2024 INSC 30

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 5348-5349 OF 2019

THE STATE OF HIMACHAL PRADESH AND OTHERS **...APPELLANT(S)**

VERSUS

YOGENDERA MOHAN SENGUPTA AND ANOTHER **...RESPONDENT(S)**

WITH

TRANSFERRED CASE (C) NO. 2 OF 2023

INDEX

List of Abbreviations

1.	NGT	-	National Green Tribunal, Principal Bench, New Delhi
2.	First order of NGT	-	Order of NGT dated 16th November 2017
3.	Second order of NGT	-	Order of NGT dated 14th October 2022
4.	SPA	-	Shimla Planning Area
5.	CWP	-	Civil Writ Petition
6.	TCP Act	-	Himachal Pradesh Town & Country Planning Act, 1977
7.	1978 Rules	-	Himachal Pradesh Town & Country Planning Rules, 1978
8.	OA	-	Original Application
9.	FC Act	-	Forest (Conservation) Act, 1980
10.	NDMA	-	National Disaster Management Authority
11.	HPMC Act	-	Himachal Pradesh Municipal Corporation Act, 1994
12.	BPMC Act	-	Bombay Provincial Municipal Corporation Act, 1949
13.	MRTP Act	-	Maharashtra Regional and Town Planning Act, 1966
14.	AT Act	-	Administrative Tribunals Act, 1985

J U D G M E N T

B.R. GAVAI, J.

I. INTRODUCTION

Civil Appeal Nos. 5348-5349 OF 2019

1. These appeals challenge the judgment and order dated 16th November 2017 (hereinafter referred to as the "first order of NGT") passed by the National Green Tribunal, Principal Bench, New Delhi (hereinafter referred to as the "NGT") in Original Application (OA) No. 121 of 2014, whereby various

directions were issued by the NGT, and the order dated 16th July 2018 passed by the NGT in Review Application No. 8 of 2018, whereby the review sought of the first order of NGT by the present appellants was dismissed.

Transferred Case (C) No. 2 of 2023

2. The draft development plan for 22,450 hectares of Shimla Planning Area (hereinafter referred to as "SPA") which was finalized vide a notification dated 16th April 2022, came to be stayed by the NGT, vide an interim order dated 12th May 2022. By the said order, it restrained the appellants herein from taking any further steps in pursuance of the draft development plan of the SPA. The State of Himachal Pradesh and its instrumentalities-appellants herein preferred Civil Writ Petition (CWP) No. 5960 of 2022 titled ***State of Himachal Pradesh and another v. Yogendra Mohan Sengupta and Others*** before the High Court of Himachal Pradesh challenging the said interim order. Despite the pendency of the said writ petition, the NGT, vide its final order dated 14th October 2022 (hereinafter referred to as the "second order of NGT") in OA No. 297 of 2022, held that the draft development plan, being in conflict with the first order of NGT, was illegal and cannot be

given effect to. Thereafter by an amendment in the said CWP No. 5960 of 2022, the second order of NGT also came to be challenged before the High Court of Himachal Pradesh. On 14th November 2022, this Court passed an order in Civil Appeal Nos. 5348-5349 of 2019 transferring the said CWP No. 5960 of 2022 from the High Court of Himachal Pradesh to itself, which came to be re-numbered as Transferred Case (C) No. 2 of 2023.

II. FACTS

Facts giving rise to filing of Civil Appeal Nos.5348-5349 of 2019:

3. Facts, in brief, giving rise to the filing of Civil Appeal Nos. 5348-5349 of 2019, are as follows:

3.1 The Himachal Pradesh Town & Country Planning Act, 1977 (hereinafter referred to as "TCP Act") was enacted by the State of Himachal Pradesh in the year 1977. Vide Government Notification dated 30th November 1977, the SPA came to be constituted. The State of Himachal Pradesh, in exercise of powers conferred upon it by Section 87 of the TCP Act, enacted the Himachal Pradesh Town & Country Planning Rules, 1978 (hereinafter referred to as "1978 Rules"). The existing land-

use for SPA was notified by a notice dated 29th December 1977 and was adopted by another notice dated 14th March 1978.

3.2 The interim development plan for SPA was approved by a notification dated 24th March 1979 for the period 1979-2001. Vide notification dated 11th August 2000 issued by the Department of Town & Country Planning (Government of Himachal Pradesh), further amendments were carried out to the interim development plan for the SPA notified by the aforesaid notification dated 24th March 1979.

3.3 By another notification dated 7th December 2000 issued by the Department of Town & Country Planning (Government of Himachal Pradesh), in pursuance of the notification dated 11th August 2000, a survey of "Green Belt" within existing Core & restricted areas of the SPA was carried out and areas were declared as "Green Belt".

3.4 A writ petition being CWP No. 4595 of 2011 titled ***Rajeev Varma and Others v. State of Himachal Pradesh and Others*** came to be filed in the year 2011 before the High Court of Himachal Pradesh. A direction was sought in the said writ petition to the State of Himachal Pradesh to prepare a

development plan for the SPA in accordance with the TCP Act within a time-bound schedule.

3.5 Respondent No.1 herein Yogendera Mohan Sengupta filed an OA (No. 121 of 2014) before the NGT, wherein he made the following prayers:

(i) "Direct the State Government and the Respondent Nos. 3 and 4 to recognize the areas mentioned in notification dated 7.12.2000 as forest and any non-forest activity should not be allowed without prior permission under Section 2 of the Forest.

(ii) Direct the State Government not to change the land use in any forests/green belt area as stated in clause d of notification dated 11.8.2000 to protect the ecology, environment and future of Shimla.

(iii) Pass any other orders as the Hon'ble Tribunal may deem fit and proper in facts and circumstances of the case."

3.6 The appellant-State of Himachal Pradesh (respondent in the said OA) filed a reply dated 23rd July 2014 before the NGT, wherein it specifically contended that the use of the words "Green Belt" does not include or bring the areas under forests and the "Green Belt" includes both forest and non-forest areas and that no permission for construction or any non-forestry activity would be allowed on forest land without approval under the Forest (Conservation) Act, 1980 (hereinafter referred to as the "FC Act").

3.7 Despite the assurance given by the State Government, the NGT, *suo motu*, extended the scope of the application and vide an ad-interim order dated 30th May 2014 banned all types of construction activities in the Green Belt areas of Shimla covered under the notification dated 7th December 2000.

3.8 Thereafter, vide order dated 12th October 2015 in the said OA No. 121 of 2014, the NGT constituted a Committee comprising of officers from the National Disaster Management Authority (NDMA), a senior scientist from Wadia Institute of Himalayan Geology, Dehradun as nominated by the Director and other officials of the State and Central Governments for submitting its report on various aspects including water supply and the strength of carrying capacity of the hills.

3.9 Pursuant to the said order dated 12th October 2015 passed by the NGT, the Additional Chief Secretary, Department of Town & Country Planning (Government of Himachal Pradesh) issued a notification dated 6th November 2015 for the constitution of an Expert Committee. The Expert Committee submitted a report to the NGT on 29th August 2016. Along with an affidavit filed by the State of Himachal

Pradesh, the final report of the Expert Committee came to be submitted to the NGT on 20th May 2017.

3.10 Thereafter the first order of NGT came to be passed, whereby it issued various directions to the appellants herein and further banned all kinds of construction activities in core/forest/green areas in Shimla and further restricted the construction and re-construction activities in the entire SPA.

3.11 Some of the directions issued *vide* first order of NGT, *inter alia,* prohibited new construction of any kind, i.e. residential, institutional and commercial, in any part of the core and green/forest area and also directed that even in the other areas which fall within the SPA, construction would not be permitted beyond 2 storeys + attic floor. It further directed that, in case of unsafe and unfit residential structures in the core and green/forest areas, re-construction would only be allowed for residential purposes and that too, not beyond 2 storeys and an attic floor.

3.12 In direction No. VIII in the first order of NGT, it directed the State to finalise the development plan within three months from the date of the pronouncement of its first order. It also directed the said development plan to be notified in accordance

with law and directed to take into consideration the directions and precautions as suggested in the first order of NGT while finalizing the development plan.

3.13 The NGT also constituted an Implementation Committee and a Supervisory Committee entrusted with the responsibility for carrying out the specific directions given under the first order of NGT and to provide NOCs or necessary permissions to the stakeholders, whether State or private parties.

3.14 The appellants thereafter filed a Review Application No. 8 of 2018 seeking review of the first order of NGT. However, the same was dismissed vide order dated 16th July 2018. Being aggrieved thereby, Civil Appeal Nos.5348-5349 of 2019 have been filed before this Court.

Facts giving rise to filing of Transferred Case (C) No.2 of 2023:

4. In pursuance of the directions issued vide first order of NGT and in exercise of the powers conferred upon it under the TCP Act and the 1978 Rules framed thereunder, the State of Himachal Pradesh published a draft development plan on 8th February 2022. It is to be noted that various directions were also issued by the High Court of Himachal Pradesh from time

to time in CWP No. 4595 of 2011 for finalization of the development plan in accordance with the TCP Act. The State of Himachal Pradesh also invited objections and suggestions from the general public in relation to the draft development plan. In all, 97 objections/suggestions were received by the State of Himachal Pradesh within stipulated time-period and the same were heard by the Director in due course. CWP Nos. 23 and 37 of 2022 were also filed before the High Court of Himachal Pradesh praying *inter alia* for stay of the draft development plan.

4.1 In the meantime, respondent No.1 herein-Yogendera Mohan Sengupta filed another OA (No. 297 of 2022) before the NGT in relation to the draft development plan. The NGT, vide interim order dated 12th May 2022, stayed the draft development plan and restrained the State of Himachal Pradesh from taking any further steps in pursuance of the draft development plan. Being aggrieved thereby, the State of Himachal Pradesh filed CWP No. 5960 of 2022 under Article 226/227 of the Constitution of India before the High Court of Himachal Pradesh. Despite the pendency of the said CWP No. 5960 of 2022, the NGT, vide its second order, held that the

draft development plan, being in conflict with the first order of NGT, is illegal and cannot be given effect to. The appellants herein filed an application in CWP No. 5960 of 2022, before the High Court of Himachal Pradesh, praying for amending the writ petition so as to challenge the second order of NGT. Since common issues were being considered by this Court in Civil Appeal Nos.5348-5349 of 2019, this Court vide an order dated 14th November 2022, directed the transfer of the said CWP No. 5960 of 2022 before itself.

III. SUBMISSIONS

5. We have heard Shri Anup Rattan, learned Advocate General appearing on behalf of the State of Himachal Pradesh, Shri Vinay Kuthalia, learned Senior Counsel appearing on behalf of the Shimla Municipal Corporation and Shri Sanjay Parikh, learned Senior Counsel appearing on behalf of the common respondent No.1 in Civil Appeal Nos.5348-5349 of 2019 and Transferred Case (Civil) No.2 of 2023..

Submissions on behalf of the Appellants:

6. It is submitted on behalf of the appellants that the State was fully aware of its duties and responsibilities as envisaged by the Constitution of India as well as the relevant statutory

provisions. It is submitted that while finalizing the development plan, the State has adopted a proactive role to ensure that a balance is struck between the developmental and environmental issues.

7. It is submitted on behalf of the appellants that the development plan has been finalized in exercise of statutory powers vested in the appellants under Sections 13 to 20 of the TCP Act, after considering all the recommendations and suggestions of various expert bodies and technical committees as well as the directions and recommendations of the NGT.

8. It is submitted on behalf of the appellants that a bare perusal of Chapters 12 and 17 of the development plan would go to show that the entire environmental aspects as well as the suggestions and directions of the NGT issued vide first order of NGT have been fully and duly considered before finalizing the development plan.

9. It is submitted on behalf of the appellants that while taking steps to finalise the development plan, the appellants have attempted to balance the developmental requirements for catering to the needs of the expanding population, with the safeguards to preserve and protect the environment. It is

submitted that while finalizing the development plan, the entire procedure as prescribed under the Statutes was duly followed.

10. The learned Advocate General as well as Shri Kuthalia submitted that the planning regulations divide the areas into different categories. It is submitted that, in order to protect the environment, various stringent provisions have been made such as:

(i) "In the core area, only 2 storeys + attic is permitted and parking floor is permitted only in those plots which are accessible by motorable road;

(ii) In the non-core area and the Planning Area, only 3 storeys + attic is permitted and parking floor is only permitted in plots which are adjacent to motorable roads; and

(iii) Rebuilding and reconstruction of old buildings has been permitted strictly on old lines. With the efflux of time in many buildings, there are different owners of each floor;

(iv) In green belt areas which are lying between constructed areas, only single storey construction with attic is permissible. However, no tree will be permitted to be felled in any such area and no

construction will be permitted in forest area without following the mandate of the Forest Conservation Act."

11. It is further submitted on behalf of the appellants that appropriate setbacks have also been made mandatory in order to avoid overcrowding. It is submitted that because of the peculiar climate of Shimla, the attic is necessary because the roof is required to be sloping in hilly terrain, to allow for run-off of rain and snow. It is further submitted that construction will only be permitted after a soil investigation report of the area and assessment of structural stability by an expert are made. The construction is required to be approved by a qualified architect or engineer.

12. The first and second orders of NGT are also challenged by the appellants on the ground that the jurisdiction of NGT is limited to the civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I of the National Green Tribunal Act, 2010 (hereinafter referred to as the "NGT Act"). It is submitted that Schedule I of the NGT Act does not include town and country

planning and as such, the orders passed by the NGT are without jurisdiction.

13. It is further submitted on behalf of the appellants that the exercise of power for finalisng the development plan is a quasi-legislative power and the NGT could not have issued directions to exercise that power in a particular manner. It is submitted that the said would amount to encroachment upon the statutory functions of the State which are entrusted to it by virtue of the TCP Act.

14. It is also submitted on behalf of the appellants that the NGT could not have *suo motu* enlarged the scope of OA No. 121 of 2014 as it is a body constituted under a statute and it has to exercise its jurisdiction within the four corners of the statute.

15. It is submitted on behalf of the appellants that various directions issued by the NGT are contrary to the provisions of the TCP Act, Himachal Pradesh Municipal Corporation Act, 1994 (for short, "HPMC Act") and the various Bye-laws, Rules and Notifications framed thereunder and as such, not sustainable in law. A reliance in this respect is placed on the following judgments of this Court:

Himachal Pradesh Bus Stand Management and Development Authority (H.P. BSM & DA) v. Central Empowered Committee and Others[1], State of Madhya Pradesh v. Centre for Environment Protection Research and Development and Others[2], Director General (Road Development) National Highways Authority of India v. Aam Aadmi Lokmanch and Others[3], Tamil Nadu Pollution Control Board v. Sterlite Industries (India) Limited and Others[4] and ***Techi Tagi Tara v. Rajendra Singh Bhandari and Others[5].***

16. It is submitted that since the development plan was prepared by the State in exercise of its constitutional powers under Article 162 of the Constitution of India and statutory powers under the TCP Act and HPMC Act, the NGT could not have issued directions to act in a manner which would be contrary to those provisions. Reliance in this respect is placed on the following judgments of this Court:

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[1] **(2021) 4 SCC 309 : 2021 INSC 18**
[2] **(2020) 9 SCC 781 : 2020 INSC 516**
[3] **(2021) 11 SCC 566 : 2020 INSC 452**
[4] **(2019) 19 SCC 479 : 2019 INSC 220**
[5] **(2018) 11 SCC 734 : 2017 INSC 986**

***State of Himachal Pradesh and Others v. Satpal Saini*[6], *Ambesh Kumar (Dr.) v. Principal, L.L.R.M. Medical College, Meerut and Others*[7]** and ***Bishambhar Dayal Chandra Mohan and Others v. State of Uttar Pradesh and Others*[8].**

17. The learned Advocate General further submitted that the directions issued by the NGT, rather than subserving any public interest are contrary to the public interest inasmuch as vast number of citizens are being put to great hardships and inconvenience. It is submitted that on account of the directions issued by the NGT, re-construction of the old structures which are in dilapidated condition and which is permissible on the existing plinth area, has been brought to a complete halt.

18. The learned Advocate General further submitted that the State is alive to the requirement of protecting environment and as such, the Cabinet has taken a decision wherein it prescribed more stringent measures.

19. Both the orders of NGT are also challenged on the ground that when the High Court was seized of the matter with regard

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[6] **(2017) 11 SCC 42**
[7] **1986 Supp SCC 543 : 1986 INSC 275**
[8] **(1982) 1 SCC 39 : 1981 INSC 189**

to the draft development plan, the NGT could not have entertained the proceedings and passed the orders therein. Reliance in this respect is placed on the judgment of this Court in the case of ***State of Andhra Pradesh v. Raghu Ramakrishna Raju Kanumuru (Member of Parliament)***[9]**.**

Submissions on behalf of the Respondents:

20. Shri Parikh, on the contrary, submitted that the first order of NGT threw light on the serious concerns regarding the fragile ecology of State of Himachal Pradesh in general and Shimla in particular. The first order of NGT has also tried to address issues with regard to continuous instances of landslides and collapsing of buildings, cloud bursts and earthquakes.

21. Shri Parikh further submitted that the first order of NGT is based on the report presented by the High Powered Committee appointed by it. The NGT has considered in detail the report of the High Powered Committee, various other documents and government records. After consideration of the same, directions have been given in order to ensure the

[9] **(2022) 8 SCC 156 : 2022 INSC 632**

protection of ecology and environment. It is submitted that the development plan is finalized keeping in view the directions issued by the NGT with regard to core areas, green areas, sinking areas and heritage areas.

22. It is submitted on behalf of the respondents that the NGT has rightly issued the directions to re-construct in core area or green/forest area within legally permissible statutory limits of the old buildings and in any case not beyond 2 storeys and an attic floor. It is submitted that further direction was that if any construction, particularly public utilities like hospitals, schools, offices are proposed to be constructed beyond 2 storeys plus an attic floor, then the plan has to be duly approved and permission has to be obtained from the concerned authorities.

23. Shri Parikh submitted that the "Green Belt" areas, by notification dated 7th December 2000, are covered under the dictionary meaning of 'forest' and are thus required to be protected under the provisions of the FC Act as per the order

of this Court passed in the case of ***T.N. Godavarman Thirumulkpad v. Union of India and Others***[10]**.**

24. Shri Parikh submitted that the challenge to the second order of NGT is also without substance inasmuch as the directions issued by the NGT, vide its first order, were binding upon the appellants and the draft development plan could not have been notified in contravention of the directions of the NGT. A reliance in this respect is placed on the judgment of this Court in the case of ***Punjab Termination of Agreement Act, 2004, In Re, Special Reference No. 1 of 2004***[11]**.** Reliance is also placed on the judgment of this court in the case of ***State of Tamil Nadu v. State of Kerala and Another***[12]**.**

25. Shri Parikh further submitted that this Court in the case of ***Mantri Techzone Private Limited v. Forward Foundation and Others***[13] has held that the NGT has overriding powers over anything inconsistent contained in any other law or in any instrument having effect by virtue of any

[10] **(1997) 2 SCC 267 : 1997 INSC 226**
[11] **(2017) 1 SCC 121 : 2016 INSC 1018**
[12] **(2014) 12 SCC 696 : 2014 INSC 373**
[13] **(2019) 18 SCC 494 : 2019 INSC 315**

law. He further submitted that this Court has held that while providing for restoration of environment in an area, the NGT can specify buffer zones around specific lakes and waterbodies in contradiction with zoning regulations under these statutes or Revised Master Plan.

26. Shri Parikh relies on the judgments of this Court in the cases of ***Pragnesh Shah v. Dr. Arun Kumar Sharma and Others***[14]***, Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority and Others***[15] and ***Resident's Welfare Association and Another v. Union Territory of Chandigarh and Others***[16] in support of the proposition that the NGT has jurisdiction to issue directions in order to protect the ecologically sensitive areas.

27. It is submitted that the jurisdiction of this Court under Section 22 of the NGT Act is very limited and an interference is warranted only when the court finds that there is an error apparent on the face of record in the findings of the NGT.

28. It is submitted that if the directions issued by the NGT, which provide for a precautionary approach, are not followed

[14] **(2022) 11 SCC 493 : 2022 INSC 47**
[15] **(1997) 11 SCC 605**
[16] **(2023) 8 SCC 643 : 2023 INSC 22**

and the construction activities as provided in the development plan are carried out, it will be disastrous for future generations and will result in calamities like frequent landslides due to floods and earthquakes, cloudbursts and other natural disasters resulting in loss to the human lives and property. It is therefore submitted that the present appeals as well as the transferred case arising out of the writ petitions pending before the High Court are liable to be dismissed.

Submissions on behalf of the Interveners/Land Owners:

29. It was argued on behalf of the interveners who were owners of the plots in "Green Belt" areas that on account of the restrictions imposed in the "Green Belt" areas, they were deprived of enjoyment of their property which would be violative of Article 300A of the Constitution of India. It was therefore submitted that a direction be given to the State to pay compensation to such owners for not being in a position to utilize their plot of lands. We *prima facie* find that such an issue could be beyond the scope of the present proceedings.

IV. CONSIDERATION:

A. Legislative Scheme of the TCP Act.

30. It will be apposite to refer to the Preamble of the TCP Act, which reads thus:

> "An act to make provision for planning and development and use of land; to make better provision for the preparation of development plans and sectoral plans with a view to ensuring that town planning schemes are made in a proper manner and their execution is made effective to constitute the Town and Country Development Authority for proper implementation of town and country development plan, to provide for the development and administration of special areas through the Special Area Development Authority*, to make provision for the compulsory acquisition of land required for the purpose of the development plans and for purposes connected with the matters aforesaid."

31. It can thus be seen that the TCP Act has been enacted to make provision for planning and development and use of land; to make better provision for the preparation of development plans and sectoral plans with a view to ensuring that town planning schemes are made in a proper manner and their execution is made effective. It also provides for constitution of Town and Country Development Authority for proper

*** As amended vide Himachal Pradesh Town and Country Planning (Amendment) Act 2015 (Act 14 of 2015).**

implementation of town and country development plan. It also provides for development and administration of special areas through the Special Area Development Authority.

32. Section 13 of the TCP Act reads thus:

> "**13. Planning Area**.—(1) The State Government may, by notification, constitute planning areas for the purposes of this Act and define the limits thereof.
>
> (2) The State Government may, by notification,-
>
> (*a*) alter the limits of a planning area so as to include therein or exclude there from such area as may be specified in the notification;
>
> (*b*) amalgamate two or more planning areas so as to constitute one planning area;
>
> (*c*) divide any planning area into two or more planning areas;
>
> (*d*) declare that the whole or part of the area constituting the planning area shall cease to be planning area or part thereof."

33. It can thus be seen that under Section 13 of the TCP Act, the State Government is empowered to constitute planning areas for the purposes of the Act and define the limits thereof. It is also empowered to alter the limits of a planning area, amalgamate two or more planning areas and also to divide any planning area into two or more planning areas.

34. Section 14 of the TCP Act reads thus:

> "**14. Director to prepare Development Plans**.— Subject to the provisions of this Act and the rules made thereunder the Director shall—
>
> *(*a*) prepare an existing land use map indicating the natural hazard proneness of the area;
>
> *(*b*) prepare an interim development plan keeping in view the regulation for land use zoning for natural hazard prone area;
>
> *(*c*) prepare a development plan keeping in view the regulation for land use zoning for natural hazard prone area;
>
> (*d*) prepare a sectoral plan;
>
> (*e*) carry such surveys and inspections and obtain such pertinent reports from Government departments, local authorities and public institutions as may be necessary for the preparation of the plans;
>
> (*f*) perform such duties and functions as are supplemental, incidental, and consequential to any of the foregoing functions or as may be assigned by the State Government for the purpose of carrying out the provisions of this Act."

35. Clauses (a), (b) and (c) of Section 14 of the TCP Act have been amended vide Himachal Pradesh Town and Country

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* **As amended vide Himachal Pradesh Town and Country Planning (Amendment) Act 2013 (Act No. 41 of 2013).**

Planning (Amendment) Act 2013 (Act No. 41 of 2013). It can be seen that these clauses provide a special emphasis on the areas indicating the natural hazard.

36. Section 15 of the TCP Act reads thus:

> "**15. Existing Land use Maps**.—(1) The Director shall carry out the survey and prepare an existing land use map and forthwith publish the same in such manner as may be prescribed together with public notice of the preparation of the map and of the place or places where the copies may be inspected, inviting objections and suggestions in writing from any person with respect thereto within thirty days from the date of publication of such notice.
>
> (2) After the expiry of the period specified in the notice published under sub-section (1), the Director may, after allowing a reasonable opportunity of being heard to all such persons who have filed the objections or suggestions, make such modification therein as may be considered desirable.
>
> (3) As soon as may be after the map is adopted with or without modifications the Director shall publish a public notice of the adoption of the map and the place or places where the copies of the same may be inspected.
>
> (4) A copy of the notice shall also be published in the Official Gazette and it shall be conclusive evidence of the fact that the map has been duly prepared and adopted."

37. Under Section 15 of the TCP Act, the Director is required to carry out the survey and prepare an existing land use map

and, forthwith publish the same in such manner as may be prescribed together with public notice of the preparation of the map. It also provides for inviting objections and suggestions in writing from any person with respect thereto within thirty days from the date of publication of such notice. Sub-section (2) of Section 15 thereof provides for allowing a reasonable opportunity of being heard to all such persons who have filed the objections or suggestions. It also enables the Director to make such modification therein as may be considered desirable. Sub-section (3) thereof provides that after the map is adopted with or without modifications, the Director shall publish a public notice of the adoption of the map. A copy of the notice is required to be published in the Official Gazette.

38. Section 15-A of the TCP Act deals with "Freezing of landuse pending preparation of existing landuse map under Section 15(1)". Section 16 of the TCP Act deals with "Freezing of land use on the publication of the existing land use map under Section 15". Section 17(1) of the TCP Act deals with "Interim Development Plans".

39. The provisions of Sections 18, 19 and 20 of the TCP Act are most relevant for considering the issues involved in the present matter, which read thus:

> "**18. Development Plan**.—A development plan shall—
>
> (*a*) indicate broadly the land use proposed in the planning areas;
>
> (*b*) allocate broadly areas or sector of land for,—
>
> (*i*) residential, industrial, commercial or agricultural purposes,
>
> (*ii*) open spaces, parks and gardens, green belts, zoological gardens and play grounds,
>
> (*iii*) public institutions and offices,
>
> (*iv*) such special purposes as the Director may deem fit;
>
> (*c*) lay down the pattern of National and State highways connecting the planning area with the rest of the region ring roads, arterial roads, and the major roads within the planning area;
>
> (*d*) provide for the location of airports, railway stations, bus terminal and indicate the proposed extension and development of railways;
>
> (*e*) make proposals for general landscaping and preservation of natural areas;
>
> (*f*) project the requirement of the planning area of such amenities and utilities as water, drainage, electricity and suggest their fulfilment;
>
> (*g*) propose broad based regulations for sectoral development, by way of guideline, within each sector of the location, height,

size of buildings and structures, open spaces, court-yards and the use to which such buildings and structures and land may be put *"including regulations for façade control and sloping roof conforming to the hill architecture and environs";

(*h*) lay down the broad based traffic circulation patterns in a city;

(*f*) suggest architectural control features, elevation and frontage of buildings and structures;

(*j*) indicate measures for flood control, *"and protection against land slide", prevention of air and water pollution, disposal of garbage and general environmental control.

19. Publication of Draft Development Plan.—(1) The Director shall forthwith publish the draft development plans prepared under section 18 in such manner as may be prescribed together with a notice of the preparation of the draft development plan and the place or places where the copies may be inspected, inviting objections and the suggestions in writing from any person with respect thereto, within thirty days from the date of publication of such notice. Such notice shall specify in regard to the draft development plan the following particulars, namely:—

(*i*) the existing land use maps;

(*ii*) a narrative report, supported by maps and charts, explaining the provisions of the draft development plan;

(*iii*) the phasing of implementation of the draft development plan as suggested by the Director;

(*iv*) the provisions for enforcing the draft development plan and stating the manner

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* **As amended vide Himachal Pradesh Town and Country Planning (Amendment) Act 2013 (Act No. 41 of 2013).**

in which permission to development may be obtained;

(*v*) an approximate estimate of the cost of land acquisition for public purposes and the cost of works involved in the implementation of the plan.

(2) The Director shall, not later than ninety days after the date of expiry of the notice period under sub-section (1), consider all the objections and suggestions as may be received within the period specified in the notice under sub-section (1) and shall, after giving reasonable opportunity to all persons affected thereby of being heard, make such modifications in the draft development plan as he may consider necessary, and submit not later than six months after the publication of the draft development plan, the plan so modified, to the State Government for approval together with all connected documents, plans, maps and charts.

20. Sanction of Development Plan.—(1) As soon as may be after the submission of the development plan under Section 19, the State Government may either approve the development plan or may approve it with such modifications as it may consider necessary or may return it to the Director to modify the same or to prepare a fresh plan in accordance with such directions as it may issue in this behalf.

(2) Where the State Government approves the development plan with modifications, the State Government shall, by a notice published in the Official Gazette invite objections and suggestions in respect of such modifications within a period of not less than thirty days from the date of publication of the notice in the Official Gazette.

(3) After considering objections and suggestions and after giving a hearing to the persons desirous of being heard the State Government may confirm the modification in the development plan.

(4) The State Government shall publish the development plan as approved, under the foregoing

provisions in the Official Gazette and shall along with the plan publish a public notice, in such manner as may be prescribed, of the approval of the development plan and the place or places where the copies of the approved development plan may be inspected.

(5) The development plan shall come into operation from the date of publication thereof in the Official Gazette and as from such date shall be binding on all Development Authorities constituted under this Act and all local authorities functioning within the planning area.

(6) After the coming into operation of the development plan, the interim development plan shall stand modified or altered to the extent the proposals in the development plan are at variance with the interim development plan."

40. It can thus be seen that the development plan is required to consist of various factors. Clause (b) of Section 18 of the TCP Act provides that it shall allocate broadly areas or sector of land for various purposes including residential, industrial, commercial or agricultural. It shall also provide for open spaces, parks and gardens, green belts, zoological gardens and play-grounds. It is also required to make proposals for general landscaping and preservation of natural areas. It is required to project the requirement of the planning area of such amenities and utilities as water, drainage, electricity and suggest their fulfilment. It is also required to propose broad-based regulations for sectoral development, by way of guide-

lines, within each sector of the location, height, size of buildings and structures, open spaces, court-yards and the use to which such buildings and structures and land may be put including regulations for façade control and sloping roof conforming to the hill architecture and environs.

41. It can thus be seen that a special emphasis is placed on regulations for façade control and sloping roof conforming to the hill architecture and environs. Clause (j) of Section 18 of the TCP Act, also specifically provides to indicate measures for flood control, protection against land slide, prevention of air and water pollution, disposal of garbage and general environmental control.

42. Under Section 19(1) of the TCP Act, the Director is required to publish the draft development plan prepared under Section 18 in such manner as may be prescribed together with a notice of the preparation of the draft development plan and the place or places where the copies may be inspected. It provides for inviting objections and suggestions, in writing, from any person with respect thereto, within thirty days from the date of publication of such notice. The notice to be issued under Section 19 requires that it should specify the existing

land use maps, a narrative report supported by maps and charts, explaining the provisions of the draft development plan, the phasing of implementation of the draft development plan as suggested by the Director, the provisions for enforcing the draft development plan and stating the manner in which permission to development may be obtained and the approximate estimate of the cost of land acquisition for public purposes and the cost of works involved in the implementation of the plan.

43. Under sub-section (2) of Section 19 of the TCP Act, the Director is required to consider all the objections and suggestions as may be received within the period specified in the notice under sub-section (1) thereof, not later than ninety days after the date of expiry of the notice period. He is also required to give reasonable opportunity to all persons affected thereby of being heard and make such modifications in the draft development plan as he may consider necessary. He is also required to submit, not later than six months after the publication of the draft development plan, the plan so modified, to the State Government for approval together with all connected documents, plans, maps and charts.

44. Under Section 20 of the TCP Act, after the development plan under Section 19 is submitted to the State Government, it may either approve the development plan or it may approve it with such modifications as it may consider necessary or may return it to the Director to modify the same or to prepare a fresh plan in accordance with such directions as it may issue in this behalf. Under sub-section (2) thereof, where the State Government approves the development plan with modifications, the State Government shall, by a notice, published in the Official Gazette, invite objections and suggestions in respect of such modifications within a period of not less than thirty days from the date of publication of the notice in the Official Gazette. Under sub-section (3) thereof, after considering objections and suggestions and after giving a hearing to the persons desirous of being heard, the State Government may confirm the modification in the development plan. Sub-section (4) thereof requires the State Government to publish the development plan as approved, under the foregoing provisions in the Official Gazette and shall along with the plan publish a public notice, in such manner as may be prescribed, of the approval of the development plan and the

place or places where the copies of the approved development plan may be inspected. Sub-section (5) thereof provides that the development plan shall come into force from the date of publication thereof in the Official Gazette and as from such date shall be binding on all Development Authorities constituted under this Act and all local authorities functioning within the planning area. Sub-section (6) thereof provides that after the coming into operation of the development plan, the interim development plan shall stand modified or altered to the extent the proposals in the development plan are at variance with the interim development plan.

B. Nature of functions/powers of the Authorities under Chapter-IV of the TCP Act.

45. A perusal of the aforesaid provisions, leaves no manner of doubt, that Chapter-IV of the TCP Act is a complete code, providing for preparation of draft development plan, publication of draft development plan with a publication of its notice, inviting objections and suggestions, giving reasonable opportunity to all persons affected of being heard, making modifications in the draft development plan as may be

considered necessary by the Director and thereafter submitting it to the State Government.

46. Under Section 20 of the TCP Act, the State Government is empowered to either approve the development plan or may approve it with such modifications as it may consider necessary or may return it to the Director to modify the same or to prepare a fresh plan in accordance with such directions as it may issue in this behalf. Sub-section (2) thereof provides that where the State Government approves the development plan with modifications, it is again required to be published in the Official Gazette to invite objections and suggestions in respect of such modifications. The State Government is empowered to confirm the modification in the development plan after considering objections and suggestions and after giving a hearing to the persons desirous of being heard.

47. It could thus be seen that Chapter-IV of the TCP Act provides for inviting objections and suggestions at two stages. Firstly, at the stage of Section 19 where the Director is required to invite objections and suggestions to the draft development plan and after giving an opportunity of being heard and considering the objections and suggestions, submit

the development plan to the State Government. Under Section 20 of the TCP Act, a second opportunity of making objections and suggestions has been provided. Again, the State Government is required to give an opportunity of hearing to such objectors before granting final approval to the development plan.

48. A perusal of the scheme of the TCP Act and particularly Chapter-IV thereof would establish beyond doubt that the powers vested with the Director and the State Government are for enacting a piece of delegated legislation.

49. The distinction between the legislative function and administrative function is succinctly described by this Court in the case of ***Union of India and Another v. Cynamide India Ltd. and Another***[17], which reads thus:

> "**7.** The third observation we wish to make is, price fixation is more in the nature of a legislative activity than any other. It is true that, with the proliferation of delegated legislation, there is a tendency for the line between legislation and administration to vanish into an illusion. Administrative, quasi-judicial decisions tend to merge in legislative activity and, conversely, legislative activity tends to fade into and present an appearance of an administrative or quasi-judicial activity. Any attempt to draw a distinct line between legislative and administrative functions, it

[17] **(1987) 2 SCC 720 : 1987 INSC 100**

has been said, is "difficult in theory and impossible in practice". Though difficult, it is necessary that the line must sometimes be drawn as different legal rights and consequences may ensue. The distinction between the two has usually been expressed as "one between the general and the particular". "A legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases; an administrative act is the making and issue of a specific direction or the application of a general rule to a particular case in accordance with the requirements of policy". "Legislation is the process of formulating a general rule of conduct without reference to particular cases and usually operating in future; administration is the process of performing particular acts, of issuing particular orders or of making decisions which apply general rules to particular cases." It has also been said: "Rule-making is normally directed toward the formulation of requirements having a general application to all members of a broadly identifiable class" while, "an adjudication, on the other hand, applies to specific individuals or situations". But, this is only a broad distinction, not necessarily always true. ....."

50. Though, this Court, in the celebrated case of ***Cynamide India Ltd.*** (supra) observed that any attempt to draw a distinct line between legislative and administrative functions is difficult in theory and impossible in practice, it attempted to draw a line between the two inasmuch as different legal rights and consequences may ensue, in exercise of such functions. It has been held that the distinction between the two has usually been expressed as "one between the general and the

particular". A legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases; whereas an administrative act is the making and issue of a specific direction or the application of a general rule to a particular case in accordance with the requirements of policy. It has been held that legislation is the process of formulating a general rule of conduct without reference to particular cases and usually operating in future. Whereas, administration is the process of performing particular acts of issuing particular orders or of making decisions which apply general rules to particular cases. It has also been held that rule-making is normally directed towards the formulation of requirements having a general application to all members of a broadly identifiable class; whereas an adjudication, on the other hand, applies to specific individuals or situations.

51. When we apply the aforesaid principles to the facts of the present case, it will be amply clear that the preparation of draft development plan under Section 18 of the TCP Act, finalization of the same under Section 19 of the TCP Act by the Director and grant of approval by the State under Section 20 of the TCP Act are all legislative functions. The provisions enable the

delegated legislative body to formulate the provisions which will have a general application to all members of the broadly identifiable classes.

52. In the case of ***Tulsipur Sugar Co. Ltd. v. The Notified Area Committee, Tulsipur***[18], again a challenge was made to the notification issued under Section 3 of the U.P. Town Areas Act, 1914 on the ground that before issuance of final notification, the principles of *audi alteram partem* were not followed. While rejecting the said contention and holding the exercise of powers as a piece of conditional legislation, this Court observed thus:

> "**7.** .....The power of the State Government to make a declaration under Section 3 of the Act is legislative in character because the application of the rest of the provisions of the Act to the geographical area which is declared as a town area is dependent upon such declaration. Section 3 of the Act is in the nature of a conditional legislation. Dealing with the nature of functions of a non-judicial authority, Prof. S.A. De Smith in *Judicial Review of Administrative Action* (3rd Edn.) observes at p. 163:
>
> > "However, the analytical classification of a function may be a conclusive factor in excluding the operation of the audi alteram partem rule. It is generally assumed that in English law the making of a subordinate legislative instrument

[18] **(1980) 2 SCC 295 : 1980 INSC 38**

need not be preceded by notice or hearing unless the parent Act so provides."

.....

9. We are, therefore, of the view that the maxim "audi alteram partem" does not become applicable to the case by necessary implication."

53. It is thus clear that this Court held that a declaration under Section 3 of the U.P. Town Areas Act, 1914 provided for enabling the application of the rest of the provisions of the Act to the geographical area which is declared as a town area. It was thus held that the declaration made under Section 3 was legislative in character.

54. In the case of ***Sundarjas Kanyalal Bhatija and Others v. Collector, Thane, Maharashtra and Others***[19], the Government of Maharashtra had issued a draft notification under Section 3(3) of the Bombay Provincial Municipal Corporation Act, 1949 (for short, "BPMC Act"). The draft notification proposed for formation of "Kalyan Corporation". Against the said proposal, there were many objections and representations received from different sections. In the earlier draft notification, the area of Ulhasnagar Municipal Council

[19] **(1989) 3 SCC 396 : 1989 INSC 202**

was proposed to be merged in the proposed area of Kalyan Corporation. However, taking into consideration the objections, the area of Ulhasnagar Municipal Council was excluded from the area of Kalyan Corporation while issuing the final notification. The same was challenged before the High Court by filing a writ petition. One of the reasons which weighed with the High Court while allowing the petition was that the opportunity of hearing was not given to one of the parties while issuing the final notification under Section 3(2) of the BPMC Act. It will be relevant to refer to the following observations of this Court while reversing the order of the High Court in the said case:

> "**28.** Equally, the rule issued by the High Court to hear the parties is untenable. The Government in the exercise of its powers under Section 3 is not subject to the rules of natural justice any more than is legislature itself. The rules of natural justice are not applicable to legislative action plenary or subordinate. The procedural requirement of hearing is not implied in the exercise of legislative powers unless hearing was expressly prescribed. The High Court, therefore, was in error in directing the Government to hear the parties who are not entitled to be heard under law."

55. It could thus be seen that this Court clearly held that the issuance of draft notification, consideration of objections and

publication of final notification are done in exercise of legislative powers. The procedural requirement of hearing would not be implied unless the statute so provides for.

56. This Court, in the case of ***Pune Municipal Corporation and Another v. Promoters and Builders Association and Another***[20], had an occasion to consider somewhat similar provisions under the Maharashtra Regional and Town Planning Act, 1966 (for short, "MRTP Act"). In the said case, this Court was considering the power of the State Government to make any changes of its own in the modifications submitted by the Planning Authority under Section 37 of the MRTP Act. This Court observed thus:

> "**5.** Making of DCR or amendments thereof are legislative functions. Therefore, Section 37 has to be viewed as repository of legislative powers for effecting amendments to DCR. That legislative power of amending DCR is delegated to the State Government. As we have already pointed out, the true interpretation of Section 37(2) permits the State Government to make necessary modifications or put conditions while granting sanction. In Section 37(2), the legislature has not intended to provide for a public hearing before according sanction. The procedure for making such amendment is provided in Section 37. Delegated legislation cannot be questioned for violating the principles of natural justice in its making except when the statute itself provides for that requirement. Where the legislature

[20] **(2004) 10 SCC 796 : 2004 INSC 348**

> has not chosen to provide for any notice or hearing, no one can insist upon it and it is not permissible to read natural justice into such legislative activity. Moreover, a provision for "such inquiry as it may consider necessary" by a subordinate legislating body is generally an enabling provision to facilitate the subordinate legislating body to obtain relevant information from any source and it is not intended to vest any right in anybody. (*Union of India* v. *Cynamide India Ltd.* [(1987) 2 SCC 720] , SCC paras 5 and 27. See generally *H.S.S.K. Niyami* v. *Union of India* [(1990) 4 SCC 516] and *Canara Bank* v. *Debasis Das* [(2003) 4 SCC 557 : 2003 SCC (L&S) 507] .) While exercising legislative functions, unless unreasonableness or arbitrariness is pointed out, it is not open for the Court to interfere. (See generally *ONGC* v. *Assn. of Natural Gas Consuming Industries of Gujarat* [1990 Supp SCC 397] .) Therefore, the view adopted by the High Court does not appear to be correct."

57. It could thus be seen that this Court in the case of ***Pune Municipal Corporation*** (supra) held that making of Development Control Rules (DCR) or amendments thereof are legislative functions.

58. In the said case, the Court also found that since the legislature did not provide for a public hearing before according sanction, the delegated legislation could not be questioned for violating the principles of natural justice in its making except when the statue itself provide for that requirement. The Court went on to hold that where the

legislature has not chosen to provide for any notice or hearing, no one can insist upon it and it is not permissible to read natural justice into such legislative activity.

59. Again, in the case of ***Bangalore Development Authority v. Aircraft Employees' Cooperative Society Limited and Others***[21], the scheme for finalization of the development plan as provided under the Karnataka Town and Country Planning Act, 1961 was considered and the said power was held to be in exercise of the legislative powers.

60. Recently, a three-Judges Bench of this Court in the case of ***Rajeev Suri v. Delhi Development Authority and Others***[22], after considering the earlier judgments, held that the change of use of government land which is of general nature would be a function which has a quasi-legislative hue to it.

61. It can thus be seen that it is a settled position of law that the exercise of power for the preparation, finalization and approval of development plan is a power exercised by the delegatee for enacting a subordinate piece of legislation. We

[21] **(2012) 3 SCC 442 : 2012 INSC 50**
[22] (**2022) 11 SCC 1: 2021 INSC 4**

therefore have no manner of doubt in holding that the aforesaid provisions as contained in the TCP Act provide for exercise of power by a delegatee to enact a piece of subordinate legislation.

C. Whether the NGT could have issued directions to the legislative body to exercise its legislative functions in a particular manner?

62. A perusal of the first order of NGT would reveal that the NGT, in effect, has issued directions to the authority empowered to enact the development plan, to do so in a particular manner. The question therefore that will have to be considered is as to whether the NGT could have exercised its jurisdiction in such a manner, to issue such directions.

63. In the case of ***V.K. Naswa v. Home Secretary, Union of India and Others***[23], the petitioner-in-person had approached this Court to issue directions to the Central Government, through the Ministry of Law & Justice, to amend the law for taking action against a person for showing any kind of disrespect to the national flag or for not observing the terms contained in the Flag Code of India, 2002. In the alternative,

[23] **(2012) 2 SCC 542 : 2012 INSC 10**

it was prayed by the petitioner-in-person that this Court may be pleased to issue direction(s) in that regard.

64. This Court, in the said case, after surveying various earlier judgments on the issue, observed thus:

> "**6. It is a settled legal proposition that the court can neither legislate nor issue a direction to the legislature to enact in a particular manner**.
>
> **7.** In *Mallikarjuna Rao* v. *State of A.P.* [(1990) 2 SCC 707 : 1990 SCC (L&S) 387 : (1990) 13 ATC 724 : AIR 1990 SC 1251] and *V.K. Sood* v. *Deptt. of Civil Aviation* [1993 Supp (3) SCC 9 : 1993 SCC (L&S) 907 : (1993) 25 ATC 68 : AIR 1993 SC 2285] , this Court has held that the writ court, in exercise of its power under Article 226, has no power even indirectly to require the executive to exercise its law-making power. The Court observed that it is neither legal nor proper for the High Court to issue directions or advisory sermons to the executive in respect of the sphere which is exclusively within the domain of the executive under the Constitution. The power under Article 309 of the Constitution to frame rules is the legislative power. This power under the Constitution has to be exercised by the President or the Governor of a State, as the case may be. **The courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its law-making power in any manner. The courts cannot assume to themselves a supervisory role over the rule-making power of the executive under Article 309 of the Constitution**. While deciding the said case, the Court placed reliance on a large number of judgments, particularly *Narinder Chand Hem Raj* v. *UT, H.P.* [(1971) 2 SCC 747 : AIR 1971 SC 2399] , where it has been held that **legislative power can be exercised only by the legislature or its delegate and none else**.

8. In *State of H.P.* v. *Parent of a Student of Medical College* [(1985) 3 SCC 169 : AIR 1985 SC 910] , this Court deprecated the practice adopted by the courts to issue directions to the legislature to enact a legislation to meet a particular situation observing : (SCC p. 174, para 4)

> "*4*. … The direction given by the Division Bench was really nothing short of an indirect attempt to compel the State Government to initiate legislation with a view to curbing the evil of ragging, for otherwise it is difficult to see why, after the clear and categorical statement by the Chief Secretary on behalf of the State Government that the Government will introduce legislation if found necessary and so advised, the Division Bench should have proceeded to again give the same direction. Thus the Division Bench was clearly not entitled to do. It is entirely a matter for the executive branch of the Government to decide whether or not to introduce any particular legislation."

9. In *Asif Hameed* v. *State of J&K* [1989 Supp (2) SCC 364 : AIR 1989 SC 1899] this Court while dealing with a case like this at hand observed : (SCC p. 374, para 19)

> "*19*. … While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. *The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonise qua any matter which under the Constitution lies within the sphere of legislature or executive*."

10. In *Union of India* v. *Deoki Nandan Aggarwal* [1992 Supp (1) SCC 323 : 1992 SCC (L&S)

248 : (1992) 19 ATC 219 : AIR 1992 SC 96] , this Court similarly observed : (SCC p. 332, para 14)

> "*14*. … It is not the duty of the court either to enlarge the scope of the legislation.… The court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts."

11. Similarly in *Ajaib Singh* v. *Sirhind Coop. Marketing-cum-Processing Service Society Ltd.* [(1999) 6 SCC 82 : 1999 SCC (L&S) 1054 : AIR 1999 SC 1351] , this Court held that the court cannot fix a period of limitation, if not fixed by the legislature, as "the courts can admittedly interpret the law and do not make laws". The court cannot interpret the statutory provision in such a manner "which would amount to legislation intentionally left over by the legislature".

12. A similar view has been reiterated by this Court in *Union of India* v. *Assn. for Democratic Reforms* [(2002) 5 SCC 294 : AIR 2002 SC 2112] observing that the court cannot issue direction to the legislature for amending the Act or Rules. It is for Parliament to amend the Act or Rules. In *District Mining Officer* v. *TISCO* [(2001) 7 SCC 358] , this Court held that function of the court is only to expound the law and not to legislate.

13. Similarly, in *Supreme Court Employees' Welfare Assn.* v. *Union of India* [(1989) 4 SCC 187 : 1989 SCC (L&S) 569] , this Court held that the court cannot direct the legislature to enact a particular law for the reason that under the constitutional scheme Parliament exercises sovereign power to enact law and no outside power or authority can issue a particular piece of legislation. (See also *State of J&K* v. *A.R. Zakki* [1992 Supp (1) SCC 548 : 1992 SCC (L&S) 427 : (1992) 20 ATC 285 : AIR 1992 SC 1546] .)

14. In *Union of India* v. *Prakash P. Hinduja* [(2003) 6 SCC 195 : 2003 SCC (Cri) 1314 : AIR 2003 SC 2612]

, this Court held that if the court issues a direction which amounts to legislation and is not complied with by the State, it cannot be held that the State has committed the contempt of court for the reason that the order passed by the court was without jurisdiction and it has no competence to issue a direction amounting to legislation.

15. The issue involved herein was considered by this Court in *University of Kerala* v. *Council of Principals of Colleges* [(2010) 1 SCC 353 : AIR 2010 SC 2532] . The Court elaborately explained the scope of separation of powers of different organs of the State under our Constitution; the validity of judicial legislation and if it is at all permissible, its limits; and the validity of judicial activism and the need for judicial restraint, etc. The Court observed : (SCC p. 361, para 13)

> "*13*. … '*19*. At the outset, we would say that it is not possible for this Court to give any directions for amending the Act or the statutory rules. It is for Parliament to amend the Act and the rules.' [Ed. : As observed in *Union of India* v. *Assn. for Democratic Reforms*, (2002) 5 SCC 294, p. 309, para 19.] "

16. In *State of U.P.* v. *Jeet S. Bisht* [(2007) 6 SCC 586] , this Court held that issuing any such direction may amount to amendment of law which falls exclusively within the domain of the executive/legislature and the court cannot amend the law.

17. In *Delhi Jal Board* v. *National Campaign for Dignity and Rights of Sewerage and Allied Workers* [(2011) 8 SCC 568 : (2011) 2 SCC (L&S) 375] , this Court while dealing with the issue made the observation that in exceptional circumstances where there is inaction by the executive, for whatever reason, the judiciary must step in, in exercise of its constitutional obligations to provide a solution till such time the legislature acts to perform its role by enacting proper legislation to cover the field. (See also *Vishaka* v. *State of Rajasthan* [(1997) 6 SCC 241

: 1997 SCC (Cri) 932 : AIR 1997 SC 3011] ; *Common Cause* v. *Union of India* [(2008) 5 SCC 511 : AIR 2008 SC 2116] and *Destruction of Public and Private Properties* v. *State of A.P.* [(2009) 5 SCC 212 : (2009) 2 SCC (Cri) 629 : AIR 2009 SC 2266])

18. Thus, it is crystal clear that the court has a very limited role and in exercise of that, it is not open to have judicial legislation. **Neither the court can legislate, nor has it any competence to issue directions to the legislature to enact the law in a particular manner**."

[emphasis supplied by us]

65. Constitution of India recognizes the independence and separation of powers amongst the three branches of the State viz. the Legislature, the Executive and the Judiciary. Each of the branches are co-equal. The Parliament or the Legislature is entrusted with the function of legislation, i.e., enacting the laws. The Executive is entrusted with the function and power to implement those laws and discharge their functions in accordance with the provisions made in the Constitution of India and the laws so enacted. The Judiciary is entrusted with the function to ensure that the laws enacted by the Legislature are within the four corners of the Constitution of India and that the Executive acts within the four corners of the Constitution of India and the laws enacted by the Legislature. As to what should be the laws and the policy behind the said laws is clearly within the domain of the Legislature. It is a

different matter for Judiciary to examine as to whether a particular piece of legislation stands the scrutiny of law within the limited grounds of judicial review available. However, giving a direction or advisory sermons to the Executive in respect of the sphere which is exclusively within the domain of the Executive or the Legislature would neither be legal nor proper. The Court cannot be permitted to usurp the functions assigned to the Executive, the Legislature or the subordinate legislature. The Court cannot also assume a supervisory role over the rule-making power of the Executive under Article 309 of the Constitution of India.

66. It is a settled law that the Constitution of India does not permit the courts to direct or advise the Executive in the matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of Legislature or Executive. It is also settled that the courts cannot issue directions to the Legislature for enacting the laws in a particular manner or for amending the Acts or the Rules. It is for the Legislature to do so.

67. A Constitution Bench, in the case of ***Manoj Narula v. Union of India***[24], was considering various questions. One of the questions that has been considered was whether by taking recourse to the doctrine of advancing constitutional culture, could a court read a disqualification to the already expressed disqualifications either provided under the Constitution or under the Representation of People Act, 1951. Answering the question in the negative, the Court observed thus:

> "**67.** The question that is to be posed here is whether taking recourse to this doctrine for the purpose of advancing constitutional culture, can a court read a disqualification to the already expressed disqualifications provided under the Constitution and the 1951 Act. The answer has to be in the inevitable negative, for there are express provisions stating the disqualifications and second, it would tantamount to crossing the boundaries of judicial review."

68. This Court, in the case of ***Satpal Saini*** (supra), considered whether it was permissible for the High Court to call upon the State Government to amend the provisions of Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972. The directions were issued by the High Court to the State Government to make amendment within 90

[24] **(2014) 9 SCC 1 : 2014 INSC 568**

days. Allowing the appeal filed by the State Government, this Court held that the High Court, while issuing the above directions, acted in a manner contrary to the settled limitations on the power of judicial review under Article 226 of the Constitution of India. It held that the directions cannot be issued to the legislature to enact a law. The power to enact legislation is a plenary constitutional power which is vested in the Parliament and the State Legislatures.

69. It can thus be seen that it is a settled position of law that neither the High Courts while exercising powers under Article 226 of the Constitution nor this Court while exercising powers under Article 32 of the Constitution can direct the legislature or its delegatee to enact a law or subordinate legislation in a particular manner. If the High Courts and this Court, in their extra-ordinary powers under Articles 226 and 32 of the Constitution cannot do so, the answer to the question as to whether a Tribunal constituted under a statute, having a limited jurisdiction, can do so or not, would be obviously 'No'.

70. In that view of the matter, we find that the first order of NGT is liable to be set aside on the short ground that it has transgressed its limitations and attempted to encroach upon

the field reserved for the delegatee to enact a piece of delegated legislation. We are of the considered view that when the TCP Act empowers the State Government and the Director to exercise the powers to enact a piece of delegated legislation, the NGT could not have imposed fetters on such powers and directed it to exercise its powers in a particular manner.

D. Whether observations in Para 47 of the *Mantri Techzone Private Limited* (supra) would operate as *res judicata*?

71. A reliance in this respect is placed by respondent No.1 on the judgment of this Court in the case of ***Mantri Techzone Private Limited*** (supra). It will be relevant to refer to the arguments advanced by the State Government and the other private parties in the said case, which read thus:

> "**27.** The learned Advocate General, Shri Udaya Holla, appearing for the appellant State of Karnataka in CAs Nos. 4923-24 of 2017, has submitted that the State of Karnataka is also aggrieved by the order of NGT to the extent of setting aside the buffer zone in respect of waterbodies and drains specified in the Revised Master Plan, 2015, and enlargement of the buffer zone in respect of lakes and Rajakaluves. It is also aggrieved by the order of NGT directing the authorities to demolish all the offending constructions raised/built in the buffer zone, which will result in demolition of 95% of the buildings in Bengaluru. It is submitted that the Revised Master Plan is statutory in nature and NGT has no power, competence or jurisdiction to consider the validity or vires of any statutory provision/regulation.

Therefore, the order of NGT to that extent is liable to be set aside.

28. The learned Senior Counsel appearing for the appellants in other cases, have also supported the arguments of the learned Advocate General. It was contended that the Revised Master Plan provides for a 30 m buffer zone around the lakes and a buffer zone of 50 m, 25 m and 15 m from the primary, secondary and tertiary drains, respectively to be measured from the centre of the drain. Vide the impugned judgment, NGT has revised these buffer zones and has directed that the buffer zone be maintained for 75 m around the lake and 50, 35 and 25 m respectively from the primary, secondary and tertiary drain, respectively. Variation of buffer zone, as directed by NGT is without any legal and scientific basis and has the effect of amending the Revised Master Plan, 2015, without there being any challenge to the same or any relief sought with respect to the said Revised Master Plan."

72. It will be relevant to refer to the contention made by the counsel appearing on behalf of the applicants in the said case, which reads thus:

"**29.** On the other hand, Shri Sajan Poovayya, learned Senior Counsel, appearing for the applicants, has fairly submitted that the applications were filed only against the appellants in CAs Nos. 5016 and 8002-03 of 2016 (Respondents 9 and 10). He has no objection to set aside the order insofar as the appellants in other appeals including the State of Karnataka are concerned. He has also no objection to set aside the general conditions and directions of NGT in para 1 of the order dated 4-5-2016 [*Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 1409] except the directions issued against Respondents 9 and 10. In view of the above, it is not

> necessary to examine the contentions of the learned Advocate General in Civil Appeals Nos. 4923-24 of 2017. It is also not necessary to consider the contentions urged in the other civil appeals except the appeals filed by Respondents 9 and 10."

73. It could thus be seen that this Court has specifically recorded the submissions made by the counsel that he has no objection if this Court sets aside the general conditions and directions of NGT in para 1 of the order dated 4th May 2016 in the case of ***Forward Foundation* v. *State of Karnataka***[25], except the directions issued against Respondents 9 and 10. It could thus be seen that this Court, in view of the submissions recorded on behalf of the counsel for the applicants, did not find it necessary to consider the contentions urged in the other civil appeals except the appeals filed against Respondents 9 and 10. As such, the observations made in para 47 of ***Mantri Techzone Private Limited*** (supra) will have to be construed as restricted to the cases of respondent Nos. 9 and 10. The position is further clarified from the observations of this Court in the said case in paras 60-61.

[25] **2016 SCC OnLine NGT 1409**

74. As to what could be a binding precedent has been succinctly observed by this Court in the case of ***Union of India and Others v. Dhanwanti Devi and Others***[26], which reads as under:

> "**9.** ……It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the *ratio decidendi*. According to the well-settled theory of precedents, every decision contains three basic postulates—(*i*) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (*ii*) statements of the principles of law applicable to the legal problems disclosed by the facts; and (*iii*) judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone

[26] **(1996) 6 SCC 44 : 1996 INSC 911**

> is binding between the parties to it, but it is the abstract *ratio decidendi*, ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of *stare decisis*. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its *ratio decidendi."*

75. This Court, in the case of ***Dhanwanti Devi*** (supra) in paragraph 9, has held that it is not profitable to extract a sentence here and there from the judgment and to build upon it. It has been held that the essence of the decision is its ratio and not every observation found therein. It has been held that a deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue would constitute a precedent.

76. Though at a first blush, the observations made in para 47 of the judgment in the case of ***Mantri Techzone Private Limited*** (supra), would appear to support the case of the respondents, but if the entire judgment in the said case is perused, it is not so. It can clearly be seen that the learned

Advocate General of the State has specifically argued that the Revised Master Plan is statutory in nature and the NGT has no power, competence or jurisdiction to consider the validity or vires of any statutory provision/regulation. It was therefore argued that the order of the NGT to that extent was liable to be set aside. It was similarly argued on behalf of the other appellant that the order of the NGT impugned therein which revised buffer zones also had the effect of amending the Revised Master Plan 2015. A perusal of para 29 of the ***Mantri Techzone Private Limited*** (supra) would clearly reveal that the counsel appearing for the applicants before the High Court has fairly conceded to the setting aside of those general directions. It could thus be seen that, though the issue was raised before the High Court with regard to the power of the NGT to issue such directions, this Court did not go into that issue on the basis of the concessions made by the appellants. We are therefore of the considered view that the observations found in para 47 of the ***Mantri Techzone Private Limited*** (supra) could not be construed to be a precedent or a *ratio decidendi*.

77. We may also gainfully refer to the observations made by this Court in the case of ***Director General (Road Development) National Highways Authority of India*** (supra). In the said case, one of the challenges was the notification issued by the State Government under Section 154 of the MRTP Act. The notification dated 14th November 2017 referred to the general directions issued by the NGT in its order dated 19th May 2015. Vide the said directions, it was directed that the planning authorities while preparing development plan for area in their jurisdiction or amending them in respect of undeveloped portion abutting the hills up to 100 feet should be shown as "No Development/Open Space Reservation". It further directed that in the event the 100 feet area abutting hills, has already been developed, in that area no permission be granted for additional FSI or TDR. The Court observed thus:

> "**92.** In the present case, the State of Maharashtra has not shown any material or file containing the reasons behind the directive of 14-11-2017. It is not in dispute that the direction was consequential to, and solely based on the directions of the NGT in para 17(*e*). As noticed earlier, those directions were not based on any scientific evidence or report of any technical expert. Furthermore, even the impugned notification does not specify what constitutes "hills", and how they can be applied in towns and

> communities set in undulating areas and hilly terrain. This is not only vague, but makes the directions arbitrary as they can be applied at will by the authorities concerned. More importantly, they amount to a blanket change of all regional and development plans. While such directions can be issued, if situations so warrant, such as in extraordinary or emergent circumstances, the complete absence of any reasons why the State issued them, coupled with the lack of any supporting expert report or input, renders it an arbitrary exercise. That they are based only on the NGT's orders [*Aam Aadmi Lokmanch* v. *State of Maharashtra*, 2015 SCC OnLine NGT 11] , only underlines the lack of any application of mind on the part of the State, while issuing them.
>
> **93.** For the above reasons, we hold that the impugned judgment [*Harshada Coop. Housing Society Ltd.* v. *State of Maharashtra*, 2018 SCC OnLine Bom 2576 : (2018) 6 Bom CR 154] of the Bombay High Court cannot be sustained; it is set aside. Consequently, the directions in the notification under Section 154 (dated 14-11-2017) are hereby quashed."

78. A perusal of the aforesaid would clearly reveal that, though the directive issued by the State Government under Section 154 of the MRTP Act was issued in accordance with the directions issued by the NGT, this Court found such exercise not to be permissible in law. This Court held that the complete absence of any reasons as to why the State issued such directions, coupled with the lack of any supporting expert report or input, renders such a directive to be an

arbitrary exercise of power. This Court, therefore, disapproved such a directive issued under Section 154 of the MRTP Act merely on the basis of the directions issued by the NGT and set aside the same.

E. Development Plan 2041.

79. In any case, we find that the appellants herein, while preparing the draft development plan, have taken into consideration the suggestions given by the NGT. Chapter 12.10 of the development plan elaborately considers the directions given by the NGT.

80. Insofar as "Green Belt" areas, core areas and non-core areas are concerned, the development plan has considered as under:

> "**12.11.4 Implication of Ld. NGT Order**
>
> That it is a settled position of law that normally a Tribunal will deal with the controversy brought before it. That is to say, it will adjudicate upon case put up by any aggrieved party before it. Without conceding on the point of limitation, that the Learned Tibunal could have only adjudicated upon the case put up before it. The case put up before it in nutshell was that no construction should be allowed in forests and green belt area. As already submitted green belt areas are those areas in which the land is also owned by the private land owners and is occupied by the structures. As per IDP Provisions, only reconstruction is permitted in the area and that too

on old lines. No new construction or increase in constructed area is permissible in these areas. So far as the forest lands are concerned, no construction upon that is permissible unless there is a clearance from the Central Government as per the provisions of Forest Conservation Act. Further, no construction is permissible on the forest land until or unless proposal is cleared by the Competent Authority i.e. Central Government, but while disposing of the case, the Learned Tribunal has entered the field, which does not belong to it. Whether the building should be one storey or three storeys is for the Competent Authority to decide. Town Planning does not come under the purview of the NGT. Further the state of Himachal Pradesh is not a non-compliant State. It has been taking care of environment and has also been taking care of Town Planning."

81. Insofar as "Green Belt" areas are concerned, it has been found that "Green Belt" areas are those areas in which the land is also owned by the private land owners and is occupied by the structures. It provides that as per the provision, reconstruction would be permitted in the area and that too on old lines. No more new construction or increase in constructed area is permissible in these areas. It further provided that insofar as forest lands are concerned, no construction upon them would be permitted unless there is a clearance from the Central Government as per the provisions of the FC Act.

82. Not only that, as has already been referred to hereinabove, the learned Advocate General has placed on

record a Cabinet decision which provides that construction would be permitted only in those plots in which there are no trees. It is further pointed out that the construction in "Green Belt" areas, would be permitted only to the extent of single storey with attic.

83. The development plan has elaborately considered as to how vertical construction will have to be preferred over the horizontal construction, inasmuch as the land to be utilized for actual construction would be lesser and there would be more open space.

84. The development plan also consists of the Chapters on "Land Use Zoning" and "Development Control Regulations". In "Green Belt" areas, limited construction with one parking floor + one floor + habitable attic would be permitted for residential use only. It is further clear that the parking floor is permissible only where the plot of land has an access to the motorable road. The maximum permissible height shall be 10 metre. The maximum permissible FAR shall be 1.0. The setbacks norms as prescribed for R1 use in core area shall be applicable. Reconstruction on old lines shall be permissible with same plinth area and number of storeys. Cutting and

felling of trees shall be prohibited. Change of land use and building use shall be prohibited. So also detailed provision has been made for heritage land use as well as core areas and non-core areas.

85. A special provision has been made for Sinking and Sliding Areas which reads thus:

> "**17.2.2.9. Sinking and Sliding Area**
>
> i. The development permission shall be granted by the Competent Authority in whose jurisdiction the Sinking and Sliding Area falls.
>
> ii. The Regulations as applicable for Core/Green Area and Non-Core Area shall be applicable in Sinking and Sliding Area.
>
> iii. The Soil Investigation Report shall be submitted by the applicant before construction/reconstruction of building(s) for the areas falling in sinking and sliding zones as defined in Shimla Planning Area, or for any reclaimed piece of land. The Soil Investigation Report shall be given by the Geologist in the prescribed form. In case of negative observations, the construction shall not be allowed/shall be allowed as per conditions imposed by the consultant."

It can thus clearly be seen that unless a Soil Investigation Report is provided by the applicant before construction/reconstruction of building(s) for the areas falling in Sinking and Sliding Zones as defined in SPA, construction

would not be allowed or allowed only as per the conditions imposed by the consultant. The Soil Investigation Report is required to be given by the Geologist in the prescribed form.

86. It can thus be seen that while preparing the development plan, due care has been taken to ensure that environmental aspects are taken care of.

87. We, however, do not propose to stamp our approval to all the provisions made in the development plan. In that regard, if any person feels aggrieved by any of the provisions, they would always be at liberty to take recourse to such remedy as is available in law.

88. However, we are of the considered view that the NGT could not have directed the delegatee who has been delegated powers under the TCP Act to enact the regulations, to do so in a particular manner. As a matter of fact, the NGT has imposed fetters on the exercise of powers by the delegatee, who has been delegated such powers by the competent legislature. In any case, it is clear that there were sufficient safeguards under the provisions of the TCP Act inasmuch as an aggrieved citizen was entitled to raise objections, give suggestions and was also entitled to an opportunity of hearing on more than one

occasion. The first one at the stage of finalization of the draft development plan by the Director, and the second one at the stage of grant of approval and publication of the final development plan by the State Government. We are informed that 97 objections were received to the draft development plan in the present case. An opportunity of being heard was given to all of them before finalization of the draft development plan. We are also informed that out of 97 objectors, all, except 5, had requested for more relaxation.

89. The first order of NGT is also sought to be attacked by the appellants on the ground that the subject matter of the dispute did not concern any of the enactments listed in Schedule I of the NGT Act and therefore, the OA filed under Section 14 of the NGT Act itself was not tenable.

90. Since we find that the first order of NGT is not sustainable on the ground of encroaching upon the powers of the delegatee to enact a delegated legislation and also amounts to imposing fetters on the exercise of such powers, we do not propose to go into the said issue and we keep the same open to be adjudicated upon in appropriate proceedings.

Transferred Case (C) No. 2 of 2023.

F. Whether the NGT was justified in passing the order dated 14th October 2022 when the High Court was seized of the same issue during the pendency of Civil Writ Petition No.5960 of 2022?

91. Insofar as the second order of NGT is concerned, the same arises out of publication of the draft development plan on 8th February 2022. After the draft development plan was published, in all 97 objections/suggestions were received by the State of Himachal Pradesh within the stipulated time period and the same were heard. After considering the objections and suggestions including the recommendations made by the NGT in its first order, the development plan was finalized for 22,450 hectares of SPA upto the year 2041. However in the meantime, CWP Nos. 23 and 37 of 2022 were filed before the High Court of Himachal Pradesh praying *inter alia* for stay of the draft development plan.

92. Subsequent to the finalization of the draft development plan, the respondent No.1 herein filed another application being OA No. 297 of 2022 before the NGT. The NGT passed an *ex parte ad interim* order dated 12th May 2022 restraining the

appellants herein from taking any further steps in pursuance of the draft development plan.

93. Being aggrieved thereby, the State of Himachal Pradesh – appellant herein preferred CWP No. 5960 of 2022 before the High Court of Himachal Pradesh under Article 226/227 of the Constitution of India. A prayer was made in the said writ petition to declare the order of the NGT dated 12th May 2022 to be without jurisdiction. It was also prayed that the Town and Country Planning Department and Municipal Corporation be permitted to perform their statutory duties and be authorized to grant approvals, sanctions and building permissions in accordance with the development plan. The respondents therein have filed their reply to the said writ petition and the appellants filed their rejoinder.

94. Despite the pendency of CWP No. 5960 of 2022 as well as other writ petitions relating to the same subject matter, the NGT passed its second order holding that the draft development plan, being in conflict with its first order, is illegal and therefore cannot be given effect to.

95. Immediately after the said order was passed, the appellants filed an application before the High Court of

Himachal Pradesh in CWP No. 5960 of 2022 seeking leave to amend the writ petition so as to challenge the order of the NGT dated 12th May 2022.

96. This Court, vide order dated 14th November 2022, in Civil Appeal Nos. 5348-5349 of 2019, transferred the said CWP No. 5960 of 2022 before itself and directed it to be heard along with Civil Appeal Nos. 5348-5349 of 2019. The said writ petition has been renumbered as Transferred Case (C) No. 2 of 2023.

97. At the outset, we allow the application seeking leave to amend the writ petition so as to challenge the second order of NGT and the impleadment application filed before the High Court of Himachal Pradesh.

98. Subsequently, on 3rd May 2023, we passed an order in these proceedings, as under:

> "1. We are informed that on account of directions issued by the National Green Tribunal (NGT), the final development plan which is presently at the stage of 'draft notification' could not be published. We are further informed by the learned Advocate General for the State of Himachal Pradesh that 97 objections have been received to the draft development plan.
>
> 2. In light of the facts and circumstances of these cases, we find that it will be appropriate, that the State Government decides the objections received to

the draft development plan and after considering the same issue a final development plan.

3. We, therefore, direct the State of Himachal Pradesh to consider the objections to the draft development plan, decide them and publish the final development plan within a period of six weeks from today.

4. We further clarify that after the final development plan is published, it would not be given effect to for a period of one month from the date of its publication.

5. It is further directed that no construction should be permitted on the basis of the draft development plan.

6. Learned counsel appearing for the impleadors submits that certain constructions are being carried out without there being a sanctioned plan.

7. If any such construction is carried out without there being a sanctioned plan, indisputably, such a construction would be an unauthorized construction.

8. We, therefore, grant liberty to the applicant(s) to take recourse to the remedy available under Article 226 of the Constitution of India and bring unauthorized constructions to the notice of the High Court.

9. Needless to state that on such petitions being filed, the High Court would decide such petitions with due urgency that the issue requires.

10. List these matters on 12.07.2023."

99. In pursuance of the aforesaid directions, the Town and Country Planning Department, Government of Himachal Pradesh had notified the final development plan on 20th June 2023.

100. It could thus be seen that when the second order of NGT was passed, the writ petition challenging the interim order dated 12th May 2022 was very much pending before the High Court. Not only that, two other writ petitions being CWP Nos. 23 and 37 of 2022, challenging the draft development plan, were also pending before the High Court. It is thus clear that the High Court was in seisin of the matter related to finalization of the draft development plan.

101. A Constitution Bench of this Court in the case of ***L. Chandra Kumar v. Union of India and Others***[27] was considering the issue regarding ouster of jurisdiction of this Court and the High Courts under Articles 32 and 226 of the Constitution of India as was provided under the Administrative Tribunals Act, 1985 (for short, "AT Act"). The AT Act was constituted under the enabling provisions of Article 323-A of the Constitution of India. Sub-clause (d) of Clause (2) of Article 323-A specifically enables the Parliament to legislate a law for establishment of AT Act and also provides for exclusion of jurisdiction of all the Courts except jurisdiction of

[27] **(1997) 3 SCC 261 : 1997 INSC 288**

this Court under Article 136 with respect to disputes or complaints referred to in Clause (1). This Court after scanning the entire law on the question as to whether the powers of this Court and High Courts of judicial review as could be found in Articles 32 and 226 respectively amounts to basic structure or not, observed thus in paragraph nos. 78 & 79:-

> "**78.** The legitimacy of the power of Courts within constitutional democracies to review legislative action has been questioned since the time it was first conceived. The Constitution of India, being alive to such criticism, has, while conferring such power upon the higher judiciary, incorporated important safeguards. An analysis of the manner in which the Framers of our Constitution incorporated provisions relating to the judiciary would indicate that they were very greatly concerned with securing the independence of the judiciary. These attempts were directed at ensuring that the judiciary would be capable of effectively discharging its wide powers of judicial review. While the Constitution confers the power to strike down laws upon the High Courts and the Supreme Court, it also contains elaborate provisions dealing with the tenure, salaries, allowances, retirement age of Judges as well as the mechanism for selecting Judges to the superior courts. The inclusion of such elaborate provisions appears to have been occasioned by the belief that, armed by such provisions, the superior courts would be insulated from any executive or legislative attempts to interfere with the making of their decisions. The Judges of the superior courts have been entrusted with the task of upholding the Constitution and to this end, have been conferred the power to interpret it. It is they who have to ensure that the balance of power envisaged by the Constitution is maintained and that the legislature

and the executive do not, in the discharge of their functions, transgress constitutional limitations. It is equally their duty to oversee that the judicial decisions rendered by those who man the subordinate courts and tribunals do not fall foul of strict standards of legal correctness and judicial independence. The constitutional safeguards which ensure the independence of the Judges of the superior judiciary, are not available to the Judges of the subordinate judiciary or to those who man Tribunals created by ordinary legislations. Consequently, Judges of the latter category can never be considered full and effective substitutes for the superior judiciary in discharging the function of constitutional interpretation. We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Articles 226 and in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.

79. We also hold that the power vested in the High Courts to exercise judicial superintendence over the decisions of all Courts and Tribunals within their respective jurisdictions is also part of the basic structure of the Constitution. This is because a situation where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation, is equally to be avoided."

102. It could thus be clearly seen that this Court, even when a provision in the Constitution enabled the Parliament to make a law thereby excluding the powers of judicial review except under Article 136 of the Constitution, held that the

power of judicial review vested in the High Courts under Articles 226 and in this Court under Article 32 of the Constitution, is an integral and essential feature of the Constitution, constituting part of its basic structure and, therefore, the power of High Courts and this Court to test the constitutional validity of legislations can never be ousted or excluded. This Court further goes on to observe that the power vested in the High Courts to exercise judicial superintendence over the decisions of all Courts and Tribunals within their respective jurisdictions is also part of the basic structure of the Constitution.

103. It will be further relevant to refer to the following observations of this Court in paragraph nos. 90 to 92 in the said case which read thus: -

> "**90.** We may first address the issue of exclusion of the power of judicial review of the High Courts. We have already held that in respect of the power of judicial review, the jurisdiction of the High Courts under Article 226/227 cannot wholly be excluded. It has been contended before us that the Tribunals should not be allowed to adjudicate upon matters where the vires of legislations is questioned, and that they should restrict themselves to handling matters where constitutional issues are not raised. We cannot bring ourselves to agree to this proposition as that may result in splitting up proceedings and may cause avoidable delay. If such a view were to be

adopted, it would be open for litigants to raise constitutional issues, many of which may be quite frivolous, to directly approach the High Courts and thus subvert the jurisdiction of the Tribunals. Moreover, even in these special branches of law, some areas do involve the consideration of constitutional questions on a regular basis; for instance, in service law matters, a large majority of cases involve an interpretation of Articles 14, 15 and 16 of the Constitution. To hold that the Tribunals have no power to handle matters involving constitutional issues would not serve the purpose for which they were constituted. On the other hand, to hold that all such decisions will be subject to the jurisdiction of the High Courts under Articles 226/227 of the Constitution before a Division Bench of the High Court within whose territorial jurisdiction the Tribunal concerned falls will serve two purposes. While saving the power of judicial review of legislative action vested in the High Courts under Article 226/227 of the Constitution, it will ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter.

91. It has also been contended before us that even in dealing with cases which are properly before the Tribunals, the manner in which justice is dispensed by them leaves much to be desired. Moreover, the remedy provided in the parent statutes, by way of an appeal by special leave under Article 136 of the Constitution, is too costly and inaccessible for it to be real and effective. Furthermore, the result of providing such a remedy is that the docket of the Supreme Court is crowded with decisions of Tribunals that are challenged on relatively trivial grounds and it is forced to perform the role of a First Appellate Court. We have already emphasised the necessity for ensuring that the High Courts are able to exercise judicial superintendence over the decisions of Tribunals under Article 227 of the

> Constitution. In *R.K. Jain's case*, after taking note of these facts, it was suggested that the possibility of an appeal from the Tribunals on questions of law to a Division Bench of a High Court within whose territorial jurisdiction the Tribunal falls, be pursued. It appears that no follow-up action has been taken pursuant to the suggestion. Such a measure would have improved matters considerably. Having regard to both the afore-stated contentions, we hold that all decisions of Tribunals, whether created pursuant to Article 323A or Article 323B of the Constitution, will be subject to the High Court's writ jurisdiction under Articles 226/227 of the Constitution, before a Division Bench of the High Court within whose territorial jurisdiction the particular Tribunal falls.
>
> **92.** We may add here that under the existing system, direct appeals have been provided from the decisions of all Tribunals to the Supreme Court under Article 136 of the Constitution. In view of our above-mentioned observations, this situation will also stand modified. In the view that we have taken, no appeal from the decision of a Tribunal will directly lie before the Supreme Court under Article 136 of the Constitution; but instead, the aggrieved party will be entitled to move the High Court under Articles 226/227 of the Constitution and from the decision of the Division Bench of the High Court the aggrieved party could move this Court under Article 136 of the Constitution."

104. It would thus reveal that the Constitution Bench of this Court in unequivocal terms has held that the Tribunals will have a power to handle matters involving constitutional issues. This Court held that if it is held that the Tribunals do not have power to handle matters involving constitutional issues, they could not serve the purpose for which they were

constituted. It has further been observed that on the other hand to hold that all such decisions will be subject to jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India and before Division Bench of High Court within whose jurisdiction the concerned Tribunal falls will serve two purposes. It held that while saving powers of judicial review of legislative action, vested in the High Courts under Articles 226 and 227 would ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter. The Constitution Bench of this Court clearly holds that all decisions of Tribunals, whether created pursuant to Article 323A or Article 323B of the Constitution, will be subject to the High Court's writ jurisdiction under Articles 226/227 of the Constitution, before a Division Bench of the High Court within whose territorial jurisdiction the particular Tribunal falls.

105. The perusal of paragraph 92 of the judgment of the Constitution Bench would further reveal that the function of the Tribunals is only supplementary and all such decisions of

the Tribunals would be subject to scrutiny before the Division Bench of respective High Courts. The Constitution Bench holds that all such Tribunals will continue to act as the only Courts of first instance in respect of areas of law for which they have been constituted. It has been held that it will not be open for a litigant to directly approach the High Courts even in cases where the question of vires of statutory legislations (except as mentioned where the legislations which creates the particular legislation) is challenged by availing the jurisdiction of the Tribunal concerned.

106. It could thus clearly be seen that it is a settled position of law that the High Courts exercise the power of judicial review over all the Tribunals which are situated within its jurisdiction.

107. We may gainfully refer to the observations of this Court in the case of ***Priya Gupta and Another v. Additional Secretary, Ministry of Health and Family Welfare and Others***[28]**,** wherein this Court has succinctly culled down the position as under : -

[28] **(2013) 11 SCC 404 : 2012 INSC 601**

"**12.** The government departments are no exception to the consequences of wilful disobedience of the orders of the Court. Violation of the orders of the Court would be its disobedience and would invite action in accordance with law. The orders passed by this Court are the law of the land in terms of Article 141 of the Constitution of India. No Court or Tribunal and for that matter any other authority can ignore the law stated by this Court. Such obedience would also be conducive to their smooth working, otherwise there would be confusion in the administration of law and the respect for law would irretrievably suffer. There can be no hesitation in holding that the law declared by the higher court in the State is binding on authorities and tribunals under its superintendence and they cannot ignore it. This Court also expressed the view that it had become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have a grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty are important hallmarks of judicial jurisprudence developed in this country, as discipline is sine qua non for effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and to abide by the rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law. (Ref. *East India Commercial Co. Ltd.* v. *Collector of Customs* and *Officials Liquidator* v. *Dayanand*) (SCC p.57, paras 90-91)."

108. It could thus be seen that this Court in unequivocal terms held that no Court or Tribunal and for that matter any other authority can ignore the law stated by this Court. It held that such obedience would also be conducive to their smooth

working, otherwise there would be confusion in the administration of law and the respect for law would irretrievably suffer. It has been held that the law declared by the higher court in the State is binding on authorities and tribunals under its superintendence and they cannot ignore it. This Court expressed a caution that it had become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have a grave impact on the credibility of judicial institution and encourages chance litigation. This Court further held that predictability and certainty are important hallmarks of judicial jurisprudence developed in this country, as discipline is *sine qua non* for effective and efficient functioning of the judicial system.

109. In view of the settled legal position, we are of the view that the continuation of the proceedings by the NGT during the pendency of the writ petitions before the High Court was not in conformity with the principles of judicial propriety. Needless to state that the High Court of Himachal Pradesh, insofar as its territorial jurisdiction is concerned, has supervisory jurisdiction over the NGT. Despite pendency of the proceedings before the High Court including the one

challenging the interim order dated 12th May 2022 passed by NGT, the NGT went ahead with the passing of the second order impugned herein.

110. It will also be relevant to refer to the observations of this Court in the case of ***Raghu Ramakrishna Raju Kanumuru (Member of Parliament)*** (supra), which read thus:

> "**13.** We are, therefore, of the considered view that it was not appropriate on the part of the learned NGT to have continued with the proceedings before it, specifically, when it was pointed out that the High Court was also in seisin of the matter and had passed an interim order permitting the construction. The conflicting orders passed by the learned NGT and the High Court would lead to an anomalous situation, where the authorities would be faced with a difficulty as to which order they are required to follow. There can be no manner of doubt that in such a situation, it is the orders passed by the constitutional courts, which would be prevailing over the overs passed by the statutory tribunals."

111. It can be seen from the perusal of the orders of the NGT itself that though the NGT was informed about the High Court being in seisin of the proceedings, it went on to hold that the judgment given by it was binding and therefore, the draft development plan, which in its view, was not in conformity with its judgment, was liable to be set aside.

112. In any case, the second order of NGT is passed basically on the basis of the first order of NGT. Since we have held the first order of NGT itself to be not tenable in law, the second order of NGT which is solely based on the first order of NGT, is liable to be set aside, on the short ground. This, apart from the fact that as discussed hereinabove, on the ground of judicial propriety, the NGT ought not to have continued with the proceedings after the High Court was in seisin of the matter and specifically when it was informed about the same.

G. Balancing the need for Development and Protection of the Environment.

113. A need for maintaining a balance between the development and protection/preservation of environmental ecology has been emphasized by this Court time and again.

114. A three-Judges Bench of this Court in the case of ***Indian Council for Enviro-Legal Action v. Union of India and Others***[29], has observed thus:

> "**31.** ..... While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development

[29] **(1996) 5 SCC 281 : 1996 INSC 237**

> and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment. This is sought to be achieved by issuing notifications like the present, relating to developmental activities being carried out in such a way so that unnecessary environmental degradation does not take place. In other words, in order to prevent ecological imbalance and degradation that developmental activity is sought to be regulated."

115. This Court, again in the case of ***Essar Oil Limited v. Halar Utkarsh Samiti and Others***[30], emphasizing on the need for removal of deadlock between the development on the one hand and the environment on the other hand, observed thus:

> "**27.** This, therefore, is the aim, namely, to balance economic and social needs on the one hand with environmental considerations on the other. But in a sense all development is an environmental threat. Indeed, the very existence of humanity and the rapid increase in the population together with consequential demands to sustain the population has resulted in the concreting of open lands, cutting down of forests, the filling up of lakes and pollution of water resources and the very air which we breathe. However, there need not necessarily be a deadlock between development on the one hand and the environment on the other. The objective of all laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other….."

[30] **(2004) 2 SCC 392 : 2004 INSC 40**

116. Emphasizing the need for sustainable development by balancing between the environmental protection and developmental activities, this Court, in the case of ***N.D. Jayal and Another v. Union of India and Others***[31], observed thus:

> "**22.** Before adverting to other issues, certain aspects pertaining to the preservation of ecology and development have to be noticed. In *Vellore Citizens' Welfare Forum* v. *Union of India* [(1996) 5 SCC 647] and in *M.C. Mehta* v. *Union of India* [(2002) 4 SCC 356] it was observed that the balance between environmental protection and developmental activities could only be maintained by strictly following the principle of "sustainable development". This is a development strategy that caters to the needs of the present without negotiating the ability of upcoming generations to satisfy their needs. The strict observance of sustainable development will put us on a path that ensures development while protecting the environment, a path that works for all peoples and for all generations. It is a guarantee to the present and a bequeath to the future. All environment-related developmental activities should benefit more people while maintaining the environmental balance. This could be ensured only by strict adherence to sustainable development without which life of the coming generations will be in jeopardy."

117. Again, in the said case, stressing on the right to clean environment to be a right guaranteed under Article 21 of the Constitution and also noting that the right to development also

[31] **(2004) 9 SCC 362 : 2003 INSC 438**

is a component of Article 21 of the Constitution, this Court observed thus:

> "**24.** The right to development cannot be treated as a mere right to economic betterment or cannot be limited as a misnomer to simple construction activities. The right to development encompasses much more than economic well-being, and includes within its definition the guarantee of fundamental human rights. The "development" is not related only to the growth of GNP. In the classic work, *Development As Freedom*, the Nobel prize winner Amartya Sen pointed out that "the issue of development cannot be separated from the conceptual framework of human right". This idea is also part of the UN Declaration on the Right to Development. The right to development includes the whole spectrum of civil, cultural, economic, political and social process, for the improvement of peoples' well-being and realization of their full potential. It is an integral part of human rights. Of course, construction of a dam or a mega project is definitely an attempt to achieve the goal of wholesome development. Such works could very well be treated as integral component for development."

118. Recently, in the case of ***Rajeev Suri*** (supra), emphasizing the need for sustainable development, this Court observed thus:

> "**520.** The principle of sustainable development and precautionary principle need to be understood in a proper context. The expression "sustainable development" incorporates a wide meaning within its fold. It contemplates that development ought to be sustainable with the idea of preservation of natural environment for present and future generations. It would not be without significance to note that

sustainable development is indeed a principle of development, it posits controlled development. The primary requirement underlying this principle is to ensure that every development work is *sustainable*; and this requirement of sustainability demands that the first attempt of every agency enforcing environmental rule of law in the country ought to be to alleviate environmental concerns by proper mitigating measures. The future generations have an equal stake in the environment and development. They are as much entitled to a developed society as they are to an environmentally secure society.

521. By the Declaration on the Right to Development, 1986, the United Nations has given express recognition to a right to development. Article 1 of the Declaration defines this right as:

> "**1.** The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."

522. The right to development, thus, is intrinsically connected to the preservance of a dignified life. It is not limited to the idea of infrastructural development, rather, it entails human development as the basis of all development. The jurisprudence in environmental matters must acknowledge that there is immense interdependence between the right to development and the right to natural environment.

523. In *International Law and Sustainable Development*, Arjun Sengupta in the chapter "*Implementing the Right to Development* [*International Law and Sustainable Development — Principles and Practice* (Publisher : Martinus Nijhoff, Edn. 2004) p. 354.] " notes thus:

> "... Two rights are interdependent if the level of enjoyment of one is dependent on the level of enjoyment of the other..."""

119. In the case of ***Resident's Welfare Association*** (supra), this Court, speaking through one of us (B.R. Gavai, J.), observed thus:

> "**151.** One another important aspect that needs to be taken into consideration is the adverse impact on environment on account of haphazard urbanisation. It will be relevant to refer to Clause 20.3 of the CMP-2031 which we have already reproduced hereinabove. It has been recommended that an Effective Environmental Management Plan be devised for the region including Chandigarh, which includes environmental strategy, monitoring regulation, institutional capacity building and economic incentives. It is observed that the proposal needs a legal framework and a monitoring committee to examine the regional level proposals/big developments by the constitution of an Inter-State High-Powered Regional Environmental Management Board, as per the proposal of the Ministry of Environment and Forests, Government of India.
>
> **152.** The United Nations Environment Programme ("UNEP") notes in its publication titled "*Integrating the Environment in Urban Planning and Management — Key Principles and Approaches for Cities in the 21st Century*" that more than half of the world's population is now living in urban areas. It further noted that by the year 2050, more than half of Africa and Asia's population will live in towns and cities. It recognised that City Development Strategies ("CDSs") have shown how to integrate environmental concerns in long-term city visioning exercises. It states that

environmental mainstreaming can help to incorporate relevant environmental concerns into the decisions of institutions, while emerging ideas about the green urban economy show how density can generate environmental and social opportunities. It states that the strategies need to be underpinned with governance structures that facilitate integration of environmental concerns in the planning process.

153. The said publication defines EIA to be an analytical process or procedure that systematically examines the possible environmental consequences of the implementation of a given activity (project). It is aimed to ensure that the environmental implications of decisions related to a given activity are taken into account before the decisions are made.

154. Judicial notice is also taken of the cover story published in the weekly, *India Today*, dated 24-10-2022, titled as "*Bengaluru — How to Ruin India's Best City*" by Raj Chengappa with Ajay Sukumaran. The said article depicts the sorry state of affairs as to how the City of Bengaluru, once considered to be one of India's best cities, a "Garden city" has been ruined on account of haphazard urban development. It takes note of as to how on account of one major spell of rain in the September of 2022, the city bore the brunt of nature's fury. Various areas of the city were inundated with heavy rains. The loss the flood caused to the Outer Ring Road tech corridor alone was estimated to be over Rs 225 crores.

155. The article notes that, while on one hand, on account of heavy rains, many of the houses were submerged in water, on the other hand, the city faced a huge shortage of drinking water.

156. The article further notes that rapid expansion of the city with no appropriate thought given towards transportation and ease of mobility has led to nightmarish traffic jams on its arterial roads. It notes

that, almost overnight, Bengaluru's municipal jurisdiction grew from 200 sq km to 800 sq km. It observes that the only one to benefit was the politician-businessman-builder nexus, which has thrived. It further noted that though posh colonies mushroomed in new areas, the infrastructure lagged, as roads remained narrow, the drainage poor, and no adequate provision for garbage disposal too.

157. The article notes that the primary canals known locally as *rajakaluves* were once natural rain-fed streams across which farmers built small bunds over time, to arrest the flow of water and create lakes. It further notes that these interlinked man-made lakes worked as a storm-water drain network. However, in order to meet the demand for space for construction and roads, the administrators allowed the lakes to be breached regularly. The lakes, which once numbered a thousand-odd, are now reduced to a paltry number. Worse, the *rajakaluves* that channelised the storm water had buildings built over them.

158. The warning flagged by the City of Bengaluru needs to be given due attention by the legislature, executive and the policy-makers. It is high time that before permitting urban development, EIA of such development needs to be done."

120. Again, while emphasizing the need for balancing the development along with preservation of ecology and environment, this Court, speaking through one of us (B.R. Gavai, J.), in the case of ***State of Uttar Pradesh and Others***

v. Uday Education and Welfare Trust and Others*[32]*, while referring to the earlier judgments on the issue observed thus:

> "**100.** Though we are allowing the appeals, setting aside the orders of the learned NGT, and upholding the action of the State Government in granting licenses, we would like to remind the State and its authorities that it is their duty to protect the environment. The State and its authorities should ensure that necessary steps are taken for arresting the problem of declining forest and tree cover. The State and its authorities should make meaningful and concerted efforts to ensure that the green cover in the State of Uttar Pradesh is not reduced and to ensure that it increases.
>
> **101.** The conservation of forest plays a vital role in maintaining the ecology. It acts as processors of the water cycle and soil and also as providers of livelihoods. As such, preservation and sustainable management of forests deserve to be given due importance in formulation of policies by the State. In this regard, it will be apposite to refer to certain earlier pronouncements of this Court.
>
> > (a) In the case of *Samatha* v. *State of A.P.* [AIR 1997 SC 3297 : (1997) 8 SCC 191], a three-Judge Bench of this Court after referring to the earlier judgment in the case of *State of H.P.* v. *Ganesh Wood Products* [(1995) 6 SCC 363] observed that, even while considering the grant of renewal of mining leases, the provisions of the Forest (Conservation) Act, 1980 and the Environment (Protection) Act, 1986 would apply. This Court held that the MOEF and all the States have a duty to prevent mining operations affecting forests. It further observed that, whether mining operations are carried on within

[32] **2022 SCC OnLine SC 1469 : 2022 INSC 465**

the reserved forest or other forest area, it is their duty to ensure that the industry or enterprise does not denude the forest to become a menace to human existence nor a source to destroy flora and fauna and biodiversity. It has further been held that if it becomes inevitable to disturb the existence of forests, there is a concomitant duty upon the State to reforest and restore the green cover and to ensure adequate measures to promote, protect and improve both man-made and natural environment, flora and fauna as well as biodiversity. It further held that there can be no distinction between government forests and private forests in the matter of forest wealth of the nation and in the matter of environment and ecology.

(b) In the case of *Essar Oil Ltd.* v. *Halar Utkarsh Samiti* [(2004) 2 SCC 392], this Court discussed the need for a balance between the economic and social needs and development on the one hand and environment considerations on the other. It was observed that laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other. In this regard, the observations of this Court in the case of *Indian Council for Enviro-Legal Action* v. *Union of India* [(1996) 5 SCC 281] were quoted as under:

> "While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other

developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment."

(c) In the case of *Maharashtra Land Development Corporation* v. *State of Maharashtra* [(2011) 15 SCC 616] reference was made to *Glanrock Estate Private Limited* v. *State of Tamil Nadu* [(2010) 10 SCC 96] wherein it was observed as under:

"*27.* .... Forests in India are an important part of the environment. They constitute [a] national asset. In various judgments of this Court delivered by the Forest Bench of this Court in *T.N. Godavarman Thirumulpad* v. *Union of India* (Writ Petition No. 202 of 1995), it has been held that 'intergenerational equity' is part of Article 21 of the Constitution.

28. What is intergenerational equity? The present generation is answerable to the next generation by giving to the next generation a good environment. We are answerable to the next generation and if deforestation takes place rampantly then intergenerational equity would stand violated.

29. The doctrine of sustainable development also forms part of Article 21 of the Constitution. The 'precautionary principle' and the 'polluter pays principle'

flow from the core value in Article 21.

30. The important point to be noted is that in this case we are concerned with vesting of forests in the State. When we talk about intergenerational equity and sustainable development, we are elevating an ordinary principle of equality to the level of overarching principle."

(d) Of course, one cannot ignore one of the several dicta of this Court in *T.N. Godavarman Thirumulkpad* v. *Union of India* [(1997) 2 SCC 267 : AIR 1997 SC 1228] wherein this Court enunciated the definition of "forest" in the following words:

"**4.** The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(*i*) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not

only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof…"

102. Though we find that for the sustainable development of the State and on account of the availability of the timber, sanction of granting licenses can be permitted to continue, however, as a responsible State, it needs to ensure that environmental concerns are duly attended to. We, therefore, direct the State Government to ensure that while granting permission for felling trees of the prohibited species, it should strictly ensure that the permission is granted only when the conditions specified in the Notification dated 7th January 2020 are satisfied. The State Government shall also ensure that when such permissions are granted to the applicants, the applicants scrupulously follow the mandate in the said notification of planting 10 trees against 1 and maintaining them for five years."

121. It is needless to state that, this Court, in a series of judgments and orders passed in the case of ***T.N. Godavarman Thirumulkpad v. Union of India and Others***[33] and lastly

[33] **2023 INSC 430**

vide order dated 26th April 2023, passed by a three-Judges Bench to which one of us (B.R. Gavai, J.) was a member, has emphasized the need to have a balance between the requirement of development and preservation of ecology and environment.

122. It is thus clear that while ensuring the developmental activities so as to meet the demands of growing population, it is also necessary that the issues with regard to environmental and ecological protection are addressed too.

V. CONCLUSION

123. We have gone through the development plan. The development plan has been finalized after taking into consideration the reports of various expert committees and the studies undertaken with regard to various aspects including environmental and ecological aspects.

124. We, however, clarify that we have not considered the development plan in minute details. Upon its *prima facie* consideration, we have come to a view that there are sufficient safeguards to balance the need for development while taking care of and addressing the environmental and ecological concerns. We may however not be construed as giving our

imprimatur to the said development plan. At the same time, it cannot be ignored that the development plan has been finalized after various experts from various fields including those concerned with urban planning, environment etc., were taken on board. It also cannot be ignored that the development plan has been finalized after undergoing the rigorous process including that of inviting objections and suggestions at two stages, giving the hearing to such objectors and suggesters and after considering the same. If any of the citizen has any grievance that any provision is detrimental to the environment or ecology, it is always open to raise a challenge to such an independent provision before the appropriate forum. Such a challenge can be considered in accordance with law. But, in our view, the development plan, which has been finalized after taking recourse to the statutory provisions and undergoing the rigors thereto, cannot be stalled in entirety thereby putting the entire developmental activities to a standstill.

125. Insofar as the grievance of the Interveners, who are the plot holders in the 'Green Belt' area, with regard to payment of compensation is concerned, we find that the said issue would

be beyond the scope of the present proceedings. We, therefore, without specifying any opinion on such claim, relegate the interveners to avail the appropriate remedy available to them in law.

126. In the result, we pass the following order:

(i) The Civil Appeal Nos. 5348-49 of 2019 as well as the Transferred Case (C) No. 2 of 2023 are allowed;

(ii) The orders of the NGT dated 16th November 2017 in Original Application No. 121 of 2014, dated 16th July 2018 in Review Application No. 8 of 2018, dated 12th May 2022 and 14th October 2022 in Original Application No. 297 of 2022 are quashed and set aside; and

(iii) The appellant-State of Himachal Pradesh and its instrumentalities are permitted to proceed with the implementation of the development plan as published on 20th June 2023 subject to what has been observed by us hereinabove.

127. In the facts and circumstances of the present case, there is no order as to costs.

128. Pending application(s), if any, shall stand disposed of in the above terms.

.....J.
[B.R. GAVAI]

.....J.
[ARAVIND KUMAR]

NEW DELHI;
JANUARY 11, 2024.