

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).5610-5611 OF 2017  
(Arising out of SLP(C)Nos. 1912-1913/2015)

COMMISSIONER, CORPORATION OF CHENNAI  
RIPON BUILDING, CHENNAI ..APPELLANT (S)

VERSUS

K. GAFOOR BASHA AND ORS. ..RESPONDENT (S)

WITH

CIVIL APPEAL NO(S).5612 OF 2017  
(Arising out of SLP(C)No.7048/2015)

CORPORATION OF CHENNAI  
REP. BY ITS COMMISSIONER  
RIPON BUILDING, CHENNAI ..APPELLANT (S)

VERSUS

HIND AGRO INDUSTRIES LTD. & ANR. ..RESPONDENT (S)

O R D E R

1. Leave granted.
2. Shorn of unnecessary details, the core facts required to be noticed in the above two sets of appeals may be set out herein below.
3. Way-back in the year 2009, a Design Built Operate and Transfer (DOBT) Agreement

was executed by and between the appellant-Commissioner, Corporation of Chennai [for short, "the appellant-Corporation"] and the respondent No.1-M/s. Hind Agro Industries Limited [for short, "the respondent-HAIL" (in Civil Appeal @ SLP(C) No.7048/2015] for building a modern slaughter house on a site measuring about 10 acres. The first phase of the project was completed in the year 2010 at a cost of Rs.36 crores, as claimed by the respondent-HAIL.

4. The second phase of the project could not commence as anticipated owing to some dispute over handing over of the land earmarked for the said phase which was being used for slaughter of the animals at the site.

5. In the year 2011, one Perambur Meat Labourers Association (claiming to represent over 2000 workers/butchers) filed a Writ Petition (No.25910/2011) before the Madras High Court seeking orders safeguarding their

livelihood before commencement of the modern facility.

6. The said writ petition was disposed of on 27.01.2012 on the basis of an undertaking furnished by the appellant-Corporation as well as the respondent-HAIL that the interest of the workers and butchers would be adequately protected and taken care of.

7. Notwithstanding the above, on 04.05.2012, the respondent-HAIL communicated a notice to the Commissioner of the appellant-Corporation stating that it is "constrained to withdraw from the Concession Agreement dated 25<sup>th</sup> March, 2009". It will not be necessary to specifically notice the detailed reasons for the aforesaid stand of the respondent-HAIL, save and except, to record that in the communication dated 04.05.2012 the respondent-HAIL had raised a grievance with regard to the availability of the land for commencement of the second phase of the Project.

8. Notwithstanding the above communication dated 04.05.2012, the respondent-HAIL instituted a writ petition i.e. Writ Petition No.21446 of 2013 before the High Court seeking directions for handing over the land in question to the respondent-HAIL for commencement of the second phase of the project. While writ petition No.21446 of 2013 was pending, the respondent-K.Gafoor Basha (in C.A. arising out of SLP(C)No.1912-1913 of 2015) instituted a petition under Article 226 of the Constitution before the High Court, which was registered and numbered as Writ Petition No.28575 of 2014 (PIL petition). The prayer in the said PIL petition was, in essence, to close down the old slaughter house.

9. The High Court heard the PIL petition as well as the writ petition filed by the respondent-HAIL, as it appears, together, and thought it fit to pass the impugned order in the PIL petition and

close the writ petition filed by the respondent-HAIL in terms thereof. The essence of the order of the High Court passed in the PIL petition is that the appellant-Corporation would hand over the land in question to the respondent-HAIL within 15/30 days and thereafter the respondent-HAIL would start/commence work on the second phase of the project and complete the same within a time bound frame. At this stage it will also be necessary to notice that on 14.05.2014 while the writ petition by the respondent-HAIL and the PIL petition were pending, the respondent HAIL had issued a legal notice to the appellant-Corporation raising a claim of over Rs.497.28 crores which was delineated under several heads specifically mentioned in the legal notice dated 14.05.2014.

10. In the said legal notice the respondent-HAIL had further stated that if it is allowed to complete the second phase of the project, the claims made by it could

suitably be adjusted/reduced.

11. It is in the above conspectus of the facts that this Court is required to consider the correctness of the order of the High Court in the PIL, the core of which has already been noticed.

12. A reading of the order of the High Court would go to show that the High Court was primarily moved by the element of public interest that surrounded the early completion of the Project and in commissioning a modern slaughter house. While the public interest in the early completion of the project has certainly to be kept in mind, the respective rights of the parties and their conduct arising from the communications exchanged and the stand taken from time to time as referred to above will also have to be kept in mind. In a situation where the respondent-HAIL had virtually walked out of the contract by its communication dated 04.05.2012 and has raised a claim of Rs.497.28 crores by its

legal notice dated 14.05.2014, the High Court, in our considered view, could not have, guided by public interest, issued the impugned directions which in fact allows the respondent-HAIL to recommence the Project and at the same time keep alive its claim against the appellant-Corporation. The order of the High Court virtually resurrects the contract that has spent its force by the conduct and actions of the respondent-HAIL. The respondent-HAIL was not even a party to the proceedings in the PIL petition in which the impugned order has been passed by the High Court to its benefit. An alternative course of action which was open for the High Court to adopt, viz. to understand the contract to have been terminated and to allow and direct the appellant-Corporation to complete the Project at the earliest, was not even considered by the High Court as a feasible/viable course of action to achieve the purpose aimed at by the impugned order dated 22.12.2014.

13. If public interest which appears to have guided the High Court to pass the impugned order was the prime consideration, such public interest could have also been achieved by an appropriate determination of the *inter partes* rights and at the same time by directing the appellant-Corporation to complete the Project within a time bound manner instead of directing the appellant-Corporation to hand over the land to the respondent-HAIL and permit it to complete the contract out of which it had voluntarily and unambiguously walked out.

14. Consequently and in view of the aforesaid, we take the view that the second course of action indicated by us above would be more in consonance with the *inter partes* rights and at the same time protect and preserve public interest. We, therefore, on our understanding that the contract between the parties had spent its force, direct the respondent-Corporation to ensure that the second phase of the project is completed and

the slaughter house in its entirety be commissioned within a period of six months from today.

15. We have taken on record the statement made by Mr. Subramonium Prasad, Additional Advocate General of the State of Tamil Nadu, on instructions received from the officers present in Court, that the appellant-Corporation will get the work executed through a competent contractor by issuing a fresh tender notice for the remaining part of the works. It will be open for the respondent-HAIL to participate in the said tender, if it so desires.

16. To balance the equities between the parties, as the DOBT contract has been understood by us to have become frustrated/to have spent its force we direct that whatever amount the respondent-HAIL has incurred in the project till it was abandoned should be reimbursed to it.

17. The appellant-Corporation will give notice to the respondent-HAIL to appear

before it and following the determination of the precise quantum of the expenses incurred by the respondent-HAIL the same will be tendered to the respondent-HAIL along with interest at the rate of 8% per annum from the date of completion of the first phase project.

17. With the aforesaid modification in the order of the High Court and the directions above, all the appeals stand decided and disposed of in terms thereof.

.....,J.  
(RANJAN GOGOI)

.....,J.  
(NAVIN SINHA)

NEW DELHI  
APRIL 26, 2017



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

Leave granted.

The appeals are disposed of in terms of the  
signed order.

In view of the above, all pending  
application(s) shall stand disposed of.

(Neetu Khajuria)  
Court Master

(Asha Soni)  
Court Master

(Signed order is placed on the file.)