

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No. 12512 of 2016 (O&M)
Date of decision: 24.01.2017.**

M/s Kher Construction

..... Petitioner.

Versus

Union of India and others

..... Respondents.

**CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE DARSHAN SINGH**

Present: Mr. R.K. Girdhar, Advocate, for the petitioner.

Mr. V.K. Kaushal, Advocate, for respondents No. 1 and 4.

Mr. P.P.S. Thethi, Additional Advocate General, Punjab,
for respondents No. 2 and 5 to 9.

Ms. Anju Arora, Advocate, for respondent No. 3.

None for respondent No. 10.

Mr. Tribhuvan Singla, Advocate, for respondent No. 11.

Mr. Jasbir Singh, Advocate, for respondent No. 12.

S.S. SARON, J.

The petitioner - M/s Kher Construction through its proprietor Shri Yogesh Kher by way of the present petition under Articles 226/227 of the Constitution of India seeks quashing of the order dated 19.05.2016 (Annexure P9) whereby the learned National Green Tribunal (respondent No.10) ('Tribunal' - for short) has passed a blanket order restraining the entire State of Punjab from felling and cutting any tree. A further direction has been sought for directing respondents No. 2 to 9 to complete the cutting/axing of trees so as to enable the petitioner - Company to complete its project in time.

The petitioner - M/s Kher Construction submits that it is an A-class government contractor and is a leading private sector road focussed company, which is mainly developing infrastructure in the State of Punjab in many diverse areas such as roads, bridges, irrigation, industrial, commercial and residential buildings. It has executed various works assigned to it from time to time.

The project for improvement of Ropar, Abiana, Nurpur Bedi up to Jhajj Chowk road from KM 0.00 to KM 32.62 was approved in different schemes. The case for improvement (widening and strengthening) of road from KM 0.00 to 12.50 was approved under the PIDB scheme by the Punjab Government. The stretch of this road from KM 12.50 to KM 32.62 stands approved under CRF scheme by the Central Government. Number of trees are standing on both sides of this road. The lands on which the trees are standing belong to the Forest Department and Zila Parishads. Approval for diversion of 0.736 hectares of forest land for the aforesaid project was granted by the Government of India vide letters dated 13.02.2014 and 07.11.2014.

The petitioner has been a successful bidder making a bid for an amount of Rs.6,70,97,134/- for carrying out the project for a part of the section for Periodical Renewal of Ropar, Abiana, Nurpur Bedi road (MDR-55) (RD 0.00 to 4.00 Kms approved under PIDB Scheme) including maintenance of road for five years in District Rupnagar. Allotment letter dated 09.11.2015 (Annexure P2) for the said project has been issued in favour of the petitioner.

In respect of the trees that are to be cut, an amount of

Rs.1,03,28,877/- has been deposited by the Executive Engineer, Construction Division, B&R Branch, Rupnagar (respondent No.7) with the Forest Department (respondent No.8) vide letter No.13948 dated 16.10.2015, letter No. 1553 dated 11.02.2016 and letter No. 4090 dated 08.04.2016. E-tenders for cutting of trees have also been invited by the Divisional Manager, Punjab State Forest Development Corporation, Mohali (respondent No.3). The requisite permission for cutting the trees for widening the road for some stretch has already been granted and for the remaining stretch, all the requisite formalities including the deposit of funds have already been completed and only formal approval is to be granted. Therefore, the project of widening and strengthening of the road in question is a duly approved project and all acts are being done as per the approval and sanction granted by the competent authority. It is submitted that for widening and strengthening of the road in question in different RDs, the cases for deforestation of forest area were prepared and submitted for approval vide different letters issued by the Executive Engineer, Construction Division, B&R Branch, Rupnagar (respondent No.7), the details of which are mentioned. However, in view of the order dated 19.05.2016 (Annexure P9) passed by the learned Tribunal. The said order, according to the petitioner, has been passed without taking into account the projects that had been officially cleared and also had the requisite sanctions as in the present case.

We have given our thoughtful consideration to the matter.

The grievance of the petitioner is that despite having made full and complete payments for felling and cutting the trees for which necessary permissions have been granted, it is unable to cut the same due to the order

dated 19.05.2016 (Annexure P9) passed by the learned Tribunal whereby it has restrained the felling and cutting of trees in the entire State of Punjab.

Notice of motion was issued in the case on 14.06.2016, which on the asking of the Court was accepted by Shri V.K. Kaushal, Advocate on behalf of respondent No.1 and Shri Rajesh Bhardwaj, learned Additional Advocate General, Punjab.

We propose to dispose of the writ petition in terms of the order passed by Hon'ble the Supreme Court of India in an appeal arising out of the same order dated 19.05.2016 (Annexure P9) passed by the learned Tribunal.

It may be noticed that the State of Punjab filed Civil Appeal D No.33942 of 2016, titled 'State of Punjab and others v. Amandeep Aggarwal and others' against the aforesaid order dated 19.05.2016 (Annexure P9) passed by the learned Tribunal, in the Supreme Court. It was submitted on behalf of the State that the order passed by the learned Tribunal was wholly unjustified having regard to the fact that the State of Punjab had obtained all permissions required from the competent authority for felling of trees in connection with various ongoing projects and that without taking note of such permissions, the learned Tribunal was not liable to have issued a blanket ban on cutting of forest trees. This, according to the State, would seriously hamper the ongoing developmental projects in connection with widening of the highways and in particular the construction of National Highway No. 71 in the State of Punjab. It was submitted that while the State of Punjab was ready and willing to furnish whatever information that was required by the learned Tribunal; however, the projects of national importance like widening of the highways mentioned in the said case ought not to be hampered by

reason of the said order dated 19.05.2016. It was submitted that Hon'ble the Supreme Court while permitting the petitioner State in the said case to approach the learned Tribunal for vacation of the stay part of the said order qua National Highway No. 71 so that the ongoing project would not be adversely affected.

Hon'ble the Supreme Court, on the basis of the aforesaid submissions, passed the following order on 28.10.2016:-

“There is in our opinion considerable merit in the submission made by Mr. Rohatgi. It is true that the State has been directed to secure certain information including the trees removed and those planted as also the scheme under which such plantation has been undertaken yet the the blanket ban on felling of trees placed by the Tribunal cannot be allowed to adversely affect the ongoing works on the highway mentioned earlier. In the circumstances therefore we deem it proper to suspend the impugned order for a period of four months from today to enable the State Government to not only execute the ongoing project mentioned above but also the other projects which are likely to be affected by the impugned order. We make it clear that the Tribunal shall be at liberty to pass any fresh order qua the projects that are already approved upon consideration of the materials that the State of Punjab may place on record. We are conscious of the fact that we are not issuing any notice to the respondent while we are suspending a part of the impugned order concerning NH-71. We are doing so only to avoid any

delay in service of notice upon the respondent and the final order that may be passed. We however leave it open to the respondent, petitioner before the Tribunal to raise all such contentions as may be open to him in law after the requisite information is received by the Tribunal.

With the aforesaid observation, this appeal is disposed off.”

In terms of the aforesaid order dated 28.10.2016 passed by Hon'ble the Supreme Court, the present petition is disposed of with the direction that the operation of the impugned order dated 19.05.2016 passed by the learned Tribunal shall remain suspended and shall continue to remain suspended for a period of four months from the date of receipt of certified copy of the order to enable the petitioner to execute the ongoing project in the present case and leaving the learned Tribunal with liberty to pass any fresh order for the project in question upon consideration of the facts which are furnished by the parties. The parties would be at liberty to approach the learned Tribunal to raise all such contentions as may be open to them in law.

The writ petition is accordingly disposed of in the aforesaid terms.

(S.S. SARON)
JUDGE

(DARSHAN SINGH)
JUDGE

24.01.2017
Ramesh

Note:

1.	Whether reasoned/speaking	:	Yes
2.	Whether reportable	:	No