

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 5537 of 2020.

Decided on : 8<sup>th</sup> December, 2020.

National Highway Authority of India

...Petitioner.

Versus

State of H.P. & others

....Respondents.

**Coram:**

***The Hon'ble Mr. Justice Sureshwar Thakur, Judge.***

***The Hon'ble Mr. Justice Chander Bhusan Barowalia, Judge.***

*Whether approved for reporting?<sup>1</sup> Yes.*

**For the Petitioner(s):**

Mr. K.D. Shreedhar, Senior  
Advocate with Ms. Shreya  
Chauhan, Advocate.

**For the Respondents :**

Mr. Ashwani Sharma, Addl.A.G. with  
Vikrant Chandel, Dy. A.G.

**Sureshwar Thakur, Judge ( Oral).**

The petitioner is engaged in the construction of four  
laning of road, commencing from Parwanoo to Shimla. The  
construction activity has reached upto a stretch located at  
Kathali village, whereat stands located hence forest land,  
nomenclatured, as, D-227 Raikot. In the afore stretch, there

<sup>1</sup> Whether reporters of the local papers may be allowed to see the judgment?

are about 2079 trees of various species. Though, in contemporaneity, vis-a-vis, the notification, made under Section 4 of the Land Acquisition Act, the jamabandi(s) appertaining to the afore stretch, depicted the private landowners to be in exclusive ownership, and, possession of the afore tract of land. However, subsequently, it appears from a perusal, of, the scribed instructions, placed on record, by the learned Additional Advocate General, that the forest department has become apprised/awakened that the afore stretch of forest land, has been erroneously recorded in the name of the private landowners, despite the forest department being the true owner of the afore stretch of land. It also appears from the afore scribed instructions, as, become, placed on record, that after confabulations being held inter se the authorities concerned, it being resolved, that a declaratory suit be filed before the Civil Judge, Kandaghat, for seeking a decree, for setting aside the purported erroneous entries, occurring in the revenue record, rather displaying the private landowners concerned, to be

owners in possession of the afore tract of land, the relevant portion of the minutes, of, the meeting, held on 5<sup>th</sup> February, 2020, stand(s) extracted hereinafter:-

"During the meeting, it was pointed out that this dispute will cause delay in executing the work of Solan Kaithlighat Four Lane Project executed by NHAI, which is a very important project for the State. After detailed deliberations, following decisions were taken:-

(i) The NHAI shall process the case for seeking approval of the diversion of additional land comprised in disputed portion coming in the construction of Four Lane under Forest (Conservation) Act, 1980 and the Forest Department shall expedite the diversion proposal at the earliest.

(ii) The Deputy Commissioner, Solan shall convene a meeting with the NHAI authorities and shall take an undertaking from them that if the ownership title of the said land is decided by the competent Court of law in favour of the local people, in that event, NHAI

will have to bear the compensation amount for making payment to the owners.

(iii) The Forest Department shall file a suit in the competent Civil Court for seeking correction of revenue entries in its favour."

2. Since, in pursuance to the notification issued under Section 4 of the Land Acquisition Act, the Land Acquisition Collector concerned, may not, given the dispute with respect to the entitlements of compensation, hence germinating inter se the private landowners, and, the forest department, hence proceed to determine compensation, qua the lands concerned, nor it would be judicially appropriate for this Court to make a direction, upon, the Land Acquisition Collector to make determination(s), of, the compensation amount(s), (a) as, thereupon, the effect, if any, of the judicial verdict rather contrary to the private landowners' espousal, would negate, all the effects, of, the afore determination of compensation, qua them by the Collector concerned, rendering hence the afore to be, a, nugatory recouring. Furthermore, also, at this stage, it



would be extremely hazardous, for, this Court, to direct the petitioner authority, to suo moto assess any interim compensation, nor also any directions can be made, upon, it to deposit the afore sums of compensation in the Registry of this Court, and, nor thereafter, at this stage, without for the afore reason any decision being made, by the competent authority concerned, vis-a-vis, the entitlements of the contesting litigants, to order for its disbursement to the purported legitimate disbursees thereto. In addition, another obstacle, besetting this Court, to make an affirmative order, upon, the extant petition, inasmuch, as, the Forest Department, and, other respondents concerned, being directed, to, permit the petitioner to proceed to undertake the construction activities in the afore stretch of forest land, (b) is, comprised in the fact that though enumeration of trees in the afore land rather has occurred, (c) however, the thereafter imperative processes, for ensuring valid felling(s), of the afore existing enumerated trees, upon, forest land, besides for permission being granted, for conversion of the forest land,

to, non forest land, inasmuch, as, for construction of the road thereon, are, to be yet initiated by the petitioner.

3. Consequently, the Forest Department concerned, shall forthwith purvey to the petitioner, the entire records appertaining to the enumeration of trees hence existing on the afore stretch of forest land, and, thereafter the petitioner authority, shall forthwith transmit them to the Regional Office, of, the Ministry of Environment, Dharadun, and, the latter upon receiving the afore, shall forthwith or with utmost promptitude hence proceed, to, inasmuch, as, within one month from today, and, strictly in accordance with law, complete the makings, of, apposite sanctions.

4. Upon permission being received from the Regional Office, Ministry of Environment, Dehardun, both for felling of trees existing upon the forest land, and, also for, conversion of the forest land, to non forest land or for its use for construction of road(s) thereon, thereupon, the petitioner authority shall proceed to forthwith execute the road construction activity, and,

shall completely, complete it within six months. However, the petitioner authority shall, upon, receiving the afore permission shall proceed to place on record, of the writ petition, and, shall also place before this Land Acquisition Collector, besides before the Civil Court concerned, a sworn affidavit by its responsible functionary, disclosing therein that as and when the dispute with respect to the entitlements to compensation, as, are underway inter se the litigants concerned, becomes fully rested, thereupon, compensation amount determined thereunders, shall be forthwith deposited before the Land Acquisition Collector concerned. It is also clarified that the Land Acquisition Collector, may not, till a decision becomes meted, upon, the civil suit concerned, proceed to determine compensation, in pursuance, to, the notification issued under Section 4 of the Act. With the afore directions the extant writ petition stands disposed of. Further, the learned Civil Judge (Junior Division), Kandaghat, is, directed to within nine months from today,

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conclude the trial of the Civil Suit concerned. All pending applications also stand disposed of.

(Sureshwar Thakur)  
Judge

(Chander Bhusan Barowalia)  
Judge.

8<sup>th</sup> December, 2020.  
(jai)