

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

**CWP No. 15664 of 2016 (O&M)
Date of decision: 24.01.2017.**

M/s Friends Saw Mill Malerkotla Petitioner.

Versus

State of Punjab and others Respondents.

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

Present: Mr. Karan Bhardwaj, Advocate, for the petitioner.

Mr. P.P.S. Thethi, Additional Advocate General, Punjab,
for respondents No. 1 and 2.

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

None for respondent No. 4.

Mr. Tribhuvan Singla, Advocate, for respondent No. 5.

Mr. Jasbir Singh, Advocate, for respondent No. 6.

S.S. SARON, J.

The petitioner - M/s Friends Saw Mill Malerkotla, Ludhiana through its proprietor Mohammad Ashraf seeks quashing of the order dated 19.05.2016 (Annexure P12) whereby the learned National Green Tribunal (respondent No.4) ('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 allow the petitioner to cut the trees which have been sold to it.

The petitioner - M/s Friends Saw Mill Malerkotla has its office at Ludhiana road, Malerkotla in District Sangrur. The petitioner firm deals in wood and purchases of trees from the Punjab State Forest Development Corporation (respondent No.3) ('Corporation' - for short). The trees are earmarked for felling by the Corporation (respondent No.3). The Corporation invites tenders for felling trees or in other words for felling and cutting trees on National Highway No.71.

The Government of India along with the State of Punjab has initiated the project of development of four lanes falling on the Jalandhar-Barnala road section of National Highway No.71 from existing KM 12.00 to 44.60 including construction of Nakodar and Shahkot bypasses as well as section of NH-71 from existing KM 77.200 to KM 114.00 in the State of Punjab. The said project is based on Public Private Partnership on Design Build Finance Operated and Transferred (DBFOT) Toll No. NHDP Phase IV B/S under Forest Divisions, namely, Ferozepur, Sangrur and Jalandhar in the State of Punjab. For widening or laying four lanes on the National Highway No.71, the trees adjoining the same were required to be cut. The State of Punjab and the Corporation took a decision with regard to the same and work was assigned to the Corporation (respondent No.3) with the task of inviting tenders for purchase of trees. The Corporation (respondent No.3) accordingly floated tenders for selling the trees on Nakodar-Malsian road as the project of development of four lanes falling on various sections of

National Highway No.71 in the State of Punjab was under process.

The petitioner participated in the tender and auction process which was conducted on 14.01.2016, 26.02.2016, 14.03.2016 and 28.03.2016. The Corporation sold the trees to the petitioner, who deposited the amount in the account of the Managing Director of the Corporation. A list of payments that have been made has been appended as Annexure P1 (colly).

The Corporation sold 112 trees on 10.01.2016 at a cost of Rs.6,80,000/- to the petitioner. The petitioner deposited the security and tax along with 100% amount. The Divisional Manager of the Corporation at Phillaur vide letter No.985 dated 19.05.2016 asked the Chief General Manager of the Corporation to grant the permission. Accordingly, in terms of letter dated 28.06.2016 (Annexure P2) permission was given to the petitioner to cut 112 trees on Malasian road KM 3-4 R/S, Lot No. PHL-G5137.

Similarly, tender with regard to lot No. - PHL-G5128 for 296 trees was floated. The trees in question were sold to the petitioner for an amount of Rs.8,28,000/-. The Divisional Manager of the Corporation at Phillaur vide letter No. 986 dated 19.05.2016 asked the Chief General Manager of the Corporation to grant necessary permission since it had paid the entire amount of Rs.8,28,000/- and also the tax and security. The Corporation vide letter dated 28.08.2016 (Annexure P3) granted permission to the petitioner to cut the trees falling between Nakodar-Malasian road at KM 5-6 L/S, Lot No. - PHL-G-5128 for 296 trees.

Similarly, the Corporation on 25.02.2016 sold 202 trees bearing Lot No. - PHL-G5127 for 202 trees at a cost of Rs.9,41,000/- to the petitioner. The petitioner deposited 100% of the amount along with security and tax for purchase of 202 trees. The Divisional Manager of the Corporation at Phillaur vide letter No. 1039 dated 19.05.2016 asked the Chief General Manager of the Corporation to grant the permission. Accordingly, the necessary permission was given vide letter dated 01.07.2016 (Annexure P4) to the petitioner to cut 202 trees on the Nakodar-Malasian road KM 4-5 L/S, Lot No. PHL-G5127.

The petitioner firm started its work of felling the trees. However, in view of the order dated 19.05.2016 (Annexure P12) passed by the learned Tribunal, the Corporation asked the petitioner not to continue with the work of felling the trees. The petitioner submits that the scenario results into a state where it has paid for the trees, but it cannot cut the same. Therefore, the order dated 19.05.2016 (Annexure P12) is assailed.

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 P12) passed by the learned Tribunal whereby it has restrained the felling and cutting of trees in the entire State of Punjab.

Notice in the case is issued and is accepted by learned counsel for the respondents, who are appearing in the connected cases.

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 P12) 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 P12) 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