

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

CWP No. 25234 of 2016 (O&M)

Date of decision: 24.01.2017.

Kailash Devi

..... Petitioner.

Versus

Union of India and others

..... Respondents.

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

Present: Mr. Ramdeep Partap Singh, 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 to 4.

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. 918-CWP of 2017

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. 25234 of 2016

The petitioner - Kailash Devi by way of present petition under Articles 226/227 of the Constitution of India seeks quashing of the order dated 19.05.2016 (Annexure P8) 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. A further prayer has been made for quashing the order dated 20.05.2016 (Annexure P9) passed by the Principal Chief Conservator of Forests (respondent No.2) implementing the aforesaid order dated 19.05.2016 (Annexure P8) in the entire State of Punjab.

It is further prayed that a direction be issued to respondents No. 2 to 4 to permit the petitioner to cut ten trees in front of her petrol-pump and complete its work for installing retail outlet of Hindustan Petroleum Limited.

The petitioner by way of an application dated 18.07.2005 applied for a retail outlet dealership on the Khanna-Samrala road in District Ludhiana, Punjab. The petitioner on the said application was granted Letter of Intent (LOI) dated 22.02.2006 (Annexure P1). The petitioner had taken necessary approval from various departments for setting up her retail outlet. She also submitted the Marking and Assessment fee with regard to ten trees which were causing hindrance in the operation and construction of the outlet. The assessment was done by the Forest Range Officer, Samrala on 03.02.2016. As per the assessment, the petitioner deposited Rs.43,763/- in favour of Greening Punjab Mission Fund, Punjab National Bank, Sector 9, Chandigarh. Copies of receipt 'challan' dated 03.02.2016 (Annexure P2) for marking and assessment for ten trees and amount deposited (Annexure P3)

are placed on record. The petitioner, as per procedure, deposited the *ad hoc* Compensatory Afforestation Fund Management and Planning Authority (CAMPA) fund amounting to Rs.2,05,374/- on 17.05.2016 (Annexure P4). On the next day, an amount of Rs.4,66,683/- was deposited by way of cheque dated 18.05.2016 (Annexure P5) with the Managing Director, Punjab State Forest Development Corporation Ltd. The photograph (Annexure P6) of the site in question has been placed on record.

After the prescribed procedure had been followed, the petitioner was granted 'no objection certificate' dated 05.10.2016 (Annexure P7) by the District Magistrate, Ludhiana. The said certificate is issued only after the concerned officials duly inspect and find that the requisite permissions have been obtained. The petitioner, however, now is unable to execute the work in view of the order dated 19.05.2016 (Annexure P8) passed by the learned Tribunal (respondent No.5). The said order, according to the petitioner, 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.

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, she is unable to cut the same due to the order dated 19.05.2016 (Annexure P8) passed by the learned Tribunal whereby it has restrained the felling and cutting of trees in the entire State of Punjab.

Notice of motion was issued in the case on 06.12.2016 and in the meantime, the operation of the impugned order dated 19.05.2016 (Annexure P8) passed by the learned Tribunal (respondent No.5) to the extent the same

related to the setting up of a retail outlet, i.e. petrol-pump, by the petitioner on the Khanna-Samrala road, District Ludhiana, was stayed by this Court.

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 P8) 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 P8) 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