Ex. D-20 and P-61 that the value of the land of TANSI Foundry unit could be about Rs. 3 lakhs per ground particularly when the sale was by way of open tender, it cannot be said beyond reasonable doubt that the property in question had been under-sold and thus there was loss to TANSI. The view taken by the High Court appears to us to be a reasonably possible view.

Now we shall examine whether Ex. P-8, P-57, P-70 and P-71 could be considered to assess the market value of the disputed property as Rs. 7.32 lakhs per ground. Each of these documents was accompanied by Form 1-A wherein the parties acquiesced in the claim for payment of excess stamp duty.

The land comprised in Exs. P-70 and P-71 are small in extent and they could not be taken into consideration to be safe guide to find value of the land sold by TANSI to Jaya Publications because it will be 53 times higher than the extent of land conveyed under those documents. In fact, PW.1 admitted that they are not comparable sales. The sale deed executed on 22.9.1991 [Ex.P.8] by Idayam Publications in favour of Jaya Publications had shown the value of the land at Rs.4,78,488/- per ground. It was in respect of a small extent situate in block No.6 of Adyar Village. The said sale deed did not show that the value was Rs. 7.32 lakhs per ground and when the Sub-Registrar wanted to collect additional stamp duty, it was paid without any demur and from this fact, it could not be inferred that the value of TANSI Foundry land was Rs. 7.32 lakhs per ground. Therefore, there is no justification in taking the sale consideration mentioned in Ex. P-8 which was only Rs. 4 lakhs and odd per ground and putting it against the accused by stating that the market value of the property in question is Rs. 7.32 lakhs per ground. Ex. P-8 cannot offer a true index to assess the market value of TANSI Foundry land at Rs. 7.32 lakhs per ground. As regards P.57, which was a sale deed in favour of Jaya Publications in respect of 5658 sq.ft. situate in block No.6 of Adyar Village, the sale price mentioned therein is Rs.76,344/- only per ground. But, the Sub-Registrar fixed the value for the purpose of stamp duty at Rs.6 lakhs and the stamp duty was paid accordingly. Hence, it stands on the same footing as Ex.P-8.

It is strongly contended that the recommendation of Rs.3 lakhs per ground in respect of a transaction to be entered into with Tamil Nadu Sugar Cooperative Federation is stated not to offer a good guide for fixing the value of the properties in the present case. The High Court took note of the fact that Tamil Nadu Sugar Cooperative Federation is not a Governmental organisation to which a concession has been shown on that basis. It is to be noticed that the Trial Court relied upon four documents, viz., Exs. P-8, P-57, P-70 and P-71, to show that the market value of the land in question is Rs.7.32 lakhs per ground. Each of these documents was accompanied by Form No.1A wherein the parties acquiesced in the claim for the payment of excess stamp duty. It is correctly assessed by the High Court that the price ranged between Rs.76,344 to Rs.4,78,484/- per ground.

Indeed, Exs.P-70 and P-71 indicated that Rs. 8 lakhs per ground would be the value but those documents involve transfer of a running business. The High Court also gave importance to the history of the efforts on the part of TANSI to bring the properties to sale and its failure to obtain the reasonable price at the earlier floated tenders. The properties, therefore, became a dead investment and interest was being paid by TANSI on loans borrowed from the banks. At the time of the present transaction, the borrowings extended to Rs.1.87 crores and had to pay Rs.18 lakhs of interest per annum and, therefore, it was not possible to contend that bringing the properties in question for sale was imprudent nor it could be demonstrated that the advertisement did not give sufficient particulars or that the tender forms were not made freely available or that anyone of the bidders was pressurized into not bidding or bidding for a lower amount or that a cartel had been formed or that the bidding in open tender was vitiated in any manner whatsoever. In such cases the courts have always held that the best price obtained through open tender is an index of the market value of the property. The Collector of Madras and the Commissioner of Land Reforms looked into the matter and held that an amount of Rs.3 lakhs per ground is the market value of the land in question. Contrary to what is stated by the prosecution, the valuation in Ex.D-20 was not made on the basis of sale being to a Government Corporation but on the basis of the independent data relating to sales of land in the neighbouring blocks. The effort of the prosecution to show that the actual sale when made to the Tamil Nadu Sugar Cooperative Federation was at a far higher price than Rs.3 lakhs per ground since 15000 sq. ft of built area was to be given at a cost to TANSI without the plinth area being valued.

This exclusion of the plinth area has not been established and, on the other hand, the TANSI Board had passed a resolution not to go in for office space due to financial constraints but the price per ground was not altered in any manner.

The High Court has gone into this aspect in detail, citing the relevant documents.

Therefore, the price offered by the respondents and accepted by TANSI cannot be termed to be not a fair price in regard to the properties in question going by the state of evidence on record. If the value of the properties is determined, as stated above, the view taken by the High Court in respect of the various charges under Sections 13(1)(c), (d), 13(2) of the Prevention of Corruption Act and

under Sections 409 and 120-B IPC would stand to reason.

The argument of Sri Andhyarujina and Shri Natarajan is that officers had proceeded initially on the basis that the land in question had a Guideline Value of Rs.7.32 lakhs per ground and hence the same constituted a benchmark. The High Court has gone on to examine the case as if it is a valuation court and did not examine the matter in the perspective in which charges are framed against the accused. This argument ignores that the gist of the charge is causing wrongful loss or gain in the sale of the land which could be only on the basis of its market value and not on assumed figures or notional value. Thus, the finding of the High Court that the prosecution has not succeeded in establishing that the market value of TANSI Foundry land sold to Jaya Publications as Rs. 7.32 lakhs per ground cannot at all be said to be a perverse finding.

We may now proceed to consider the valuation of superstructure. Exhibit P-5 showed that the building was worth Rs.18,22,654/- which is less than the value offered by M/s Jaya Publications. This amount of Rs.18,22,654/- was assessed by one Sivaraman at the instance of PW-1 after the sale was effected.

The assessment of Sivaraman under Exhibit P-5 was not impeached. On the contrary, the prosecution placed reliance upon the same and adverting to the evidence of PW-19, the Design Engineer, and Ex.P-59 approved by the Chief Engineer wanted to contend that the value of the building is Rs.53,12,354/-. PW-19, the Design Engineer, assessed it at Rs.4,64,75,036/- as could be seen from Ex.P-58. Subsequently, the same was modified by the Chief Engineer by bringing it down to Rs.53,12,354/-. There is a big difference of amount of more than 4 crores between the value assessed by the PW-19, the Design Engineer and the value fixed by the Chief Engineer. They did not contain any details as to how the value had been finally arrived at Rs.53,12,354/- of the building. In Ex.P- 58, the value of the structural columns were shown at Rs.54,32,130/- but in Ex. P-59, it was shown as 39 lakhs, and no evidence was adduced before the Court to show that how these figures were arrived at, although, it is stated that the witnesses had taken about 40-50 pages of note. If that was so, the same should have been produced by the prosecution and in the absence of production of those notes, forming part of evidence is difficult to accept that the value mentioned in Exs. P-58 and P-59 was the correct value for the building. Ex.P.5 shows calculation and indicated that as to how the value for the building was arrived at which is a document offered by the prosecution in evidence.

The guideline value has relevance only in the context of Section 47-A of the Indian Stamp Act (as amended by TN Act 24 of 1967) which provides for dealing with instruments of conveyance which are undervalued. The guideline value is a rate fixed by authorities under the Stamp Act for purposes of determining the true market value of the property disclosed in an instrument requiring payment of stamp duty. Thus the guideline value fixed is not final but only a prima facie rate prevailing in an area. It is open to the registering authority as well as the person seeking registration to prove the actual market value of property. The authorities cannot regard the guideline valuation as the last

word on the subject of market value. This position is made clear in the explanation to Rule 3 of Prevention of Undervaluation of Instruments Rules. The said explanation reads as follows :- "Explanation.-the "Guidelines Register" supplied to the officers is intended merely to assist them to ascertain prima facie, whether the market value has been truly set forth in the instruments. The entries made therein regarding the value of properties cannot be a substitute for market price. Such entries will not foreclose the enquiry of the Collector under section 47-A of the Act or fetter the discretion of the authorities concerned to satisfy themselves on the reasonableness or otherwise of the value expressed in the documents." This explanation also will have to be read in conjunction with explanation to Section 47-A of the Indian Stamp Act (as amended by TN Act 24 of 1967) which reads :- "Explanation.- For the purpose of this Act, market value of any property shall be estimated to be the price which, in the opinion of the Collector or the Chief Controlling Revenue Authority or the High Court, as the case may be, such property would have fetched or would fetch, if sold in the open market on the date of execution of the instrument of conveyance, exchange gift, release of benami right or settlement." This scheme of the enactment and Rules contemplate that guideline value will only afford a prima facie basis to ascertain the true or correct market value undue emphasis on the guideline value without reference to the setting in which it is to be viewed will obscure the issue for consideration. It is clear, therefore, that guideline value is not sacrosanct as urged on behalf of the appellants, but only a factor to be taken note of if at all available in respect of an area in which the property transferred lies. In any event, therefore, if for the purpose of Stamp Act guideline value alone is not a factor to determine the value of property, its worth will not be any higher in the context of assessing the true market value of properties in question to ascertain whether the transaction has resulted in any offence so as to give a pecuniary advantage to one party or the other.

In ascertaining the true value, the High Court has taken note of several features. Firstly, the price has been offered by the firm of A-1 and A-2 in a tender process pursuant to an advertisement issued in a newspaper. A tender process by the TANSI not being shown to be or demonstrated to be vitiated is a transparent and good piece of evidence to indicate the real price of the properties in question. That line adopted by the High Court cannot be faulted with at all.

Secondly, the adoption of Rs.7.32 lakhs per ground as Guideline Value will have to be in terms of Tamil Nadu Stamp Act and not de hors the same. In the view we have expressed as to the nature of guideline value the finding recorded by the High Court that no Guideline Value has been fixed in respect of the properties in question need not be further examined. The next basis upon which the High Court proceeded to fix market value is the price of Rs. 3 lakhs per ground in respect of land sold to Tamil Nadu Sugar Corporation Federation. The said land forms part of the land out of which a portion is sold to the firms of respondents. The contention of the prosecution that this is not a comparable transaction has been rejected by the High Court for valid reasons. The approach of the High Court cannot be said to be irrelevant or perverse.

Argument regarding the extent of land that was sold to the firms of Respondents Nos. 1 and 2 is raised. It was pointed out that an extra piece of land of 9 cents or so [about 1/10th of an acre] over and above the approximate extent mentioned in the advertisement was sold to the firm of

respondents. We do not think that this aspect assumes any significance especially in view of the fact that one of the terms in the advertisement itself stipulates that the actual area to be sold will be according to measurement. Thus the view taken by the High Court in this regard is perfectly in order and calls for no interference.

The contention that there was enough material on record to show that A-1 had knowledge of the purchase of the TANSI Foundry land and A-1 had signed several documents in relation thereto need not be examined because even proceeding on the basis on which the learned counsel contended would not carry the matter any further. The stand of respondents Nos. 1 and 2 is not that the firms of which they are partners have not purchased the properties in question, but only that respondent No. 1 has not signed some of the documents leading to sale of the properties in question. There is overwhelming evidence on record to indicate that accused No. 1 has signed the documents in question, but the denial of respondent No. 1 appears to be too naive to be accepted in a court of law.

May be respondent No. 1 might have tried to be unduly cautious without fully understanding the implications in law. Fact remains that properties in question have been sold to firms of which respondents Nos. 1 and 2 are partners. That fact in the case not being in dispute, it is unnecessary to dilate on this aspect any more.

Insofar as the offence under Section 120B is concerned, it is not clear from the arguments made by the learned counsel on behalf of the appellants in what manner the conspiracy is sought to be established. How there have been meeting of the minds of different accused at different stages and what the common design has been, is not clear. Even if we assume for the purpose of argument that some of the officers of the Government were circumspect in their attitude having come to the conclusion that A-1 was interested in purchase of the properties and have put their seal to such act either tacitly or over zealously by being too expressive of the same, we cannot hold that there was a conspiracy amongst various persons.

In the present case, conspiracy was sought to be inferred from the conduct of several accused. The contention on behalf of the State was that while putting a note on 13.1.1992 A-4 had stated that he verified with A-3 and came to know that the market value of the property was Rs. 3 lakhs per ground for larger extent and that A-4 could not have verified it with A-3 on 13.1.1991 and, therefore, conspiracy could be inferred. The note file indicates that A-4 discussed with Secretary (Industries), Joint Secretary (Industries) and Chairman- cum-Managing Director, TANSI (A-3) which means that before he made the said note, he discussed the issue not only with A-3 but also with other two persons and thereafter came to the conclusion that the price was Rs. 3 lakhs per ground.

One of the contentions raised on behalf of the State in the case was that the note file - Ex.P-48 - prepared at the Secretariat was not circulated to A-1 and it was a deliberate omission on the part of

A-4 and, therefore, it would be inferred that there was a conspiracy in the matter. It was also indicated that G.O. Ms. No. 836 of 1991 - Ex.P-53 - directed that the Board of Management should exercise proper scrutiny in the approval of all tenders and purchase contracts and that prior approval of the Government should be obtained in respect of all tenders for works, equipments, etc. and all purchases whether by open tender or by limited tender enquiries, etc. where the value of the contract exceeds Rs. 1 crore.

Therefore, the said note file should have been circulated to A-1 for approval and not circulating the said note file to A-1, offence of conspiracy could be held to have been made out. The learned Judge held that G.O. Ms. No. 836 of 1991 had to be read in its entirety and if it is so read, it would show that it would be applicable only in respect of financial outgo by means of tender for works or for purchase of equipments and all purchases as noted in different paragraphs thereof and this G.O. was issued only as a financial discipline measure and to monitor the expenditure above Rs. 1crore and the word 'tender' used in the said G.O. did not mean that the sale of land by TANSI will also come within the ambit of the said G.O. since it was clear from the word 'contracts' used in the said paragraphs that the G.O. was applicable to the tenders for works, equipments, etc. if it is for purchase and not for sale of property. Inasmuch as in the markings in the note file there was reference to 'Minister (Rural Industries)', 'Minister (Finance)' and 'Chief Minister' and according to the prosecution, it was scored off by PW-14 at the instance of A-4, the prosecution wanted to draw support from this fact. In fact, PW-14 admitted that when she put up her note, she only stated that it had to be circulated to A-4 and PW 11 wanted the file to be circulated to Minister (Rural Industries), Minister (Finance) and Chief Minister and PW 14 did not make such a note and, therefore, by merely finding the letters "M(RI)", "M(F)" and "CM" and their scoring off, we cannot come to the conclusion that they were first entered and later scored off at the instance of A-4. It was, therefore, not possible to hold that there was conspiracy among the accused on that account.

An argument was put forth that A-5 did not follow the procedure contemplated under the Tamil Nadu Stamp (Prevention of Under-valuation of Instruments) Rules, 1968 since he did not wait for 21 days for the parties to submit their representations before he passed the final order under Rule 7 of the said Rules and A-5 ought to have waited for 21 days as contemplated under Rule 4 of the said Rules and thereafter he should have passed a provisional order under Rule 6 and then final order under Rule 7. The objections of Jaya Publications were received on 3.12.1992. There is no rule that A-5 should wait for 21 days since the period of 21 days as contemplated under Rule 4 of the said Rules was only the upper limit for filing of objections. A-5 inspected the property on 4.12.1992 and then assessed the value of the property by passing the final order on 7.12.1992. The question of passing of a provisional order would have arisen in the event of A-5 coming to the conclusion that market value was more than the value mentioned in the sale deed so as to call upon the parties to submit their objections, if any, to determine the market value. If A-5 came to the conclusion that the market value of the property was as indicated in the sale deed, then there was no necessity for A-5 to pass a provisional order at all and call for objections. Hence this conduct on his part could not indicate that there was a conspiracy.

On scrutiny of the entire evidence led by the prosecution the charge of conspiracy cannot stand as

there is no link to show that the conspirators agreed to have the property sold or the property purchased at a lesser price so as to cause wrongful loss or wrongful gain or to enable A-1 and A-2 to obtain the property at a price less than its value.

Section 13(1)(d) of the Act states as follows :- "A public servant is said to commit the offence of criminal misconduct, if he (i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or (iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest." To attract provisions of Section 13(1)(d) of the Prevention of Corruption Act, public servant obtains for himself or any other person any valuable thing or pecuniary advantage (i) by corrupt or illegal means, or (ii) by abusing his position as public servant, or (iii) without any public interest.

The circumstances under which the properties were purchased by M/s Jaya Publications and M/s Sasi Enterprises cannot be treated as one obtained in the circumstances arising in Section 13(1)(d). The facts established in the case point out that the properties are not purchased by corrupt or illegal means or by abusing the official position as public servant to obtain pecuniary advantage discarding public interest. The purchase was effected through open sales held by TANSI. The right to sell the properties in question was available with the Corporation which chose to do so in favour of M/s Jaya Publications and M/s Sasi Enterprises. It is not established that A-1 or any other person obtained for herself any valuable thing or pecuniary advantage by abusing her position as public servant. On the other hand, as stated earlier, the properties in question were sought to be sold from time to time and pursuant to such steps taken the properties had been sold to two firms in question. The sale has been held pursuant to various resolutions of the Government since 1985 and that the putting up of the properties in question for sale itself was not against any public interest. When the two firms of which A-1 is a partner offered appropriate price the same having been accepted, it cannot be said that it has resulted in obtaining any pecuniary advantage or valuable thing by abuse of the official position. If the properties in question were sold by TANSI in public interest, the obtaining of the same through purchase in such a transaction for valuation consideration which does not fall below market value does not come within the scope of Section 13(1)(d). Thus, the charge under Section 13(1)(d) is not established and we concur with the findings recorded by the High Court in this regard.

Offence under Section 13(1)(c) of the Prevention of the Corruption Act would arise if any public servant dishonestly or fraudulently misappropriated or otherwise converted for his own use any property entrusted to him or under his control as a public servant or allowed any other person to do so . In the present case, it cannot be said that the accused acted dishonestly because there was no wrongful gain or wrongful loss and hence it cannot be said that they acted fraudulently. It cannot also be said that the accused has converted the property of TANSI inasmuch as property was sold pursuant to a transparent tender process which is not shown to be vitiated in any manner. The property in question belonged to TANSI a Government Company and it was neither trust property nor was it entrusted to or under the control of the Chief Minister or any Minister. Hence, Section

13(1)(c) of the Prevention of Corruption Act is not attracted to the facts of the case.

The only evidence against A-6 is that he spoke about the disposal of file relating to sale of land in question to be expedited. This fact is spoken to by PW-12. PW 12 stated in her evidence that she voluntarily appeared before the Magistrate and gave a statement without being sponsored by the Investigating Officer though PW 23, Investigating Officer stated that he gave a requisition for recording her statement. A-6 did not participate in the meeting held on 14.10.1991 nor did he participate in the meeting held on 6.11.1991. The High Court did not accept the evidence of PW-12. This evidence does not in any manner advance the case of the prosecution to establish that A-6 has committed any offence.

Regarding the charge against A3, who was the Chairman-cum-Managing Director of TANSI from 1.8.1991 to 10.7.1992, we have to bear in mind certain facts. The decision to accept the offer of Jaya Publications was that of the Board and not of A-3 alone. PW 8 the General Manager and Company Secretary of TANSI admitted that all the decisions were taken by the Sub-Committee and no decision was taken independently by any individual and A-3 followed the decision of the Sub-Committee, which was approved by the Board. Therefore, there was no evidence to show that A-3 acted against the decision to favour Jaya Publications. The sale of land to Jaya Publications is a collective decision of the Board and not of any individual, the price on which the land was to be sold and the price on which the buildings were to be sold were decided by the Board of Directors to which the Government gave approval and thus there was no independent assignment to A-3 in deciding the matter nor did he suppress any document by not placing them before the Board of Directors.

A-5, Special Deputy Collector (Stamps), only performed statutory duty in fixing the value of the property in question at Rs. 3 lakhs per ground after notice to the concerned parties. The matter was statutorily referred to A-5 for fixing the market value of the property and thereafter A-5 fixed the market value of the property after taking into consideration the relevant factors. A-5 took into account the fact that in the vast extent of about 2 to 3 sq.kms. the land purchased by Jaya Publications was 3/4 km. away from Grand South Trunk road and King Institute was at the eastern boundary of the land in the industrial estate and the land value was only Rs. 3 lakhs per ground in the front portion and about Rs. 2 lakhs per ground in the extreme north because of the threat of inundation of river Adayar during flood season. Ex. P-6 shows that A-5 had taken into consideration several verdicts of the Madras High Court which say that the guideline was not final and it was only a preliminary exercise to find out the real market value of a particular property and he also compared the other sales and then arrived at the value. He referred to Ex. D-10 which is a sale deed by which an extent of 6695 sq.ft. of land in Block No. 6 at Adayar village was sold on 12.10.1990. The vendor is Paramount Pollution Control Limited. The value per ground is shown to be Rs. 99,984/-. The question of valuation was referred under Section 47-A of the Stamp Act and A-5 fixed the value of the property at Rs. 2,17,008/- per ground. Another document No. 1442 of 1991, which was referred under Section 47-A of the Stamp Act, was sale by Wazir Begum to Capro Industries and through this transaction an extent of 5393 sq.ft. of land was sold which is about two ground. The executant in the deed had shown the value of land per ground as Rs. 1,89,120/- and A-5

fixed the value at Rs. 3 lakhs per ground but in the course of his proceedings - Ex. P-6 - had referred to this document but only made a factual error in stating that the property was sold to SIDCO. Ex.P-68 is a deed registered on 31.5.1991 by which an extent of 5538.5 sq.ft. of land was transferred. The executant had valued the land at Rs. 2,07,984/- per ground and on being referred under Section 47-A of the Stamp Act, A-5 fixed the value of the land at Rs. 2,78,184/- per ground. These three sale deeds related to the sale of property falling within Block No. 6 of Adayar village and the properties covered by the said documents were smaller in extent.

Since the maximum extent being 2.78 acres which was conveyed under Ex.D-10 and even for that property A-5 had fixed Rs. 2,17,008/- as value per ground and, therefore, he held that the value fixed by A-5 at Rs. 3 lakhs per ground for the property in dispute could not be stated to be an under valuation.

In answer to the contention that Exs. P-8, P-57, P-70 and P-71 were not taken into consideration by A-5 when he fixed the value for disputed property at Rs. 3 lakhs per ground, it could be seen that the lands comprised in these documents were not comparable and did not reflect the true value of the property in dispute. By letter - Ex. D-20, the Collector had fixed the value of the property, Ex. P-61 - the Commissioner of Land Administration fixed the value of the disputed land at Rs. 3 lakhs per ground. In Ex. D-21, PW 1 himself admitted that Exs. P-70, 71 and 8 were not the comparable sales and further it was seen from the evidence that the land conveyed under Ex. P-8 was close to 100 feet road and the extent was also smaller as is in the case of Ex. P-57. Ex. P-4 is a letter addressed by way of answer to his subordinate setting out the guidelines. A-5 fixed the market value of the property covered under Ex. P-68 at Rs. 2,78,184/- per ground and not at Rs. 6 lakhs though the property was situate within Block No. 6 of Adayar village. Ex. P-68 was referred under Section 47-A of the Stamp Act and A-5 was not bound by the guidelines while assessing the value of the property and that he need not even accept the value mentioned in Ex. P-8, P-57, P-70 and P-71 as the properties conveyed under the said sale deeds were smaller in extent.

The trial Judge proceeded on the basis that A-5 committed an error in taking into consideration the sale to SIDCO for fixing the market value of the property in dispute though, in fact, document No. 1442 of 1991 was not the sale to SIDCO. But these documents have not been put to A-5 and he had no opportunity of explaining the circumstances under which these documents had come into existence and, therefore, the trial Judge was not justified to test his veracity with reference to those documents. Therefore, A-5 cannot be attributed with any misconduct.

As regards the charge under Section 169 IPC, the findings of the Trial Court are affirmed by the High Court.

The property in question is not owned by the Government but a public sector undertaking and under the Articles of Association, prior approval of the Government is needed before sale of any

immovable property by it. The High Court has considered that in the context of Section 169 IPC, such obligation cannot convert property as belonging to or owned by the Government. It was also held that the Code of Conduct cannot be construed to spell out a legal prohibition.

On behalf of the appellants, it is urged that A-1 had purchased the TANSI Foundry land as a public servant and she was legally bound not to bid for purchase for this property and thereby she had abused her position as a public servant to obtain for herself and A-2 the valuable property TANSI Foundry and also a pecuniary advantage of Rs.3.5 crores. There cannot be serious dispute that A-1 was a public servant at the relevant time. According to the prosecution Section 169 IPC embodies a prohibition on a public servant not to purchase or bid for certain property being legally bound as such a public servant not to purchase or bid for that property. The emphasis laid is that the principle underlying under Section 169 IPC is that a public servant is in fiduciary obligation in relation to property which is in his charge or over which he could have control and he should not put himself in a position of conflict of interest between his public duty in relation to that property and his private interest in purchasing that property and the general law in this regard being that persons in fiduciary position are not to derive advantage from their position and they should not place themselves in a position where there would be a conflict of interest in duty, whether such transaction would result in a loss to public or not. In this context, the provisions of Section 52 of the Indian Trust Act, 1882, Section 136 of the Transfer of Property Act, 1882 and Order XXI, Rule 73 CPC are brought to our notice and reliance was also placed on the decision of the Privy Council in (Seth) Kanhaya Lal, since deceased (Now represented by Seth Hanuman Prasad & was observed that there should not be merging of two positions, namely, that the interest of the seller to get the highest price and the buyer to get the lowest price in the same person. In such an event, there will definitely be a conflict. Applying the same principles, even in relation to the position of Ministers, Ministers ought not to enter into any transaction whereby their private pecuniary interest might even conceivably come into conflict with their public duty. It is urged that the expression "legally bound not to purchase' in Section 169 IPC must, therefore, be understood in the context of a fiduciary duty or obligation of a public servant not to purchase or bid for property from the Government or in respect of which he or she is in-charge or control. It is further urged that the expression "legally bound to" must be given a wide connotation so as to cast an obligation on a public servant arising in any legal way, viz., by law in the sense of statute law, by contract or bond, by an order of a competent authority having the force of law, or by an order of court, or by any fiduciary obligation imposed on a public servant by the law of trusts or otherwise. The words "legally bound" do not necessarily only mean the law made by the legislature or statutory law. Section 43 IPC contains a definition of a person being legally bound to do, that is, a person is stated to be legally bound to do whatever it is illegal in him to omit. The submission is that this definition will have to be given a proper meaning by reference to cognate and grammatical variations and a person is stated to be legally bound not to do something whatever it is illegal in him to do. The said provision also provides for a definition of what is "illegal", that is, everything which is an offence or which is prohibited by law or which furnishes a ground for civil action. In the present case, purchase of the TANSI Foundry land was prohibited by law to A-1 and, therefore, contended that a high official like a Chief Minister cannot purchase Government property or property over which the Government has control when such an elementary obligation is imposed on smaller officials. It is submitted that Rule 2(b) of the G.O.No.1012 issued by the Tamil Nadu Government states that after taking office and so long as he remains in office a Minister shall refrain from buying from, or selling to, the Government any immovable property. This order of the Government has been issued in exercise of the executive power of the State vested in the Governor under Article 154 read with Article 162 of the Constitution and the executive have

power to make any regulation which would have the effect of a law so long as it does not contravene any legislation already covering the field and such executive orders having been made under Article 73 of the Constitution have for their operation an equal efficacy as an Act of Parliament or the rules made by the President under Article 309 of the Constitution. The order of the Governor bound A-1 not to purchase property from the Government. The contention is that Rule 2(b) of the GO is not a rule of moral instruction or guidance to be observed or not observed as the Minister deems fit or not and it was meant to be a binding rule of action and in this context, Ramarao, Chief Minister, State of Andhra Pradesh, Hyderabad & Ors. AIR 1990 AP 20, the Full Bench of the Andhra Pradesh High Court observed that no minister would claim or would have the temerity to claim that he is not bound by restrictions contained in the Code of Conduct and the mere fact that the Government order is not statutory is irrelevant and even executive orders have a binding force in law and it could not be spelt out that sanction is not logically essential for a law and, therefore, the Chief Minister was also bound and was within the scope of the order. For this purpose, it was also submitted that the question is not whether TANSI Foundry land was technically the property of the Government but of a Government company, but whether A-1 was purchasing it from Government within the prohibition of Rule 2(b) of the GO and whether A-1 was purchasing property which was completely under the charge and control of the Government. In this case, A-1 was the Chief Minister and the Minister for Industries at the relevant time and she was in charge of the said Department from 24.6.1991 to 13.5.1993. Article 77A(4) of the Articles of Association of TANSI forbids TANSI from disposing of lands transferred to the company by the Government without previous approval of the Government. Inasmuch as the Government's approval had to be given the Government had necessary control over the said properties and such properties fall within the concept of the G.O. which prohibited in terms of Rule 2(b) of GO from purchasing the property whose disposal was completely under the control of the Government. Even otherwise, he submitted that in a case of this nature it is necessary to lift the veil of the corporate personality of TANSI and find out that the property really belonged to the Government and TANSI was another emanation thereof and corporate personality cannot be used to commit fraud or improper conduct or to evade an existing obligation or to protect crime. In this context, heavy reliance is placed on the Code of Conduct.

We may now advert to the contentions of the learned senior counsel appearing for the 1st Respondent:

The arguments of the learned counsel for the appellant goes beyond the scope of the charge, that the phrase "legally bound not to" has not been defined in the IPC but what is defined in Section 43 is the opposite concept i.e. "legally bound to do", that in order to attract Section 169 there must be a prohibition under the statute or statutory rules or regulations and there is no such law in the present case. The Code of Conduct is not statutory and cannot be enforced by the Court. It is more in the nature of internal guidelines meant for governing the conduct of Ministers and does not give a right to third party to maintain a civil action, much less, the violation thereof attracts any penal provision. The enormity of the result of the appellant's argument being accepted would be that a public servant would be guilty of an offence under Section 169 if there is any contravention arising out of a plethora of administrative instructions. Article 162 of the Constitution cannot elevate the Code of Conduct to the status of statute or statutory rules, even assuming that the State can legislate on the topic. In any case, it is contended, Code of Conduct contains no prohibition against the purchase of

the property in question which is owned by the Government Corporation, namely, Tamil Nadu Small Scale Industries Corporation. A distinction is maintained in the Code itself between the property of the Government and the property of the Government undertakings. The property of a Government Company, which has a distinct legal identity, cannot be equated to the property of the Government though the Government may have control over the Corporation. The prohibition must be clear and unambiguous to give rise to the offence. The theory of lifting the veil of the Company cannot be invoked while dealing with the criminal offences alleged to have been committed by a third party. While elaborating the point that the definition of "legally bound to do" cannot be imported, attention is drawn to Sections 175, 176, 177, 179, 181, 191, 202, 221, 222, 223 and 225 A IPC wherein that expression occurs. The learned counsel, therefore, submits that the said definition is relevant only while construing those Sections and what is contemplated in the above Sections is that the act which a person is legally bound to do but if he omits to do that particular act, an offence is made out, but, Section 169 only recognizes an act as an offence if a public servant being legally bound not to purchase or bid, purchases or bids for the property. Finally, it is contended that it would be violating the basic principle of criminal law to convict a person for an act which may furnish grounds for civil action but which, otherwise, is not prohibited by law.

In any case, it is submitted, the Code of Conduct being unenforceable in a court no civil action would lie and no such civil action has been spelt out anywhere in the charge or in the course of trial.

These contentions, by and large, were accepted by the High Court.

Section 169 IPC bears the marginal heading "Public Servant unlawfully buying or bidding for property" (emphasis supplied). Section 169 IPC sets out that (1) the person should be a public servant, (2) in such capacity as public servant, he is legally bound not to purchase or bid 'certain property', and (3) either in his name or in the name of another or jointly, or in shares with others.

The offence under Section 169 IPC is incomplete without the assistance of some other enactment which imposes the legal prohibition required. "The enactment containing the prohibition naturally and necessarily defines the area which is covered by it, both as to the class of public servants to whom it applies and the nature of the dealings in which those servants are prevented from engaging" [Vide 11 Cr.L.J. Reports 613, Narayan v. Emperor]. Therefore, in order to come within the clutches of Section 169 IPC, there should be a law which prohibits a public servant from purchasing certain property and if he does it, it becomes an offence under Section 169 IPC. Section 481 Criminal Procedure Code, Section 189 of the Railways Act, 1989 and Section 19 of the Cattle Trespass Act, 1871 and instances of that nature in several enactments are available in which persons mentioned therein shall not directly or indirectly purchase any property at a sale under those Acts. Similarly Section 136 of the Transfer of Property Act provides that no Judge, legal practitioner, or officer connected with any Court of Justice shall buy or traffic in, or stipulate for, or agree to receive any share of, or interest in, any actionable claim and no Court of Justice shall enforce, at his instance, or at the instance of any person claiming by or through him, any actionable claims so dealt with by

him as stated above.

Thus, in these circumstances where a law has prohibited purchase of property or to bid at an auction, the prohibition contained therein will be attracted and will become an offence under Section 169 IPC.

On a plain reading of the Section and seeking the assurance from the marginal heading as well, it is fairly clear that prohibition should flow from a law.

Such law in the context of Section 169 IPC should mean that the law as ordinarily understood, that is to say, an enacted law or a rule or regulation framed under such law but not an executive order which confers no rights on anybody nor sets down legally enforceable obligations. The rules and administrative instructions governing the public servants holding the civil post have undisputedly no application in this case. The law, which is pointed out, is the Code of Conduct for Ministers issued in G.O.Ms.No. 1350, dated 26.7.1968 by the Government of Tamilnadu in the name of Governor. Para 2(b) thereof enjoins that a Minister, so long as he remains in office, shall "refrain from buying from or selling to the Government, any immovable property except where such property is compulsorily acquired by the Government in usual course".

A perusal of the Code would indicate that they lay down guidelines or norms of conduct which the Minister must observe. The rules also prescribe the authority who should ensure compliance with the Code and to whom various statements have to be furnished. The procedure to be followed is left to the discretion of that authority in case of breach of the Code. That authority is the Chief Minister.

In our view, the Code of Conduct not having a statutory force and not enforceable in a Court of law, nor having any sanction or procedure for dealing with a contravention thereof by the Chief Minister, cannot be construed to impose a legal prohibition against the purchase of property of the Government so as to give rise to a criminal offence under Section 169 IPC. In law, there must be a specific provision prohibiting an act to make it illegal. A Code of Conduct prescribed by the Government under certain notification by itself cannot be elevated to the level of law as has been rightly held by the Andhra Pradesh High Court in the case of Vidadala Harinadhababu vs. N.T. Ramarao, [AIR 1990 A.P. 20]. Although there are certain strong expressions used in the course of the said decision to the effect that "no minister or Chief Minister can have the temerity to act contrary to such a Code" and it is binding on the Minister, still it cannot be elevated to the level of prohibition under law. Following observations made by a full Bench of the A.P. High Court in V. Harinathababu's case are quite apposite.

"The Codes of Conduct issued by the Union Government and the State Government are not

statutory in nature. They lay down rules of conduct which the Ministers must observe. They are in the nature of guidelines. They also prescribe the authority who should ensure compliance with the said Code; it is to him that the statements contemplated by paragraphs 1(a), 2(a) and 2(e) have to be furnished. Even the procedure to be followed in the case of an alleged or suspected breach of the Code is also left to the discretion of such authority. Having regard to the facts and circumstances of the Code, the 'authority' shall evolve the appropriate procedure. Evidently, the nature of action to be taken on such enquiry is also left to him. Not being statutory, Courts will not enforce them." At paragraph 50, it was further observed- "(i) There is no provision in the Constitution, nor is there any provision of law which regulates the conduct of a Minister-which expression includes Chief Minister and Prime Minister. There is also no constitutional or statutory provision prohibiting a Minister from engaging himself in any profession, occupation, or business, whether actively for gain or otherwise.

(ii) The Code of Conduct issued by the Union Government-and by the State Government-is of great significance and sanctity, though it is not statutory. It fills a great void. The Code is evolved with an eye upon good Government and clean administration, not only in action but also in appearance. It is binding upon all Ministers. It prescribes the authority who shall ensure observance thereof. The procedure to be followed by him and the action to be taken thereon is also left to him. Similar rules have also been evolved in United kingdom. However, for the reasons given hereinbefore, the petitioners cannot seek to enforce the Code through the Court." Even if the Government order is traced to have been issued under executive power of the State under Article 162, such a Code will not be enforceable when the language used is not in mandatory terms and they are intended to be mere guidelines or instructions to the concerned persons in authority. Therefore, as long as such a Code of Conduct is not enforceable in any court of law and does not even provide what action could possibly be taken in case of breach by the Chief Minister, the prohibition contained therein is only having ethical or moral effect and any breach thereof cannot be treated to be unlawful or even illegal within the meaning of Section 43 IPC. To constitute a ground for civil action under Section 43, there must be a right in a party which can be enforced. It may be a breach of contract or a claim for damages or some such similar right accruing under any law. There is no law which debars the Chief Minister from participating in a sale conducted by any Department of the Government or any of the Corporations or any public sector undertaking affording a cause for civil action especially when no fraud or illegal gain is involved. Therefore, we are constrained to hold that the offence under the aforesaid provision has not been established. In fact, there is nothing in the charge to indicate nor did the prosecution take a specific stand at any stage of the trial that the purchase of TANSI foundry property by A-1 from the Government would furnish a ground for a particular civil action. The nature of civil action that could be initiated cannot be left to the guess work and the accused cannot be expected to meet such case at this stage.

In the view we have taken, it is not necessary to consider the further questions debated at the bar, namely, whether the prohibition extends to the property of Government Undertaking as well, whether the State can legislate in respect of the conduct of Ministers and whether the expression 'legally bound not to purchase' should be necessarily construed in the light of the definition of 'legally bound to do'. But, we would like to observe one thing-whether or not the word 'Government' in para 2(b) of the Code of Conduct includes Government Company or Undertaking, the spirit and intention behind the Code of Conduct set out in para 2(b) is apparently not to maintain any such

distinction. Whether appropriate language has been employed to give effect to such intention is a different matter.

That A-1 was a public servant and the properties were purchased by the firm in which she was a partner, would be insufficient to establish a charge under Section 169 against her as the main ingredient of the aforesaid provision is not established. The High Court is justified in holding that the first respondent is not guilty of the offence under Section 169 IPC and the other respondents not guilty of abetment.

The next charge we have to deal with is one arising under Section 409 IPC. Criminal breach of trust has been defined under Section 405 IPC. For the offence of criminal breach of trust by a public servant the punishment is provided under Section 409 IPC. The properties in question belongs to TANSI, a corporation which is a separate and distinct entity from the Government and the properties are held by it as owner and has complete control over the same except when the said properties are to be alienated, approval of the Government has to be obtained as provided under the Articles of Association of the said Corporation. In a case of this nature, where there is no dominion over the properties by a Chief Minister or a Minister it cannot be treated as entrustment of the properties creating a trust which is an obligation annexed to the ownership of the properties and arises out of the confidence reposed and accepted by the owner. Indeed there is no material in the whole case to come to the conclusion that any such trust has been or deemed to have been created in respect of the said properties and that the relationship between A-1 and TANSI is one of trustee and beneficiary. Therefore, the ingredients of Section 409 IPC are not attracted to the present case at all. There is absolutely no entrustment of the properties in any manner, which allows a dominion over it except approving or disapproving, an act on the part of the Corporation either to sell or to alienate the properties. It cannot be said that a public servant who holds a particular port folio and has an element of supervisory control in certain matters, has a dominion over the property so as to exercise any legal incidents attached to the right of ownership.

Therefore, there was no entrustment of the said properties and it cannot be said that A-1 had dominion over the said properties either as the Chief Minister or as the Minister of Industries and in any case, the evidence does not establish the ingredient of dishonest disposal or conversion of property for personal use.

Thus the charge under the aforesaid section is also not established as rightly held by the High Court.

Though learned counsel wanted us to re-appreciate the evidence with reference to the files of the Government and other material on record, we refrain from doing so but have only broadly looked at facts adduced in evidence so as to judge whether in a proceeding under Article 136 of the Constitution we should interfere with the order of acquittal. For the reasons stated above, we think that none of the offences charged against the accused are established. There is no ground to interfere

with the order under appeal. Hence, these appeals are liable to be dismissed.

Before we part with the matter, it is necessary to notice certain aspects of the matter.

Crime is applied to those acts, which are against social order and are worthy of serious condemnation. Garafalo, an eminent criminologist, defined 'crime' in terms of immoral and anti-social acts. He says that "crime is an immoral and harmful act that is regarded as criminal by public opinion because it is an injury to so much of the moral sense as is possessed by a community - a measure which is indispensable for the adaptation of the individual to society." The authors of the Indian Penal Code stated that :- "...We cannot admit that a Penal Code is by any means to be considered as a body of ethics, that the legislature ought to punish acts merely because those acts are immoral, or that, because an act is not punished at all, it follows that the legislature considers that act as innocent. Many things which are not punishable are morally worse than many things which are punishable. The man who treats a generous benefactor with gross ingratitude and insolence deserves more severe reprehension than the man who aims a blow in passion, or breaks a window in a frolic; yet we have punishment for assault and mischief, and none for ingratitude.

The rich man who refuses a mouthful of rice to save a fellow-creature from death may be a far worse man than the starving wretch who snatches and devours the rice; yet we punish the latter for theft, and we do not punish the former for hard-heartedness." Though we have come to the conclusion that A-1 is not guilty of the offences with which she was charged, it is clear that the property belonging to public sector undertakings was sold to firms of which A-1 is a partner at a time when she held the Office of the Chief Minister. Under the articles of association of the public sector undertaking, there is a requirement that before the sale of property is effected approval of the government is needed and sale cannot be completed without such approval because such an act will be ultra vires the powers of the Board of Directors of the company. Such approval was readily given by the Government machinery, though on paper she remained out of picture.

Officers even holding small posts like a Railway Property Keeper or a Cattle Pound Keeper or a Process Nazir who is put in charge of the sale of properties in a court auction cannot purchase the properties over which they have control. In the present case, in view of the fact that Government headed by the 1st Respondent has to give permission in respect of the sale of property of these two companies, it certainly exercises powers over the same and thus there is conflict of interest. Where there is conflict of interest law has always avoided such sales being effected in favour of those who can jeopardise the fair outcome of the transaction. Whatever may be our findings on the question of valuation of the property whether it resulted in a pecuniary advantage to A-1 or not, we are clear in our mind that if the officers and others become aware of the fact that the Chief Minister of the State is interested in purchasing some properties, the bureaucracy will be over-enthusiastic to see that the sale goes through smoothly and at a price desired by such Chief Minister. Though we can visualise such situation, such facts have to be established by concrete evidence to be convicted in a criminal case and is hard or difficult to get. At any rate, it is plain that such conduct is opposed to the spirit

of the Code of Conduct if not its letter. Morally speaking, Can there be one law for small officials of the Government and another law for the Chief Minister ? In matters of such nature, is the Code of Conduct meant only to be kept as an 'ornamental relic' in a museum but not to be practised ? These aspects do worry our conscience.

Respondent No.1 in her anxiety to save her skin went to any length even to deny her signature on documents which her auditor and other Government officials identified.

Report leading to IPC makes it clear that criminal law merely prescribes the minimum standards of behaviour, while in public life, those who hold high offices should not take shelter under the umbrella of criminal law but stand by high probity. Further, criminal law is meant to deal with criminals ordinarily, while Code of Conduct is observed as gentlemen's agreement. Persons in public life, who are gentlemen, follow such Code instead of taking escape routes by resorting to technical pleas as arise in criminal cases. Persons in public life are expected to maintain very high standards of probity and, particularly, when there is likely to be even least bit of conflict of interest between the office one holds and the acts to be done by such person, ought to desist himself from indulging in the same. Such standards of behaviour were scrupulously observed in the earlier days after independence, but those values how now dwindled and instances of persons holding high elective offices indulging in self- aggrandisement by utilising Government property or in distribution of the largesse of the Government to their own favourites or for certain quid pro quo are on the increase. We have to strongly condemn such actions. Good ethical behaviour on the part of those who are in power is the hallmark of a good administration and people in public life must perform their duties in a spirit of public service rather than by assuming power to indulge in callous cupidity regardless of self imposed discipline. Irrespective of the fact whether we reach the conclusion that A-1 is guilty of the offences with which she is charged or not, she must atone for the same by answering her conscience in the light of what we have stated not only by returning the property to TANSI unconditionally but also ponder over whether she had done the right thing in breaching the spirit of the Code of Conduct and giving rise to suspicion that rules and procedures were bent to acquire the public property for personal benefit, though trite to say that suspicion however strong cannot take place of legal proof in a criminal case and take steps to expiate herself.

In the result, we dismiss these appeals and special leave petition, subject to the observations made above.