

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

**CWP No. 25222 of 2016
Date of decision : 24.01.2017**

Sukhpal Singh and others

.....Petitioners

Versus

Union of India & others

.....Respondents

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

Present: Mr. Rupinder S. Khosla, Senior Advocate with
Mr. Aman Sharma, Advocate for petitioners.

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

Mr. P.P.S. Thethi, Addl. A.G. for State of Punjab
for respondents No.2 & 3.

None for respondent No.4.

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

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

S.S. SARON J.

The petitioners Sukhpal Singh and others by way of the present petition under Articles 226/227 of the Constitution of India seek quashing of the order dated 19.05.2016 (Annexure P-7) passed by the learned National Green Tribunal (respondent No.4) ('Tribunal' - for short) whereby a blanket order has been passed restraining the entire State of Punjab from felling and cutting any trees in the State. It is submitted that the said order has been

passed without taking into account that various projects like the present one had been initiated only after obtaining all the requisite sanctions including those of the Department of Environment as well as Forests for felling the trees. A further prayer has been made for directing the Principal Chief Conservator of Forests (Head of Forest Force), SAS Nagar, Mohali (respondent No.2) to complete the cutting/axing of trees so as to allow the State of Punjab through its Secretary, Department of Irrigation (respondent No.3) to complete the reconstruction/remodelling of the Mandi Minor in time and also direct it to release the authorized water to the fields of the petitioners for irrigation purposes.

The petitioners, it is submitted, are agriculturists and owners of agriculture land within Hadbast No.3, 6, 451 in the revenue estate of Distt. Bathinda measuring approximately 100 acres. Their lands are situated near Mandi Minor, which is a Sub Branch of Joga Distributary. The petitioners irrigate their lands from the said Joga Distributary. The Mandi Minor initially had an unlined channel *i.e.* Earthen Banks and about 30-35 years back, the brick lining of the Distributary was constructed by the Irrigation Department. The water carrying capacity of this Distributary earlier was 158.50 cusecs. This was not enough to supply water to the fields of the cultivators. Besides, the sub soil water in the area has been very low and the same was neither suitable for human consumption nor for irrigation purposes. Even the lining of this Minor had been damaged at various places, which resulted in breaches of the water carrying capacity. The Irrigation Department, however, in the year 2013 prepared a scheme to reconstruct/

remodel this Minor so as to increase the water carrying capacity from 158.50 cusecs to 170.99 cusecs and also further release the authorized discharge of the water which would irrigate nearly 30 villages in the area of 16420 hectares of agriculture land. According to the petitioners, the remodelling of this Distributary would also benefit the general public as they would get good quality of potable water.

The Scheme for remodelling the Mandi Minor, it is stated, was approved by the Government of Punjab, Department of Irrigation vide letter dated 14.11.2013 (Annexure P-1). In furtherance thereto, detailed estimated costs of work was prepared and it was assigned to various agencies. The remodelling/reconstruction of the Mandi Minor starts from RD-0 till RD-92356 (Tail). The Irrigation Department after obtaining necessary approval had completed the work from RD-42000 to RD-92356 (Tail). The remaining reach that is RD-0 to RD-42000 had not been completed. As a result thereof, the entire area of the petitioners were denied the benefit of canal irrigation, besides, the farmers of the adjoining areas were also suffering great financial loss.

The Union of India through Additional Principal, Chief Conservator of Forests (Central), Ministry of Environment, Forest and Climate Change, Regional Office, Northern Zone, Chandigarh (respondent No.1) issued a letter dated 03.12.2015 (Annexure P-2) to the Principal Chief Conservator of Forests (Head of Forest Force), SAS Nagar, Mohali (respondent No.2) regarding diversion of 2.34 hectares (Mansa F.D. 2.03 ha + Bathinda FD 0.31 ha) of Forest land in favour of Executive Engineer,

Sangrur Division, IB Sangrur for reconstruction of Mandi Minor RD-0.36000 at Village Akila and Joga under Forest Division and District Mansa; besides, RD-36000-RD-42000 at village Chowke under Forest Division and District Bathinda, Punjab. In terms of the said letter, conditions were imposed for diversion of 2.34 hectares of forest land. Certain trees fell on the banks of the Mandi Minor, therefore, the Principal Chief Conservator of Forest (Head of Forest Force), SAS Nagar, Mohali (respondent No.2) addressed a letter dated 08.01.2016 (Annexure P-3) to the State of Punjab through its Secretary, Department of Irrigation (respondent No.3) stating that an area of 2.34 hectares fell in the forest area. It was stated that equal area of land belonging to the Sangrur Division, Irrigation Department had been transferred to the office of the Principal Chief Conservator of Forest (Head of Forest Force), SAS Nagar, Mohali (respondent No.2) for forest purposes although the ownership of the area transferred would remain with the Irrigation Department. The Irrigation Department (respondent No.3) deposited the requisite amount of Compensatory Afforestation as well as Net Present Value amounting to Rs.10,15,000/- on 11.02.2015, Rs.1,57,300/- on 10.03.2015 and Rs.43,92,148/- on 29.02.2016 respectively in the Punjab CAMPA account. The receipts in respect of the same (Annexure P-4 colly) have been placed on record. Therefore, the Irrigation Department, Punjab (respondent No.3) it is submitted obtained the necessary approvals/permissions from the Forest Department. According to the petitioners, they had obtained necessary approvals and permission from the Forest Department for cutting and felling

trees and there was no violation of any law.

In short, the position is that the Mandi Minor is to be relined and remodelled by the Irrigation Department, Punjab. However, the said work could not be carried out as certain trees were to be cut and there was a complete ban on cutting of trees by the learned Tribunal (respondent No.4) in terms of its order dated 19.05.2016 (Annexure P-7).

Notice of motion was issued on 06.12.2016 and in the meantime, operation of the order dated 19.05.2016 (Annexure P-7) passed by the learned Tribunal (respondent No.4) to the extent it related to the cutting of trees along the Mandi Minor from RD-0 to RD-42000 was ordered shall remain stayed.

It is to be noticed that against the same order dated 19.05.2016 (Annexure P-7), the State of Punjab filed Civil Appeal D No.33942 of 2016 titled as 'State of Punjab and others v. Mandeep Aggarwal and others' in the Supreme Court. Hon'ble the Supreme Court disposed of the said appeal in terms of the order dated 28.10.2016. It was contended on behalf of the State of Punjab that the order passed by the National Green Tribunal was wholly unjustified having regard to the fact that the State had obtained from the competent authority all permissions required for felling of trees in connection with various ongoing projects. It was submitted that without taking note of such permissions, the National Green Tribunal was not liable to have issued a blanket ban on cutting of forest trees which would seriously hamper the ongoing developmental projects in connection with widening of the highway in the said case. It was further submitted that the petitioner

State of Punjab before the Hon'ble Supreme Court was ready and willing to furnish whatever information was required by the National Green Tribunal. However, the project of national importance like widening of highway ought not to be hampered by the reasons of the impugned order. It was submitted that the Hon'ble Supreme Court while permitting the petitioner - State to approach the National Green Tribunal for vacation of the impugned order stay part of the said order qua NH-71 so that the ongoing project is not adversely affected. The Hon'ble Supreme Court on the basis of said contentions passed the orders as follows:-

“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.”

Keeping in view the aforesaid order dated 29.10.2016 passed by the Hon'ble Supreme Court of India, this petition is also disposed of and the operation of the impugned order dated 19.05.2016 (Annexure P-7) passed by the learned Tribunal (respondent No.4) shall continue to remain suspended to the extent it relates to the cutting of trees on the Mandi Minor from RD-0 to RD-42000 for a period of four months from the date of receipt of certified copy of the order to enable the State of Punjab in the Department of Irrigation (respondent No.3) to execute the ongoing project in the present case i.e. to remodel and reline the Mandi Minor from RD-0 to RD-42000 and leaving the learned Tribunal (respondent No.4) 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

24.01.2017
sunil yadav

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No