

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

(By Video Conferencing)

M.A. NO. 56/2021, M.A. NO. 57/2021
& M.A. NO. 58/2021

IN

Original Application No. 121/2014

Yogendra Mohan Sengupta

Applicant

Versus

Union of India & Ors.

Respondent(s)

Rail Land Development Authority (RLDA),
Unit No. 702-B, 7th Floor, Connectus Tower-2,
DMRC Building, Ajmeri Gate, Delhi

Applicant in M.A.s

Date of hearing: 31.08.2021

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE BRIJESH SETHI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Applicant: Mr. Vikas Mahajan, Senior Advocate with Mr. Vikas Kumar,
Advocate for applicant in MA Nos. 56-58/2021 (Rail Land
Development Authority)

ORDER

1. These applications have been filed in a decided matter seeking permission to file the application, for directions to permit the project of multi-level parking and other commercial activities, including Hotel on the railway land (Railway Godown below Winter Field) at Shimla and for permission to file additional documents.

2. We have heard learned Counsel for the applicant.

3. Before referring to the prayer of the applicant, we note that vide judgment dated 16.11.2017 in OA No. 121/2014, *Yogendra Mohan Sengupta v. Union of India & Ors.*, this Tribunal dealt with the issue of

remedial action against environmental calamities, in the State of Himachal Pradesh affecting human lives and properties, due to reckless and excessive constructions, felling of trees, earthquakes and landslides. Considering the data on the subject and legal regime dealing with the constructions and development, including the Himachal Pradesh Town and Country Planning Act, 1977, the Tribunal found it necessary to issue directions by way of remedial action. The Tribunal considered the recommendations of the Expert Committees constituted for the purpose by this Tribunal at length. It was held that to protect ecology, new constructions were required to be restricted in the core/green/forest area and even constructions for public utilities were required to be regulated. Accordingly, following directions were issued:

*“111. On cumulative reading of the laws referred, it is evident that the framers of the law clearly intended to protect natural resources and environment. The purpose is to effectively implement and enforce the laws and regulation relating to development and protection of environment. Then alone the twin objects- adherence to law and protection of environment and ecology could be achieved. Protection of environment and natural resources is absolutely essential for human existence. At the cost of repetition, we must notice that the concept of regularization of deviation from sanctioned plan cannot be brought in such an insidious manner. This is a limited and restricted power. **The concept of compounding cannot be permitted to be used and diminish or even destroy the natural resources, environment and ecology.** Irreparable damage to these would more often lead to disasters causing serious damage to person, property and environment. Another contention raised before the Tribunal by the applicants is that they have a right to construct over the lands of which they are the owners, even though the lands are located in Core area, Forest/Green areas. This contention is misconceived in law as well as in the facts of the present case. On the one hand, the State and its instrumentalities have failed to discharge their Constitutional obligations in terms of Article 48A of the Constitution and the citizens have failed to discharge their Constitutional duties in terms of Article 51A(g) for protection and improvement of environment and forest etc. The right to construct on one’s own land, particularly, in relation to prohibited area/restricted area have to be examined in light of the constitutional mandate. Article 19(f) was omitted by the 44th amendment of the Constitution and Article 300A was added. Article 300A even permitted a person to be deprived of his property by authority of law. **The right to construction is, however, regulated by the Town and Country Planning Department and the Municipal laws in force in a State. In other words, it is***

not an absolute right by any stretch of imagination but is restricted and regulated right. Such statutory right can only be exercised, subject to the limitation and restrictions imposed and by complying with the prescribed procedure. Such restrictions are neither unknown nor unforeseeable. There are statutorily notified eco-sensitive areas or sanctuaries or national parks where construction of any kind is prohibited. This is a reasonable restriction and is primarily imposed in the interest of environment ecology and bio-diversity. We have already noticed that the laws in force in the State of HP read with the constitutional provisions and Environment (Protection) Act, 1986, tilt the balance completely in favour of protection of environment and sustainable development. Restrictions in that behalf have to be imposed and enforced in accordance with law. Desired directions, whether prohibitory or regulatory in nature, restrictions and mandates of compliance should be passed when called for. We entertain no doubt in the facts and circumstances to pass appropriate declarations, guidelines and directions in this case that are required to be passed to not only to protect environment, ecology and natural resources but even life of public at large and their property.

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 45/35° 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, it's 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.”

4. Main prayer in the applications now filed is in the nature of seeking review. It is argued that the Supervisory Committee has recommended the proposal for construction of multilevel parking which also has construction for commercial purposes/hotel. It is also stated that the project is necessitated by directions of the High Court and to promote public interest of controlling traffic congestion.

5. We are unable to entertain the applications. Admittedly, the project is not permissible as per the directions of this Tribunal, which have attained finality. The directions of this Tribunal are in the nature of an order *in rem*. So long as the same stand, no order permitting the said project can be allowed. Even if a part of the project is held to be public utility, in that garb the main project is of commercial nature and goes upto three stories above the hill level. We, thus, do not find it appropriate to entertain the applications to review/modify the order of this Tribunal. We note that the Supervisory Committee itself has found that the project is partly of public utility and partly for commercial purposes and is not within the purview of directions of this Tribunal. It is difficult to say that the entire project is necessitated by the order of the High Court, as sought to be contended. Precautionary principle is significant in such matters and in the main judgement such projects have been found to

have potential for disasters, based on expert studies referred to in the judgement.

Accordingly, the applications are dismissed.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Brijesh Sethi, JM

Dr. Nagin Nanda, EM

August 31, 2021
M.A. Nos. 56 to 58/2021
IN Original Application No. 121/2014
DV