

Item No. 04

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

(By Video Conferencing)

Original Application No.297/2022  
(I.A. No. 90/2022)

Yogendra Mohan Sengupta

Applicant

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 14.10.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER  
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER  
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Applicant: Mr. Rahul Choudhary, Advocate

Respondents: Mr. Ashok Sharma, Advocate General with Mr. Abhinav Mukerji,  
AAG for the State of Himachal Pradesh  
Mr. Ravinder Gupta, Advocate for MoEF & CC

**ORDER**

**The Issue**

1. Challenge in this application is to the Draft Development Plan, 2041 prepared by the Town and Country Planning Department, Himachal Pradesh on the ground that such plan is contrary to the sustainable development principle and destructive of environment and public safety. The applicant has relied upon Expert Committee reports based on which this Tribunal, vide judgment dated 16.11.2017 in OA121/2014, has already issued regulatory measures required to be adopted in terms of number of floors, restrictions on constructions in core/green areas etc.

The said directions are still holding the field. There is illegal and ill conceived effort to violate the binding directions of this Tribunal under Section 15 of the NGT, having the force of binding Court decree, subject to further orders only of Hon'ble Supreme Court. Under Section 33 of the said Act, the NGT Act has overriding effect over any other law in force. Violating such directions is a criminal punishable offence under Section 26 of the NGT Act. Heads of concerned Departments of the State are liable to be prosecuted for such offence under Section 28 of the said Act.

**Order dated 12.5.2022**

2. Vide order dated 12.05.2022, the Tribunal considered the contentions of the applicant against the validity of the draft development plan permitting construction of more floors, new constructions in core area, constructions in green area, permitting development in sinking and sliding area in violation of order of this Tribunal. The Tribunal noted that against its judgement dated 16.11.2017 in OA121/2014, the State filed Civil Appeal Diary No. 4763/2019, *State of Himachal Pradesh & Ors. vs. Yogendera Mohan Sengupta & Anr.* before the Hon'ble Supreme Court which came up for hearing on 08.07.2019 but no stay was granted. Thus, the draft plan was illegal.

3. Finding that prima facie the draft development plan was in violation of orders of this Tribunal, notice was issued to State of Himachal Pradesh and interim injunction was granted against taking further steps in pursuance of the said draft plan.

**State's stand**

4. In response to the above, the State of Himachal Pradesh has filed a counter affidavit dated 20.07.2022 by submitting that judgement of this

Tribunal could be ignored by the State in exercise of its legislative power. A Writ Petition was filed before the Himachal Pradesh High Court being CWP No. 4595 of 2011, *Rajeev Verma v. State of Himachal Pradesh & Ors.*, on which order dated 21.09.2021 was passed taking on record the draft plan which is a valid ground to ignore the order of this Tribunal. It is further stated that the draft development plan is necessary notwithstanding the view of this Tribunal. The plan is as per Guidelines of Ministry of Urban Development, Government of India and is necessary to promote development. The recommendations of Expert Committee appointed by this Tribunal have been duly addressed while preparing the draft development plan. In the process, the State has considered Disaster Risk Management, suitability for the hill environment, seismic safety analysis and retrofitting of life-line buildings, capacity of Shimla Fire Services, city level disaster preparedness planning, mobility and water supply system. The counter affidavit also refers to following judgements of the Hon'ble Supreme Court:

- i. Judgment dated 01.06.2022 in Civil Appeal no. (Diary) no. 16486 of 2022 titled as "*State of Andhra Pradesh Raghu Ramakrishna Raju Kanumuru (M.P)*" that the Tribunal could not pass orders in conflict with the orders of the High Court
- ii. *Karnataka Bank Ltd. vs State Of A.P. &Ors [(2008) 2 SCC 254]* in para 19 that there is presumption in favour of validity of a statute
- iii. *Madhya Pradesh vs. Rakesh Kohl' and another (2012) 6 SCC 312* that law is not to be declared bad lightly
- iv. *Govt. of AP vs P Laxmi Devi (2008 (4) SCC 720* that greater latitude is available to legislature in fiscal matters
- v. *T. Vijayalakshmi v. Town Planning Member, (2006) 8 SCC 502* that land use is governed by town planning law.

### **Rejoinder of the Applicant**

5. In rejoinder, the applicant has submitted that the draft development plan is not justified. Stand taken by the State in counter affidavit is not tenable. The High Court has not expressed any view on merits of judgment of this Tribunal or on merits of the draft development plan. Hon'ble Supreme Court has not granted stay and appeal against the judgement of this Tribunal is pending. Acting in violation of judgement of this Tribunal during pendency of the Appeal before the Hon'ble Supreme Court, without permission of the Hon'ble Supreme Court is over-reaching the process of law. The statutory right pleaded by the State under the Himachal Pradesh Town and Country Planning Act, 1977 cannot override directions of this Tribunal under Section 15 read with Section 33 and 25 to 28 of the NGT Act, 2010. The applicant has relied upon judgement of the Hon'ble Supreme Court in *Mantri Techzone Private Limited v. Forward Foundation and Ors.*, (2019) 18 SCC 494, particularly para 47. It is further submitted that as per scheme of separation of powers scope of legislature does not extend to annul decree of Court (order of this Tribunal is at par with decree of court under section 25 NGT Act) nor self-serving opinion of the State, contrary to adjudicated view of this Tribunal justify violating the decree of this Tribunal.

### **Consideration by the Tribunal and finding**

6. We have considered the rival submissions. It is undisputed that the draft development plan is in violation of judgement of this Tribunal dated 16.11.2017 in O.A No. 121/2014, *Yogendra Mohan Sengupta v. Union of India & Ors.*, operative part of which is reproduced below:-

“xxx .....xxx.....xxx

*112. Thus, we pass the following directions and order:*

- I. *We hold and declare that the facts and circumstances of the present case, as afore-recorded, clearly*

*demonstrate failure on the part of the State Government, its instrumentalities and local authorities to discharge their constitutional obligations under Article 48A, statutory duties under the Environment (Protection) Act, 1986, under the TCP Act and Municipal byelaws. It is this failure that has exposed the Shimla Planning Area to such vulnerability to natural and man-made disasters. In the event, if such unplanned and indiscriminate development is permitted there will be irreparable loss and damage to the environment, ecology and natural resources on the one hand and inevitable disaster on the other.*

- II. We hereby prohibit new construction of any kind, i.e. residential, institutional and commercial to be permitted henceforth in any part of the Core and Green/Forest area as defined under the various Notifications issued under the Interim Development Plan as well, by the State Government.*
- III. Beyond the Core, Green/Forest area and the areas falling under the authorities of the Shimla Planning Area, the construction may be permitted strictly in accordance with the provisions of the TCP Act, Development Plan and the Municipal laws in force. Even in these areas, construction will not be permitted beyond two storeys plus attic floor. However, restricted to these areas, if any construction, particularly public utilities (the buildings like hospitals, schools and offices of essential services but would definitely not include commercial, private builders and any such allied buildings) are proposed to be constructed beyond two storeys plus attic floor then the plans for approval or obtaining NOC shall be submitted to the concerned authorities having jurisdiction over the area in question. It would be sanctioned only after the same have been approved and adequate precautionary and preventive measures have been provided by the special committee constituted under this judgement along with the Supervisory Committee.*
- IV. Wherever the old residential structures exist in the Core area or the Green/Forest area which are found to be unfit for human habitation and are in a seriously dilapidated condition, the Implementation Committee constituted under this judgement may permit construction/reconstruction of the building but strictly within the legally permissible structural limits of the old building and for the same/permissible legal use. The Competent Authority shall sanction the plans and/or approve the same only to that extent and no more; under any circumstances such plans must not be beyond two storeys and an attic floor and only for residential purpose.*

- V. *There shall be no regularization of unauthorised constructions within the Core area and Green/Forest areas which have been raised without obtaining any prior permission/sanction of plans in entirety. It shall also include constructions in complete violation of the sanctioned plan or where additional floors have been constructed in contradiction to the concept of deviation or variation, to constructed areas for which the plans were sanctioned. In such cases, the authorities shall take action in accordance with law and direct demolition of such property.*
- VI. *The State of HP, its departments and authorities are hereby restrained from permitting cutting of hills/forests without prior submission of application for sanctioning of plans for construction. If any person is found to be damaging Forest/Green area and/or cutting of hills, without grant of permission of the concerned authorities and without construction plan being sanctioned, he/she would be liable to pay environmental compensation as may be determined by the concerned department but not less than Rs. 5 Lakhs for each violation. The compensation, if not paid, shall be recovered as land revenue by the State and will be utilized by the State for restorative purposes and/or for afforestation of the Shimla Planning Area.*
- VII. *Wherever unauthorised structures, for which no plans were submitted for approval or NOC for development and such areas falls beyond the Core and Green/Forest area the same shall not be regularised or compounded. However, where plans have been submitted and the construction work with deviation has been completed prior to this judgement and the authorities consider it appropriate to regularise such structure beyond the sanctioned plan, in that event the same shall not be compounded or regularised without payment of environmental compensation at the rate of Rs. 5,000/- per sq. ft. in case of exclusive self-occupied residential construction and Rs. 10,000/- per sq. ft. in commercial or residential-cum-commercial buildings. The amount so received should be utilised for sustainable development and for providing of facilities in the city of Shimla, as directed under this judgement.*
- VIII. *We direct the State Government and/or its instrumentalities and more, particularly, the Town and Country Planning Department to finalize the Development Plan within three months from the date of pronouncement of this judgement without default. The Development Plan so finalized shall be notified in accordance with law. While finalizing the development plan, the directions and precautions stated in this judgement shall be duly considered by the concerned departments and the State of Himachal Pradesh.*

- IX. *The Registrar or any other authority vested with the responsibility of registering documents of transfer or division of land shall not do so except with the prior NOC from the Town and Country Planning Department, in accordance with the provisions of the law afore-referred. The Department of Science and Technology, Town and Country Planning, Municipal Corporation, Urban Development, Forest, Revenue and Registrar for documents shall depute their senior officers within a period of three weeks from today, who shall prepare Memorandum of Practice which shall be followed by all the departments in regard to cutting of hills, any activity in the forest areas, division and transfer of land, development activity providing of infrastructure and other facilities in the Shimla Planning Area. This memorandum shall provide due coordination and cooperation between the various wings of the State to ensure sustainable development of the entire Shimla Planning Area. This Memorandum will be approved by the Supervisory Committee appointed under this judgement.*
- X. *The State of Himachal Pradesh, its instrumentalities, departments and local authorities shall prepare an Action Plan for providing appropriate infrastructure, water and sewerage facilities, roads, greenery, other public amenities and retrofitting of existing structures (especially public utilities) particularly with the earthquake resistance structures in the areas which have been indiscriminately developed and lacks such facilities like Sanjauli and other congested areas of Shimla including Lower Bazar etc. The Action Plan shall be prepared within a period of three months from the date of pronouncement of this judgement providing retrofitting to public or private buildings against earthquake effect and be implemented in accordance with the State Policy.*
- XI. *No construction of any kind, i.e. residential, commercial, institutional or otherwise would be permitted within three meters from the end of the road/national highways in the entire State of HP, particularly, in Shimla Planning Area. We direct that all the concerned authorities shall duly enforce the valley view regulation and direct the same.*
- XII. *Within the existing Zoning policy, additional layers of slope, geology, soil type and load bearing capacity of soil should be superimposed on different zones to regulate any construction or development works. The height of constructions should be regulated by such safe bearing load capacity of the underlying rock formations rather than uniformly following 18 mtr. of height requirement. The Interim Development Plan permits 18 mtr. of height requirement, which again has no rational and is not backed by any study. Thus the*

same will not be implemented till compliance with the other directions.

- XIII. Presently slope of 45° for construction is uniformly applicable in all zones and areas irrespective of soil and geology. This can create vulnerability during seismic events and soil saturation/soil liquefaction. Slope in soft rocky areas with over burden soil should be reduced to 35° while retaining 45° for areas with hard sub surface stratum. The concerned department shall ensure that no construction activity takes place where the slope is more than 450/35° in any case, which should be prior to cutting of the hills.
- XIV. Rain water harvesting should be a mandatory requirement for all the building plans. Even the old buildings where such RWH structures are not present must be provided with RWH systems within three months. This direction must be complied with particularly in relation to public buildings, schools, colleges, universities, hotels, hostels, etc.
- XV. All the storm water available as surface run off in all the concretised areas like roads, lanes, platforms and market places should be diverted in such a manner to ensure that such run off does not go in to over burden or flow along hills and depressions, thereby creating over saturation and affecting soil and slope stability. Options be evaluated for storage and use of such water after proper treatment/ disinfection.
- XVI. There should be no institutional construction in the Core area and the institutions located in the Core area which requires a further demand for space or facilities should be shifted to other district or to the areas falling under the jurisdiction of SADA.
- XVII. We appoint the following Committee to be termed as 'High Powered Expert Committee', which shall be responsible for carrying out the specific directions under this judgement and provide NOC or other necessary permissions to the stakeholders, whether State or private parties. This Committee shall also ensure that there is no further degradation of environment, ecology and natural resources of the Shimla Planning Area. If anything comes to the notice of this Committee, they would be at liberty to move to the Tribunal for appropriate directions. The High Powered Expert Committee shall consist of two components. First would be the Supervisory Committee while the later would be Implementation Committee. The Members of these committees shall be as follows:

**I. SUPERVISORY COMMITTEE:**

- i) Secretary, Urban Development, State of Himachal Pradesh.



- ii) Director, Wadia Institute of Himalayan Geology, Dehradun.
- iii) Director, Town and Country Planning, Govt. of H.P. shall be the Member Secretary of the Committee
- iv) Professor from relevant field nominated by the Director, Punjab Engineering College, Chandigarh.
- v) Nominated officer from NDMA not below the rank or equivalent to the Joint Secretary or above.
- vi) Member Secretary, H.P. Pollution Control Board.

## **II. IMPLEMENTATION COMMITTEE:**

Chairman: Director, Deptt. Town and Country Planning, Govt. of H.P.

### **MEMBERS:**

- i) State Town Planner, Govt. of H.P.
- ii) Director, Department of Urban Development, Govt. of H.P.
- iii) Municipal Commissioner, Shimla.
- iv) Nominated officer from Wadia Institute of Himalayan Geology, Dehradun not below the rank or equivalent to Director in Govt. of India.
- v) Nominated officer from NDMA not below the rank or equivalent to Director in Govt. Of India.
- vi) State Geologist, Department of Industries, Govt. of H.P.
- vii) Director, Department of Environment, Science & Technology, H.P.
- viii) Architect in-Chief, H.P. PWD.
- ix) Member Secretary, H.P. Pollution Control Board.

*The Supervisory Committee shall meet atleast once in three months, while the Implementation Committee shall meet every month in the first week to perform the functions and duties assigned to them under this judgement, without default.*

XVIII. *This High Powered Expert Committee shall carry out a survey of lifeline structures and identify those structures that are vulnerable to damage due to seismic events and other natural hazards. Also it will identify and delineate passages for providing emergency services, for medical assistance and relief works, so that enough openings are created for ingress and egress of fire tenders and emergency medical vehicles/ambulances.*

XIX. *This Committee shall also advise the State of HP for regulating traffic on all roads, declaring prohibited zones for vehicular traffic, preventing and controlling pollution and for management of Municipal Solid Waste*

*in the Shimla Planning Area. The recommendation of this Committee should be carried out by the State Government and all its departments as well as local authorities, without default and delay.*

- XX. *The Committee shall also deal with the recommendations in relation to zoning policy and would keep in mind the factor of vulnerability risk assessment. The Committee may also make recommendations for permitting construction of buildings of exceptional nature like hospital, fire-brigade or public utility services but strictly in consonance with the laws in force.*
- XXI. *There should be a complete ban on felling of trees in Catchment Forest and Sub-Catchment of water streams and water sources. In such areas, even change of land use to horticulture and agriculture should not be permitted as that can add pesticides and inorganic chemicals to soil which will eventually drain in to water sources.*
- XXII. *The State Government shall ensure that the Municipal Solid Waste generated in the Shimla Planning Area is managed strictly in consonance with the Solid Waste Management Rules, 2016. The Waste to Energy Plant located at Bhariyal should positively be made operational as directed by the Tribunal in the other connected matters by 15th November, 2017.*
- XXIII. *The ban on use of plastic bags and plastic packaging in the Shimla Planning Area is again reaffirmed and reiterated. The State of HP, its Departments, Himachal State Pollution Control Board and the Municipal Corporation of Shimla shall ensure that no plastic bags or plastic packing or goods are used, stored, sold and/or given with any product, by the shopkeepers in the Shimla Planning Area.*
- XXIV. *The State Government, concerned departments and the local authorities are hereby directed to prepare a complete action plan for collection and disposal of sewage in the Shimla Planning Area expeditiously. The plan should deal with laying of pipeline, putting up of STP and reutilisation of the treated sewage and/or its discharge at the appropriate places wherever there is a discharge in the water body. It shall be ensured that the release of the treated sewage should not be at a point prior to any drain or pipe discharging untreated sewage into the river/water bodies directly, which must be stopped. The Action Plan should be placed before the Tribunal within a period of three months from today.*
- XXV. *It is directed that wherever the concerned authorities extract water from the river or water bodies it should do so according to law and positively prior to a point*

*where discharge from any drain, nalla, etc. meets the river/water body. Though, every effort should be made that no untreated sewage or other polluted water enters the river at all.*

- XXVI. *Wherever there are trees in the compound or land of an owner or a house adjacent to a forest or green area, it shall be the responsibility of such owner/owners to ensure that the trees are properly protected and maintained and no damage is caused or permitted to be caused to their growth.*
- XXVII. *All the directions issued by the Tribunal in relation to collection and disposal of sewage, passed in the case of Abhimanyu Rathor v. State and Ors. (supra) should be strictly complied with.*
- XXVIII. *The concerned departments and the local authorities of the State Government should also prepare a complete and effective Action Plan with regard to disaster management. The Disaster Management Plan should deal with both precautionary and preventive measures that should be taken up presently to ensure that in the event of any untoward incident or natural calamity there is least damage to the natural resources, person and property of the public at large. The action plan should also deal with the preparedness of the concerned wings of the State for the purpose of relief and rehabilitation as a result of disaster.*
- XXIX. *Original Application No. 505 (THc) of 2015 also stands disposed of in terms of this judgement. The Applicant has already submitted the plans for reconstruction of the house on the existing lines on the ground that the same is in dilapidated conditions and is unfit for human habitation. In this judgement, the Tribunal has placed restrictions in consonance with the Notifications issued by the State on the nature and the extent of construction that can be raised in such areas. All these matters are required to be considered by the Supervisory Committee. Therefore, we direct the concerned authorities to consider the application of the applicant afresh, in light of the directions contained in this judgement and pass orders expeditiously in any case not later than four weeks from today. The orders dated 1st August, 2005 and 13th October, 2010 already passed by the authorities would not be given effect to and they will be subject to fresh orders that may be passed by the competent authority.*

*113. The Miscellaneous Application No. 192 of 2017 was also heard along with the main case. After the case was reserved for judgement and before pronouncement, the learned Counsel appearing for the State of Himachal Pradesh and its various departments mentioned the matter and informed the Tribunal that in principle a decision had been taken to permit the applicant to install lift as per amending drawings. Some relaxation in relation to setback is under*

*consideration of the authorities and the same shall be decided objectively and very expeditiously not later than two weeks from the date of pronouncement of this judgement. In view of this judgement, no further orders are called for in Miscellaneous Application No. 192 of 2017. Liberty to mention in the event of default granted.*

*114. The Miscellaneous Application No. 525 of 2014, has been filed on behalf of the H.P. Public Service Commission, praying that there has been shortage of office accommodation and to provide better facilities like ultra modern library, facilitation centre for the candidates, strengthening and furnishing of strong room and interview rooms in the existing building besides providing parking space for official vehicles of Commission and other vehicles of the Government; additional accommodation needs to be constructed. As per proposed plans construction is to be carried out for parking, office block, Chairman's room with retiring room, secretary's room with retiring room, digital library and other ancillary constructions thereto. According to the applicant, these areas fall in Green/Forest area of Shimla Planning Area. Even the photographs of the existing structure have been filed on record. The building is surrounded by trees and has some open space at two different levels in front of it. We are of the considered view that for the reasons recorded in this judgement which should be read as an integral part of this order, this construction should not be permitted in the interest of ecology, environment and safety.*

*In this judgement, the Tribunal has placed restrictions in consonance with the Notifications issued by the State on the nature and the extent of construction that can be raised in such areas. All these matters are required to be considered by the Supervisory Committee. Apparently, the area is green/forest area in Shimla Planning Area and it will be impermissible to raise any fresh construction, particularly, to the extent and of the size as has been prayed by the applicants. The reports on record have clearly stated that there should be greater emphasis on shifting of public offices from core, green or forest areas to the outer area of Shimla and if necessary even to the adjoining districts. Keeping in view the seismic status of Shimla it would not be appropriate to permit such construction, especially when reasonable alternatives are available with the applicants. There is no reason as to why the building should not be shifted to another appropriate area either in the nongreen/forest areas of SPA or even the areas available in the adjoining districts. The distances have lost their meaning in view of the highways network being improved to the extent of providing four lane dual carriage and two lane dual carriage. Thus to protect the green area as well as to avoid additional construction burden on the hills, it is not proper to permit such huge construction on the small area which is open in front of the existing building which itself is a huge construction. The hills need not be converted into concrete mountains and thereby cause adverse impacts on the environment, ecology and the stability of the structures.*

*We grant liberty to the applicant to approach the Supervisory Committee, which shall be assisted by the Implementation Committee by filing appropriate applications for raising the proposed construction with complete plans, environmental impacts consideration in relation to the seismic status of the hill, its carrying*

capacity and all other necessary documentation relatable to different environmental aspects. If such an application is filed the Supervisory Committee shall examine the same in accordance with the provisions of the TCP Act, and the directions issued in this judgement. It would make recommendations in favour of applicant or otherwise in relation to the construction as prayed and with such precautions and preventive measures as may be necessary. If such recommendation is made, the same shall be placed before the Tribunal for issuance of appropriate directions in accordance with law. With the above directions, Miscellaneous Application No. 525 of 2014 is disposed of, without any order as to costs.

115. The Miscellaneous Application No. 785 of 2015, has been filed on behalf of the Town and Country Planning Department, for construction of proposed Convention Centre at UP Mohal Raj Bhawan at Peterhoff, Shimla. There is already an existing structure and a running hotel. The applicant prays for allowing construction, expansion of the existing Peterhoff building. As per the drawings placed on record, the new construction besides the existing structure would be that of basement, ground floor, first floor, second floor and third floor. The constructed area of the basement would be 1182 sq. mtr, ground floor would be 865.89 sq. mtr, first floor would be 855.12 sq. mtr., second floor would be 855.12 sq. mtr. and third floor would be 824.52 sq. mtr. The building is located in green/forest area of the SPA. In this judgement, the Tribunal has placed restrictions in consonance with the Notifications issued by the State on the nature and the extent of construction that can be raised in such areas. All these matters are required to be considered by the Supervisory Committee. It is evident and in fact, the applicant has placed nothing on record that any appropriate study was carried out in relation to various environmental aspects including its vulnerability to earthquake, treatment of sewerage, management of MSW and the impact of the trees which are going to be felt on the environment.

Because of the reasons stated, we are unable to allow the application at this stage. We direct the applicant to approach the Supervisory Committee, which shall be assisted by the Implementation Committee, with the application and all necessary documents. If such application is filed, the Supervisory Committee shall make its recommendation, whether such construction should or should not be permitted, while taking into consideration the Act, the Development Plan and the directions contained in this judgement. If recommendation is favourable to the applicant, the same shall be implemented only subject to the final orders of this Tribunal. With these directions this Miscellaneous Application has been disposed of without any order as to costs.

116. The Miscellaneous Application No. 1495 of 2016 has been filed on behalf of the Chief Engineer, Deepak Project Minto Court, Shimla, stating that the building, where its headquarter was located was gutted in a fire in November, 2014 and they want to reconstruct the same plinth location of the old building. Presently they are working in a temporary accommodation. The plans have been submitted to the Municipal Corporation, Shimla. The area is located in green/forest area and the applicant prays that they be allowed to raise construction. This application does not give any details about the construction, i.e., proposed to be raised in terms of dimensions,

area, material to be used, nature of construction that is proposed to be raised. The application relates to raising new constructions in place of old site, thus in terms of the judgement it requires to be considered by the Supervisory Committee in accordance with the provisions of the TCP Act, Environment Protection Act and the directions of the Tribunal.

Therefore, we direct the applicant to approach the Supervisory Committee, which shall be assisted by the Implementation Committee with complete reports, documentation and proposed plans by filing appropriate application. If such application is filed the same should be dealt with expeditiously. Only if the recommendations are in favour of the applicant, then they should be implemented subject to orders of the Tribunal. With these directions, Miscellaneous Application No. 1495 of 2016 is disposed of, without any order as to costs.

117. The Miscellaneous Application No's. 747 of 2017 and 626 of 2017 have been filed by different departments of the State of HP. The former application has been filed by the Forest Department, praying that the permission for raising construction in the Green/Forest area of Shimla Planning Area which has been declined by the Corporation vide its letter dated 17th January, 2017. They pray for quashing the said order and be permitted to raise construction. The later application has been filed by the Public Works Department of the State of HP in relation to raising construction. They had applied for the approval of the building plan which has been declined by the Corporation vide its Survey Report dated 1st August, 2015 and has also declined the approval to raise the construction. Public Works Department is praying for setting aside the said report and for permission to raise construction in the Core/Green area. We have already noticed the detailed facts of these applications in paragraphs 18 and 19 of this judgement. We have held that in terms of the Notification issued by the State, construction in these areas is either prohibited or highly restricted. Furthermore, if any construction is to be raised, it has to be subject to the conditions that may be imposed and directed under the judgement. Therefore, while declining the permission to construction at this stage, we direct the applicant to approach the Supervisory Committee, which shall be assisted by the Implementation Committee by placing before them proper documentation, building plans, reports etc. If such an application is filed, the same shall be considered by the Supervisory Committee with utmost expeditiousness. If the recommendations of the Supervisory Committee, which shall be assisted by the Implementation Committee, are favourable to the applicant then they shall be implemented subject to the orders of this Tribunal, failing which there shall be no construction carried out by the applicant. With the above directions, both these applications stand disposed of, with no order as to costs.

118. The facts of Miscellaneous Application No. 947 of 2017 have been noticed in detail in para 20 of this judgement. The applicant wishes to raise five storeyed building in the core green/forest area. This construction is in violation of the order of the Hon'ble Supreme Court dated 12th December, 1996, order of the Tribunal dated 30th May, 2014 and patently violates the Notification dated 7th

*December, 2000. The construction is also violating the steep slopes being in excess of 400. The first building plans that were sanctioned, were never acted upon for years together and therefore under the provisions of the Town and Country Planning Development and Corporation, the buildings plans lapsed. They were never revived. After lapse of years, amended plans were filed without reference to the previous plans. They were stated to have been approved. However, the record produced by the Corporation does not reflect proper state of affairs. This construction is completely unauthorized and is being raised in flagrant violation of all known principles and does not comply with any of the Precautionary Principals in relation to seismic zone IV & V, susceptibility to landslides due to its terrain, soil conditions and steep slopes. For these reasons and after hearing the parties, we had injuncted the owner/builder/applicant from raising any further construction, vide order dated 22nd September, 2017. Tribunal confirmed that order of injunction. However, the applicant would be entitled to file a fresh application for raising construction, in accordance with the provisions of the Act, final Development Plan, the Notifications and the restrictions contained in this judgement. If the applicant files an appropriate application with proposed plans, reports and all other necessary documents then the same shall be dealt with and disposed of by the Supervisory Committee expeditiously. If the recommendations are favourable to the applicant the same shall be implemented subject to the order of the Tribunal, failing which the applicant would not be able to raise any construction on the land in question.”*

7. Extract from the draft development plan which according to the applicant is in conflict with the order of this Tribunal is as follows:-

*“xxx .....xxx.....xxx*

**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 Tribunal 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.*

*xxx .....xxx.....xxx*

*However, the recent ruling of Hon'ble National Green Tribunal of height restriction in Shimla Planning Area is a dent on meeting the future urbanization challenges due to the following few reasons:-*

- a) By repudiating the relaxation of FSI norms/Height restrictions, there is a possibility of restricting the effective infrastructural development that may help support a higher carrying capacity.*
- b) The restrictive development control regulations may implicitly constrain the optimal utilization of existing economies of scale, followed by a resultant increase in per capita operation and maintenance costs incurred on creation of urban infrastructure.*
- c) Further, the regulatory restrictions limit the effective supply of land available for construction, and force up rental and land values, which act as a virtual tax, imposed on those searching for housing and accruing to those who already own houses.*
- d) The need of the hour is to take the approach of looking upward and not looking outward, while planning the cities. The Niti Ayog and MoHUA also strongly support the high density vertical development and relaxation in FSI to meet the urbanization challenges.*
- e) As per URDPFI guidelines of MoHUA, the gross densities of hilly cities can go up to 100-150 pph, however in case of Shimla MC its about 77 and for complete Shimla Planning Area it is 10 ppha only, which presents that, if city is developed in planned manner and incorporates the densification strategy it can maintain the balance between development and ecology.*
- f) Also, most of the old buildings existing on the Mall Road Shimla are 4 to 5 storeyed and the construction of these buildings had been raised from either the Lower Bazar or Middle Bazar Shimla. Thus restricting the rebuilt buildings to a maximum of two and half storeyed would lead to a situation where the Mall Road would cease to exist. It would not be possible to have any shops, showrooms or flat on the Mall Road Shimla as two and half storeys of the reconstructed building would be completed much below the present Mall Road Shimla. There are different owners/occupants of different floors of such buildings and restricting the reconstruction of these buildings to only two and half storeys would not only lead to various disputes but would also deprive the owners/occupants of their property*



*without any authority of law and in gross violation of Article 300-A of the Constitution of India.*

- g) *The impugned judgment / order of the Hon'ble National Green Tribunal is also violative of Principle of natural justice as no opportunity of being heard was afforded to other affected persons of the locality against whom the order is passed. The orders would also adversely affect the rights of co-owners of old properties having more than two stories in a building owned by more than 2 co-owners, if it is to be reconstructed. The Constitution makers bestowed right on every citizen of the Country to acquire, hold and dispose of property and also provided ample safeguards against deprivation of the property by Legislature by confining such deprivation for public purpose only and only on payment of compensation to the expropriated owner either by fixing the amount of compensation or by specifying the principles upon which it could be determined or fixed. As such the impugned judgment/ order is against the provisions of Article 300-A of the Indian Constitution which provides that no person shall be deprived of his right to property save by the authority of law. Further it has been provided under article 19 (1) (g) of Constitution of India the right to practice any profession or to carry out any occupation, trade or business to all is citizens.*
- h) *Building height up to 18 to 21 mts. is accepted as low rise development as per the fire norms, URDPFI guidelines and some of city master plans having same profile. Same can be followed (including top of sloping roof, solar panels, lift rooms etc.). In order to cater to the housing demand and other livelihood demand of growing local population of Shimla, new construction is required in Shimla Planning area and core area. Various proposals in shape of the recommendations that form part and parcel of the Shimla Smart City Project include retrofitting old area, decongesting Shimla, improving mobility, water supply, sanitation and solid waste management, ICT services, eco-friendly development, etc. These proposals are planned to provide adequate infrastructure to the local population. For these reconstructions/ retrofitting should be permissible on old lines and as per the existing Statutes, subject to permissible slope and soil conditions. The construction in core area may be permitted strictly in accordance with the provisions of Town & Country Planning Act, Development Plan and Municipal Bye-law in force.”*

### **Core Issue considered**

8. In view of undisputed factual position question is whether it is open to State to issue a 'development plan' in violation of decree of the Tribunal. Further question is whether such action can be justified on the

ground that copy of plan was filed in some matter before the high Court or that according to State its action is justified.

### **Finding**

9. After due consideration of the issue, we are of the view that stand of the State cannot be upheld. Once the Tribunal has adjudicated upon the matter, no further question remains for going into the merits. View already taken is final unless the same is interfered with by a legal forum. There is no jurisdiction with the State to annul or ignore the order of the Tribunal. Any other view will negate the rule of law and defeat the purpose of setting up this Tribunal. State's view is not final in view of overriding provisions of NGT Act by virtue of express provision under section 33. The position is beyond doubt in view of judgment of the Hon'ble Supreme Court in *Mantri Techzone Private Limited (Supra)*:

*“44. The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See Kishore Lal v. Chairman, Employees' State Insurance Corporation (2007) 4 SCC 579, para 17). The existence of the Tribunal without its broad restorative powers Under Section 15(1)(c) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialized Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with Experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment.*

*45. Section 15 of the Act provides power & jurisdiction, independent of Section 14 thereof. Further, Section 14(3) juxtaposed with Section 15(3) of the Act, are separate provisions for filing distinct applications before the Tribunal with distinct periods of limitation, thereby amply demonstrating that jurisdiction of the Tribunal flows from these Sections (i.e. Sections 14 and 15 of the Act) independently. The limitation provided in Section 14 is a period of 6 months from the date on which the cause of action first arose and whereas in Section 15 it is 5 years. Therefore, the legislative intent is clear to keep Section 14 and 15 as self contained jurisdictions.*

*46. Further, Section 18 of the Act recognizes the right to file applications each Under Sections 14 as well as 15. Therefore, it cannot be argued that Section 14 provides jurisdiction to the Tribunal while Section 15 merely supplements the same with powers. As stated supra. the typical nature of the Tribunal, its breadth of powers as provided under the statutory provisions of the Act as well*

as the Scheduled enactments, cumulatively, leaves no manner of doubt that the only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction.

**47. Section 33 of the Act provides an overriding effect to the provisions of the Act over anything inconsistent contained in any other law or in any instrument having effect by virtue of law other than this Act. This gives the Tribunal overriding powers over anything inconsistent contained in the KIAD Act, Planning Act, Karnataka Municipal Corporations Act, 1976 ("KMC Act"); and the Revised Master Plan of Bengaluru, 2015 ("RMP"). A Central legislation enacted under Entry 13 of List I Schedule VII of the Constitution of India will have the overriding effect over State legislations. The corollary is that the Tribunal while providing for restoration of environment in an area, can specify buffer zones around specific lakes & water bodies in contradiction with zoning Regulations under these statutes or the RMP."**

10. In *Punjab Termination of Agreement Act, 2004, In Re*, (2017) 1 SCC 121, it was held:-

“

**48. From the abovementioned set up under our Constitution, there is no difficulty in concluding that no Government, whether Central or State can usurp the power of adjudicating disputes vested in the Judiciary including High Courts and the Supreme Court. Further, as a corollary, the judgments and decrees which are the end product of exercise of judicial power cannot be set at naught by the process of legislative declaration in respect of facts and circumstances. As explained already in the main judgment, the situation is somewhat different when a competent legislature engages itself in the exercise of validating a law declared defective or invalid for reasons which are curable.”**

11. As already mentioned, judgement of this Tribunal is deemed to be decree of Court under section 25 of the NGT Act. Judgements relied upon on behalf of the State do not advance its case. There is no conflicting judgement of the High Court. The Tribunal is not dealing with a fresh matter. There is no occasion to revisit the view already taken which has to be treated as final as far as this Tribunal is concerned.

12. In view of above, we are satisfied that the draft development plan, 2041, being in conflict with the judgement of this Tribunal dated 16.11.2017 in O.A No. 121/2014 (*Supra*) is illegal and cannot be given effect. Any action taken in violation of the said judgment cannot be validated by the said plan and will remain illegal. We declare accordingly.

The Application is allowed as above.

I.A. No. 90/2022 also stands disposed of.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

Dr. Afroz Ahmad, EM

October 14, 2022  
Original Application No.297/2022  
(I.A. No. 90/2022)  
AB