

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

CWP No. 23327 of 2016 (O&M)

Date of decision: 24.01.2017.

Shivam Construction Company

..... 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.S. Khosla, Senior Advocate, with
Mr. Aman Sharma, Advocate, for the petitioner.

Mr. Karan Singh, Advocate,
for respondent No. 1 - Union of India.

Mr. P.P.S. Thethi, Additional Advocate General, Punjab,
for respondents No. 2 and 4.

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

None for respondent No. 5.

Mr. Tribhuvan Singla, Advocate, for respondent No. 6.

Mr. Jasbir Singh, Advocate, for respondent No. 7.

S.S. SARON, J.

CM No. 823-CWP of 2017

Reply affidavit of Shri Som Datt Sharma, Conservator of Forest
(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. 23327 of 2016

The petitioner - Shivam Construction Company through its authorized representative Shri Raghav Chhabra 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 P10) whereby the learned National Green Tribunal (respondent No.5) ('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 felling of trees so as to enable the petitioner - Company to complete its project.

The petitioner - M/s Shivam Construction Company has its office at Abohar. It has the project for construction of service lanes on NH-15 (New NH-62) section Abohar-Usmankhera road from KM 389.400 to 391.100 passing through Kallarkhera Sale Tax Barrier in the State of Punjab. This work is a part of the process of completing the defence related roads connecting Rajasthan and Gujarat with the State of Punjab and it passes through Bathinda, Abohar, Sri Ganganagar, Bikaner, Jaisalmer up to Kandla Port. The road connects Bathinda Army Cantonment in Punjab to Lalgah Army Cantonment in Rajasthan. This road section from Abohar, Bikaner, Jaisalmer moves along the Indo-Pakistan border. It is submitted that this stretch of road from Abohar to Sri Ganganagar is important and strategic from the defence point of view for frequent movement of Army vehicles along the International border.

The Government of Punjab has deposited an amount of Rs.58,57, 350/- only on account of NPV and CA fee for forest clearance for the said project vide Annexure P5. 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 P10) passed by the learned Tribunal (respondent No. 5).

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 P10) 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 11.11.2016 and the operation of the impugned order dated 19.05.2016 (Annexure P10) 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 P10) 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 P10) 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