

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

CWP No. 12858 of 2016 (O&M)

Date of decision: 24.01.2017.

M/s Srishti Infrastructure Ltd.

..... Petitioner.

Versus

Union of India and others

..... Respondents.

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

Present: Mr. Aman Sharma, Advocate, for the petitioner.

Mr. Virender Soni, Advocate,
for respondent No. 1 - Union of India.

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

None for respondent No. 6.

Mr. Tribhuvan Singla, Advocate, for respondent No. 7.

Mr. Jasbir Singh, Advocate, for respondent No. 8.

S.S. SARON, J.

The petitioner - M/s Srishti Infrastructure Ltd. through its authorized representative Shri Santosh Ghai by way of 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.6) ('Tribunal' - for short) has passed a blanket order restraining the entire State of Punjab from felling and cutting any tree. It is submitted that the said order 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. A further direction has been

sought for directing respondents No. 2 and 3 to complete the process of cutting/axing of trees so as to allow the petitioner - Company to complete the project in time.

The petitioner - M/s Srishti Infrastructure Ltd. is a company registered under the Companies Act, 1956. It has its regional office at Jalandhar. It is a leading private sector company which is mainly developing infrastructure all over the State of Punjab as well as neighbouring States in many diverse areas such as buildings, commercial complex etc. It has worked for various departments such as Public Works Department, Railways, Airport Authority of India etc.

The petitioner - Company made a bid for construction of District Administrative Complex and construction of residence of the Deputy Commissioner at Nawanshahar (SBS Nagar). With the construction of District Administrative Complex at Nawanshahar (SBS Nagar), offices of various departments such as SDM office, DC office, Administrative Wing of the Police Department, office of the Public Works Department, Tehsildar office, office of the District Revenue etc. would be under one roof. The petitioner was declared as one of the successful bidders and approval has been granted to the petitioner - Company vide allotment letter dated 12.04.2016 (Annexure P2). The petitioner has invested approximately 15% of the awarded cost by way of performance bank guarantee and by mobilization of manpower, offices, machinery and equipment and collection of materials.

It is submitted that the Divisional Forest Officer, Banga Road, Garshankar (respondent No. 3) vide letter 06.05.2016 (Annexure P3)

addressed to the Secretary to Government of Punjab, Public Works Department (B&R), Punjab (respondent No.5) informed that the aforesaid work could not be carried out and the trees falling within the area of construction of District Administrative Complex and the residence of Deputy Commissioner at Nawanshahar (SBS Nagar) had to be removed by way of public auction to be held on 20.05.2016. It is also submitted that the Secretary to Government of Punjab, Public Works Department (B&R), Punjab (respondent No.5) vide letter dated 24.06.2016 (Annexure P6) informed the Divisional Forest Officer, Banga Road, Garshankar (respondent No. 3) that approximately 214 trees which are falling in the area where construction is to be raised are in the non-forest area.

It is submitted that the work on the said project has been held up in view of the impugned order dated 19.05.2016 (Annexure P9) passed by the learned Tribunal (respondent No. 6).

We have given our thoughtful consideration to the matter.

The grievance of the petitioner is that despite having made full and complete payment 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 in case was issued on 19.07.2016.

Reply by way of affidavit of Shri Som Datt Sharma, Conservator of Forests (Central) on behalf of respondent No. 1 - Additional Chief Conservator of Forests (Central), Northern Regional Office, Chandigarh has been filed.

In the reply that has been filed, it is stated that as per available records in the office, neither any project proposal for construction of District Administrative Complex and residence of Deputy Commissioner at Nawanshahar (SBS Nagar) had been received in their office, nor any approval had been accorded under the Forest Conservation Act, 1980.

In the reply filed by way of affidavit of Shri Kuldeep Kumar, IFS, Principal Chief Conservator of Forests (HoFF), Punjab, SAS Nagar on behalf of respondents No. 2 and 3, it is stated that respondents No. 2 and 3 are bound to comply with the order dated 19.05.2016 (Annexure P9) passed by the learned Tribunal. The said order is being complied with as per rules. It is, however, submitted that respondents No. 2 and 3 had not caused any obstruction in the implementation of the project but it was their duty to circulate the orders dated 19.05.2016 (Annexure P6) passed by the learned Tribunal so that these could be implemented in true letter and spirit.

It is further submitted that auction of trees was scheduled to be conducted on 20.05.2016 but had to be stalled due to the passing of the order dated 19.05.2016 (Annexure P9). It is also stated that approximately 214 number of trees fall in the District Administrative Complex at Nawanshahar (SBS Nagar) which are in the non-forest area.

We have given our thoughtful consideration to the matter and 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 in accordance with law and after getting all necessary permissions and sanctions that are required, and at the same time 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