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ITEM Nos.MM-1-A a/w MM-1-B

COURT NO.1

SECTION IX

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).8655/2013

(From the judgement and order dated 14/02/2013 in WP No.21/2013  
of The HIGH COURT OF GUJARAT AT AHMEDABAD)

SKAPS INDUSTRIES INDIA PVT. LTD.

Petitioner(s)

VERSUS

GAJUBA(G.) BHIMJI JADEJA & ORS.

Respondent(s)

(With appln(s) for permission to bring addl.facts and documents on record  
and exemption from filing c/c of the impugned Judgment and with prayer for  
interim relief )

WITH

SLP(C)No.8926 of 2013

(with appln.(s) for permission to bring addl.facts and documents on record  
and exemption from filing c/c of the impugned judgment and with prayer for  
interim relief)

WITH

SLP(C)No.8929 of 2013

(with appln.(s) for exemption from filing c/c of the impugned judgment and  
with prayer for interim relief)

Date: 18/02/2013 These Petitions were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE ANIL R. DAVE

HON'BLE MR. JUSTICE VIKRAMAJIT SEN

For Petitioner(s) Mr. Mukul Rohatgi, Sr. Adv.  
In SLP 8655/13 Mr. Sandeep Singhi, Adv.  
& SLP 8926/13 Mr. Ankur Saigal, Adv.  
Mr. Mahesh Agarwal, Adv.  
Mr. Rishi Agarwal, Adv.  
Mr. E.C. Agrawala, AOR  
Ms. Parul Shukla, Adv.

In SLP8929/13 Mr. Mukul Rohatgi, Sr. Adv.  
Mr. Ajay Bhargava, Adv.  
Ms. Vanita Bhargava, Adv.  
Mr. Nitin Mishra, Adv.  
Mr. Ankur Khandelwal, Adv.  
For M/s.Khaitan & Co.,Adv.

For Respondent(s) Mr. Harish Salve, Sr. Adv.  
For R.12 in Mr. Neil Hildreth, Adv.  
SLP(C)5093/13

Ms. Kamini Jaiswal, AOR

UPON hearing counsel the Court made the following

O R D E R

1. SLP(C)No. 8621 of 2013 is taken on Board when SLP(C)No.8655  
of 2013 and SLP(C)Nos.8926 and 8929 of 2013, are also taken up  
for consideration.

2. As far as SLP(C)No.8621 of 2013 is concerned, an Order was passed on 15th February, 2013, in the absence of the respondents.

Ultimately, when SLP(C)No.8655 of 2013 was taken up for consideration, on mentioning, it was recorded that it should be listed today in the 'Mentioning List', and an order similar to that which was passed in SLP(C)No.8621 of 2013, was passed in the said matter.

3. In the proceedings which were recorded, the name of Ms. Kamini Jaiswal, AOR, was shown and she was shown as not being present when the matter was taken up. At the very outset, Ms. Jaiswal took exception to the same, since according to her, she had filed a caveat in the Special Leave Petition in connection with the judgment and order dated 14th February, 2013, passed by the Gujarat High Court in writ petition No.21 of 2013. She also indicated that, although, her name had been shown, no notice had been served on her, either by the petitioner or the Department, when this matter was taken up.

4. Mr. Rohatgi, learned senior counsel on being asked to explain why such service was not effected, submitted that when this matter was mentioned on 15/02/2013 in the morning at 10.30 A.M., they had no notice of the caveat having been lodged and that when the matter was taken up at 2.00 p.m. also they were not aware of the fact that caveat had been lodged.

5. Be that as it may, since Ms. Jaiswal was not given notice of the proceedings, her name should not have been indicated as being 'not present' on that date while appearing for the respondent. Such noting in the proceedings should, therefore, be disregarded.

6. Today, SLP(C)No.8655 of 2013 and the other two Special Leave Petition Nos.8926 and 8929 of 2013, mentioned above, have been taken up and orders similar to that which had been passed in SLP(C)No.8621 of 2013 was prayed for on behalf of the petitioner and such prayer was also supported by the respondent No.12, Mundra Port and Special Economic Zone Ltd., Gujarat, which is the owner of the Special Economic Zone in question.

7. Having regard to the fact that it has been submitted, both by Mr. Harish Salve and Mr. Mukul Rohatgi, learned senior counsel, appearing for the petitioners and the Special Economic Zone Owners, that the petitioners have been functioning for quite some time and in one case have obtained clearance from the State Level Committee. As far as the remaining three are concerned, it has been submitted that such clearance was not required at all in view of the fact that these industries did not come within the scope of the Schedule to the E.I.A. Notification dated 14th September, 2006.

8. On the other hand, it has been submitted by Ms. Jaiswal, appearing for the private respondents, that the substance of the submissions made on behalf of the petitioners, had been gone into detail in an earlier proceeding, being W.P.No.194 of 2011, and in the judgment dated 9th May, 2012. She submits that the Division Bench which passed the judgment in the earlier matter, was fully aware of the legal submissions, which had been made earlier before the same Bench.

9. Having regard to the above, notwithstanding the submissions made by Ms. Jaiswal, having regard to the fact that these units were in operation and a large number of workers had been employed, in our view, the Division Bench of the Gujarat High Court should have heard the parties before passing an ad interim order, which had the effect of shutting down these industries which were in operation, without any hearing given to them.

11. If the submissions, as made by Mr. Rohatgi and Mr. Salve are to be accepted, this would result in great hardship to the workmen, who are employed in these industries, as also the industries themselves, where large sums of moneys must have been invested.

12. We do not appreciate the fact that while listing the matter for hearing on 28th February, 2013, such an ad interim order, having such drastic consequences, should have been passed. One may understand stoppage of the construction work in respect of the other units, but the impugned order, closing down running

units was not, in our view, justified.

13. Accordingly, considering the balance of convenience and inconvenience of the parties, we set aside the ad interim order impugned in these several Special Leave Petitions, as far as the units in operation are concerned. The same will continue to remain operative, as far as the construction work and other development operations are involved.

14. Let these matters, including SLP(C)No.8621 of 2013, stand disposed of, with a request to the High Court to hear out all these matters on the question of granting interim injunction on 28th February, 2013, when they are directed to be listed.

15. The parties are on notice, as far as hearing on the 28th instant is concerned, and they should be ready to make their submissions before the Division Bench of the High Court.

16. We, however, make it clear that the observations made in this Order shall not in any way influence the final outcome of the applications for temporary injunction, that may be pending before the Division Bench of the High Court.

| (Sheetal Dhingra)  
| Court Master

| | (Juginder Kaur)  
| | Assistant Registrar

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