

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

(By Video Conferencing)

Original Application No. 55/2020

(I.A. Nos. 110/2020 & 111/2020)

(With Report dated 01.04.2020)

Dr. Pawan Kumar Banta

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 12.05.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

ORDER

1. Grievance in this application is against unauthorised and illegal development and construction of eleven storeyed hotel/apartments on the agricultural land measuring 03-17-68 hectares at Up Mohal Kiari/Rirka, Tehsil Shimla (R), District Shimla, Himachal Pradesh falling within the Municipal limits of Shimla. The applicant has drawn attention to photographs to submit that massive illegal construction is taking place. According to the applicant, the construction was in violation of the order of this Tribunal dated 16.11.2017 in O.A No. 121/2014, *Yogendra Mohan Sengupta and Ors. v. Union of India & Ors.*, directing inter-alia as follows:

“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.”

2. In view of the above, a report was sought from the Director, Town and Country Planning, H.P, Commissioner, Municipal Corporation, Shimla, SEIAA, Himachal Pradesh and the State PCB. Accordingly, a report has been filed on 01.04.2020 *inter-alia* as follows:-

“8. As per records available in this office the than project proponent applied to this office for grant of Environment Clearance on dated 21.04.2015 The Environment Clearance was granted to Sh. Sunil Kumar Sood, M/s Homeland Exotica-mixed land use construction project, 143, Sector-7, Panchkula, Haryana-134 109 vide this office letter no. HP SEIAA/2015/360-M/s Homeland Exotica-mixed land use construction project dated 01.04.2016. The project proponent Sh. Sunil Kumar Sood, M/s Homeland Exotica also applied for change of name from M/s Homeland Exotica-mixed land use construction project to Nirvana Woods on dated 20.04.2016, the same was approved by SEIAA in its 27th meeting held on 10-06-2016 but letter of change in name was pending in want of information sought from the pp and now on dated 14.03.2020 Sh. Sunil Kumar Sood has requested for surrendering and cancellation of Environment Clearance in favour of M/s Homeland Exotica-mixed land use construction project (sole proprietor Sunil Kumar Sood) on land measuring 46599 square meter. On the other hand the owner of Nirvana Wood & Hotels (P) ltd. has applied for afresh EC for reduced area from 46599 sq. mtrs to 31768 sq. Meters for built up area 55565 sq. mtrs. The observations are as below:-

i. The letter of Environmental Clearance has not been transferred in the name of M/s. Nirvana Wood as yet and is pending in want of necessary documents required for transferring the EC as per provision at Sr. No. 11 of Environment Impact Assessment Notification.

ii. As per this office record, the project proponent has not submitted the six monthly compliance reports as per requirement.

iii. During the site visit it was observed that the construction work was being carried out on site without transfer of Environment Clearance.

iv. Very limited plantation work has been done by the project proponent.

v. The logistic arrangements for labourer were also not found adequate on site

9. On the basis of site inspection and observation made, a notice under Environment Impact Assessment Notification, 2006 under Environment (Protection) Act, 1986 has been issued to the project proponent on dated 20-03-2020 for non compliance of terms and conditions of Environmental Clearance copy attached as Annexure-E.”

3. It is patent from the above that the project proponent does not have Environmental Clearance (EC) apart from other violations. There is nothing to show compliance of requirement of Air and Water Acts. In view of this position, the Director, Town and Country Planning, H.P, Commissioner, Municipal Corporation, Shimla, SEIAA, Himachal Pradesh and the State PCB may ensure that the project does not proceed further in violation of law. Action may also be taken for prosecution and assessment and recovery of environmental compensation, following due process of law. Further report in the matter be filed on or before on 31.08.2020 by email at judicial-ngt@gov.in.

List again on 22.09.2020.

Adarsh Kumar Goel, CP

Sheo Kumar Singh, JM

Dr. Nagin Nanda, EM

May 12, 2020
O.A No. 55/2020
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