

CWPIL No. 15 of 2010-B

16.12.2011 Present: Mr. R.K. Gautam, Senior Advocate (Amicus Curiae), with Mr. Vikrant Chandel, Advocate, for the petitioner.

Mr. Vivek Singh Thakur, Additional Advocate General, for respondents-State.

Mr. T.S. Chauhan, Advocate, for respondent No. 2.

Mr. Ajay Mohan Goel, Advocate, for the proposed respondents in CMPs No. 12936 and 12937 of 2011.

Mr. B.C. Negi, Advocate, for the proposed respondents in CMPs No. 13283 and 13344 of 2011.

Keeping in view the nature of the petition, we direct that the Principal Secretary (Forests) to the Government of H.P. and HIMURJA through its CEO be impleaded as party-respondents.

2. This Public Interest Litigation, initiated on a letter written to Hon'ble the Chief Justice, deals with the problems relating to the Rohtang area. The scope of the litigation was extended over a period of time especially when we felt that indiscriminate and haphazard construction is being permitted in this pristine and verdant area of Himachal, which is one of the most beautiful valleys in the country, nay, the world. The Manali Valley is the crown jewel of Himachal Pradesh. Unfortunately, due to human avarice, unabated haphazard construction took place, especially in the heart of Manali town, which is nothing more than an air conditioned bazaar of any crowded North Indian city. The main Mall of Manali does not appear to be the main thoroughfare of a hill station but looks like and is as crowded as any street of Karol Bagh, albeit the weather is cool and pleasant. This is the damage which we have done to what was our first Prime Minister Pandit Jawahar Lal Nehru's favourite holiday destination.

3. Nature is a manifestation of the Almighty himself and if we cannot protect nature, we are desecrating the temple of the Almighty. In our ancient scriptures, we find that there is an exhortation to everybody to ensure that environment and ecology is protected. We always refer to the earth as our mother and it would be indeed a sad day if we cannot protect our mother. Here it would be apt to quote the following verses from the Atharva Veda:

“The Earth is my mother, her child am I;

Infinite space is my father.

May he fill us with plenty.

Peaceful, sweet-smelling, gracious Earth.

Whatever I dig from thee, O Earth,

May that have quick growth again.

May we not injure your vitals or your heart.

Full of sweetness are the plants.

And full of sweetness these my words.

And with things that are full of sweetness,

I prosper in a thousand ways.”

4. Keeping the aforesaid factors into consideration, we had vide our order dated 30th September, 2011, directed the Director, Town and Country Planning Department to file an affidavit stating clearly what are the criteria laid down for construction in these areas.

5. On 18.11.2011, such affidavit was not filed and Shri A.N. Gautam, State Town Planner, who was present in Court, submitted that for the Marhi - Rohtang area, no interim development plan has been

prepared by the State Government. He further stated that there is no plan governing the construction activities in this area, though there is a proposal to finalize the same. Keeping in view the aforesaid statement made by Shri Gautam, and also due to the fact that no affidavit was filed despite directions of this Court, we had passed the following order:

“Notice in this petition was issued on 21.10.2010. The issue raised is with regard to protection and preservation of the fragile ecology, biodiversity and environment of the Rohtang area. Glaciers of this area feeds our river basins and any damage would be irreparable. It would adversely effect nature and national economy. Hence some immediate measures are required to be taken. The learned Amicus Curiae had submitted a detailed report in this regard. On 30.9.2011, we had expressed our concern that if more roads and buildings are allowed to be constructed in the area it may result into land-slides. Thus, causing soil erosion. With this purpose the issue was required to be considered by NEERI, Nagpur. Hence, for the time being, till such time interim development plan is prepared by State, except for the projects pertaining to Army/defence, no construction activity in Marhi and Rohtang area (as clarified in our order dated 30.09.2011) shall take place without leave of this Court. The Superintendent of Police, Kullu shall ensure strict compliance thereof.”

6. Now, applications have been filed, by the State, for modification of the aforesaid order and it has been stated that Shri Gautam had made an incorrect statement in Court. Shri Gautam has filed an affidavit and according to him, he had intermingled and misunderstood Rohtang Special Area with the other areas. He has tendered his unqualified apology, which we accept.

7. We have now been informed that the area with which we are concerned, as far as the orders for modification are concerned, that is from Nehru Kund near Manali to Koksar in Lahaul and Spiti can

be divided into five segments. Segment-I consists of the area between Nehru Kund and Kothi and Palchan falling on the left bank of the river Beas. Segment-II consists of the Solang Special Development Area, which is on the right bank of the Beas. Segment-III is the area between Kothi/Palchan upto the boundary of the Rohtang Special Area. Segment-IV is the Special Area Rohtang, which is the area delineated as Special Area Rohtang and the area beyond that in Lahaul Spiti up to Koksar forms Segment-V.

8. It would be pertinent to mention that previously also this Court in a number of cases has issued directions directing the State to comply with certain laws and directions issued by the Court to ensure that the development of the area is done in an aesthetic manner. It, however, seems that the orders of the Court have not been complied with in letter and spirit and the views of this Court in various earlier petitions as well as this petition have fallen on deaf ears. We are not referring to any specific judgment as far as this case is concerned except certain orders in CWPs No. 532 of 1995 and 1185 of 2004, which we will refer to in detail later.

9. For the purpose of our order and to appreciate the boundaries of these segments, we may make reference to the map of the Planning Area and Special Areas in Kullu District, which has been filed as Annexure R-1/A with the application for modification of order. Certain areas of Kullu, especially Manali town up to Nehru Kund are covered by the notification issued by the Town and Country Planning Department on 20th June, 2005. For the purpose of this portion of the

order, we need not make detailed reference to this notification.

10. The State issued a notification on 15.01.2011 covering the left out areas of Kullu Valley Planning Area and admittedly Segment-I falls in this area. There is no dispute with regard to this issue. At the outset, we may state that Segment-I and II are now virtually a part of the greater area of Manali town. Tourist facilities such as hotels, restaurants etc. abound in this area, which has virtually become a part of the tourist hub of Manali. However, for reasons best known to the State, they are being still shown as rural areas. This Court can take judicial note of the fact that there is a phenomenal increase in construction activities and commercial activities in this area.

11. The H.P. Town and Country Planning Act was enacted in the year 1977. Section 30-A of the Town and Country Planning Act was inserted vide Amendment Act 11 of 1997 and reads as follows:

“30-A. Construction of farm-houses.-
Notwithstanding anything to the contrary contained in Section 30, a person who owns on the commencement of this Act and thereafter continues to own land, or his successor, and intends to construct a farm-house for agricultural purposes shall make a simple application to the Director for seeking his permission:

Provided that the farm-house-

(i) is comprised of covered area not exceeding 200 sq. mtrs; and

(ii) is not having more than two storeys.

Provided further that minimum two metre set backs shall be kept on all sides of the farm house and shall not be put to any other use.

Explanation:- For the purpose of this section the expression “farm-house” shall include a cattle shed.”

12. The purpose of introducing Section 30-A was not to grant exemptions to city dwellers who purchase land in rural areas or to people who are constructing cottages etc. for commercial purposes. In our opinion, the purpose of Section 30-A is that the villagers and residents of the villages are not put to difficulty while obtaining permission etc. The opening words of Section 30-A clearly indicate that the benefit of the exemptions under this section is only available to those persons who owned land in the rural areas at the time of commencement of the Act. The word "successor" in the context of this section and the Act, has to be read to mean natural heirs only. The word "successor" cannot include persons who have purchased or leased property from the original owners. We, therefore, make it clear that the benefit of the notification issued under Section 30-A and the letter dated 2nd July, 2009 shall only be available to the residents and original inhabitants of the areas, who were owning the property at the time of commencement of the Act and their natural heirs only. The purpose of Section 30-A is not to grant exemptions to city dwellers who purchase land in rural areas or to people who are constructing cottages etc. for commercial purposes.

13. We are issuing these orders because we are well aware of the fact that a number of cottages are being built to be sold on commercial basis to people who are not even residents of Himachal Pradesh. We hold the Director, Town and Country Planning and the State Town Planner responsible for adherence to our orders, who shall ensure that no construction, except by the inhabitants, is permitted even as per the exempted notification. We further make it clear that

even with regard to ongoing projects being constructed by person(s) who have purchased land after the commencement of the Act, these people will have to apply for permission and permission shall be granted to them strictly in accordance with the Act, bye laws, development plans, planning guidelines and the orders of this Court.

14. The benefit of such exemption shall not be given to people who have purchased land in that area after the commencement of the Act and all these persons will have to obtain permission under the Town and Country Planning Act. We further direct that the benefit of Section 30-A will only be available even to the original owners/residents only in respect of farm houses being built for personal use of such residents and not in case of farmhouses being built for sale to others or farmhouses which are to be used for commercial purposes such as homestays etc. We may also clarify that as far as our interpretation with regard to Section 30-A is concerned, this shall apply to entire State of Himachal Pradesh.

15. The Government in exercise of the powers under Section 30-A of the Town and Country Planning Act issued a notification exempting certain areas, which included Segment-I vide notification dated 27th March, 2009. The guidelines prescribing the limits and the criteria for such construction were issued by the Principal Secretary on 2nd July, 2009. Broadly speaking, the guidelines prescribe that when residential buildings and farm houses are to be constructed, then if they shall not exceed three storeys and cover a maximum floor area upto 600 sq. mts. in such circumstances no permission under the Town

and Country Planning Act would be required. Similarly, construction of buildings in case of commercial use may cover a maximum floor area of 100 sq. mts. and the maximum number of storeys is two. For service industries, the maximum floor area is 100 sq. mts. and the number of storeys is one. The only other exemption is in respect of public amenities.

Segment-I

16. We, therefore, clarify our earlier order to the limited extent that those persons, who are covered as per the exemption notification, may continue with the construction being raised by them so long as it is strictly within the limits prescribed under the letter dated 2nd July, 2009 and the other imperatives annexed to this letter, which clarify that attic or basement shall be counted as a storey. Construction of sloping roof shall also be ensured and it shall also be ensured that there are adequate provisions for set backs etc.

17. While going through the regulations relating to this area, we were surprised to note that the only limit is that a floor area ratio (FAR) of 1.75 is prescribed. What happens if a person purchased a plot of 20 acres? Can he raise a hundred storeyed building in this beautiful valley? Obviously, there have to be some other limitations other than the FAR. Therefore, we direct that till the State formulates a proper policy in this behalf and submits it to this Court, the conditions which are laid down for the Solang Development Area, which is adjoining to this area, shall apply *mutatis mutandis* to this area also and no plan shall be sanctioned except if it is in accordance with the guidelines

issued in the Solang area. We also make it clear that this limit of three storeys will not only apply to Segment-I but shall apply to the entire left out area of Kullu Valley Planning Area.

Segment-II

18. As far as Segment-II is concerned, Solang area is covered under Rules 10(a) and 10(b) of the Himachal Pradesh Town and Country Planning Rules, 1978 attached with Annexure R-1/C with this petition. Guidelines have been issued under these rules which have been attached as Annexure R-1/C with Appendix-I. As per these guidelines, the maximum coverage is provided in Section 2 and the maximum number of storeys are prescribed as four including basements and attic. Public and semi public buildings can be allowed up to five storeys, if feasible as per site conditions. We direct that only those constructions will be permitted to be carried out, which had obtained necessary permission and in future, permission shall be granted strictly in accordance with Annexure R-1/C. In addition thereto, the State shall ensure that construction is carried out in accordance with the other legal provisions and there is no violation of the Town and Country Planning Act and the Himachal Pradesh Roadside Land Control Act, 1968 and other legislations governing this field.

Segments III and V

19. As far as Segments III and V are concerned, according to the respondents, they are mainly part of Forest area, where the Town and Country Planning Act does not apply. Therefore, the earlier order calls for no modification as far as these areas are concerned.

Segment-IV

20. As far as Segment-IV is concerned, it has been declared to be a Special Area, but no construction is allowed in this area at present. Therefore, no modification of our earlier order is needed except to the limited extent and we hereby clarify that the State may construct any building(s) for rescue purposes, provision of medical aid facilities to the tourists and persons travelling from Manali to the Lahaul Valley, portable toilets, Porta cabins etc. The State can apply for further modifications by the next date.

21. We also clarify that all existing buildings can be repaired and re-roofed etc. so long as the maximum height and dimensions of the buildings are not changed. We further clarify that any construction raised in Segments III, IV and V for the purposes, which we have permitted should, so far as possible, be temporary removable construction, such as, Porta cabins and if necessary, permanent structure not exceeding one storey may be constructed. These should, however, be built in a manner that the pristine beauty of the area is not marred.

22. We may clarify that social welfare projects covered under the Mahatma Gandhi National Rural Employment Guarantee Act will be permitted to be carried out subject to the condition that in case of construction of buildings, it shall be ensured that they are not above three storeys. We further clarify that all works relating to construction of roads, water schemes etc. shall be permitted to be carried out.

23. After going through the records and the policy of the

State, we feel that certain other directions are also called for. We have held a meaningful discussion with Mrs. Purnima Chauhan, Director, Town and Country Planning as well as Shri Gautam, the State Town Planner. We have impressed upon them the need to have different FARs for different areas in the State. FAR may be higher in a city, but in rural areas and in the country side, FAR should be low as possible, except, may be, in the abadi area of the villages where the higher FAR of 1.5 may be justified.

24. We also feel that while approving the development plan(s) for different areas, the local architecture, local culture, local needs and environment must be kept in mind and even if permissions are not required, the State must frame a policy and clearly indicate therein what is the type of construction which is permitted, what should be the type of roof etc. In the hilly areas of Himachal Pradesh, there should be a provision of constructing sloping roof and the minimum gradient of the roof should be clearly indicated.

25. There must be some uniformity in the FARs, especially in the areas like Segment-I and II, which are virtually becoming a part of Manali town and in the near future, will be a part and parcel of Manali town. The development plan should also prescribe what is the preferred material for construction and some benefits even in FAR may be given to people who use local material and make buildings which are in sync with the local architecture and the natural environs of the area.

26. We also direct the Principal Secretary (Town and Country

Planning) to file an affidavit as to whether any survey has been carried out to determine whether the building(s) constructed in the areas exempted under Section 30-A have been built in consonance with Annexure R-1/C or not. If no such survey has been carried out, the same shall be carried out on or before the next date and by the next date, the Principal Secretary (Town and Country Planning) shall indicate how many construction(s) have been surveyed and how many have been found to be in violation of the instructions, Annexure R-1/C. In this affidavit, it shall also be indicated whether in the entire State of Himachal Pradesh, any action has been taken against a person, who has constructed a building in violation of Annexure R-1/C. In the affidavit, it shall also be clearly stated what is the mechanism to determine the violations and what is penalty provided for the violation.

27. We are aware that there are certain sectors, which have their own specialized requirements, such as, the hospitality sector, transport sector, education sector, health and industry. Normally, for the industrial areas, the State can have its own regulations. However, as far as education, hospitality, transport and health facilities are concerned, they to a certain extent have to be available in every town and village and in such cases, the Town and Country Planning Department may have separate guidelines for constructions thereof.

28. While considering the needs for creation of infra structure for the transport sector, the following observations of the Division Bench of this Court in **CWP No. 1185 of 2004**, titled **Balbir Singh and another versus State of H.P. & others**, shall be kept in consideration:

“....However, w.e.f. 1st April, 2008 the respondent-State shall ensure that at least 10 (ten) Authorized Testing Stations are set up around the headquarter of all the Districts in the State except Kinnaur and Lahul & Spiti. Since the new infrastructure is to be provided, we further direct that these Authorized Testing Stations should be set up atleast 10 KMs away from the District headquarter. The Authorized Testing Stations are bound to be crowded by the transport vehicles, therefore, they should be set up on the suitable sites away from the National State Highways with adequate land so that National State Highways are not clogged due to the parking of such vehicles. The respondent-State may either set up Authorized Testing Stations or it may even ask the HRTC or any private Operator to set up the Authorized Testing Station. The Authorized Testing Station, so set up must comply with the provisions of Rule 63 and the guidelines issued. We further direct that after 1st April, 2008, the “Board of Inspection”, which the State may appoint will also have the necessary infrastructure as are required by the Authorized Testing Stations.”

29. We, therefore, direct the Chief Secretary to the State of Himachal Pradesh to convene a meeting of Principal Secretary (Town and Country Planning) and the Principal Secretaries of all the departments concerned, so that by the next date, there should be some understanding as to what is the requirement of each of these different sectors. The Chief Secretary shall file her affidavit in this regard before the next date.

30. Keeping in view the importance of the Kullu-Manali area, especially tourism potential thereof, we direct the Principal Secretary (Town and Country Planning) to ensure that the entire stretch from Aut to Beas Kund should be videographed and videography should be conducted in the towns of Aut, Thalaut, Panarsa, Bajaura, Bhunter, Kullu, Raison, Naggar, Patlikuhl, Katrain, etc. so that there is hard evidence available of what is the construction actually existing in the

area on date. We are not experts in the field and if satellite imaging can be of greater benefit, it is for the Secretary (Town and Country Planning) to decide what method is used. However, it is his responsibility to ensure whether it is videography or satellite imaging, which is done, that the entire construction in this area should be suitably mapped and imaged in such a manner that the dimensions and number of storeys of each and every building are known so that violation(s) in future can be dealt with strictly.

31. In the development plan for the left Kullu Valley areas, we have found a positive condition. This condition was imposed pursuant to the directions given by this Court in **CWP No. 532 of 1995**, titled **Trisha Sharma versus State of H.P. & others**. According to this condition, no construction activity can be carried out till the highest flood level of the River Beas and even beyond that for a distance of 25 meters. We are constrained to observe that the State has neither marked the highest flood level nor given indication as to what is the area 25 meters above the highest flood level. We have found that this rule has been observed more in breach than followed. We, therefore, direct the Principal Secretary (Town and Country Planning) to file an affidavit to indicate how any person can know that he is constructing a building in accordance with this condition. To ensure compliance of this condition, we direct that the State should clearly mark the highest flood level of the River Beas and the 25 meters area where no construction is allowed in a clear cut manner. This shall be done positively before the next date.

32. Fresh Terms of Reference have been presented before this Court by the Additional Chief Secretary (Forest) to the Government of H.P. We approve the Terms of Reference and direct that the same be sent to NEERI by the Additional Chief Secretary (Forest) within 15 days from today and we request NEERI to submit its preliminary report, if not the final report, by **20th March, 2012.**

33. We are aware that we have asked the State to do a lot of work and, therefore, we granted three months time to do the needful. List the matter on **30th March, 2012.** We direct the Chief Secretary to ensure that suitable manpower is made available, which we are aware is lying in excess in PWD and Forest Departments. We also direct the Principal Secretary (Finance) to the Government of Himachal Pradesh that he shall ensure that adequate funds required for this purpose are made available.

CMPs No. 12936 and 12937 of 2011

34. We dispose of these applications by permitting the applicants to complete the power project. We are passing this order since the power house is already complete and as per their application, only the penstock has to be erected. While we are allowing the application of this power project, we find another anomaly in the policy of the State. Power projects, if they fall within the planning area, would also obtain permission of the Town and Country Planning authorities. It appears that, in fact, no planning permission is being taken by any power project. This aspect of the matter be also clarified in the affidavit of the Principal Secretary (Town and Country Planning).

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CMPs No. 13283 and 13344 of 2011

35. The applications are allowed to the extent that the applicants are permitted to intervene in the matter, but they will not be impleaded as parties.

**(Deepak Gupta)
Judge**

**(Sanjay Karol)
Judge**

December 16, 2011
(rajni)