

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No. 3131/2009

GUJARAT PIPAVAV PORT LIMITED.

Appellant

VERSUS

SPECIAL COMMISSIONER & ORS.

Respondents

O R D E R

The present appeal has a history. Writ Petition No. 758/1996 was preferred under Article 32 of the Constitution of India in public interest, bringing to the notice of this Court how various consumers, distributors and dealers of respondent no. 12 therein i.e. M/s. S.B. Petroleum Ltd. spread in nine states, namely, Madhya Pradesh, Maharashtra, Karnataka, Uttar Pradesh, Haryana, Rajasthan, Bihar, Delhi and Punjab, were taken for a ride and cheated by collection of crores of rupees. It was contended by the writ petitioners that crores of rupees were siphoned and personal properties acquired. After narrating the facts, the Court directed as follows:-

“Having regard to the facts and circumstances of the case, we do not think it possible for this Court to either examine from time to time the progress of the criminal cases so as to ensure its expeditious disposal and to also go into the factual details of a large number of consumers and their rights, and also the rights ,if any, of dealers/distributors. We may note that though large sums have been refunded, according to

respondent no.12, to the consumers but it seems that still there may be large number of consumers to get the refunds. We feel it would be appropriate, if the matter is transferred to the High Court in terms of the prayer made in I.A.No.27/2002 filed by learned Amicus Curiae. Accordingly, we issue the following directions:

a) All the case papers of this matter be transferred to High Court of Allahabad with a request to Hon'ble Chief Justice of Allahabad High Court to constitute a special bench either at Allahabad or at Lucknow to deal with the matter. The special bench will appoint a retired Judge of the High Court as a Special Commissioner and decide about his remuneration/expenses etc. The Special Commissioner will take charge of all the assets including the bank accounts of respondent no.12.

b) The bank accounts disclosed in the affidavit Dr. KPD Shastri shall remain frozen till further orders.

c) All the concerned banks are directed to details of operations of the accounts since 1993 Special Commissioner."

After so stating, the Court directed the Special Commissioner so appointed, to take charge of certain bank accounts and also directed to take charge of certain properties. The two properties which are the subject matter of the present case are mentioned below:-

(i) Kerosene and LPG port storage facility project at Pipavav Port, Gujarat.

(ii) 20 acres of land, Village Rampura II, Pipavav Port, Post Uchaiya, Tehsil Rajula, Distt. Amreli.

On the basis of the orders passed by this Court, the Special Commissioner enquired into the matter and noted the arguments of the appellant which are to the following effect:-

"In the instant case, it is the admitted position that there was no contract between the parties. In this connection, the relevant extracts of paragraph 4 of the objections of the Pipavav Port are reproduced below:

"4. ... There is no lease or even agreement to lease between GPPL and S.B. Petroleum Ltd..."

Similar are the averments made in the rejoinder filed by the Pipavav Port in reply to the counter filed by Shri V.K. Tewari. As illustration, extracts of para 10 of the rejoinder of the Pipavav Port are reproduced below:

"10. No lease of whatsoever nature was created in favour of S.B. Petroleum Ltd. S.B. Petroleum Ltd. has not been able to satisfy the valid requisites for a lease. This is clear from the following:-

10.1 No lease Deed has been executed. No Lease Deed has been produced by S.B. Petroleum

Ltd. in the absence of a written Lease Deed, no lease can be said to have been created in favour of S.B. Petroleum Ltd. by the Notices.

10.2 A valid lease required registration. There is no registration of the alleged lease in favour of the S.B. Petroleum Ltd. S.B. Petroleum Ltd. has not even contended that the alleged lease in its favour has been registered. Clearly there is no lease in favour of S.B. Petroleum Ltd.

10.3 A lease is a matter of contract. There is no concluded contract between the Noticee and S.B. Petroleum Ltd. for the creation of a lease in favour of S.B. Petroleum Ltd."

After adverting to the contentions, the Special Commissioner returned the following finding:-

"It is thus obvious that there was neither any letter/document from the company accepting the terms and conditions written in the said letter/offer nor was there any lease deed executed by it. Merely because, during negotiations, the company was initially inclined to accept the condition no. 1, it cannot be said that a valid contract/lease has been executed by the company in favour of the Pipavav Port. Even this initial inclination towards the first condition about the security deposit was, ultimately not accepted by the company in as much as it did not send the sum of Rs.18 lacs after the defective cheque was dishonoured. In the circumstances, it cannot be said that the company accepted the terms and

conditions of the Pipavav Port contained in the letter/offer dated 14.2.1994.”

Be it noted, the Special Commissioner had earlier stated thus:-

“The well settled law is that if there is any mistake or error in the order passed by a Court of law, it can be corrected by a higher court or by that court itself but it is not open to any subordinate court or any authority to ignore that order, expressly or impliedly, because it is binding on them.”

For the aforesaid purpose, the Special Commissioner had placed reliance on the decision rendered by this Court in *M. Shankaraiah & Anr. vs. State of Karnataka & Ors., (1993) Supp. 4 SCC 596.*

In essence, the submission of Mr. Preetesh Kapoor, learned counsel for the appellant is that there is no lease between the parties and, therefore, the Special Commissioner could not have been directed to take charge of the said properties, merely because the order of this Court referred to the two properties. It is urged by Mr. Kapoor that the appellant Port was not a party before this Court and further, mere reference at the instance of the respondent no. 2, namely, M/s. S.B. Petroleum Limited, would not make it a leasehold property. It is also worthy to note that when the order passed by the Special Commissioner was challenged before this Court and the

matter was taken up on 8.4.2005, the following interim order was passed:-

“the order dated 7th January, 2005 to the extent it directs handing over of two properties situated at clauses e(4) and e(23) of the order dated 13th January, 2003 passed by this Court is stayed, till further orders, subject to the condition of petitioner depositing with the Special Commissioner a sum of Rs.17 lakhs plus interest of Rs.28 lakhs, within four weeks. If any amount is already deposited, only the balance amount shall be deposited.”

In pursuance of the said order, as the amount has been deposited, we are not inclined to interfere with the said aspect and direct that the Special Commissioner shall be guided by the earlier order passed by the High Court.

We will be failing in our duty if we do not mention that the matter is pending before the High Court. The report of the Special Commissioner has been filed before it. In view of the order passed by the Special Commissioner that no lease was executed, we are inclined to think that the Special Commissioner should not have taken charge of the same, but as is noticable, the said order has been passed because of the mention/reference of/to the two properties in the order dated 13.1.2003 passed by this Court. As fact finding authority has returned a finding that the lease has never been executed, the said property shall be retained by the appellant-Port, and the amount

which has been deposited by virtue of the order passed by this Court on 8.4.2005, shall be distributed by the High Court as per the directions of this Court.

The High Court is requested to expeditiously deal with the writ petition pending before it, as there are a number of claimants to get money.

Accordingly, the appeal stands allowed to the extent indicated above. There shall be no order as to costs.

.....CJI.
[Dipak Misra]

.....J.
[A.M. Khanwilkar]

New Delhi;
February 20, 2018.

ITEM NO.102

COURT NO.1

SECTION III-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

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Date : 20-02-2018 This matter was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE A.M. KHANWILKAR

For Appellant

Mr. Preetesh Kapoor, Adv.
Ms. Hemantika Wahi, AOR
Ms. Jesal Wahi, Adv.
Mr. Kabir Hathi, Adv.

For Respondents

Ms. Rachana Srivastava, AOR
Mr. Mahesh Srivastava, Adv.
Mr. Vaibhav Manu Srivastava, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed to the extent indicated in the signed order.

Pending interlocutory applications, if any, stand disposed of.

(Deepak Guglani)
Court Master

(H.S. Parasher)
Assistant Registrar

(Signed order is placed on the file)