



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPIL NO 13/2021

Date of Order: 13.1.2023

Kusum Bali

.....Petitioner.

Versus

State of HP and others

.....Respondents.

Coram:

The Hon'ble Mr. Justice A.A. Sayed, Chief Justice.

The Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting? Yes.

For the petitioner:

Mr. Ankush Dass Sood, Sr. Advocate,
with Ms. Leena Guleria and Mr.
Gaurav Chaudhary, Advocates.

For the respondents:

Mr. Anup Rattan, Advocate General
with Mr. Rakesh Dhaulta, Additional
Advocate General, for respondent Nos.
1 to 3 and 5 to 7-State.

Mr. V.B. Verma, Advocate, for
respondent No. 4.

Mr. Kamal Kant Saroch, Director,
Town & Country Planning,
Himachal Pradesh,
Present in Person.

A.A. Sayed, Chief Justice (oral)

The above PIL has been filed highlighting the in-
discriminate and haphazard constructions, including

multi-storeyed buildings, on either side of the road stretching an area of 6 Kilometers between Village Kheel Jhalsi to Village Kainthari (including Village Koro) in District Solan.

2. In our order dated 27.09.2022, we have recorded that in the Affidavit of the Chief Secretary, it was candidly stated that the area in which the construction activities are reported is not covered under the provisions of the Himachal Pradesh Town and Country Planning Act, 1977 (hereinafter referred to as "the Act") and does not fall in any planning area. The said Affidavit further stated that a Committee was appointed to ascertain the quantum and nature of construction activities and the Committee was directed to submit a fact finding inquiry report. In the report submitted by the Committee, it was inter alia stated that no department or authority is vested with the powers to grant sanction for construction of buildings in the said area, at present. The said report further stated that the joint site inspection was carried out by the Committee and it was observed that multi-storeyed buildings have come

up on either side of the said road ranging from 4 to 9 storeys for different uses, such as residential and commercial/tourism. Paragraphs 6 to 8 of the said order dated 27.09.2022 read as follows:-

“6. We have also perused the affidavits filed by the Director, Town & Country Planning Department. HP on behalf of respondent Nos. 1 and 2, the Deputy Commissioner, Solan on behalf of respondent No.3, Member Secretary, H.P State Pollution Control Board on behalf of respondent No.4, Conservator, Forest Circle, Solan on behalf of respondent No.5. The stand of the respondents in the said affidavits is essentially that there are no regulations in place in respect of the area of 6 kilometers between Village Kheel Jhalsi to Village Kainthari (including village Koro) which is the subject matter of the present writ petition and therefore construction activities in the area is not being regulated. From the stand of the respondents, it appears that constructions can be carried out in the area in question with impunity and at the whims and fancies of the owners/developers. None of the affidavits deal with the issue of cutting and chopping of hills which are ecologically sensitive zones and affect the environment.

7. We are constrained to observe that the stand of the respondents clearly brings out the sorry state of affairs and shocks the conscience of the Court. The stand of the respondents suggests that despite the constructions/construction activities being carried out by cutting and

chopping hills in the subject area, no action can be taken unless the area falls in planning area. Such stand cannot be countenanced.

8. Having regard to the stand of the respondents and considering the public interest involved in the matter, we find that if the stand of the respondents is accepted, there would be several areas in the State of Himachal Pradesh where constructions can be carried out with impunity by cutting and chopping of hills, as has been done in the present case. We therefore propose to expand the scope of this Public Interest Litigation to include the entire State of Himachal Pradesh, so as to ensure that the constructions and, in particular, constructions by cutting and chopping of Hills, is regulated by the Authorities.”

(Emphasis supplied)

Thus, by the aforesaid order dated 27.09.2022, we have extended the scope of the above PIL to include the entire State of Himachal Pradesh, so as to ensure that the constructions/development activities, in particular, by cutting and chopping the hills, is regulated by the State and its functionaries.

3. We have heard the matter from time to time on various dates. Having regard to the importance of the issue involved, we deem it necessary to monitor the

actions of the State authorities as also the compliances of the directions that we have issued by this order and earlier orders as also such directions that may be issued in future dates. Hence, we issue **Rule**. Learned Counsel for the respective Respondents waive service. ◇

4. Situate in the lap of Himalayan ranges, the State of Himachal Pradesh is a region of scenic splendor offering multi-textured display of snow-clad mountains, deep gorges, thickly forested valleys, large lakes, terraced fields and cascading streams. The State, however, is one of the most multi-hazard prone regions of India, owing to its sensitive ecology and geology. About 1/3rd area of the State falls under Zone-V or the very-high damage zone and about 2/3rd of the area of the State falls under Zone-IV or the high damage zone. About 97% of the total geographical area of the State is prone to landslides.

5. Over the years, there has been an increase in the demand for construction activities in the State. Majority of such constructions are being carried out in

rural areas. A large number of building collapses have occurred in various regions of the State. Poor quality of constructions is one of the reasons. A building height that does not take into account the slope stability and sub-soil conditions, would be an unsafe building. Uncontrolled and unsafe construction of buildings over the years over slopes, by cutting hills which mostly involves felling of trees, lead to landslides and has created extremely vulnerable environment in the State. Large number of trees are being felled or damaged in the process of carrying out such constructions, which adversely impacts the environment and ecology of the area.

6. Reckless and excessive unsafe constructions by cutting hills and felling of trees which are the root cause of landslides, not only destroy property, but take a toll on human lives. Landslides are therefore mostly man-made in the fragile area of this mountain State. Unregulated, indiscriminate and hazardous constructions of buildings, particularly, by cutting and chopping

of hills, which are ecologically sensitive zones, by exploitation of natural resources, makes it vulnerable to disasters. For conservation and preservation of environment, the principle of sustainable development must be followed. We note that by various Notifications dated 23 August 2016, the powers of the Director, Town and Country Planning, have been extended to each of the Districts of the State of Himachal Pradesh.

7. Reference may be made to Articles 48A and 51A(g) of the Constitution. Article 48A of the Constitution mandates that the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. Article 51A(g) of the Constitution enjoins upon the Indian citizens a fundamental duty to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures.

8. Development activities in the State are therefore required to be compatible with the mountain eco-systems considering aspects such as fragility, cli-

matic peculiarities, carrying capacity, etc. The term environment encompasses air, water, soil, flora and fauna, communities, their habitats and livelihoods, etc. and is a complex mix of various inter relationships, which these facets of environment have amongst one another. These need to be preserved not only for the present generation, but for our future generations. We owe it to them!

9. In *Citizens For Green Doon & Ors vs. Union of India & Ors*, 2021 SCC OnLine SC 1243,

a three-judge Bench of the Supreme Court has considered the Principles of Sustainable Development and Environment Rule of Law. Speaking for the Bench, His Lordship Dr Justice Chandrachud, has stated in paragraphs 30 to 37 as under:

“30. E.1 Principles of Sustainable Development and Environment Rule of Law

31. Sustainable development is a common benchmark through which all development projects are judged. Arguably finding its origin in global policy from the Bruntland Report in 1987, it is often defined as “development that meets the needs of the present without compromising the ability of future generations

to meet their own needs". Adopted globally as the standard for development by nations, it is the bedrock upon which the Sustainable Development Goals have been laid out. Their latest iteration, consisting of 17 SDGs, was adopted by all United Nations member States in 2015. Titled as the "2030 Agenda for Sustainable Development", these SDGs are broad, with their focus being on overall development of society in a manner which comports with environmental preservation now and in trust for the future. SDG13 specifically focuses on "Climate Action", which is to be balanced with the other SDGs (such as SDG9, which encourages "Industry, Innovation and Infrastructure").

32. The principle of sustainable development has found consistent application in matters of environmental law. Sustainable development has a multidimensional approach, with a focus on the development of the economy, protection of individual rights and environmental concerns, while ensuring both inter and intra-generational equity. This allows the principle of sustainable development to look beyond creating policy goals (which necessarily seek specific outcomes) towards creating policy approaches (which rather seek to provide better frameworks). The principle of sustainable development has been explicitly recognized in multiple judgments of this Court.

33. In *Indian Council for Enviro-Legal Action v. Union of India*, a three-judge Bench of this Court described the principle of sustainable development in the following terms:

"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 environ-

ment 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 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.”

34. In *Essar Oil Ltd. v. Halar Utkarsh Samiti*, a two-judge Bench of this Court referred to the Stockholm Declaration while elucidating on the principle of sustainable development. It noted that while socio-economic needs could be fulfilled through development, environmental concerns will always remain. However, these concerns should not be seen as a deadlock between development and the environment but as an opportunity to harmonize both, through the principle of sustainable development. Speaking through Justice Ruma Pal, this Court observed:

“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 wa-

ter 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...

35. In *N.D. Jayal v. Union of India*, a three-judge Bench held that a balance between developmental activities and environmental protection could only be maintained through the principle of sustainable development. Doing this was held to be necessary, without which the future generations could be in jeopardy. Justice S Rajendra Babu (speaking for himself and Justice Mathur) held:

“22. Before adverting to other issues, certain aspects pertaining to the preservation of ecology and development have to be noticed. In Vellore Citizen 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.”

36. Justice Babu also noted that while the right to a clean environment is guaranteed as an intrinsic part of the fundamental right to life and personal liberty, the right to development can also be declared as a component of Article 21:

“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 people” 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.”

37. More recently, in *Rajeev Suri v. Delhi*, a three judge Bench of this Court had to decide on the permissibility of the Central Vista Project. In considering the use of the principle of sustainable development, Justice A M Khanwilkar observed that the principle of sustainable development necessarily incorporates within it the principle of development - development which is sustainable and not environmentally degrading. He holds thus:

“507. 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. By 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.”

508. The right to development, thus, is intrinsically connected to the preservice 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 ju-

risprudence in environmental matters must acknowledge that there is immense inter-dependence between right to development and right to natural environment. In International Law and Sustainable Development, Arjun Sengupta in the chapter “Implementing the Right to Development [International Law and Sustainable Development— Principles and Practice, Edn. 2004, pg. 354]” notes thus:

“... Two rights are interdependent if the level of enjoyment of one is dependent on the level of enjoyment of the other...”

10. In paragraph 44 of the judgment, His Lordship said:

“44. In Bengaluru Development Authority v. Sudhakar Hegde⁴⁸, a two-judge Bench of this Court observed that there was no winner in environmental litigation, since both - development and protection of environment - are necessary. The Court clarified that a framework created by environmental rule of law has to balance both these considerations by creating transparent and accountable institutions, while allowing for participatory democracy. Justice DY Chandrachud, speaking for the Court, held:

“94. The adversarial system is, by its nature, rights based. In the quest for justice, it is not uncommon to postulate a winning side and a losing side. In matters of the environment and development however, there is no trade-off between the two. The protection of the environment is an inherent component of development and growth. 95. The protection of the environment is premised not only on the active role of courts, but also on robust institutional frameworks within which every stakeholder complies with

its duty to ensure sustainable development. A framework of environmental governance committed to the rule of law requires a regime which has effective, accountable and transparent institutions. Equally important is responsive, inclusive, participatory and representative decision-making. Environmental governance is founded on the rule of law and emerges from the values of our Constitution. Where the health of the environment is key to preserving the right to life as a constitutionally recognised value under Article 21 of the Constitution, proper structures for environmental decision-making find expression in the guarantee against arbitrary action and the affirmative duty of fair treatment under Article 14 of the Constitution. Sustainable development is premised not merely on the redressal of the failure of democratic institutions in the protection of the environment, but ensuring that such failures do not take place.”

11. Having noticed the law laid down by the Supreme Court in the above judgment on issue of sustainable development, let us now examine the statutory framework and some of the provisions in relation to development/constructions in the State of Himachal Pradesh viz. (1) Himachal Pradesh Town and Country Planning Act, 1977 (the Act), (2) Himachal Pradesh Town and Country Planning Rules, 2014 (hereinafter

referred to as “the Rules”), and (3) Himachal Pradesh Panchayati Raj Act, 1994 (hereinafter referred to as “the Panchayati Raj Act”)

The Himachal Pradesh Town and Country Planning Act, 1977

12. The preamble and some of the relevant sections of the Act are reproduced hereunder:

“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 execution is made effective; to constitute the Town and Country and Development Authority for proper implementation town and country development plan; to provide for development and administration of special areas through the Special Area Development Authority; to make provision for the compulsory acquisition of land required for the development plans and for purposes connected with the matters aforesaid”.

1. Short title, extent, commencement and application –

- (1) ...
- (2) *It extends to the whole of the State of Himachal Pradesh.*
- (3) *It shall come into force on such date as the State Government may, by notification, appoint and different dates may be appointed for different areas and for different provision of this Act.*

(3A) It shall apply to a real estate project proposed to be developed on an area of more than 2500 M2 for plotting or plotting and construction of apartment or any building or buildings having more than eight apartments for the purpose of selling outside the notified planning areas or special areas constituted under this Act and such areas shall be deemed to be planning areas.

(4) Nothing in this Act shall apply to –

...

Thus, it is required to be noted that real estate projects proposed to be developed on an area of more than 2500 sq mts and buildings having more than eight apartments for the purpose of selling outside the notified planning areas or special areas constituted under this Act are 'deemed' to be planning areas.

4. *Establishment of regions.* – (1) *The State Government may, by notification,-*

- (a) declare any area in the State to be a region for the purpose of this Act;*
- (b) define the limits of such area; and*
- (c) specify the name by which such region shall be known.*

...

5. Director to prepare regional plan.- Subject to the provisions of this Act and the rules made thereunder, it shall be the duty of the Director:-

- (i) to carry out a survey of the regions;
- (ii) to prepare an existing land use map indicating the natural hazard proneness of the areas; and
- (iii) to prepare a regional plan keeping in view the regulation for land use zoning for natural hazard prone area.

7. Contents of regional plan.- The regional shall indicate the manner in which land in the region should be used, the phasing of development, the net work of communication and transport, the proposals for conservation and development of natural resources, and in

particular :-

(a) allocation of land to such purposes as residential, industrial, agricultural or as forests or for mineral exploitation;

...

(e) allocation of areas to be developed as "Special Areas" wherein new towns, townships, large industrial estates or any other type of large development projects may be established.

(f) landscaping and preservation of areas in their natural state;

...

10. Restriction on use of land or development ◇

thereof.- (1) Notwithstanding anything contained in any other law for the time being in force, on or after the date of publication of the draft regional plan, no person, authority, department of Government or any other person shall change the use of land for any purpose other than agriculture, or carry out any development in respect of any land contrary to the provisions of the draft plan, without the prior approval of the Director or any officer next to him authorized by the Director, in this behalf.

...

13. Planning Area.- (1) The State Government may, by notification, constitute planning areas for the purposes of this Act and define the limits thereof

...

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.

...

15-A. Freezing of land use pending preparation of existing land use map under section 15.-

(1) Wherever the State Government, after the constitution of the planning area under section 13 or the special planning area under section 66 but before the publication of the existing land use map under section 15, is satisfied that in any planning area or part thereof or the special area or part thereof, as the case may be, the change of the land use on any building operation therein-

(a) is likely to cause injurious disturbances of the surface or any land or soil, or is considered detrimental to the preservation of the soil, prevention of land slips or protection against erosion; or

(b) is likely to make it difficult to plan and develop the area in question in accordance with the provisions of the Act; the State Government may, by notification published in the Official Gazette, freeze the existing land use, for a period not exceeding five years.

(2) On the issuance of a notification under sub-section (1)-

(a) no person shall change the use of any land or carry out any development of land (other than the change for the purpose of agriculture without the written permission of the Director; and

(b) no local authority or officer or other authority shall, notwithstanding anything contained in any other law for the time being in force, grant permission for the change in use of land without the written permission of the Director.

...

17. Interim development plan. – *(1) As soon as may be, after the declaration of a planning area, the Director shall, within*

such time as may be necessary, prepare, after consultation with local authorities concerned, if any, and submit to the State Government an interim development plan for the planning area or any of its parts and such other area or areas contiguous or adjacent to the planning areas as the State Government may direct to be included in the Interim Development Plan.

(2) *The interim development plan shall-*

(a) *indicate broadly the land use proposed in the planning area;*

(b) *allocate broadly areas or sector of land for-*

(i) *residential, industrial, commercial or agricultural purposes;*

...

(e) *make proposal for general landscaping and preservation of natural areas;*

...

(g) *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 of 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;*

...

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

...

18. Development plan – *A development plan shall-*

(a) *indicate broadly the land use proposed in the planning areas;*

...

19. Publication of draft development plan,- (1) *The Director shall forth-with publish the draft development plan prepared under section 18 in such manner as may be prescribed together with notice of the preparation of the draft development plan and the suggestions in writing from any person with respect thereto, within thirty days form the date of publication of such notice. Such notice shall specify in regard to the draft development plan the following particulars, namely,-*

...

21. Director to prepare sectoral plan.- *The Director may, on his own motion, at any time after the publication of the development plan, or thereafter, if so required by the State Government shall, within six months of such requisition, prepare a sectoral plan.*

25. Director to control land use,- *The overall control of development and the use of land in the planning area shall, as from the date of publication in the official Gazette of a notification by the State Government, vest in the Director.*

27. Prohibition of development.- *After coming into operation of the development plan, no person shall change the use of any land or carry out any development of land without the permission in writing of the Director.*

30. Application for permission for development by others, -
 (1) *Any person, not being the Union Government, State Government, a local authority or a special authority constituted under this Act intending to carry out any development on any land, shall make an application in writing to the Director for permission to carry out any development on any land, shall make an application in writing to the Director for permission, in such*

form and containing such particulars and accompanied by such documents as may be prescribed.

...



30-A. Exemption from development in rural areas falling within Planning or Special Areas,- (1) Any person who owns land in rural areas, falling within Planning or Special Areas wherein neither Interim Development Plan nor Development Plan has been notified, shall be exempted from permission under this Act for the following development activities upto the limits as may be prescribed:-

(i) Residential activities such as farm-houses and residential houses upto three storeys, cattle shed, toilet, septic tank, kitchen, store, parking shed or garage and rain shelter;

(ii) Commercial activities such as basic commercial activities like shops of general merchandise, cobbler, barber, tailoring, fruit, vegetable, tea or sweet, eating places and dhabas, chemist and farm produce sale depot;

(iii) Service Industries such as cottage or house-hold, service industries like carpentry, knitting, weaving, blacksmith, goldsmith, atta-chakki with capacity upto five horse-power, water mill, agriculture equipments or machinery repair, electrical, electronic and house-hold appliances;

(iv) Public amenities such as public amenities like panchayat offices, schools, mahila mandals, yuvak mandals, community halls, post offices, dispensaries and clinics (including health, veterinary and Indian System of Medicines) information technology kiosks, patwar khanas, guard huts, anganwaries, electricity and telephone installations and connections, roads and paths, ropeways, water tanks, rain harvesting tanks, overhead or underground water tanks, pump houses, check dams, tem-

High

ples, churches, mosques, graveyards, cemeteries, cremation grounds and other religious buildings, bathing ghats, cremation shelters, rest sheds, baths, drainage, toilets, latrines, urinals, sewerage installations, wells, tube wells, baulies, garbage disposal bins, depots and other installations;

(v) Agriculture and horticulture related activities including rain harvesting structures, milk chilling plant, farm level godowns, seeds and fertilizer stores, farm clinics, pre-cooling units, primary processing units, green houses and poly houses; and

(vi) Heritage related activities such as lakes, reservoirs, dams, baulies, wild life sanctuaries, cemeteries, graveyards, railway lines.

(2) Any person who owns land in areas falling outside urbanisable areas, as shown in the Interim Development Plans or Development Plans of Planning or Special Areas, shall be exempted from permission under this Act for the development activities specified under sub-section (1) upto the limits as may be prescribed.

31-A. Structural Stability Certificate. - *“The applicant shall submit a Structural Stability Certificate of the building before putting the same into use, in the manner prescribed including soil investigation report and structural design basis report as per provisions for safety against natural hazard.*

66. Constitution of special areas, - *(1) If any area, town or township is designated as a special area in the regional plan or if the State Government is otherwise satisfied that it is expedient in the public interest that any area, town or township should be developed as a special area, it may, by notification,*

designate the area as a special area, which shall be known by such name as may be specified therein.

83-A. Restrictions on grant of Electricity, Water or Sewerage connection.-No electricity, water or sewerage connection shall be given to any person within the Planning or Special area constituted under the Act, unless a No Objection Certificate has been obtained by such person from the Director or the Special Area Development Authority, as the case may be.

Himachal Pradesh Town and Country Planning Rules, 2014

13. *In the Planning Areas constituted under section 13 of the Act and the Special Areas designated under section 66 of the Act, where no Interim Development Plan (I.D.P.) or Development Plan (D.P.) has been prepared either under section 17 or under section 18 of the Act, the Director shall permit the sub-division of land or change of land use or the development of land or construction of buildings, apartments, colonies, as the case may be, in conformity with the Regulations as given in Appendix-1 to 9 of these rules.*

14. *In the Planning Areas constituted under section 13 of the Act and the Special Areas designated under section 66 of the Act, where Interim Development Plan or Development Plan has been prepared either under section 17 or section 18 of the Act, the Director shall permit sub-division of land or change of land use or development of land or construction of buildings, apartments, colonies, as the case may be, in conformity with the Regulations contained in the Interim Development Plan or Development Plan. In case Regulations as given in Appendix- 1 to 9 are not contained in the said Interim Development Plan or Develop-*

ment Plan, the same shall be considered in addition to the Regulations as contained in the Interim Development Plan or Development Plan while granting permission by the Director.

18. The prescribed limits for the development activities exempted from permission under section 30-A of the Act shall be as given in Appendix-8 of these rules. For carrying out all the development activities by Union Government or State Government or Authority or a Local Authority or any person which are beyond the prescribed limits shall apply for permission to the Director under rule 15 and sub-rule (1) of rule 16 of these rules.

Appendix 8 referred to in Rules 13, 14 and 18 provides for regulations of prescribed limits for development activities exempted under Section 30-A of the HPT&CP Act, 1977. Appendix 8 reads thus:

“APPENDIX 8

(See rules 13, 14 and 18)

REGULATIONS OF PRESCRIBED LIMITS FOR DEVELOPMENT ACTIVITIES EXEMPTED UNDER SECTION 30-A OF THE HIMACHAL PRADESH TOWN AND COUNTRY PLANNING ACT, 1996 (ACT NO. 12 OF 1977)

1. Residential Buildings and Farm Houses

(i) Maximum floor area **600.00 M²**

- (ii) *Maximum number of storeys* 3 Nos +1 *Parking floor wherever feasible.*

Note: *The applicant may have a maximum floor area of 600.00 M² distributed over not more than three storeys.*

2. Commercial Use

- (i) *Maximum floor area* 100.00 M²
- (ii) *Maximum number of storeys* 2 Nos.
- (ii) *Minimum access* 3.00 M
- (iv) *Parking* *For loading, un-loading and parking purpose suitable community parking space has to be arranged by the Shop owners.*

Note: *The applicant may have a maximum floor area of 100.00 M² distributed over not more than two storeys.*

3. Service Industries

- (i) *Maximum floor area* 100.00 M²
- (ii) *Number of storeys* 1 No.
- (iii) *Minimum access* 3.00 M
- (iv) *Parking* *For loading, un-loading and parking purpose suitable community parking space shall have to be ensured by the Industrialists.*

4. Public Amenities

- (i) *Maximum floor area* *As per requirement of the particular amenity.*

- (ii) *Maximum Number of storeys* 3 Nos.
- (iii) *Minimum access* 3.00 M
- (iv) *Parking* @0.50 to 1.50 equivalent car space per
100 M² of floor area.
- (v) *Play fields in case of
Educational buildings.* 0.20 Hectare to 1.60 Hectare is
Desirable, however, as per availability
of land.

5. Other Imperatives

- (i) *Structural safety and seismic proofing including soil investigation should be ensured.*
- (ii) *Attic and basement shall be counted as a storey.*
- (iii) *Sloping roof shall have to be ensured. (iv) No construction shall be raised within a distance of 3.00 Metre from the edge of the roads in respect of village roads,*
- (v) *No construction shall be raised within the controlled width of major District roads.*
- (vi) *Minimum Set Back of 3.00 M from the controlled width of National Highways, State Highways and Scheduled Roads under the Himachal Pradesh Road Side Land Control Act, 1968 shall be kept.*
- (vii) *Minimum Set Back of 2.00 M in front and 1.50 M in sides and rear side and from the adjoining property, Government land and 5.00 M from Forest land shall have to be maintained.*
- (viii) *Adequate distance from all the electric lines including HT/LT lines as per the requirement of Himachal Pradesh State Electricity Board Limited (HPSEB Ltd.) Rules shall have to be maintained. A Self Declaration / Certificate to this effect shall be submitted by the applicant in this regard*

(ix) *The applicant shall endeavor to develop the colony along the slopes of hill without much disturbance to the natural hill profile. In no case hill cut at any level shall not exceed 3.50 Metres.*

(x) *Provision of Rain Water Harvesting structure @ 20 Liters per M² of roof area should be made.*

(xi) *Septic Tank and Soak Pit should be constructed.*

(xii) *Preference shall be given for Solar Passive Building Design.*

(xiii) *Locational attributes, aesthetics, local building material, heritage and environmental aspects should also be taken into account. Remarks:*

6. Remarks

(i) *The benefit of above exemptions shall only be available to the residents and original inhabitants of the areas, who owned the property at the time of commencement of the Act and their natural heirs only and not to the persons who purchased land in rural areas.*

(ii) *Any person intending to carry out development activities exempted under section 30-A of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977) shall give information on simple paper alongwith a copy of original jamabandi and original tatima to the concerned Panchayat before carrying out development activities. The concerned Panchayat after verifying the documents, shall grant No Objection Certificate for releasing Service Connections or Completion Certificate to the applicant under Section 83-A of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977) for obtaining service connections.*

(iii) *In case of any constraints as per the site conditions in maintaining setbacks, or any other regulations the Director or the concerned officer vested with the powers of the Director may relax the same. In case of any clarification with reference to any proviso or if there is*

no any specific provision, the provisions as envisaged in the Urban and Regional Development Plans Formulation and (URDPFI) Guidelines 2014 of the Government of India or the National Building Code of India shall have to be adhered to.

41. *The Regulations for development of Real Estate Projects shall be as specified in Appendix-7.*

Himachal Pradesh Panchayati Raj Act, 1994

11. Functions of the Gram Panchayat,- (1) *The Gram Panchayat shall perform the functions specified in Schedule-I.*

Schedule-I above, provides the list of functions of the Gram Panchayats. One of the functions of the Gram Panchayat listed at item (5) of *Schedule-I*, interalia speaks of regulating the construction of buildings.

14. Control on erection of buildings.- (1) *The Gram Panchayat, after preparing a model plan for the village which has been approved by the Gram Sabha and the prescribed authority by written order, may-*

(a) *direct that before erecting, re-erecting or adding to a building, wall or a platform every person shall present an application to the Gram Panchayat and that no building, wall or platform shall be erected, re-erected or added to in conflict with the model plan or in advance of an alignment to be specified on land demarcated by the Gram Panchayat; and*

(b) specify the space which shall intervene between any new or enlarged building and the building next adjacent or any road in the village.

(2) The Gram Panchayat shall have the power to modify, return for modification or reject the proposed plan for erection, re-erection or addition to a building, wall, or platform.

(3) Where any building, wall or platform has been erected, re-erected or added to in contravention of any order passed under sub-section (1), the Pradhan may report to the Sub-Divisional Officer and the said Officer may make an order-

(i) directing that the work done or so much of the same as has been executed in contravention of the order passed under sub-section (1) shall be demolished by the owner of the building, wall or platform or that it shall be altered by him to the satisfaction of the Gram Panchayat within such time as may be fixed by him; or
(ii) directing that the work done or so much of the same as has been executed in contravention of the order passed under sub-section

(1) shall be demolished or altered by the Gram Panchayat at the expense of the owner within such time as may be fixed by him:

Provided that the Sub-Divisional Officer shall not make any such order without giving the owner full opportunity of adducing evidence and of being heard.

184. Preparation of Development Plan,- (1) Every Panchayat shall prepare every year a development plan to perform functions specified in Schedule-I and Schedule-II and such other functions as may be specified by the State Government, in so far as the Panchayat funds allow to perform such functions within its respective area.

...

185. District Planning Committee.-(1) *The Government shall constitute in every district a District Planning Committee to consolidate the plans prepared by the Zilla Parishad, Panchayat Samitis, Gram Panchayats, Municipalities in the district and to prepare a draft development plan for the district as a whole.*

...

We are informed that presently there are 12 Zilla Parishads, 78 Panchayat Samitis and 3226 Gram Panchayats in the State.

13. Having perused the above provisions, we find that for lands falling within urbanisable areas shown in Interim Development Plan/Development Plan of a planning area or special area, development activities can be regulated. In rural areas falling within planning areas and special areas, where there is no Interim Development Plan/Development Plan in place, development activities are regulated only to a limited extent, in that, exemptions are provided from applying for permission for development activities in the said areas vide Section 30-A read with Rule 18 and Appendix 8 to the Rules. The only provision made in respect of these areas (i.e where are notified planning area or notified special area, but there is no Interim Development Plan/Development Plan in place) is found in Regulation 6 (under head "Remarks") of Appendix A, wherein it is provided that a person intending to carry out

development activities exempted under section 30-A is required to give information on simple paper alongwith copy of jamabandi and tantima to the concerned panchayat before carrying out development activities. It is further provided therein that the service connections (i.e. water, electricity or sewerage connections) or Completion Certificate shall not be issued unless a "No Objection Certificate" is issued by the concerned Gram Panchayat as provided under section 83-A of the Act. Under Regulation 6(1) of Appendix A (under the head 'Remarks)', it is stated that the benefit of exemptions shall only be available to the residents and original inhabitants of the areas, who owned the property at the time of commencement of the Act and their natural heirs only and not to the persons who purchased land in rural areas. It is provided/clarified that for all development activities exempted from permission under section 30-A, 'beyond' the prescribed limits/restrictions in Appendix 8 of the Rules, are required to apply for permission to the Director under rule 15 and sub-rule (1) of rule 16 of the Rules. It is also required to be noted that the provisions of the Panchayati Raj Act envisage preparation of a model plan and Development Plan. We are told that no such model plan or Development Plan is in place at present and the provisions of the Panchayati Raj Act have remained on paper. However, what is rather worrisome, is that the areas beyond planning areas and special areas are left totally unregulated. The 6-kilometer stretch,

which is the subject matter of the PIL, as filed, is a case in point. It is admitted in the Affidavit of the Chief Secretary that no department or authority is vested with the powers to grant sanction for construction of buildings in the said area. The said report of the fact-finding Committee appointed by the Government brings out that multi-storeyed buildings have come up on either side of the road, ranging from 4 to 9 storeys for different uses, such as residential and commercial/tourism. From the photographs annexed to the PIL from page 84 onwards, it appears that hills have been cut and trees felled for the purposes of constructing the buildings.

14. In the facts and circumstances of the case, we find that there has been inaction and failure on the part of the State Government and its authorities, including the local authorities, to control the haphazard and indiscriminate development activities and in discharging their statutory duties under the Act, Rules, the Panchayati Raj Act and the Environment (Protection) Act, 1988 and the constitutional obligations under Article 48-A of the Constitution of India. The State, as a trustee, is under a legal duty to protect the natural resources and the environment and prevent its degradation under the 'Public Trust Doctrine'. Moreover, there has been non-obs-

vance of principles of ‘sustainable development’ as well as ‘precautionary principle” by the State which envisages that if there is risk of severe damage to humans and environment, absence of incontrovertible conclusive or definite scientific proof would not be a reason for inaction. ◇

15. We find that there are several areas in the State where constructions/development activities are being carried out with impunity at the whims and fancies of the owner/developer without there being any regulations in place. The Court cannot turn a blind eye and is constrained to step in, so as to ensure that development activities in the State, including by cutting hills, are regulated and the principle of sustainable development is adhered to. Hence, we pass the following interim order:

ORDER

- (i) *The Director, Town and Country Planning, shall take steps to prepare and publish the draft Regional Plans for all the Districts in the State of Himachal Pradesh (which Districts are already notified as ‘regions’ under various Notifications issued, as far back as on 23 August, 2016), after carrying out necessary survey of the regions and preparing an existing land use map (inter-*

alia indicating the natural hazard prone areas), which exercise the Director is duty bound to carry out under Section 5 of the Act. We direct that the Regional Plans shall inter alia also indicate/provide for "No Development Zones" for conservation and preservation of areas in their natural state, particularly the hills. This exercise shall be carried out and completed within a period of 1 year from today. We are told that in respect of two Districts ie. Solan and Lahaul & Spiti, steps have already been taken for preparation of the Regional Plans.

- (ii) *The State Government shall take immediate steps to identify areas and issue appropriate Notifications so as to include such areas (as may be specified in the said Notifications), as planning areas and special areas (so as to extend the existing planning areas and special areas already notified) and/or constitute further planning areas under Section 13(1) and designate further special areas under Section 66(1) of the Act (apart from the 55 notified planning areas and 35 notified special areas), more particularly areas which have high potential of development/growth, like tourists areas and areas having proximity with tourist areas, as also areas having valley views. This shall be done within a period of 4 months from today.*
- (iii) *After the Notifications are issued as directed in clause (ii) above, the Director shall prepare and publish or cause to be prepared and published (through Special Area Development Authorities in special areas, if permissible) appropriate Interim Development Plans/Development Plans in respect of these areas or part thereof*

after following due process including consultation with the local authorities, if any. This exercise shall be completed within 4 months from the date of issuance of the Notifications as directed in clause (ii) above. The Interim Development Plans/Development shall inter alia also indicate/provide for "No Development Zones" for conservation and preservation of areas in their natural state, particularly the hills/hills having valley views.

- (iv) *In respect of those areas which are already notified as planning areas or special areas, but there is no Interim Development Plans/Development Plans in place, the Director shall prepare and publish or cause to be prepared and published (through Special Area Development Authorities in special areas, if permissible) appropriate Interim Development Plan/Development Plan in these areas or part thereof after following due process including consultation with the local authorities, if any. The Interim Development Plans/Development shall inter alia also indicate/provide for "No Development Zones" for conservation and preservation of areas in their natural state, particularly the hills/hills having valley views. This exercise shall in the first instance be carried out for at least 3 Districts having high potential of development/growth and shall be completed within 6 months from today. In rest of the Districts, this exercise shall be completed within 1 year from today. We are told that there is already an Draft Development Plan for Shimla District and proceedings in respect whereof are now pending before the Supreme Court and NGT.*

High

- (v) *After the Development Plans are notified and published, steps may be taken to prepare and publish Sectoral Plans, where deemed necessary.*
- (vi) *The State Government is directed to frame a policy document in respect of conservation and preservation of hills and cutting of hills in the State, in consultation with Department of Environment, Science and Technology and such other Departments, as may be necessary, including the Pollution Control Board. This shall be done within 2 months from today. We direct that the Pollution Control Board shall play an active role in bring out the above policy document. This direction is necessary as we find that in the affidavit in reply filed by the Pollution Control Board, it has sought to extricate itself, as if it has no role to play, despite the specific stand of the petitioner that the constructions were being carried out by cutting of hills.*
- (vii) *We direct that there shall be no cutting of hills in the entire State of Himachal Pradesh, unless permission is obtained from the Director, who shall call for a report and "No Objection Certificate" from the Pollution Control Board, before granting such permission.*
- (viii) *In respect of areas beyond planning areas and special areas, the concerned competent authorities/local authorities are directed to prepare or cause to be prepared model plan(s) and development plan(s) in terms of the provisions of the Himachal Pradesh Panchayati Raj Act, 1994 providing for control on erection of buildings. After following due procedure, the same shall be submitted to the State Government not later than 3 months*

from today. The State Government shall examine and approve the same with or without such modification/s, as it deems appropriate. This entire exercise shall be carried out and completed within 6 months from today. While preparing the model plan(s) and development plan(s), the authorities shall consider all aspects including environment concerns.

- (ix) *Till the model plan(s) and development plan(s) in terms of the above direction are prepared and approved, the limitations/restrictions laid down in Section 30-A of the H.P. Town and Country Planning Act read with Rule 18 and Appendix 8 of the Rules shall operate even in areas of the State which are outside/beyond the planning areas and special areas. Liberty is granted to the owners who are affected by this interim order and whose land falls outside/beyond the planning area or special area, to apply to this Court for consideration of their proposal/Application by the Director, Town and Country Planning, if such proposal/Application is made to the Director under Rule 15 and 16(1) of the Rules, (notwithstanding the fact the land is located in an area outside the planning area or special area). We make it clear that in respect of all areas falling outside the Interim Development Plan/Interim Development Plan, irrespective of whether they fall 'within' the planning area or special area or 'outside' the planning area or special area, as stated in Regulation 6(1) of Appendix A (under the head 'Remarks'), the benefit of exemptions shall only be available to the residents and original inhabitants of the areas, who owned the property at the*

time of commencement of the Act and their natural heirs only and not to the persons who purchased land in rural areas.

(x) *We hope and trust that the authorities of the State Government comply with this order in letter and spirit so as to save this beautiful State of Himachal Pradesh from further haphazard and indiscriminate constructions/development activities, particularly by cutting hills, which is causing immeasurable harm to the environment and which is in violation of the principles of sustainable development, not to mention the risk to the lives and property of occupants on account of any possible mishap of such building whose construction may be sub-standard and/or the building being constructed without taking into account the slope stability and sub-soil conditions.*

(xi) *We make it clear that any constructions/development in violation of this order shall entail an order of demolition.*

(xii) *We may not be understood to be against development in any manner. Our endeavour in issuing the above directions is only to see that the development activities in the State are regulated.*

(xiii) *The Director shall file an Action Taken Report every two months setting out the progress made in respect of the above directions and the directions issued by earlier orders passed by the Court.*

- (xiv) *The time-lines directed by this order shall not be extended unless an appropriate Application is made by the Respondents.*
- (xv) *This interim order would be subject to such further interim orders/directions as may be modified by the Court. We also make it clear that we have not gone into the issue of arbitrariness or reasonableness of exemptions from permissions and/or the limits prescribed in section 30-A or Rule 13/18 and Appendix to the Rules.*
- (xvi) *The ad-interim directions issued by earlier orders passed by the Court would continue to operate.*

16. List on 27.3.2023 for reporting compliance and the steps taken.

(A.A. Sayed)
Chief Justice

(Jyotsna Rewal Dua)
Judge

Januray, 13, 2023
(Bhardwaj)