

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

**CWP No. 22308 of 2016 (O&M)
Date of decision: 24.01.2017.**

Aashirwad Filling Station

..... Petitioner.

Versus

Union of India and others

..... Respondents.

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

Present: Mr. Gagneshwar Walia, 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.

None for respondent No. 7.

Mr. Tribhuvan Singla, Advocate, for respondent No. 8.

Mr. Jasbir Singh, Advocate, for respondent No. 9.

S.S. SARON, J.

CM No. 15540-CWP of 2016

Reply affidavit of Shri Som Datt Sharma, Conservator of Forests (Central) on behalf of Additional Principal Chief Conservator of Forests (Central), Ministry of Environment, Forests and Climate Change, Northern Regional Office at Chandigarh (respondent No.1), attached with the civil miscellaneous application, is taken on record, subject to just exceptions.

The civil miscellaneous application stands disposed of.

CWP No. 22308 of 2016

The petitioner - Aashirwad Filling Station, G.T. Road, Naushehra Majha Singh, District Gurdaspur through its sole proprietor Mrs. Nidhi Johar 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 P11) whereby the learned National Green Tribunal (respondent No.7) ('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 prayer has been made for quashing the order dated 20.05.2016 (Annexure P12) passed by the Principal Chief Conservator of Forests, Punjab (respondent No.3) implementing the said order (Annexure P11) in the entire State of Punjab with regard to non-felling and axing of trees. A further prayer has been made for directing respondents No. 3 to 5 to permit the petitioner to act in accordance with the 'no objection certificate' granted by the Forest Department for diversion of forest land and cutting and felling of 14 trees for construction of service lane for the purposes of setting up a petrol-pump on the Pathankot-Amritsar road at KM 59-60 L/S at village Naushera Majha Singh under Forest Division, District Gurdaspur in terms of the statutory 'no objection certificate' and permissions (Annexures P3 to P6) which have been duly granted.

The petitioner vide letter of intent dated 24.10.2011 (Annexure P1) to develop, set up and operate a petrol-pump station under the dealership of Indian Oil Corporation (respondent No.6) was allotted retailed dealership for running petrol-pump at Bidhipur to Naushera Majha Singh, District

Gurdaspur under the open category by the Indian Oil Corporation (respondent No.6). The petitioner accordingly purchased a plot of land measuring 45 metres x 45 metres at village Naushera Majha Singh. In terms of the condition of letter of intent, the petitioner deposited a security of Rs.3,00,000/- and fulfilled all other conditions including construction of permanent sales building, public toilets and all other amenities. The petitioner has received all statutory permissions/'no objection certificates' as envisaged under Rule 144 (Chapter 7) of the Petroleum Rules, 1976 and the instructions issued by the State of Punjab. As per the site plan of the retail dealership, some forest land abutting the pump was required. On the said land, certain trees were there which were to be cut for making provisions for a service lane. The Indian Oil Corporation, accordingly, applied under the provisions of the Forest Conservation Act, 1980 and the rules made thereunder to the Divisional Forest Officer, Gurdaspur (respondent No.4) for permission and grant of 'no objection certificate' for diversion of 0.0963 hectare of forest land for setting up petrol-pump under Forest Division, Gurdaspur. The said application was forwarded by the Forest Department to the Central Government, Ministry of Environment and Forest. The latter vide letter dated 28.05.2015 issued permission and formal 'no objection certificate' regarding diversion of forest land subject to the conditions of payment of the land in question including deposit of compensatory afforestation amount (CA) and Net Present Value (NPV) to be assessed in terms of the rules to be deposited in the account of Compensatory Afforestation Fund Management and Planning Authority (CAMPA), Punjab. The Principal Chief Conservator of Forests, Punjab and the Divisional Forest Officer, Gurdaspur (respondents No.3 and 4), in terms of said letter dated

28.05.2015, assessed the amount of CA as Rs.1,26,096/- and NPV as Rs.85,418/-. The petitioner was asked vide letter dated 17.06.2015 (Annexure P3) to deposit the amount in the account as mentioned. The Divisional Forest Officer, Gurdaspur (respondent No.4), thereafter, vide letter dated 06.07.2015 (Annexure P4) calculated the total price of land which the petitioner was to deposit for diversion of 0.0963 hectare of forest land. An amount of Rs.13,64,571/- was assessed by the Divisional Forest Officer, Gurdaspur (respondent No.4).

The petitioner deposited all the requisite amounts as assessed, i.e. the cost of land, CA and NPV, pursuant to which formal 'no objection certificate' dated 1.10.2015 (Annexure P5) was issued by the District Forest Officer, Gurdaspur.

It is submitted that 'no objection certificates' have been granted to the petitioner vide order dated 02.02.2016 (Annexure P2) passed by the District Magistrate, Gurdaspur (respondent No.5); order dated 28.05.2015 (Annexure P3) passed by the Ministry of Environment, Forest and Climate Change, Regional Officer, Northern Zone, Chandigarh (respondent No.1); order dated 06.07.2015 (Annexure P4) issued by the Divisional Forest Officer, Gurdaspur (respondent No.4); order dated 01.10.2015 (Annexure P5) issued by the Divisional Forest Officer, Gurdaspur (respondent No.4) and order dated 28.04.2016 (Annexure P6) issued by the Divisional Forest Officer, Gurdaspur, Forest and Wildlife Protection Department. However, despite this position the work at the petrol-pump site of the petitioner cannot be carried out in view of the impugned order dated 19.05.2016 (Annexure P11) passed by the learned Tribunal (respondent No. 7).

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 P11) 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 25.10.2016 and the operation of the impugned order dated 19.05.2016 (Annexure P11) was stayed in respect of the project of the petitioner.

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 P11) 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 P11) 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