BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI
.....

ORIGINAL APPLICATION NO. 69 OF 2017
(EARLIER ORIGINAL APPLICATION NO. 506 OF 2015)

IN THE MATTER OF:

Society for Preservation of Kasauli and its Environs
Registered office: "Roscommon Castle" Lower Mall Kasauli,
District Solan, Himachal Pradesh, through its Hon. Secy.
Brig. W.S. Choudhary (Retd.) Resident of Ekant, Thimayya
Marg, Upper Mall Kasauli, District Solan, HP

.....Applicant

Versus

Bird's View Resort

.....Respondent

ORIGINAL APPLICATION NO. 70 OF 2017
(EARLIER ORIGINAL APPLICATION NO. 506 OF 2015)

IN THE MATTER OF:

Society for Preservation of Kasauli and its Environs
Registered office: "Roscommon Castle" Lower Mall Kasauli,
District Solan, Himachal Pradesh, through its Hon. Secy.
Brig. W.S. Choudhary (Retd.) Resident of Ekant, Thimayya
Marg, Upper Mall Kasauli, District Solan, HP

.....Applicant

Versus

Chelsea Resorts

.....Respondent

ORIGINAL APPLICATION NO. 71 OF 2017
(EARLIER ORIGINAL APPLICATION NO. 506 OF 2015)

IN THE MATTER OF:

Society for Preservation of Kasauli and its Environs
Registered office: "Roscommon Castle" Lower Mall Kasauli,
District Solan, Himachal Pradesh, through its Hon. Secy.
Brig. W.S. Choudhary (Retd.) Resident of Ekant, Thimayya
Marg, Upper Mall Kasauli, District Solan, HP

.....Applicant

Versus

Hotel Pine View

.....Respondent

ORIGINAL APPLICATION NO. 72 OF 2017
(EARLIER ORIGINAL APPLICATION NO. 506 OF 2015)

IN THE MATTER OF:

Society for Preservation of Kasauli and its Environs
Registered office: "Roscommon Castle" Lower Mall Kasauli,
District Solan, Himachal Pradesh, through its Hon. Secy.
Brig. W.S. Choudhary (Retd.) Resident of Ekant, Thimayya
Marg, Upper Mall Kasauli, District Solan, HP

.....Applicant

Versus

M/s. Narayani Guest House
Through its Sole Proprietor
Smt. Narayani Devi, aged 70 years
W/o Late Sh. Ram Saran through her GPA
Sh. Vijay Singh, S/o Late Sh. Ram Saran
R/o Mando Matkanda, PO Dharampur
Tehsil Kasauli, Distt. Solan (HP)
Mob. No. 94184-50395

.....Respondent

ORIGINAL APPLICATION NO. 73 OF 2017
(EARLIER ORIGINAL APPLICATION NO. 506 OF 2015)

IN THE MATTER OF:

Society for Preservation of Kasauli and its Environs
Registered office: "Roscommon Castle" Lower Mall Kasauli,
District Solan, Himachal Pradesh, through its Hon. Secy.
Brig. W.S. Choudhary (Retd.) Resident of Ekant, Thimayya
Marg, Upper Mall Kasauli, District Solan, HP

.....Applicant

Versus

Hotel Nilgiri

.....Respondents

COUNSEL FOR APPLICANT:
Mr. A.R. Takkar, Advocate (Amicus Curie), Mr. Vineet Kumar and Mr. Archit Upadhyay, Ms. Shreya Takkar Advs., Mr. Vinent Kumar, Advs. Mr. A.K. Prasad and Mr. Jaydip Pati, Advocates for CGWA

COUNSEL FOR RESPONDENTS:
Mr. Gudipati G. Kashyap and Ms. Apoorva Pandey, Advocates for respondent no. 1.
Ms. Smita Bankoti and Mr. Ashish Sheoran, Advocate for Himgiri Hotel.

Ms. Sanchit Garga, Advocate for Neelkanth.
Mr. Rajesh K. Singh and Mr. Kuldeep Singh, Advocates for MoEF.
Mr. Saumyen Das, Advocate for Mrs. Mahip Tandon, Mashobra Valley View Guest House.
Mrs. Kawaljit Kochar, Ms. Vasundhra Singh, Ms. Krishna Parkhani, Advocates.
Mr. Mandeep Kalra, Advocate for Noticee.
Mr. Jugal Kishore, Advocate.
Mr. D.K. Thakur, AAG and Ms. Seema Sharma, DAG for State of HP.

JUDGMENT

PRESENT:
HON'BLE MR. JUSTICE SWATANTER KUMAR (CHAIRPERSON)
HON'BLE MR. BIKRAM SINGH SAJWAN (EXPERT MEMBER)
HON'BLE DR. AJAY A. DESHPANDE (EXPERT MEMBER)

Reserved on: 3rd May, 2017
Pronounced on: 30th May, 2017

1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

JUSTICE SWATANTER KUMAR (CHAIRPERSON)

Mahatma Gandhi once said "Earth provides enough to satisfy everyman's need, but not everyman's greed". *Lex non a rege est violanda* - The law must not be violated even by the King. The Rule of Law is a concept opposite to arbitrary or tyrannical power. Rule of Law contemplates governance by law and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. The Rule of Law is like oxygen, easily taken for granted, but quickly noticed when it is absent. If we lack the Rule of Law, it is a recipe for disorder and corruption. It primarily means that everything must be done according to law. It requires that every government authority must be

able to justify its action as authorised by law. The Rule of Law does not mean *"quod principi placuit legis habet vigorem"* which says "the sovereign's will has the force of law". Therefore, Rule of Law means, "Governance should be conducted within a framework of recognised rules and principles which restrict discretionary power". The public authorities, in principle, should be subject to all normal duties and liabilities which are not inconsistent with their governance functions. It is well-settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution of India and basic to the Principle of Rule of Law. Arbitrariness is the very negation of the Rule of Law. It is true that "*Be you ever so high, the Law is above you*". This is what a man in power must always remember. Almost half a century back the Hon'ble Supreme Court of India in *S.G. Jaisinghani v. Union of India and Ors.*, (1967) 2 SCR 703, at p.7 18-19, indicated the test of arbitrariness and the pitfalls to be avoided in all State actions to prevent that vice.

> "In this context it is important to emphasize that the absence of arbitrary power is the first essential of the Rule of Law upon which our whole constitutional system is based. In a system governed by Rule of Law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The Rule of Law from this point of view means that decisions should be made by the application of known principles and rules

> and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the Rule of Law."

2. With great sense of regret, we notice that the present cases are glaring examples of flagrant violation of the above canons of law, violations of statutory duties and more particularly environmental jurisprudence. The Noticees in the present cases could not quench their thirst for indiscriminately and illegally constructing properties for earning money while destroying natural resources and destroying the environment. These cases are examples of cruel human and nature conflict, the conflict that is activated by greed for money. The Principle of Rule of Law and Governance in accordance with law was thrown to the wind by the arbitrary exercise of power on one hand and complete inaction to uphold the laws to protect environment and ecology on the other. Arbitrariness is writ large while the line of connivance is distinctly discernible. Courts and Tribunals are being confronted more often than not with such cases where they have to approach their decision making process and the decision arrived at, with an iron grip to protect Rule of Law and enforce fairness according to law, in State action.

3. With this preface, let us examine the facts giving rise to

this judgment. The Tribunal was hearing the case titled *Society for Preservation of Kasauli and its Environs vs. Himachal Pradesh Tourism Development Corporation Ltd.* in Original Application No. 506 of 2015. This case was reserved on 17th January, 2017. While reserving the case for judgment, the Tribunal had noticed vehemently raised submissions by some of the parties as well as the report of the Committee constituted its order dated 24th February, 2016 in O.A. No. 506/2015, that a number of hotels have been unauthorizedly constructed in close vicinity of Kasauli area in the State of Himachal Pradesh. There are instances where plans were sanctioned for a limited purpose but they have been flagrantly violated, for instance, where 7 rooms were sanctioned, 50 rooms have been constructed. The Tribunal also noticed that the Himachal Pradesh State Pollution Control Board (for short, "HPPCB") appears to have shut its eyes to such severe violations as all these hotels had started operating without obtaining the consent of the HPPCB either to establish or to operate. Therefore, it was directed that show cause notices be issued to various hotels specified in the order dated 17th January, 2017 and the list that had been submitted consisting of various Government officials by the Committee and Board before the Tribunal. The show cause *inter alia* but primarily related to consequences of violations committed by the

Noticees and for payment of environmental compensation for causing degradation and damage to the environment and ecology and for means and methods of restoration thereof.

Vide the same order, the Tribunal directed the Department of Town and Country Planning, State of Himachal Pradesh (for short, 'TCPD') and the HPPCB to discharge their statutory functions and ensure that there is no violation of law resulting in degradation of the environment and ecology of the areas particularly where these hotels are unauthorizedly constructed and operating without the consent of the Board. Out of a large number of Noticees, some of them had filed their replies to show cause and their cases were heard in batches. Following are the Noticees (1st batch) whose cases were heard by the Tribunal and reserved for judgment on 3rd May, 2017:

1. Bird's View Resort, O.A. No. 69 of 2017
2. Chelsea Resorts, O.A. No. 70 of 2017
3. Hotel Pine View, O.A. No. 71 of 2017
4. Narayani Guest House, O.A. No. 72 of 2017
5. Nilgiri Hotel, O.A. No. 73 of 2017

4. The cases of the above Noticees were heard on different dates between 24th April, 2017 to 3rd May, 2017. Now, we would refer to the facts and circumstances of the present cases in relation to the replies of the Noticees, respectively.

5. **BIRD'S VIEW RESORT**

As already noticed *vide* its order dated 24th February, 2016 passed in the O.A. No. 506 of 2015, an Expert Committee was constituted by the Tribunal to submit a comprehensive report in relation to construction of the hotels, mainly of commercial nature in Kasauli area and their adverse impacts on environment, ecology and water bodies. During the course of hearing on 29th February, 2016, the Tribunal further restrained construction activities being carried on without consent of various departments and the Board. The State of Himachal Pradesh through its Additional Chief Secretary, TCPD had constituted a Committee in furtherance of the orders of the Tribunal which consisted of the following:

> "1) Additional Chief Secretary (Env. Science & Technology) to the Government of Himachal Pradesh- Chairman.
> 2) Representative of Central Pollution Control Board, New Delhi.
> 3) Representative of Central Water Ground Authority.
> 4) Representative of Chandigarh Engineering College.
> 5) The State Town Planner, Town and Country Planning Department, Kasumpati, Shimla - 9 – Member Secretary."

Joint Inspection Team

6. This Committee submitted a detailed and comprehensive report in terms of the orders of the Tribunal. This High Power Committee submitted the following report in relation to the Noticee 'Bird's View Resort':

(Mashobra) Sr. No. 17

- The owner has made **unauthorized** additions in the existing hotel project. A 3-storey frame structure has been added adjoining to the existing building **without** obtaining prior approval from Town & Country Planner, Solan. The maps of the existing hotel were approved by TCP Department on 15.07.2001.
- In view of the totally unauthorized development undertaken at site, a **notice** has been issued by the Town & Country Planner, Solan under provisions of the Himachal Pradesh Town & Country Planning Act, 1977 on 23.03.2016.
- No NOC for service connections or completion certificate have been issued by Town & Country Planning Department till date. As per Town & Country Planner, Solan the disconnection of service connections has been ordered in this case keeping in view the fact unauthorized additions have been carried out at site. However, disconnection has not been carried out at site by the concerned authorities. The owner who was present at site stated that he made the additions in the hope of a Retention Policy being brought out by the State Government.
- Despite the non-issuance of completion certificate by the TCP Department, the Himachal Pradesh Tourism Department has registered 17 rooms vide Registration No. 9-2391/2003 dated 29.7.2005 which is valid upto 27.7.2017.
- The **consent to operate** granted by the Himachal Pradesh Pollution Control Board is valid upto 31.3.2016.

It was observed by the Committee that strict action is required to be taken against the promoter in regard to additional construction carried out by him beyond the plan approved."

Reply of the Noticees

7. The Noticee submitted that after obtaining permission under Section 118 of the Himachal Pradesh Tenancy and

Land Reforms Act, 1975 on 6th August, 1998, the 'Bird's View Resort' in village Shiloura Khurd, Tehsil Kasauli was set up. No Objection Certificate (for short, 'NOC') had been issued by the TCPD for installation of electricity connections on 26th November, 1998. The Himachal Pradesh Tourism Development Corporation Ltd. (for short, "HPTDC") issued certificate to Bird's View Resort as tourism unit in the year 2003 which was renewed and valid upto July 2017. The Consent to Operate was granted and is being renewed time to time. Lastly, the Consent was issued on 28th November, 2013 and the renewal of the consent for the year 2016-2017 was sought online for which fee was deposited. However, the same has not been granted so far. It is stated that the Noticee has constructed a septic tank and soak pit which were duly approved by the TCPD as no sewage system exists in the area. Municipal solid waste is not thrown in the open. The Noticee has not cut a single tree but has planted 40 different species of trees around the resort and the adjoining area. The Noticee had constructed a small structure and the reason for such construction was that due to heavy rains during the rainy season, the retaining wall supporting the road side parking of the resort had collapsed and the Noticee under such circumstances was supposed to construct such structure for Road Head Open parking immediately, to avoid any further mishaps. It

had already applied to the concerned department for approval of the structure in view of the Ordinance, 1 of 2016, hereinafter referred to as 'Ordinance of 2016') issued by the Government of Himachal Pradesh regarding regularization of unauthorised construction and issuance of NOC/Consent Certificate (for short, 'CC'). This had been done under provisions of the Himachal Pradesh Town and Country Planning Act, 1977 (hereinafter referred to as, 'Act of 1977').

8. It is also stated in the reply that, apprehending withdrawal/disconnection/stoppage of the basic amenities of electricity and water supply connections and making any sort of interference, or causing any type of damage or demolition to the structure, the said Noticee preferred a civil suit for injunction in the Court of the Civil Judge, Sr. Division, Kasauli, Distt. Solan, H.P. and the court passed the following order on 26th April, 2016:

> "26.4.2016.
> Present: Shri Mohit Sharma, Advocate for the applicants.
> Shri Mayank Manta, ld. ADA for respondents No. 1, 2 & 4.
> Shri H.D. Tanwar, Advocate for respondent No. 3.
>
> Time is sought for filing reply. Allowed. Be filed c 31.5.2016. Till then, respondents are restrained from disconnecting the water and electricity supply to the suit premises.
>
> (Yajuvendra Singh)
> Civil Judge, Sr. Division
> Kasauli, Solan (H.P.)"

Discussion

9. We would be discussing the legal, factual and scientific aspects of all the cases collectively as they would be common to all. Presently, we would only deal with the factual aspect of the respective case.

The findings of the Committee are self-explanatory. The Noticee himself has annexed permission granted by the TCPD on 6th August, 1998. The permission was given under the Act of 1977 to use 3.03 bighas of land to establish a hotel. This permission does not refer to what construction was permitted, what extent of area was covered, how many other matters are to be covered and various laws that are to be taken care of. The NOC was issued by the TCPD of State of Himachal Pradesh for obtaining an electricity connection for a building constructed on khasra nos. 11/3 and 11/4 of the planning area. Only 1 connection was to be granted as the structure is stated to be existing prior to enforcement of the provisions of the Development Plan. It is evident even from these two documents that the permission dated 6th August, 1998 related only to khasra nos. 11/3 while NOC relates to two khasra numbers i.e. 11/3 and 11/4. The Noticee had allegedly placed on record, a sanction plan for this structure. This plan was approved on 14th July, 2004 and not in the year 1998 as claimed. This relates to construction on khasra nos. 261/11 and 262/11 at village Shiloura in Tehsil Khurd. This was for a guest house and

not for a hotel. In any case, this plan does not tally in its form or content with the construction existing on site. The Noticee had also filed a Certificate of Registration issued by the Department of Tourism dated 12th August, 2015 for 14 bedrooms and 3 cottages, in all 17. There is not a single document on record which remotely shows that such construction of 17 rooms was permitted by any of the concerned Departments at any point of time.

10. The Noticee had placed on record, the consent issued on 1st June, 2004 by HPPCB which is stated to be the consent for setting up of the unit which is Bird's View Resort. This Consent to Establish or setting up has been granted without any inspection of the site and does not impose any condition as contemplated under the Water (Prevention and Control of Pollution) Act, 1974 (for short, "Water Act"), the Air (Prevention and Control of Pollution) Act, 1981 (for short, "Air Act") and the Environment (Protection) Act, 1986. It only shows that as and when the directions are issued under these laws, the same shall be complied with. The Consent to Establish does not talk of sources of water, extent of utilization of water, discharge of trade effluents, treatment of effluents, how municipal solid waste would be treated, what is the quantum and quality of these pollutants and whether there exist, appropriate infrastructure and anti-pollution devices to prevent and

control the pollution. The TCPD has not considered anywhere, the various aspects of Development in accordance with law and protection of environment and ecology in accordance with Development Plan. The only condition that this order contains is that they would plant variety of trees at the density of not less than 1000 trees per acre, of which there is no compliance report.

From original records

From the records of the HPPCB, it is evident that the unit has applied and was granted consent to establish on 1st June, 2004. Though the unit had raised construction in 1998, this Consent to Establish also lacks basic features and conditions relating to environment. On 31st July, 2007, Consent to Operate/Establish was again granted for six rooms in a very routine manner. On 28th November, 2013, the consent was renewed for seven rooms w.e.f. 2006-07 to 2015-16 for a period of nine years. This also lacks on basic ingredients which we noticed above for grant of appropriate consent in accordance with law. This consent for nine years was also issued without conducting inspection and analysing the factors at site including analysis of trade effluents. A notice was issued on 20th April, 2016, stating that the consent has lapsed and the unit should obtain fresh consent. The unit is operating without consent. It is recorded in the noting dated 25th October, 2016 that the unit has grossly deviated from the

approved plan by constructing additional storeys as well as blocks at the site. Therefore, necessary action should be taken. Thereafter, no action whatsoever has been taken and the Board has been sending reminders only.

From the records of TCPD, it appears that Noticee has made misrepresentation even as on 23rd December, 2002, despite existing construction at the site. The only NOC applied was for two houses located at Khasra 11/3 and 11/4 for their use as guest house. Planning permission was granted on 15th July, 2004. Various restrictions imposed under this permission, have not been adhered to. Application for grant of Certificate of Consent was moved on 26th November, 2014 which has not been granted till date. On the contrary, the Department has served various notices dated 24th December, 2014, 9th February, 2015 and 23rd March, 2016, last being the notice under Section 39 of the Act of 1977 and directing demolition, restoring the land to its original condition and to stop development activity. However, despite issuance of these notices, a vague reply of two lines was submitted where it was stated that the Noticee could not submit drawing/plan to the department due to preoccupation with grave sickness of one of his family members and was also forced to construct a RCC structure for Road Head open car parking purpose to avoid any mishap. The Department, for reasons best known to

them did not take appropriate steps.

Furthermore, this Consent to Operate which is stated to be valid upto 31st March, 2016 again lacks the above particulars that we have noticed in relation to Consent to Establish. It appears that even DG sets have been installed in the unit and what measures have been taken for that purpose, including noise pollution are not even indicated therein. It requires the ambient air quality standards for noise to be maintained and there is no record before us to show that such prescribed parameters are being adhered to. What is absolutely unacceptable in this Consent to Operate is that the Applicant claims and the Board grants consent only for 7 rooms, which is in complete contradiction to the structure existing at the site. When the matter was being heard, it was stated by the Applicant that even the plan that he has relied upon was for construction of 5 rooms and 2 cottages i.e. in all 7 rooms for which the consent was granted. Development Plans which were sanctioned relate to different khasra numbers as already noticed. as well as the alleged plans which has already noticed to different khasra numbers were sanctioned.

Proceed-ings Before Tribunal

11. There was no dispute that at present it has 14 rooms and 3 cottages and the 14 rooms are double bedded rooms. The unit is operating without obtaining consent from the HPPCB. Complete documents have not been submitted for

the rooms, for which the consent has not been granted. There exists no system for dealing with sewage and other wastes at the site. During the course of hearing the unauthorised construction was admitted. The Noticee claims that there is a septic tank for collection of the sewage in the hotel which is emptied by the sewage suction tanker but strangely, the Noticee does not know where this sucked sewage and waste is thrown. Whether the septic tank constructed is sufficient for 5 rooms or 14 rooms with 3 cottages has been left to anyone's imagination. There is no record before us to show that the septic tank is being emptied at regular intervals and where the sewage and other wastes is disposed of. Admittedly, there is no STP or any other appropriate plant situated in any surrounding area which can treat the sewage including the Coliform as per the prescribed norms. Apparently, these units are either not getting their septic tank evacuated or if evacuated, then they must be throwing the sewage and other waste down the hill or in the nallahs of the surrounding areas.

12. **CHELSEA RESORTS (Earlier O.A. No. 506/2015)**

Joint Inspect -ion Team

The Joint Inspection Team made the following fact findings in relation to this Resort:

(Sanawar) Sr. No. 55

- The planning permission granted by the Town & Country Planner, Solan on 25.11.2011 has been **revoked** on 5.12.2014, as the applicant has

undertaken gross deviations from the approval plants. The firm has constructed 4 blocks as against 2 blocks approved by TCP Department. Two of the blocks are having 4 storeys as against 3 permissible.

- Notices under Himachal Pradesh Town & Country Planning Act, 1977 too have been issued by Town & Country Planner on 18.7.2013 and 23.3.2016. The applicant has preferred an **appeal** to the Additional Chief Secretary (TCP) to the Government of Himachal Pradesh under provisions of section 32 of the Himachal Pradesh Town & Country Planning Act, 1977.
- The Himachal Pradesh Tourism Department has **not granted** any temporary or permanent registration in this case so far.
- **Consent to establish** has been granted by the Himachal Pradesh Pollution Control Board on 3.11.2014.
- It was intimated by DFO, Solan that permission for **felling** of **75 trees** has been taken by the owner out of 243 trees existing at site as per documents available in the case file.

  The Committee **observed** at site that huge hill cutting has been undertaken by the firm and that debris has been dumped in the nallah abutting the site in question due to which the drainage is likely to get blocked. The construction undertaken at site is also in gross violation of the approved maps. It was the common consensus that the project should not be allowed to proceed further since it has flouted various regulations under revised Development Plan for Kasauli."

Reply of the Party

Reply to the show cause notice issued by the Tribunal was filed on behalf of Chelsea Resort Pvt. Ltd. by its director Mr. M.K. Jain. According to the reply, it is nothing but an under construction site/building and the said

construction is being monitored by State Administration to ensure that the construction is carried out in conformity with all the relevant laws including the policy formulated. According to the Noticee, only super structure of the building had been erected and the same was done only after following due procedure. The Noticee had applied for permission for establishing the hotel, which was granted on 25th November, 2011. The said permission was subsequently revoked by TCPD on 5th December, 2014 because of alleged deviation. The Noticee then submitted the revised building plan/drawing which was also rejected by the authority arbitrarily. Being aggrieved by the same, the Noticee had approached the Appellate Authority by way of filing an appeal under Section 32 of the HPTCP Act, 1977. The Appellate Authority formed a committee to inspect the site which noticed certain shortcomings, which were not in conformity with the Development Plan of Kasauli. The Noticee made alterations, changes and informed the Appellate Authority accordingly. The Appellate Authority again directed an inspection and a detailed report pointed out that the deficiencies had been cured, except the construction of retaining wall beneath Block D and the proposed construction of the twin parking floors. According to the respondent, these were due to the denial of permission by TCPD, Solan. In the meanwhile,

notification dated 15th June, 2016 was issued under which some of the unauthorised structures were allowed to be regularized with the condition that there should be no appeal or any form of litigation pending for such unauthorised building. The Noticee was granted certain Certificate of Essentiality on 11th April, 2005. The Noticee also submitted that the non grant of temporary or permanent registration by HPTD referred by the Expert Committee is required only when the hotel is fully constructed and in operation. The STP and other ancillary requirements have been fully complied with and the Noticee had also taken permission for felling of 75 trees out of 243 existing trees. The hill cutting in the area was done up to the hard strata as per the opinion of the Structural Engineer. It was necessary because of very steep slope at the site, i.e. 35^0 and the only option to accommodate foundation was hill cutting. The building is proposed to be Lead Platinum Rated green building and earth has not been moved out of the site. After passing of the orders by the Tribunal, the construction activity at the site has been completely stopped. The blocks constructed are within the prescribed limits with 25% of ground coverage and with the required floor area ratio. It is also stated in the reply that during construction there was a landslide due to loose strata and debris, which mainly during the rainy season

started flowing towards the nallah. To stop the said flow and on the expert advice, the construction of the retaining wall was made with geo membranes. Because of the orders of the local authorities the construction of the said wall has been stopped, though the said wall was being constructed in the interest of the environment. There are no gross violations of the regulations and the revised development plan.

Proceed -ings before Tribunal

During the course of hearing, reference was made to the inspection report of the Joint Inspection Committee which noticed gross deviation from the approved sanction plan. The Noticee had constructed four blocks as against two blocks as approved by the Department. Even the two blocks are having four storeys as against the three permissible storeys. The Consent to Establish was granted by HPPCB on 3rd November, 2014. The Noticee has also felled 69 trees. The permission to fell 23 trees was granted out of 243 trees existing on the site. The Noticee obtained a further permission from the Forest Department to fell 26 more trees. Huge hill cutting is reported to have been done by the Noticee and the debris has been dumped in the nallah abutting the site in question and due to that, the drainage is bound to get blocked. The Noticee does not have Consent to Operate. In the letter dated 13th May, 2016, the TCPD had noticed that the connection between

Block A & B as well as Block C & D has been dismantled at site. The demolition work of raising mumty and stair portion of Block D has been started. The retaining wall proposed beneath Block D has not been constructed at the site yet. The Noticee has constructed twin parking floors in Block A and height of the same has not been reduced. The permission to fell 26 more trees was submitted to the team.

From original records

From the records produced before the Tribunal, it appears that, Notice dated 23.4.16 by HPPCB to the Noticee for renewal of consent was last valid upto 2.11.2015. The Noticee was also required to submit drawing of septic tanks and soak pits along with NOC from the TCP. On record, a letter addressed to Director, Tourism from Himachal Pradesh Pollution Control Board has been placed, referring to the Consent to Establish. Therein, the project has been described as a hotel for 29 rooms along with Restaurant, Bar, Conference Hall, Game Room and Gym facility at Hadbast No. 104, Village Sanawar, Tehsil Kasauli, Distt. Solan. In other words, the Consent to Establish has expired and has not been renewed by the Board. There is no document to show on record that the conditions of the Consent to Establish, including setting up of the STP, noise control devices for DG sets, adherence to the Ambient Air Quality standards, obtaining of mandatory clearances, plantation of variety of trees, fixation of water consumption

meters, installing anti-pollution devices for prevention & control of air pollution and installing of rain water harvesting system; installation of cystic enclosures when managing and handling e-waste and MSW, as per rules have been complied with or not, as period of nearly three years has been gone by. The Noticee has not placed any document on record to show compliance.

On perusal of records, it was also noticed that a show cause dated 2nd August, 2014 was issued to the Noticee under Water and Air Act, for construction without consent of the HPPCB required under Section 25 and 26 of the Water and Air Act. Also, it was mentioned that DG Sets without acoustic enclosure are being operated at the site of this unit. Similar notice was also issued under Water and Air Act for renewal of consent by the State Board, dated 20.4.16.

The Himachal Pradesh Irrigation and P.H. Department vide letter dated 29.9.11 stated that the department had no objection for the construction of hotel after fulfilling of the codal formalities by the Noticee. But the department does not have sufficient water to fulfil the requirement for Tourism purposes, neither till today, nor in future and the owner is required to make his own arrangement for drinking water supply.

Notices were issued several times under Section 39 and 39-A of the Himachal Pradesh Town and Country Planning Act, 1977 dated 18.7.13, 26.8.14 and 23.3.16 for carrying construction work in contravention of the approval granted vide order dated 25.11.11, wherein directions were issued for discontinuation of development on the concerned lands. In view of the order dated 18.7.13 by the TCP, the said development being not discontinued/ stopped by the Noticee, request for police assistance under Section 39-A would be made to remove within 7 days the Noticee from the place of development and to seize all construction material, tools, machinery and other such things used in the development.

The TCP Department issued a letter dated 27.3.15 to Mr. Rajnesh Gupta C/O Raj Architectural Point who prepared and forwarded the approval maps for the Noticee, stating that the drawings prepared by him for tourism purpose duly approved by this office were not obeyed during the actual execution of construction work at the site and therefore, show cause as to why action under Rule 17 sub rule 5 of the HPTCP Rules, 2014 be not initiated against him. In reply to the above vide letter dated 7.4.15, Mr. Rajnesh Gupta stated that he prepared the site plan only for tourism purpose for the applicant and he is not supervising the construction. In reply to another letter dated 18.5.15 by

TCP to Mr. Rajnesh Gupta, vide letter dated 9.6.15, to the Town and Country Planner he submits that he has only prepared the drawings of the existing buildings at site after taking measurement of the constructed portions at the site only. He is in no manner involved in the construction work which has been carried out at the site. The above reply was found unsatisfactory by the TCP vide letter dated 26.6.15, as it had been observed that Mr. Rajnesh Gupta has resubmitted the drawings in contravention of the provisions of the Development Plan of Kasauli, which is in clear violation of provisions of Act of 1977. The planning permission for tourism was rejected by the Town and Country Planning Department vide order dated 11.5.15 on various grounds stated in the order.

The Forest Department had granted permission to fell 26 trees on 8th June, 2015. This permission is inappropriate and does not comply with the national policy as well as imposition of conditions which are necessary for grant of such permission. The permission was granted nearly two years back but it is nowhere stated that the trees were actually marked by the department and thereafter plantation of three trees in lieu of every tree felled, has been complied with or not.

It is not known whether the area was demarcated and

whether the progress reports were submitted in terms of the said permissions. The Noticee has also not placed any such document on record. No such similar permission has been placed on record by the Noticee in relation to the 75 trees that was granted earlier. A document has been placed on record dated 4th December, 2012. The letter is addressed to Sh. Hem Raj Varma, referring to felling of 49 trees of Sanawer with the expected forest produce i.e. likely to be generated. However, there is no permission on record in relation to 75 trees.

Discuss -ion

From the above, it is evident that this Noticee has committed gross violations of the sanction plan and in fact, he never had any sanction plan for construction of four blocks. The construction of two blocks is completely unauthorized and illegal. The Noticee has no valid consent to establish and operate as of today from the Himachal Pradesh Pollution Control Board. There is not even a mention in the reply as to how the unit manages the municipal solid waste, e-waste and other waste generated in the unit. There is nothing on record to show that it had established a STP and that the STP is capable of treating effluent and meet the prescribed parameters. In fact, there is complete violation of all the laws in force. The TCPD had also issued an order under Section 39 of the Act for demolition of the property after cancelling the sanction plan

vide order dated 13th May, 2016. It is further to be noticed that, there is serious damage to the environment, ecology and nature at the site and its surrounding areas. There has been major hill cutting and tree felling. These acts will be deemed to have serious adverse impacts on the environment and ecology. It is the own case of the Noticee that there were landslides and therefore, he entered into the realm of constructing a retaining wall and other wall which was not even permitted in the development plan. This itself shows the eco-sensitivity of this area. It is evident that there has been complete and flagrant violation of the law in force as well as damage to the nature. The Noticee has constructed the said project in an un-satisfactory manner showing complete disregard to the laws in force.

13. **HOTEL PINE VIEW (Earlier O.A. No. 506/2015)**:

From Joint Ins -pection Team

The Joint Inspection Team submitted the following report in relation to this hotel:

> "(Kumharda) Sr. No. 6
>
> - The owner has constructed a **7-storey structure** in two inter-connecting building blocks as against only **3 storeys** in one block approved by the Town & Country Planner, Solan vide sanction dated 5.12.1997. Town & Country Planning Department, Himachal Pradesh has not issued any No Objection Certificate for service connections or completion certificate in this case. Notices have been served by Town & Country Planner, Solan on 31.8.2010 & 4.3.2016 for having carried out unauthorized construction at site. Letter has also been sent to Himachal Pradesh Tourism Department with the request to

cancel the registration of this tourism unit. However, TCP Department has not written to concerned authorities for disconnection of water/electricity connections till date.

- Despite non-grant of completion certificate by TCP Department, the District Tourism Development Officer, Solan has registered the project for 7 rooms only vide registration No. 15-24/97 dated 59.5.2006, which was valid upto 28.5.2018. It was observed at site that about 50 rooms have been created by owners. No punitive action under section 55 of H.P. Tourism Development & Registration Act, 2002 has till date been initiated by the H.P. Tourism Department on account of this for sealing the premises or get the service connection disconnected.
- The fact that this unit has got registered only 7 rooms with the H.P. Tourism Department out of 50 rooms created at site could have resulted into huge evasion of Luxury Tax etc. since usually the amount of Luxury Tax liability is worked out on the basis of the number of rooms registered with the Tourism Department. As such, the concerned authorities in Exercise and Taxation Department, Government of Himachal Pradesh need to examine this matter further to assess the liability on account of Luxury Tax.
- The Himachal Pradesh Pollution Control Board has granted consent to operate which was valid up to 31.3.2003 only. It was observed at site that septic tank constructed is not of adequate size keeping in view the actual number of users. In fact, as per their regulations, the units having more than 25 rooms are compulsorily required to establish STP. No punitive action on account of non-renewal of consent to operate or other violations has been taken by the H.P. Pollution Control Board.
- The Committee was of the opinion that strict action should be taken against the erring unit since the project has been raised in gross violation of the revised

> Development Plan for Kasauli. These are clear instances of inaction by TCP, Tourism and HPPCB. This is classical case where a promoter can go to any extent showing no concern to Rules and Regulations. Incidentally the permissions granted by the Tourism Department and H.P. Pollution Control Board are also time barred now. In fact, both these departments should not have granted permission without waiting for issuance of completion certificate by TCP Department. The applicant has created 50 rooms as against just 7-rooms registered by the Tourism Department. Tourism Department must initiate action under section 55 of the Act ibid to seal the premises and to order disconnection of the service connections. There could be huge evasion of Luxury Tax which needs to be examined by the Excise & Taxation Department in consultation with other Department. The unit should not be allowed to run further till it is made compliant to various laws and regulations.

From the reply of the Noticee

In furtherance to the above report and other documents on record, show cause notice was ordered to be issued to Hotel Pine View *vide* order dated 17th January, 2017. Reply to the show cause has been filed by Smt. Sunita Bhandari. The Noticee along with the reply to the show cause has filed certain documents on record, contents of which we will shortly discuss. It is stated in the reply that the hotel called Pine View is a proprietorship concern and is running the hotel comprising of 7 rooms at Mauza Kumharda, Tehsil Kasauli, District Solan, since 1997. They had taken approval from the TCPD and other local authorities and have taken all precautionary measures to

obviate even the faintest possibility of degradation though either air or water pollution. The Noticee had submitted an application for seeking permission to use the basement-II of the residential building for the purpose of Guest House to TCPD. The electricity connection to the premises was in existence and NOC from the TCPD was not required. The said Department on 5th December, 1997 accorded permission to the answering respondent in relation to basement-II. The Tourism Department issued certificate of registration for 7 rooms valid upto 28th May, 2009 and was renewed upto 28th May, 2012. This permission was extended till 28th May, 2018 on 6th May, 2016. HPPCB *vide* its letter dated 18th June, 2016 issued Consent to Operate which was valid upto 31st March, 2017. Thereafter, the consent has not been renewed. It is wrongly mentioned in the report that there is a seven storeyed building having 50 rooms. It is far from the factual position and the two buildings are not inter-connected. There are two different hotels on two different khasra numbers adjoining Hotel Pine View belonging to different entrepreneurs. There exists only a three storeyed building on the land where the answering respondent is running Hotel Pine View. It is submitted that after the lapse of 19 years *vide* notice dated 4th March, 2016 addressed to the Noticee under section 39 of the Act, the TCPD has directed the Noticee to restore the

land to the condition as it existed before and to stop the development operation and to demolish the development made by the Noticee within 15 days, which is not sustainable. The notice was wrongly sent in the name of Shri Devender Jeet. Shri Devender Jeet filed a suit for injunction and declaration against the notice dated 4th March, 2016 issued by the TCPD before the Hon'ble Civil Judge (Senior Division Kasauli) along with an interim application under Order 39 Rule 1 and 2 of the Civil Procedure Code (for short, "CPC") read with Section 151 of the CPC. The Court after hearing passed the order of status quo with regard to essential supply of water and electricity connection on 6th April, 2016. The reply to the notice was also submitted by the Noticee on 19th May, 2016. The owner of the adjoining building on separate khasra number and being separate entity has already applied for registration with TCPD, Tourism Department and Pollution Control Department for 30 rooms submitting along with it a project report. The application has been submitted to the authorities and final decision in that behalf is awaited. *Vide* letter dated 31st May, 2016, Shri Devender Jeet was required to submit NOC from the concerned Panchayat and completion certification issued by TCPD, Himachal Pradesh. Copy of the said letter was issued by the Department of Tourism and Civil Aviation. The document has been

submitted to the authorities. The Committee has wrongly implicated the name of the Noticee without knowing the ground realities. The Noticee is only running the hotel of 7 rooms and there is no requirement for installing the Sewage Treatment Plant (for short, 'STP'). Therefore, the show cause notice issued be withdrawn.

Proceed -ings before the Tribunal

The case of the Applicant was taken up for hearing before the Tribunal amongst other dates on 25th April, 2017. On that date, Shri Devender Jeet Bhandari had appeared and submitted that plans were sanctioned for construction of 7 rooms in the year 1997 and it was also registered with the Tourism Department for the same rooms. He stated that at the same time he had applied for adjacent land where 33 rooms have been constructed by him on a different khasra number and this was called Pine View-II owned by him. The 7 rooms were constructed on three storeys. The residence is on the ground and first floor and 7 rooms are located on second floor. 30 rooms are located in 3 ½ storeyed building and they have applied for regularisation in May 2016, in relation to Hotel Pine View-II. In the order itself it was noticed that the version put forward by the Noticee is belied by his own document. There was no sanctioned plan placed on record to show that construction on any of these lands had started after taking sanction from the concerned authorities. On 5th December, 1997, Town and Country

Planning Department had issued permission for development under Section 16(a) of the Act of 1997. This does not refer to 7 rooms or 33 rooms as stated to have been constructed by the Noticee. Condition no. 3 of the letter stipulated that basement of the existing residential house will be used as guest house, no parking will be allowed on the road and specific permission for the purpose shall be obtained from the concerned authorities. Thus, this document does not grant any permission to any of these areas constructed. In the letter, it was also noticed that reliance is placed on the letter issued by the Tourism Department on 29th May, 2016 and in that letter the Noticee was registered by the Department for 5 rooms and 2 family suites. This registration was limited to Hotel Pine View. It became evident and was so recorded in the order that the record before the Tribunal showed that both the hotels i.e. Pine View and Pine View-II had operated without consent of the HPPCB till 18th June, 2016. They did not even care to take consent to establish before establishment of these hotels. Strangely, the HPPCB in flagrant violation of the laws in force on 18th June, 2016 while referring to consent to establish dated 16th June, 2016 just two days prior granted consent to operate without any specific conditions. In fact, the consent order did not even refer to Pine View-II which existed adjacent to and also interconnected with the

Hotel Pine View. The consent had been granted without conducting any proper inspection. It is arbitrary exercise of power by the Board. The consent was valid upto 31st March, 2017 and has now expired. The same has not been renewed thereafter. The Town and Country Planning Department on 4th March, 2016 issued show cause notice to Shri Devender Jeet Bhandari stating that unauthorised constructions were in contravention to the approval granted by the office dated 5th December, 1997. The seven storeyed building was constructed without leaving set back from the boundary in the said development. *Vide* the same order, the Department directed the Noticee to demolish development and bring the status of the land back to original status. However, for reasons best known to the department, no action has been taken in furtherance thereto. The Tribunal recorded that there is apparent collusion among the Government of Himachal Pradesh, HPPCB and the Noticee.

When the matter was taken up for hearing on 27th April, 2017, the Tribunal noticed that no document had been produced to show that these hotels had operated with the consent of the Board and their plans had been approved. Ms. Leela Shyam, Town and Country Planning Department stated that there are two structures, one is a three storey building which is connected with the other four storeyed building, thus making a total of seven storeys. The

order issued on 1st March, 2017 which describes the seven storeyed unauthorized construction in fact means that construction of these seven storeys had come to the notice of the Department in August 2010 and a notice dated 1st August, 2010 had been issued. Three, four and five storeys were unauthorisedly constructed later on and a notice dated 4th March, 2016 was also issued to the Noticee and order of disconnection of electricity was also issued subsequent to the notice dated 4th March, 2016. The officer of the department admitted during the course of hearing that right from August 2010 till 2016, no action was taken except sending a request for disconnection of electricity. *Vide* letter dated 3rd December, 2008, Department of Tourism was requested to de-register the hotel. In the notice which was issued by Mr. Sandeep Sharma, Town and Country Planner, it was noticed that Shri Devender Jeet Bhandari started raising construction of four storey, without prior approval.

One Mr. Praveen Gupta, Senior Environmental Engineer was the person who had granted consent to establish and operate to the hotels. He admitted before the Tribunal that he had never visited the site before issuing the consent order dated 18th June, 2016. Strangely, the officers of the Board also stated that there is no prescribed procedure for considering the application for consent under the Water Act and the Air Act. However, it was strongly denied by the

Chairman and the Member Secretary of the Board and stated that such submission was clearly incorrect, as they have prescribed procedure for submission of application, processing and passing of consent order. The two officers namely, Mr. Praveen Kumar Gupta and Mr. Anil Kumar also admitted that no consent to the hotel can be granted without actual verification of the intake and discharge of the said hotels. It is a tourism industry. These officers did not verify if the content of the application submitted were factually correct or not. No inspection report was produced before the Tribunal.

On 2nd May, 2017, Mr. Sandeep Sharma, State Town Planner appeared in person and produced records. It came to light that he had not disclosed the complete and correct facts before the Tribunal as well as did not produce the complete records. He actually stated that the plan was sanctioned by letter dated 5th December, 1997. However, the records are contrary and no plan had been sanctioned in that letter as we have already noticed. Letter dated 5th December, 1997 only placed restriction in relation to use of basement and stating that there should be no parking. Letter dated 5th December, 1997 by no stretch of imagination could be termed as a letter issuing NOC or sanctioning development plan. Notices were issued in August 2010 and subsequently were received by the

Noticee. He replied vide letter dated 19 September, 2010. Except a vague denial, this reply contained nothing more. The reply dated 19th September, 2010 was responded to by the department saying that the reply was not satisfactory and an order was passed. However, no action for these years had been taken on that order.

With reference to threat to demolish, the suit afore-referred was filed on which order of *status quo* was filed. Even this representation by the Noticee is factually incorrect as the Trial Court had only passed the order that water and electricity supply to the premises will not be disconnected. The order of the Trial Court dated 6th April, 2016 was not contested nor any appeal filed against the said order. It was also revealed before the Tribunal on that date that proceedings in the year 1993–1994 had taken place before the Ld. Sub-judge at Solan. The suit was filed between the private parties i.e. the Noticee and one of their known persons which turned into a compromise stating that the defendants would have no objection, if the property is used for guest house purpose. Again on this suit, no action was taken by the department. The application for intent to change land use to guest house was moved on 10th March, 1997. *Vide* affidavit dated 10th February, 2007 the compromise appears to have been entered into before the Trial Court which sufficiently indicates that the department

is clearly in hand-in-glove with the Noticee and the Officers have failed to perform their functions under the statute as well as in discharging their public duties.

From the record before the Tribunal, it is evident that the Noticees have made misrepresentations before the Tribunal. They have un-necessarily tried to complicate the issue, which on the face of it is straight and simple. Ms. Sunita Bhandari in her entire reply has not disclosed that Shri Devender Jeet Bhandari is her husband and the property is theirs. She has very cleverly said in her reply that on the adjacent land having a different khasra number belongs to a different entrepreneur and an independent building has been constructed. Not disclosing that it is her husband who has constructed the entire complex which is interconnected. The permission on which she relies dated 5th December, 1997, in fact, is a permission granted to Shri Devender Jeet Bhandari and not to Smt. Sunita Bhandari. Falsity appears to be the foundation of their entire case. The registration of the Tourism Department is dated 29th May, 2006 for seven rooms (5 rooms and 2 suites) while they have raised construction of 50 rooms in two different blocks where interconnected buildings having a common area and discharge facilities. Till the year 2016, the hotels operated without consent of the Board either to establish or to operate. As we have already noticed that the consent order

dated 18th June, 2016 suffers from basic infirmity. It refers to consent to establish dated 16th June, 2016 just two days earlier. This consent is granted without any appropriate conditions which was valid upto 31st March, 2017 and has already expired. The consent has not been extended.

It is shocking that the consent order has been issued without any conditions as to what will happen to the sewage, how the municipal solid waste generated by the hotel would be treated, what is the source of water, how much water would be consumed and what will be the net output. Strangely, the officer of the Board stated that he had given consent for 7 rooms while at site 50 rooms existed. The officer did not even bother to check-up if there was a common sewage for these 50 rooms and how a septic tank which has been created for 7 rooms would be sufficient for 50 rooms or if there were more septic tanks. Then in the contention of the Noticee (Smt. Sunita Bhandari, wife) that no STP was required to be fixed since the hotel was less than 25 rooms has been falsified by the fact that inter-connected 50 rooms existed in these two blocks which have been totally counted as seven storeys as opposed to seven rooms which were allegedly sanctioned as has been placed on record. In other words, the entire construction is illegal, unauthorised and has been constructed at the cost of environment and ecology.

The falsity of the entire case of the Noticees as well as Shri Devender Jeet Bhandari is exhibited by an affidavit submitted by Shri Devender Jeet Bhandari and his son Mr. Gaurav Bhandari where they claim to be joint owners of the entire property of khasra nos. 44, 46, and 56. In this affidavit, it is stated that they have constructed their own buildings but by mistake some part of the buildings falls in the khasra number of the other and they have no objection if part of the buildings remains in each other's khasra numbers. According to this affidavit, Smt. Sunita Bhandari has no interest in the business. However, in her reply she has stated that she has constructed the hotel in khasra no. 56. Thus, it remains undisputed on record that these properties are commonly constructed but for the purpose of causing deception have been referred to as Pine View and Pine View-II.

From Original Records

Being faced with the above peculiar facts and circumstances of the case and to ensure removal of doubt if any, the Tribunal had directed production of original records, both from the Himachal Pradesh Pollution Control Board as well as the Town and Country Planning Department. First, we would deal with the records of the Pollution Control Board. These records show that it is for the first time only on 29th January, 2003 that an application

for consent to operate or consent to establish was submitted. From the noting it appears that without conducting any inspection, without analysing various scientific parameters, environmental impact assessment, what would be the adverse impacts on the environmental ecology, how the municipal solid waste and other waste generated from the hotel would be dealt with, what was the source, extent of water and how the same would be disposed of along with sewage and other waste of the hotel, consent was granted. It is a one line noting on 29th January, 2003 and the letter for consent is issued. The consent granted for establishment/to operate was issued on 21st January, 2003 and it was specifically noticed that for all this period till 2003, the Unit had operated without obtaining consent of the Board. All the consent talked about was the penalties and moneys payable and the expression, "environment – appropriate condition of consent in that behalf" is conspicuous by its very absence. Identical letter was also issued on 25th December, 2002 and 23rd January, 2003. Still another Consent to Operate/renewal for this Hotel Pine View were issued for four rooms on 30th January, 2003. Thus, one would be at a loss to understand as to which of the consents were operative. The consent issued on 30th January 2003 was for the year 2003-04. On 24th May, 2005, the Consent to Establish/Operate was

issued by the Environmental Engineer without any application and without there being any noting on the file. After the noting of 16th May, 2005 and 20th June, 2005, issuing renewal for 2005-06, there is no noting and the file is taken up on 7th September, 2009 regarding reminder for renewal of consent. Then after a lapse of six years, the file was taken up on 21st August, 2015 and in the noting it was noticed that "the unit is operating without valid consent of the State Board. Last consent was valid upto 31st June, 2006. Issue notice."

It is only on 14th October, 2015 that the Unit had considered the need for septic tank and had submitted the drawing of the septic tank and the copy of the balance sheets. On 19th May, 2016, the Headquarters had written to the Regional Office and the Regional Office had received a notice to be issued to the Unit as they were operating without consent. Even on 17th June, 2016, it was specifically noticed, "Consent granted *vide* W21042. Please put up later. Letter may also be sent to the Headquarters for restoration of 7 rooms and 43 rooms. Unit shall not operate till they get the permission from the competent authority." This was never adhered to as the unit kept on operating without consent and for the entire 50 rooms.

The record also shows that on 24th August, 2015, the

hotel was issued warning that it had been operating without mandatory valid consent of the Board and appropriate penal and legal action would be initiated against them. In response to it, it appears that the Unit submitted some documents and its balance sheets. Despite the fact that there were actual 50 rooms at the site in an interconnected condition and they were operating together, the consent was granted for 7 rooms. In the report, it was stated that the water consumption was 1.200 kilolitres per day. In the application it was also stated that it was a Hotel and a Restaurant.

The Himachal Pradesh Pollution Control Board vide order dated 11th May, 2016 had noticed that with effect from 31st March, 2016, the Unit was operating without consent even in relation to the four rooms. It was further noticed that about 50 number of rooms have been constructed and are being operated without any prior consent of the Board in terms of the provisions. After noticing these violations, the Board had ordered that strict action would be taken. In the said order the Board passed a direction that in terms of Section 33A of the Water (Prevention and Control of Pollution) Act, 1974, the power supply of M/s. Hotel Pine View should be disconnected, which was done for reasons best known to the concerned authorities. Against this order, the Noticee had even filed an appeal and in the

memorandum of appeal except for a vague denial it was nowhere specifically stated that 50 rooms, as stated in the order, had not been constructed by the Hotel and that they were not in operation. It was stated that the order suffers from error of law and primarily violates the principles of natural justice. On 18th June, 2016 again, another incomplete and insufficient consent to operate (expansion) for setting up of additional three rooms in existing four rooms making a total of seven rooms, that too without conducting any site inspection, was granted, which was valid upto 31st March, 2017 and thereafter even that has not been extended. Strangely, the Environmental Engineer of the Regional Office, Mr. P.C. Gupta, vide his letter dated 18th June, 2016 had even recommended for restoration of power supply to the seven rooms and that there should be closure of the 43 rooms unless permission from the authorities was obtained. Even vide letter dated 20th September, 2016, the Department of Tourism had issued a clarification that no provisional certificate has been issued to the proprietor of the Hotel Pine View. The original records produced by the TCPD again show that no sanction or NOC was granted for development. In fact, the file opens as on 15th March, 1997 to use the existing house as "Guest House" and specifically notice that no new construction is proposed. The guest house was proposed to be run on the

first floor which ultimately resulted in issuance of the letter dated 5th December, 1997, again without any site visit or verification of the contents of the documents. We have already noticed that the compromise was entered into between Bahadur Singh, Janki Ram and Devender Jeet Bhandari for demolition of any structure and no objection for using the house as a guest room. This decree formed the basis for issuing the permission dated 5th December, 1997 which only permitted the basement to be used as guest house with the restriction we have already noticed above. It is evident from the record that on 3rd December, 2008 it was noticed that the noticee has commenced construction of four storey without prior approval of the Department, in gross violation of the development plan for Kasauli planning area and in violation of the order of the High Court of Himachal Pradesh and, therefore, it was required of the Department of Tourism to revoke the registration. Show cause notice was issued. It is also evident from the file that notice under Section 39 of the Himachal Pradesh Town and Country Planning was issued to the noticee for construction of the 3rd /4th /5th storeys at Khasra No. 73/29 and 30 on 31st August, 2010. To the show cause, Devendra Bhandari had submitted that he had not violated any law and the notice should be withdrawn. Nothing else was stated in the reply dated 19th September,

2010. On 4th October, 2010, the Department mentioned that reply was unsatisfactory and the notice could not be withdrawn. This continued for years together without taking any action. Again on 4th March, 2016, a similar notice under Section 39 was issued. However, it *inter alia* issued the following directions as well:

> "a. to restore the land to the condition existing before the development took place.
> b. to demolish the development made by you in contravention of the provisions of the Act and Rules made there under e.g.- **As above-**
> c. to stop/discontinue the development operation.
>
> Within a period of 15 days from the date of service of this notice you fail to comply with the above direction(s) you shall be liable for action under sections 38 & 39 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977)"

This notice was replied to vaguely by the noticee. The Department of Town and Country Planning, vide their letter dated 28th September, 2016 had informed the Pollution Control Board, Regional Office that the consent should not be renewed, making a reference to the above order and notice issued under Section 39. To complete the factual matrix, we may also notice, even at the cost of repetition, that the civil suit was filed in the Court of the Civil Judge, Senior Division, Kasauli (Solan) without even impleading the Pollution Control Board and praying that the essential supplies be not disconnected. The learned Court had

passed order dated 6th April, 2016 directing maintenance of *status quo* qua the essential supplies of water and electricity. This order will bind the parties to the suit. The HPPCB was not a party and it had issued an order dated 11th May, 2016 in exercise of its statutory powers which had never been implemented by the HPPCB, without any justification.

Discuss -ions

The above narration of facts and discussion clearly shows that the Noticee husband, wife and son have misrepresented the facts before all concerned to suit their convenience. Strangely, all authorities, whether it is the Pollution Control Board, Town and Country Planning Department, Tourism Department and the Electricity Board, all have shut their eyes and in fact, have colluded with the Noticees to permit such a massive structure of seven storeys to come up on the site, causing serious, adverse environmental and ecological effects besides causing pollution. As already noticed, there is no mechanism provided for dealing with the sewage from 50 rooms, the municipal solid waste that would be generated, other wastes that would be generated, the water source and its implication as in the area of Kasauli. The water levels have already depleted and there is extreme shortage of water in that area, as has been held in this very case, in the Tribunal's judgment dated 6th March, 2017. However, the

Committee constituted by the Tribunal, after noticing the gross violations and suggesting that strict action should be taken against the Unit, has not adverted itself to the aspects and violations in relation to the environment but has shown its primary concern towards evasion of luxury tax. The Hotel has operated intermittently and for the major period without consent to operate from the Board, even in relation to four/seven rooms from time to time. As far as the 43 rooms are concerned, it has always operated without the consent of the Board and has violated the laws in force. It has operated without registration of the Tourism Department, without approval of the TCPD and without statutory sanction under environmental laws. Even the directions issued under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974, have been violated not only by the noticees but even by the Electricity Board and the other concerned Departments. Thus, it is truly an example of how to evade law and make material gains at the cost of destruction of environment and nature.

14. **<u>NARAYANI GUEST HOUSE (Earlier O.A. No. 506/2015:</u>**

Joint Inspect -ion Team

The Joint Inspection Team upon conducting the inspection of the guest house has made the following comments in relation to Narayani Guest House:-

> "(Mando Matkanda) Sr. No. 4
>
> - The owner has constructed a **6-storey** building as against approval of **3 storey + 1 parking floor,** thus in

gross contravention of the approval granted by the Town & Country Planner, Solan vide sanction dated 26.8.1997. A Notice under provisions of the Himachal Pradesh Town & Country Planning Act, 1977 has been issued by the Town & Country Planner, Solan on 5.4.2016 for having made illegal and unauthorized additions at site.

- The District Tourism Department Officer, Solan has registered 8 rooms vide registration No. 4-73/97 dated 25.8.2005 valid upto 23.8.2017 whereas number of rooms existing on the spot is much more but no action has been taken by the Department for this violation under the Act ibid for sealing the premises or to order disconnection of the service connections.
- The Himachal Pradesh Pollution Control Board has granted **consent to operate** which was valid upto 31.3.2011. No action has been taken for this violation by HPPCB till date even though there is provision of deterrent penalties under relevant laws, i.e. Water Act or Air Act like issuing directions for power disconnection and seizure etc.

The Committee was of the opinion that strict action should be taken in this case keeping in view the fact that the owners have flouted various provisions of the revised Development Plan for Kasauli. The unit should not be allowed to run further till it is made compliant to various laws and regulations. Since the number of rooms registered with the Tourism Department is far less than those existing on the spot, there could also be evasion of Luxury Tax which needs to be examined by the Excise & Taxation Department."

Reply of the Noticee

In reply to the Show Cause Notice, the Noticee has filed a detailed reply and has stated that the report of the

Committee is based on conjectures and surmises as they had not visited the guest house. It is claimed that the report of the Committee suffers from the vice of biasness and prejudices, towards the Noticee, as the Member Secretary of the Committee, State Town Planner was the party respondent in the suit instituted by the Noticee titled as *Narayani Guest House v. Town and Country Planning Department & others* which is pending before the Court of Learned District Judge, Solan and is also the party respondent in another suit filed before the Hon'ble High Court of Himachal Pradesh by the son of the Noticee titled as *Vijay Singh v. Town and Country Planning Department and Ors.,* both the suits are still pending. It is stated that various officers from different Government Departments have visited the guest house a number of times and have never raised any objection. The issue is that the guest house has been granted permission as a "Residential Paying Guest House". The rules applicable for mixed land use, "Commercial-cum-Residential Use" upto 500 sq. mtrs. plot were the same as for residential use. The Noticee has put only those rooms for commercial use which have been registered and approved by the HPTDC. According to the Noticee, she and her family members have nearly 17 Bighas of land in Himachal Pradesh out of which 2.07 Bighas is situated at village Mando Matkhanda. Out of 2.07 bighas,

10 biswas (390 m. sq.) of land is in the name of the Noticee and the rest is in the name of her son. The development permissions were obtained from the TCPD before adoption of Kasauli Development Plan *vide* letter dated 26th August, 1997 along with the construction lay out plan. The ground floor was permitted at the road level, the basement floor below the road levels as garage/parking area and two floors were approved above the ground floor. It is submitted by the Noticee that she was constrained to raise a small portion below the basement level, because during the construction of the building, poor soil strata with low load bearing capacity appeared on the spot of the construction, as such, the plot had to be excavated to lower depth than what had not been anticipated at the approval stage, only in order to reach at hard soil strata which was needed for providing strong foundation to the building and also to maintain the requisite floor levels of all the storeys of the building. After completion of the construction of the guest house, Noticee *vide* its application dated 22nd September, 1999 applied for No Objection Certificate (NOC) for installation of electricity and water connection which was issued on 28th September, 1999 by TCPD. The Noticee also applied for completion certificate in respect of guest house *vide* letter dated 18th November, 1999. The TCPD had issued completion certificate *vide* its letter dated 28th

November, 1999 after conducting inspection of the premises. The HPPCB, TCPD and HPTDC had recommended time and again that the Noticee should raise sloping roof of green or maroon color, rain harvesting tank, fire exit, etc. in its guest house. Consequently, the Noticee was further constrained to raise sloping floor for the purpose of collection of rainwater harvesting and as the guest house had a flat roof before the said recommendations were made by various concerned departments. The guest house is being operated only in the duly approved portion and nearly 800 sq.ft. in front of the building which is available for parking space. The guest house is situated at about 10 Kms. away from the Kausauli bus stand at a much lower altitude. The guest house is more than 150 feet away from the road, Dharampur to Kasauli and is not causing any traffic hindrances. In 2016, the Government of Himachal Pradesh sought application from various people for regularization of deviation cases, in view of promulgation of Ordinance No. 1 of 2016. The Noticee has applied for regularization of deviation *vide* application dated 26th July, 2016. The State of Himachal Pradesh has enforced the Himachal Pradesh Town and Country Planning (Amendment) Act, 2016. The case of the Noticee is under process for regularisation of deviation in construction. According to the Noticee, it is not extracting

groundwater as it has water connection. It also has septic tanks and soak pits measuring 6 cum. which have been approved by TCPD. The PIL filed in relation to unauthorized construction by Society for Preservation of Kasauli and its Environs was disposed of by order dated 28th August, 2009 passed by the Hon'ble High Court of Himachal Pradesh, in view of the fact that the Development Plan for Kasauli, Planning Area has been published in the official gazette and all cases should be dealt with accordingly. Along with her reply, the Noticee has also filed documents in support of her averments, which we may notice, do not entirely serve the purpose of the Noticee. One of the documents filed is a certificate issued by HPTDC for 7 double bedded rooms, one family suite which is in all 8, dated 11th February, 2016.

Proceed -ings before Tribunal

When the matter came up for hearing before the Tribunal on 27th April, 2017, it came to light that the Noticee has constructed a 6 storey building as against the approved 3 storey and a parking floor. For that reason, the respondent was directed to produce the original records and concerned officer was required to be present before the Tribunal and the case was adjourned to 2nd May, 2017. On 02nd May, 2017 it was revealed by the concerned officer that no Consent to Operate was ever granted to Narayani Guest House and they had been operating for all this period

without Consent to Operate by the Board. The consent to operate was granted till 2011 that too only with regard to 4 rooms. It was also stated by the officers present during the course of hearing that the basement was to be exclusively used for parking and pavement could not be constructed under the ground. However, keeping the slope in mind they would permit to construct basement 11 feet from top to bottom of the slope. Mr. Yavneshwer Singh Nariyal, Junior Engineer had submitted that the area is under his jurisdiction. He visited the premises on 31st March, 2016, but did not count the rooms on each floor, however, he noticed that 6 storey had been constructed. He further stated that basement was meant exclusively for parking, but had been converted for residential purpose as opposed to the prescribed purpose of parking. This officer as well as senior officers took no action right from the date of inspection till date.

From Original Records

The record produced demonstrated the pathetic state of affairs existing in the Himachal Pradesh Pollution Control Board. From the record produced before the Tribunal, it appears that for the first time on 12th August, 1999 a noting was made that Narayani Resort, Kasauli has not applied for obtaining consent from the Board and they should be served with the Notice. The said notice was issued on 13th August, 1999. On 4th November, 1999, it was

noted that the guest house has applied for consent to operate and fee has been deposited. Probably on the basis of this application only without conducting any inspection a notice dated 13th August, 1999 was issued for the grant of Consent to Operate.

It is interesting to know that in the letter issued on 6th November, 1999 the request reference was made to a letter dated 23rd October, 1997 which is a letter written to the Director, HPTDC granting consent to establish to the hotel on the conditions applicable to an industry and they were even expected to submit detailed design and drawing of the effluent treatment plant within one month and various other constructions including construction of *pakka* storage tank of suction capacity of effluent and discharge of the effluent, which should be non-toxic and there were nearly 21 conditions which are obviously not applicable to a hotel, which have been stated in the letter. With reference to this letter, the final NOC was issued for the hotel to operate. This was issued without conducting any inspection on record and verification of the facts, stated in the application for obtaining the consent. Without imposing any condition that ought to be applied to a hotel unit in accordance with relevant provisions, this consent was renewed from time to time, but again without conducting any inspection, without verifying facts and without even knowing whether the hotel

was causing any pollution and if the anti-pollution devices had actually been installed and were operative at the premises. During the intervening period, the Noticee had not submitted application and notice for non-compliance was issued amongst others on 28th November, 2001. The Consent to Establish was again renewed *vide* letter dated 22nd April, 2006 upto 2010-11, while the industry had already started its operation long time back. Even in this, the only condition that was imposed, is with regard to providing of Rainwater Harvesting System. From the record it appears that for the first time a project report was submitted along with application for renewal of consent by the Noticee which is incomplete and has been submitted as a mere formality. On 22nd April, 2016 a Notice for non-compliance was issued to the Noticee by the HPPCB. Reminder thereto was also issued on 11th August, 2016 to obtain consent for non-compliance of the requirement for Consent to Operate. The Consent to Establish was issued on 23rd October, 1997, while Consent to Operate was issued on 06th November, 1997 stating that anti-pollution devices have been installed which is impossible to perform, as it is not possible to establish a building as well as provide for anti-pollution devices within a period of 15 days.

Another shocking fact that emerges from the records is that a noting was made on 09th August, 2016 in the record,

stating that there is no compliance of the letter dated 22nd April, 2016 and a reminder was ordered to be issued. Thereafter, there is no noting on the file, however the file itself contains suit and application for injunction and exemption under section 80(2) of Civil Procedure Code, 1908, filed by Narayani Guest House against HPPCB and Others, where injunction is prayed for, in relation to the letter issued by the Board dated 23rd January, 2017, wherein the Board had directed HPSEBL for disconnecting the electricity supply to the premises within three days. The said document is not on the file of the Board.

The original records of the TCPD have also been produced. It appears on 11th September, 1996 that documents including Jamabandi, Tatima, Location Plan, Site Plan, Building Drawing, Demarcation Certificate, Electricity Availability Certificate were submitted to the department. On 27th November, 1996, the Noticee again submitted the documents to the Executive Engineer, TCPD stating that the basement shown in the plans of the proposed building will be used for parking of vehicles only and that was the correction to be made. After exchange of some correspondence between the parties, *vide* letter dated 12th July, 1996, the authorities informed the Noticee that at present there was acute shortage of water during summer, particularly, from April to June. The department can

provide water only for 9 months, after applying for connection. It also informed that the water could not be supplied for construction work and during summer season in that year. This was also communicated to the Noticee, *vide* letter dated 29th May, 1997, by the Town and Country Planning Department and they should inform how they would receive water for this period. However, *vide* letter dated 26th August, 1997 the permission for change of land use was granted and plans were approved with the following restrictions:-

> "a). The building construction shall be carried out strictly in accordance with the approved building plan and no trees shall be cut.
> b). no parking shall be allowed on the road side."

Narayani Guest House served a legal notice upon the Director, TCPD, stating that one Mr. Ved Prakash submitted a plan for construction of guest house on 01st May, 1999 and had sought permission for construction of a guest house. As per the development plan for Kasauli, setback has to be 5 meters in front and 3 meters on all sides is required to be left. Such setback was not left and construction in excess thereof was to be carried on land adjoining the house owned by him and therefore, construction work should be stopped and demolished, failing which he would take legal action against them. On 05th April, 2016 Town and Country Planning Department issued a Notice under section 39 of the Act of 1977 stating

that the 6 storeyed construction had been raised unauthorizedly and passed the following directions:-

> "a. to restore the land to the condition existing before the development took place.
> b. to demolish the development made by you in contravention of the provisions of the Act and Rules made thereunder e.g. **As above**.
> c. to stop/discontinue the development operation.
> Within a period of 15 days from the date of service of this notice. If within the period specified in this notice you failed to comply with the above direction(s) you shall be liable for action under sections 38 & 39 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977)."

In the same notice, Executive Engineer, HPSEBL was required to disconnect the electricity. An order under section 39A(1) was also issued on 05th April, 2016 directing to stop/discontinue the development on the land which was being carried out by the Noticee. From the noting sheet it is also evident that on 31st March, 2016, Mr. Yavneshwer Singh Naryal, Junior Engineer had noticed that during site inspection on 26th March, 2016, it had been found that the Noticee carried on unauthorized construction at site by way of constructing 6 storey hotel building against permissible 3 storey plus the parking floor in contravention of the approval granted on 26th August, 1997. Unauthorized construction done at site is far beyond the permissible composition limit and had suggested taking appropriate action.

Discuss -ions

From the above record based narration, it is clear beyond doubt that these officers failed to perform their statutory duties and in fact were hand in glove with the Noticee. The environmental concern has been given a complete go by in the case. The consents were granted without inspection and without proper application of mind. The TCPD entirely shut its eyes to the unauthorized construction which has consequently damaged the ecology and environment of the area. It is strange that having found the strata of the soil poor and that there were landslides, the Noticee decided and the department raised no objection to the raising of additional construction on the ground level, apparently causing great risk to the super-structure raised on that strata. There is acute shortage of water as stated by the different departments but the Noticee constructed more and more rooms to make money, irrespective of consequential environmental results and adverse impacts of pollution on the environment. How could the provision made, if at all, for a 3 storey building which had to have a basement as complete parking would be sufficient to serve these 6 storeys plus the use of basement for commercial purposes. This certainly is a very disappointing state of affairs.

15. **NILGIRI HOTEL(Earlier O.A. No. 506/2015)**

Joint Inspect -ion Team

The Joint Inspection Team after the physical inspection

of the premises submitted the following report in relation to the violations or otherwise of Nilgiri Hotel:

(Mando Matkanda) Sr. No. 56

- The owner has constructed more number of storeys than approved vide sanction dated 3.2.2012 which stands **revoked** by the Town & Country Planner, Solan on 29.8.2013. A Notice under provisions of the Himachal Pradesh Town & Country Planning Act, 1977 has been served on 18.7.2013. No NOC for service connections or completion certificate has been issued by Town & Country Planning Department till date even though the hotel is running. No orders for disconnection of water/electricity connections have been issued by the Department.
- The project as a tourism unit has been provisionally registered by the Tourism Department. However permanent registration is yet to be done due to non-submission of completion plan from Town & Country Planning Department. No action has been taken by the Tourism Department to stop its unauthorized operations by sealing the premises under section 55 of the H.P. Tourism Act, 2002.
- The **consent to establish** stands issued by the Himachal Pradesh Pollution Control Board but consent to operate has not been granted by it. No action has till date been initiated by the HPPCB to stop the unauthorized running or to disconnect the water/electricity supply to this Hotel.

  The Committee was of the opinion that strict action should be taken in the case in view of gross violations vis-à-vis the revised Development Plan for Kasauli. Additional storeys raised must be ordered to be demolished, the owner be prosecuted by the Tourism Department/HPPCB for running unauthorized running. Investigation relating to payment of Luxury Tax/VAT must be carried out by the Excise & Taxation Department in consultation with the other concerned Departments.

The unit should not be allowed to run further till it is made compliant to various laws and regulations.

Reply of the Noticee

Reply to the show cause notice was filed by the partner of Nilgiri Hotel, Mr. Sanjeev Kumar. It is stated therein that they are environmental conscious entrepreneurs and are running a hotel at Mandhodhar, Tehsil Kasauli. The applicant sought permission to construct the hotel for which application was moved to the TCPD for which the sanction was issued on 3rd February, 2012. The construction was carried out in accordance with the permission. However, TCPD revoked the said permission *vide* letter dated 29th August, 2013. The unit was registered with the Department of Tourism but no permanent registration was issued due to non-submission of completion certificate from the TCPD. HPPCB had issued a sanction *vide* letter dated 1st July, 2014 and NOC from the Gram Panchayat was also obtained. The Board had granted Consent to Establish. The Noticee had not received any notice from the Board. The hotel is being run since 2014 and employs 18 people and more than 40 people are dependent on the hotel indirectly. The hotel is being run legally and in accordance with law. The State of HP passed the Ordinance No. 1 of 2016 regarding Regularization of Deviations and Unauthorized Constructions and HPTCP (amendment) Ordinance, 2016 was issued on 8th June,

2016 as required under Clause (3) of Article 348 of the Constitution of India and the Governor granted his assent to the ordinance. The application for regularization has been filed, however, the same has not been regularized and the case is pending. The respondent had built-up the hotel by taking loan from Oriental Bank of Commerce and adverse orders, if any, passed would be affecting the economic interest of the applicant.

Original Records

In furtherance of the order of the Tribunal, original records were produced. From the file produced by the HPPCB. It is evident that on 14th July, 2014, the application was moved for Consent to Establish and documents were filed along with it and fee was deposited. On 4th August, 2014, inspection report is submitted and case was recommended for granting the Consent to Establish. On 14th August, 2014, a letter is issued to the Director Tourism, stating that the case has been recommended for grant of Consent to Establish. On the record file, there is no order of consent. The only document on record is a reference made that on 14th August, 2014, the case has been recommended for grant of Consent to Establish. Just a few days later, i.e. on 4th September, 2014 a show cause notice was issued by the Board to the hotel stating that the unit was operating without the consent of the Board and therefore, they were violating the law and that why action

should not be taken against them in accordance with law. Reminder thereof was issued on 21st October, 2014, to the Resort. *Vide* letter dated 10th November, 2014 the Regional Office had informed the Member Secretary of the HPPCB that action under Section 33-A and 31-A of the Water (Prevention & Control of Pollution) Act, 1974 and Air (Prevention & Control of Pollution) Act, 1981, respectively, should be taken against the resort for non-compliance. Reply to the show cause notice was submitted, where it was stated that some dispute was going on with the Electricity Board and there were difficulties in complying with the provisions of law. The Noticee then filed a grievance complaint and an interim order dated 22nd October, 2014 was passed by the Member of the Forum for Redressal of Grievances of HPSEBL with regard to the payment of electricity dues and extent thereof. No effective action was taken by the HPSEBL. It passed an order under Section 31A and 33A of the relevant Acts, as referred above, dated 18th November, 2014 which was faxed on 13th August, 2015 where the Noticee was asked to suspend the operations forthwith. The Department was also asked to disconnect the electricity of the premises. It was submitted that non-compliance of the above directions shall constitute a cognizable offence in which a complaint should be filed. Thereafter, the Noticee also filed a suit in the Court of Civil

Judge, Sr. Division in relation to the notice dated 24th August, 2014, served by the Electricity Board to disconnect the electricity of the premises. The Court passed an order of status quo but in this suit the HPPCB and TCPD were neither impleaded as respondents nor was any change pleaded to the order dated 18th November, 2014 or 13th August, 2015. The interim order continued for some time but finally *vide* order dated 27th May, 2016, the Ld. Civil Judge Court dismissed and held that it has no jurisdiction to grant any relief as the matter fell within the ambit of the Electricity Act, 2003. The interim injunction automatically got vacated. No action has been taken by the Electricity Board and any other authority in accordance with law since then.

As per the records, it appears that NOC of land was issued by the HPSEB and a permission by Himachal Pradesh Irrigation and Public Health Department, Shimla was granted to drill 1 tube well under Section 7 of the Himachal Pradesh Ground Water (Regulation and Control of Development and Management) Act, 2005. The application filed for grant of planning permission was returned with various objections from time to time. Even *vide* order dated 19th September, 2011, nearly, 14 observations were made and the Noticee was granted one month time to comply with the said observations. Similarly, objections were also raised

vide letter dated 24th November, 2011. Finally, *vide* letter dated 3rd February, 2012, the permission to develop was granted subject to following conditions. The said letter reads as under:

> "Permission for development under Section 31 (a) of H.P. Town & Country Planning Act, 1977 to carry out development work in Kh No. 1159/99/20 in Mauza Mandodhar Tehsil Kasauli Distt. Solan, H.P. for proposed Resort land use keeping in view land use of adjoining area and after considering its feasibility as per approved drawing attached subject to the following conditions:-
>
> (a) The building permission shall be obtained from the Local Authority concerned before commencement of development.
> (b) The building operation shall be carried out strictly in accordance with the approved building plan.
> (c) The permission shall remain valid for three years from the date of issue of sanction.
> (d) No trees shall be cut without prior permission of the competent authority.
> (e) No parking shall be allowed in the road side.
> (f) This office may be informed after raising construction at plinth level."

From the above permission, it is clear that no parking was allowed in the road side and trees were prohibited to be cut without permission. The construction was to be regulated, under the supervision of the authority, right from the plinth level. However, nothing appears to have been done in that regard. The construction was being done in contravention to the provisions under Section 39-(A) of the

Act of 1977. On 18th July, 2013, wherein the Noticee was directed to stop/discontinue the development operation, demolish the developments made in contravention of the provisions and to restore the site in question to its original position within 15 days. Another order was also issued under Section 39 (A) for stopping the development activity at the site in question. However, the Project Proponent continued with the same despite these orders. Photographs on file show huge cutting of the hill and it is impossible to believe that no trees were cut as the surrounding areas of the site in question are fully covered with the forest i.e. with trees including pine trees. Finally, *vide* order dated 29th August, 2013, exercising the powers under Section 37 (1) of the Act of 1977, the permission conveyed *vide* order dated 3rd February, 2012 was revoked and it was specifically noticed that four complete storey and raising column for fifth storey are completely in violation of the development permission. On 16th September, 2013, the Noticee submitted a reply stating that the order of revocation be withdrawn as he will close the basement floor immediately and will not open the same and the need for one floor has arisen for getting access from the level of the road for parking purpose.

The TCPD *vide* order dated 19th December, 2013 rejected the application as the Noticee did not restore the

major deficiencies of the construction. He constructed an additional fourth storey as against three, a basement and also an attic. Overall height of the building is much more than that is permissible as well as that permitted *vide* sanction letter given to the Noticee. The Tourism Department of Himachal Pradesh Government had also issued a direction dated 16th October, 2014 stating that the hotel was being run without registration and therefore, action under Section 46 and 50 of the Himachal Pradesh Tourism Development and Registration Act, 2002 is contemplated against them. The Electricity Board had also passed an order of permanent disconnection on 1st June, 2016.

Proceed -ings before the Tribunal

As already noticed *vide* order dated 17th January, 2016, notice was issued to the Noticee. They had filed reply to the show cause notice. When the matter was heard on 2nd May, 2017, the Noticee had stated that there was permission for development of 22 rooms granted in 2012 and the construction was raised during the years 2012-2013 and he had cut no trees. According to him, there was no banquet hall or restaurant on the premises. The Noticee constructed two extra storeys and construction thereof had not been completed as of that date. The permission to develop was revoked on 29th August, 2013. By that time the construction of 22 rooms had been completed. Two floors

are still under construction. Consent to Operate was not granted but Consent to establish was granted. The project has not been registered with the Tourism Department as of now. However, the Ld. Amicus had pointed out that on record it was evident that there are 24 rooms, one banquet hall and a restaurant in existence. It is also recorded that the Consent to Establish was applied for in the year 2014. It is stated that even the fifth floor had been constructed and application for regularization thereof had been submitted i.e. from 2nd floor to 5th floor plus the floor constructed below the 2nd floor. The learned Counsel appearing for the Board upon instructions from the Environmental Engineer present has stated that consent to establish was granted on 14th August, 2014. It was granted for 24 rooms and one banquet hall. This Consent to Establish was granted for one year which had already lapsed and has now become inoperative and has not been renewed.

According to the Counsel appearing for the Tourism Department, it was submitted that three storey structures were permitted to be raised and permission was granted on 3rd February, 2017. On 18th July, 2013, notice was issued for carrying out unauthorized construction. The permission/sanction was revoked by an order dated 29th August, 2013. The planning permission was rejected *vide*

order dated 19th December, 2013. Notice under Section 39 of the Act of 1977 was also issued on 21st November, 2014. No action has been taken in furtherance to that notice as of today. There was no justification shown on record as to why for a period of three years no action had been taken. The matter adjourned for 3rd May, 2017.

When the matter was taken up for hearing on that date, further records were to be produced and the Tribunal passed detailed order referring to the inaction and callous attitude adopted by the officials of the Department. Relevant extract of the order reads as under:

> "As we have noticed yesterday, inspection note is to be produced today. The inspection report is available on the web folder dated 04th August, 2014 which have been produced and that reads as follows:-
>
> "Water Parameter

A	W.C. Per Day (Last 3 Months Average) – KLPD	10.00
B	Source of Water Supply	Own Tubewells
C	W.W.G. is EXCEEDING the CCA Limits	No
D	W.W. Disposal as per the consent Conditions?	Yes
E	Was the ETP in operation?	Yes
F	Treatment System ADEQUATE to handle existing effluent	Adequate
G	Did u observe ANY Discharge?	No
H	Nos. of Samples collected	00

> Remarks:
> **Site Observations during Inspection. Pollution Control Board-ID: (23773)**
> The unit is established at village – Mandodhar, PO – Garkhal, Tehsil – Kasauli, District Solan. The unit is engaged in establishment of Hotel (24 Rooms and 1 Banquet Hall). No trade effluent is expected from the process and

the unit has proposed sewage treatment plant of capacity 12 KLD for treatment of sewage and domestic waste. The unit has proposed acoustically enclosed DG Set of capacity 75 KVA. The unit does not require environmental clearance. the unit has deposited consent fee vide R. No. 76210 dated 08.07.2014 Rs. 90000/-. Hence, the consent to establish is recommended under the provisions of Water (Prevention & control of Pollution) Act, 1974 and Air (Prevention & control of Pollution) Act, 1981 subject to usual terms and conditions. [113]- 04/08/2014~RO Comments/Reply:/ I recommend: May be GRANTED – 04/08/2014

Specific Instructions given to Industry at the time of visit, for Pt to Pt Compliance."

Mr. Anil Kumar, Junior Engineer had conducted inspection along with Mr. Brij Bhushan, Executive Engineer who is in service. It is unfortunate that these senior officers are stating blatant lie before the Tribunal. The record produced before the Tribunal completely shows that there are in collision with the Noticee – the hotel owner. Firstly, Mr. Anil Kumar who are sitting yesterday in court and for the reason best known to him, however never informed that he had conducted inspection along with Mr. Brij Bhushan, Executive Engineer. Today when the documents have been produced before us, he has stated that the inspection had been conducted by him. In the inspection, as ever referred that there is no trade effluent which is factually incorrect statement. Consent to establish was granted for 24 rooms and 1 Banglow. The inspection was conducted in August, 2014, still the officer did not notice that there was no compliance to the conditions of the consent to establish and took no action.

The Inspection was conducted to consider the grant of consent to establish which was issued on 14th August, 2014. The inspection note further does not even say whether the STP has been installed or what was the project in that behalf. It is interesting to note by that time the Town

Planning Department has already cancelled the permission for development which was not taken note of in 25th August, 2013. Another patent feature of collusion apparent on the face of the record is that according to the Noticee, he had submitted a Project Report, copy of which is not annexed to his reply before the Tribunal was filed before the Pollution Control Board along with the application for consent to establish on 1st July, 2014. This report is not available on record of the Board. In fact, that contains totally different project report where it seems to be project of very high value. It is stated that the cost of constructions including the hotel, plant and machinery for the hotel is Rs. 174.95 Lakh while for the plant and machinery it was Rs. 67.78 Lakh. This was a resort project and total cost is Rs. 332.72 Lakh. Nothing of this kind is in the file and even mentioned in the inspection report or in the order for consent to establish. The consent to establish was never revoked for non-compliance, unauthorized construction and in fact the Board and its officers continue to shield the Noticee – hotel owner. After 2014, the hotel was never inspected by any of the officers of the Board and the hotel continues to be in operation."

In light of the peculiar unexplainable conduct of the officers of the various departments, further records were produced and officers even from the Electricity Board were present on 4th May, 2017. An attempt was made even to misguide the Tribunal. We consider it appropriate to refer to the contents of the order itself rather than discussing it all over again. The relevant part of the order reads as under:

"Yesterday, we were informed that the electricity to the premises was restored in furtherance to the order of the court. This stand also reiterated even today. When we asked the order to be produced before us, the facts are entirely different. The Learned Trial Court, Solan had passed order of status-quo which came to be vacated by an injunction. The application for interim

injunction was dismissed by the Trial Court vide order dated 26th May, 2016, for the reason best known to the department, despite this order the electricity supply to the hotel is restored. When we made query from the officer, he again reiterated that there was order of the court. When we asked the order to be produced before the Tribunal, direction passed by the Lok Adalat was brought to our notice. In the Lok Adalat order passed on 10th September, 2016, it is again mis-representation before the Tribunal, because it is stated in the said order that the respondent may have restored the electricity and the applicant does not want to proceed any further. It clearly shows that the department and particularly this officer is in collusion with the hotel – Noticee and has mislead the court as well as this Tribunal.

We may notice with concern that despite direction for disconnection of electricity issued by Himachal Pradesh
Pollution Control Board under Section 33A in the Water (Prevention and Control of Pollution) Act, 1974 read with Section 3 and Section 5 of the Environment (Protection) Act, 1986, has not been acted upon by the authorities.

It is unfortunate that such senior officer in the State and its instrumentalities go to the extent of misleading courts and then take shelter of lame excuses to justify their unjustifiable actions. Thus we impose further cost of Rs. 25,000/- upon this officer. The sum of Rs. 50,000/- in terms of today's and yesterday's order, will be recovered in 3 equal installments with total deduction not being more than one third (1/3) of the total salary. The Learned Counsel appearing for the Noticee – hotel submits that the report prepared by the Town Planner as well as Himachal Pradesh Pollution Control Board are clearly incorrect as there are only 22 rooms and no banquet hall.

In the project report the Applicant has stated that there are 24 rooms, 1 banquet hall and 1 restaurant. Despite directions, Mr. Yavneshwer Singh Naryal, Junior

Engineer and Ms. Leela Shyam, District Town Planning Officer who are present, failed to produce appropriate record before the Tribunal. The record that has been produced before us are incomplete and contrary to what was stated. The Junior Engineer says that he has visited the site but does not know how many rooms are there, whether there is restaurant or not and claims that he does not remember. The Junior Engineer is also misleading the Tribunal. Whenever it is convenient to him, he admits that he paid visit to the site and took note, while on other occasion when it is not convenient to him he does not follow such procedure and even forgets basic requirements of his visit. Despite all this, he is supported by the District Town Planning Officer. They are apparently in collusion with the hotel and intentionally have not brought on record whether 1 banquet hall and 1 restaurant in fact is there or not. The officers are entirely evasive and intended to interfere in the proceedings of the court. Action would be taken subsequently as the matter is reserved. For the present we impose cost of Rs. 25,000/- each which would be recovered from their salary for the current month.

We issue show cause notice to all three, the District Town Planner; Junior Engineer; Town Planner of State of Himachal Pradesh; the Executive Engineer, Electricity Board and Environmental Engineer and JE of the Pollution Control Board to show cause why proper action be not taken against them as well as criminal proceedings be initiated against them having been found causing delay and compelling the Tribunal to adjourn the matter time and again."

Discuss
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The record of the department, proceedings before the Tribunal and the report of the Joint Committee clearly show that there has been flagrant violation of all the laws in

force. There is blatant invasion into the nature which is adversely impacting the environment and ecology. Amongst others, there has been damage to the forest area which was subsequently prohibited under all the orders including the permission for Development. It is impossible to believe that a piece of land located in a thickly green area of pine trees, bushes and other species would be absolutely free of any greenery or forest where the construction activity has been carried on by the Noticee. The Consent to Establish was applied for after construction activity had already started. Consent to Operate has not been obtained till today. The Consent to Establish has also lapsed. The Development Plan was indiscriminately filed after much of the construction work had already been done. Two storeys have been constructed unauthorizedly, illegally including another area below the basement. The stratum of the soil in the mountain has degraded. The Noticee has made false statements before the Tribunal that there is no restaurant and banquet hall. This was evident from his own application as well as Consent to Establish and the inspection note prepared by the officers of the TCPD. It is unfortunate that officers from these authorities who are expected to perform their statutory functions with sincerity and righteousness have failed to keep up the expected standards of public duties.

Conclus
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From the record, it is evident that on 22nd August, 2013, in the application submitted to the TCPD by the Noticee for grant of NOC for water and electricity, photographs were annexed. In these photographs, it is evident that including basement, there are eight storeys of the building and eighth storey is under construction. Thus, it is not a case of constructing of two extra storeys but in fact four extra storeys have been constructed. It violates the prescribed height as well as destroys the basic features of the earth in that area. Once the photographs submitted by the Noticee himself showed 8 storeys, we again understood why the authorities are bent upon protecting such a violator. These photographs also show lot of greenery in and around the land in question.

16. **ILLEGAL, UNAUTHORIZED DEVELOPMENT AND CONCEPT OF REGULARIZATION**

All the above five cases are the cases of blatant violation of laws in force and illegal and unauthorized development. The cases are glaring examples not only of illegal and unauthorized development but also cases which demonstrate critical and serious adverse impacts upon environment, ecology and eco-seismically sensitive area. Our primary concern is to deal with the substantial environmental issues arising in the present cases and to ensure prevention and control of Air and Water pollution in terms of the Air Act and the Water Act respectively on the

one hand, while on the other hand, environmental protection in terms of the Environment (Protection) Act, 1986. We have to discuss this aspect of so called regularization of unauthorized and illegal development which is having adverse impacts on environment, ecology and nature. The principal stand taken by all the Noticees that after Notification of Ordinance 1 of 2016 referred (supra), their constructions would be regularized for which some of them have even moved application for regularization, therefore, they would not have committed any environmental offence much less other liability for other violations.

The State of Himachal Pradesh enacted the Himachal Pradesh Town and Country Planning Act, 1977 that was published in Rajpatra-Extraordinary on 30th September, 1977 (for short hereinafter referred to as "Act of 1977"). This Act of 1977 was enacted to make provisions of planning, development and use of land to make better provision for preparation of development plans and sectoral plans with a view to ensuring that town planning schemes are made in a proper manner and their execution is made effective by constituting the Town and Country Planning Development Authority for proper implementation of such plans and the provisions of the Act. The purpose of Planned Development is to be in consonance with the

fundamental environmental Principle of Sustainable Development. The development has to be regulated and sustainable so as to utilize the natural resources available in the best possible manner while ensuring no irretrievable or irreversible damage is caused to the nature, environment and ecology. Another paramount consideration is that the entire Himachal Pradesh is on top of the Himalayan belt. There are various sensitive aspects of which we shall shortly deliberate under the specific head in this judgment but the concept of sustainable development has to be implemented by the authorities concerned under the laws in force while being fully conscious of this fact. Sustainable development has to have a reference to the geographical, ecological and natural conditions of a given area.

Now, we may look at some of the relevant definitions under the Act of 1977. It extends to the whole of the State of Himachal Pradesh. In terms of sub-section (4) of Section 1, the Act does not apply to lands comprised within cantonment; owned by central government for armed forces, lands under the control of railway administration and lands owned by the Department of Central Government where operational constructions are going on. In other words, to all other lands the provisions of this Act would be applicable without exceptions. We may refer some of the following important definitions which will have a bearing on

our discussion at this stage:

> 2. (c) “building” includes any structure or erection, or part of a structure or erection, which is intended to be used for residential, industrial, commercial or other purposes, whether in actual use or not;
> (e) “commercial use” means the use of any land or building or part thereof for the purpose of carrying on any trade, business or profession or sale or exchange of goods of any type whatsoever and includes running of with a view to made profit hospitals, nursing homes, infirmaries, educational institutions, hostels, restaurants and boarding houses not being attached to any educational institution, sarais and also includes the use of any land or building for storage of goods or as buildings for storage of goods or as an office whether attached to any industry or otherwise;
> (g) “development” with its grammatical variations means the carrying out of a building, engineering, mining or other operations in, on, over or under land, or the making of any material change in any building or land or in the use of either, and includes sub-division of any land;
> (h) “development plan” means interim development plan or development plan prepared under this Act.
> *(zp) “natural disaster” means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or manmade causes or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of property or damage to, or degradation of environment and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area;
> *(zv) “property” means the land, the building, all improvements and structures thereon and all easements, rights and appurtenances belonging thereto and includes every type of right and interest in land which a person can have to the exclusion of other persons, such as possession, use and enjoyment free from

interference, right of disposition, franchises and hereditament.".

In terms of Sections 9 and 10 of the Act, the regional plans are required to be prepared and finalized in accordance with these provisions and Section 10 of the Act puts a restriction on use of land as well as not to develop any land contrary to the provisions of the plan and without prior approval of the concerned authority. In terms of Chapter IV and V, the planning areas and development plans are expected to be notified. Similarly, sectoral plans in terms of Chapter V are to be prepared. These plans cannot be modified and altered except in consonance with the provisions of the Act. The control of development and use of land is covered under the Chapter VI. After coming into force of the development plan, the use and development of land has to conform to the provisions of the development plan and not the other way. The jurisdiction is vested in the Director. In fact, Section 27 puts a prohibition on development and use of land without specific permission in writing from the director. Proviso to Section 27 makes certain exceptions which are restricted to repairs, maintenance and in the interest of agriculture or a temporary use necessary in that regard. If an application for change of use of land for development thereupon is moved under Section 30, permission could be granted or refused by the Director in terms of Section 30 of the Act which reads

as under:

> 30.(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, in such form and containing such particulars and accompanied by such documents as may be prescribed.
>
> (2)Such application shall also be accompanied by such fee as may be prescribed."

Requirement of Section 31 is due application of mind by the Director. It is expected of the Director to record reasons for imposition of conditions and so also where the permission is refused and/or granted unconditionally. The order is required to be communicated to the parties. Section 31(5) also contains deeming fiction in law in relation to grant or refusal of the permission and manner in which the prescribed period of two months is to be computed. Section 31(A), which was subsequently amended *vide* the Act of 2001 adds a very important feature to this concept of planning and grant of permission that structural stability certificate of the building has to be obtained and it is expected of the Applicant to submit soil investigation report, structure design basis report for safety against natural hazardous. All these requirements have not been satisfied and in fact they are not even found on record of the authorities concerned. There is violation of this

statutory requirement having far reaching consequences particularly from the point of view of the environment. Section 37 vests the authority with a power of revocation and modification or permission to the development. A very important provision of Section 38 is the proviso to that Section which opens with the words that "Provided that imposition of fine shall not be deemed to regularize the unauthorized constructions, colonies or buildings, and the Director after giving a notice of thirty days and after affording a reasonable opportunity of being heard, may demolish or remove such unauthorized constructions. The amount incurred on account of demolition or removal of un-authorized construction shall be recovered from the owner of such building as arrears of land revenue. Section 38 provides for different penalties for unauthorized development or for use other than in conformity with the development plan. Further, this penalty provision is without prejudice, but any action may be taken by the authorities under Section 39 of the Act. The penalty could be simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both. Section 39(A) vests the authority with the power to remove unauthorised development in consonance with the provisions of sub-section (1) to sub-section (6) of Section 39. Section 39 vests the authority with the power of

removal of unauthorised development in consonance with the provisions of the Act, the Director could ask for compliance of the provisions and restoration of the land to its original condition. The authority is vested with wide powers under this provision for compliance of the conditions sanctioning development and the provisions of the Act. The section also provides with consequences of default under Section 32(2), if the directions issued under Section 39(1) are not complied with then notice could be served to stop or even seal the unauthorised development in the prescribed manner. Section 39(3) which introduces *vide* Amendment Act No. 15 of 2001 reads as under:

> 39.(3) Any person aggrieved by such notice may within fifteen days of the receipt of the notice, apply for composition of offences under section 39-C and till the time the application is disposed of, the notice shall stand withdrawn; and"

Sub-section 5 of Section 39 talks of compounding of the offence and withdrawal of notice if the offence is compounded otherwise the said notice issued under Section 39(2) has to be complied with. If it is not complied with, Section 39(6) provides for penal consequences including prosecution and demolition of such structure. Section 39(7) provides for punishment thereof. Section 39-A vests the authority with the power to stop development where any development in any area

being commenced in contravention of the development plan or the sectoral plan or without permission/ approval or sanction in accordance with the provisions of the Act. Sub-section 2 to sub-section 8 of Section 39-A provides for consequences that will follow as a result of default and non-compliance in relation to the directions passed with regard to provision of Section 39A(1). Importantly, Section 39A(9) states that the provisions of Section 39-A shall be in addition to, and not in derogation of any other provision relating to stoppage of building operations contained in any other law for the time being in force. Section 39-B of the Act gives powers to the authority to seal the unauthorised development. The seal could be removed only after discontinuing or removing such unauthorised development. In terms of Section 39 A(2), if the development is not discontinued in terms of the order, the officer is vested with the power to require any police officer to remove unauthorised construction and the workman working on the site. We must notice Section 39(C) at this stage which empowers the Director to receive an application from a person who has committed an offence punishable under this Act by way of composition of such offence and receive such sum of

money as may be fixed by the State Government by rules. On payment of such sum of money, no further proceedings shall be taken against the person in respect of such office.

The intent of the framers of law to ensure development to be carried on strictly in consonance with the sanction or permission granted is evident from the actions that the authority could take under Section 39 and 39-A of the Act of 1977. In order to understand with greater clarity, it will be appropriate to reproduce Section 38, Section 39 and Section 39 (C) of the Act of 1977, which reads as under:

> "38. Any person who, whether at his own instance or at the instance of any other person commences, undertakes or carries out any development or changes use of any land-
> (a) without permission required under this Act;
> (b) in contravention of the permission granted or any condition subject to which such permission has been granted;
> (c) after the permission for development has been duly revoked; or
> (d) in contravention of any permission which has been duly modified;
> *"(e) in contravention of any other provision of this Act";
> shall, without prejudice to any action that may be taken under section 39 be punished with simple

imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees or with both, and in the case of a continuing offence with further fine which may extend to two hundred rupees for every day during which the offence continues after conviction for the first commission of the offence.

Provided that imposition of fine shall not be deemed to regularize the unauthorized constructions, colonies or buildings, and the Director after giving a notice of thirty days and after affording a reasonable opportunity of being heard, may demolish or remove such unauthorized constructions. The amount incurred on account of demolition or removal of un-authorized construction shall be recovered from the owner of such building as arrears of land revenue."

39.(1)Where any development has been carried out as indicated in section 38 the Director may, within *ten years of such development serve on the owner a notice requiring him, within **fifteen days from the date of service of the notice.-

(a) in cases specified in clause (a) or (c) of section 38 to restore the land to its condition existing before the said development took place;

(b) in cases specified in clause (b) or (d) of section 38 to secure compliance with the conditions or with the permission as modified;

(c) in cases specified in clause (e) of section 38 to secure compliance in the manner as may be prescribed; Provided that where the notice requires the discontinuance of any use of land it shall be served on the

occupier also.

(2)in case any person after issuance of notice under sub-section (1) does not comply with the directions, he shall be served with a notice to stop or to seal, as the case may be, unauthorized development in the manner as may be prescribed."

(3)Any person aggrieved by such notice may within fifteen days of the receipt of the notice, apply for composition of offences under section 39-C and till the time the application is disposed of, the notice shall stand withdrawn; and"

(4)The foregoing provisions of this chapter shall, so for as may be applicable, apply to an application under sub-section (3).

(5)If the offence is compounded, the notice shall stand withdrawn, but if the offence is not compounded, the notice shall stand, or if such offence is partly compounded, the notice shall stand withdrawn to the extent the offence is compounded, but shall stand in respect of the offence which is not compounded, and thereupon the owner shall be required to take steps specified in the notice under sub-section (1) in respect of the offence not compounded".

(6)If within the period specified in the notice or within the same period after the disposal of the application, the notice or so much of it as stands is not complied with, the Director may-

(a) prosecute the owner for not complying with the notice and whether the notice requires the discontinuance of any use of land, any other person also who uses the land or causes or permits the land to be used in contravention of the notice, and

(b) where the notice required the demolition or any alteration of any building or works or carrying out of

any building or other operations itself, cause the restorations of the land to its condition before the development took place and secure compliance with the condition of the permission or with the permission as modified by taking such steps as the Director may consider necessary including demolition or alteration of any building or works or carrying out of any building or other operations, and recover the amount of any expenses incurred by him in this behalf from the owners as arrears of land revenue.

(7)Any person prosecuted under clause (a) of sub-section (6) shall on conviction, be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both, and in the case of a continuing offence with further five which may extend to two hundred and fifty rupees for every day during which the offence continues after conviction for the first commission of the offence."

39-C.Power to compound offences.-

(1) The Director may, on an application made to him, accept from any person who has committed an offence punishable under this Act, by way of composition of such offence; a sum of money as may be fixed by the State Government by rules.

(2) On payment of such sum of money to the Director, no further proceedings shall be taken against such person in respect of such offence".

If we examine the object and the statutory scheme of the Act of 1977 then it would become evident even on

its plain reading that the paramount legislative intent is to permit regulated development in contradistinction to indiscriminate and haphazard development which would cause irretrievable damage to the Nature. The provisions of Section 38 and Section 39 that we have reproduced above must be construed and understood inconsonance with the language of Section 37, Section 39 (A), 39(B) and 39(C) respectively. All these provisions fall under Chapter-VI of the Act of 1977 that is titled as 'Control of development and use of land'. In other words, there has to be restrictions and regulation both vis-a-vis the land use and development activity. The scheme of Chapter-VI provides both the methodology for regulating development and the stringent measures that the concerned authorities can take in the event of violation of conditions imposed, while giving complete predominance to the development plan and sectoral plan, once they come into force.

Section 30 imposes an obligation upon any person who intends to carry-out any development on any land to make an application in writing to the Director for permission in such form and containing such particulars as may be prescribed. Such application will be considered by the Director, subject to the provisions

of this Act, who then by order in writing grant the permission subject to the conditions as may be deemed necessary and refuse the permission in terms of Section 31(1) of the Act of 1977. Every such order has to give grounds and reasons for grant of permission. Under Section 31(5), if the Director does not communicate his decisions within two months from the date of receipt of the application, the permission shall be deemed to have been granted upon expiry of the period of two months. Importantly, providing of structure stability certification is mandatory in terms of Section 31(A) of the Act of 1977. Section 37 vests the authority with the power of revocation and modification of permission to develop. This is a very wide power vested in the authorities which is intended to protect the environment and ecology. In accordance with this provision, wherever it appears to the authority that it is expedient, having regard to the development plan prepared or under preparation or to any other material considerations, that any permission to develop land granted under this Act or any other law, should be revoked or modified then it would pass such order as it may appear necessary to the authority. This order can be passed subject to its proviso. But where the permission is

revoked or modified, the amount in lieu of expenditure incurred in carrying out the work after grant of permission can be determined by the authority after hearing the owner and considering the report. Section 37, thereafter, has to some extent an overriding effect and it primarily gives power to the authority to pass appropriate orders of revocation and modification where it is expedient to do so in the interest of planned development or any other material considerations. The use of such language by the Legislature conveys the legislative intent to adhere to the Principle of Sustainable Development with all its rigours and effects.

Section 38 provides penalty for unauthorised development or use of land other than in conformity with the Development Plan. It is any or all the five specified conditions stated, the violations of which would invite punitive consequences. The person could be punished to the extent of imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees or with both and even the continuing offence is punished separately. The five stated conditions require adherence to the plan with reference to which the permission for development has

been granted and no development could take place without such permission. There are two very significant aspects that are required to be noticed, firstly, the punishment awarded under Section 38 is without prejudice to any action that may be taken under Section 39 of the Act of 1977 and secondly, imposition of fine shall not be deemed to regularise the unauthorised construction, colonies or buildings. On the contrary, where the Director after giving notice directs demolition or removal of unauthorised construction, the amount so incurred upon such demolition or removal has to be recovered from the owners as arrears of land revenue. Primarily, the offence under this section relates to carrying out development without permission, in contravention of permission, original or modified or whether it has been revoked. More significantly, if the development is being carried out in contravention of any provisions of the Act of 1977, it becomes an offence punishable under Section 38.

Besides, the punitive action to which a violator is subjected to before the Court of Competent Jurisdiction, the Department is vested with wide powers under Section 39 to deal with such violation and the

consequences thereof. The foundation of Section 39 is Section 38 i.e. where the development has been carried out, which attracts the punitive provisions of Section 38 then even within a period of 10 years of such development, serve upon the owner a notice of 15 days to restore the land to its condition as it existed before the development took place. In case the development was carried out without permission or where the permission has been revoked, it is in contravention of the conditions of the permission or in contravention of permissions that have been modified, requires the person is to comply with the conditions or with the permission as modified. Where the development has been carried on in contravention of any other provisions of the Act of 1977, the person to comply in the manner as may be prescribed. Besides providing remedy to a person aggrieved from such an order where notice in terms of Section 39(1) has been served upon a person and he fails to comply with the directions as issued under that section, the authorities are vested with the powers under Section 39(2) to stop or to seal the unauthorised construction that had been carried out. Section 39(3) provides right to a person who is aggrieved from the notice to apply for composition of offences

under Section 39-C and till the time the application is disposed of, the notice shall stand withdrawn. The notice shall be dealt with in accordance with the provisions of Section 39(5). However, if the owner is required to comply with the notice served under Section 39(6) and there is a default, the Director is empowered to prosecute the defaulter for not complying with the notice and whether the notice requires the discontinuance of any use of land and to order demolition or any alteration of any building or works, cause the restoration of the land to the condition it was in before the development took place and secure compliance with the conditions of the permission or as the Director may consider necessary, including demolition or alteration of any building or works and recover the amount of any expenses incurred by him in this behalf from the owners as arrears of land revenue. If the Director directs prosecution of such person then such persons would be liable for punishment as contemplated under Section 39(7) of the Act of 1977.

Section 39(A) has been enacted to provide additional powers to stop development and ensure its compliance by the authorities concerned. The concerned

authority is empowered so that in addition to prosecution that may be instituted under this Act, the authority could pass an order for discontinuation of development from the date of service of the order of such development that is in contravention of the development plan, sectoral plan, without permission/approval or sanction or is in contravention of the conditions of such permission/approval or sanction. After passing such an order, if the development is not stopped or discontinued then under sub-section 2 of Section 39A the empowered officer is entitled to direct a police officer to remove the person or his labour and workmen from the place of development or to seize any construction material, tools, machinery, etc. The amount spent on compliance, the seized material could be disposed of by public auction and the expenditure incurred could be adjusted from such amount. Section 39A(5) empowers the State Governments to pass all such appropriate orders as ought to have been passed by the empowered officer of the Department and if the officer has failed to pass such order, it could empower any officer to make the order and that officer shall be bound to carry out such directions and the orders or requisition made by him in

pursuance of the directions, shall be complied with accordingly. Any person failing to comply with the order under sub-section (1), or as the case may be, under sub-section (5), shall be punishable with fine which may extend to two hundred rupees for every day during which the non-compliance continues after the service of the order. No compensation shall be claimable by any person for any damage which he may sustain as a consequence of the removal of any development under Section 39-A(8).

Section 39-B further empowers the State Governments or the competent authority as the case may be before or after making an order for the removal or discontinuance of any development under Section 39 or 39-A, it could also direct sealing of such development in accordance with the prescribed procedure and no person can remove such seal. This is the scope of the wide and varied powers vested in the competent authority which amongst others includes order for removal, demolition, discontinuance and sealing of unauthorised construction, seizure or removal of material, recovery of expenditure incurred on these counts and finally power to prosecute.

Section 39 refers to the power of the Director to compound offences that finds reference under Section 39(3) of the Act of 1977. Under these provisions, a person who has committed an offence punishable under this Act can make an application to the Director by way of composition of such offences and pay a sum of money as may be fixed by the State Government by Rules. On payment of such money, no further proceedings shall be taken against such person in respect of such offence. The concept of compounding by the authorities under this law would have application in regard to the departmental action. Once the prosecution in terms of Section 38 has been launched before the Court of Competent Jurisdiction, provisions of Section 39 (C) and Rule 35 would have no application to the Court proceedings. It is primarily for the reasons that once prosecution before the Court of Competent Jurisdiction has been commenced in accordance with law, it can only be compounded with the leave of the Court or otherwise but in accordance with law. Section 38 provides for punishment of imprisonment or fine or both which can only be imposed by the Court of Competent Jurisdiction. Therefore, the provisions of Section 39 (C) have limited application in relation to the action taken and/or orders passed or proposed to be passed by the Department itself.

In light of this, now let us examine the scope of

compounding of offences and its consequences within the framework of these provisions.

17. Section 39 (3) read with Section 39-C of the Act have to be given a purposive construction. The interpretation has to be one that is in conformity with the Act and would not defeat the very purpose of planned and structured development. If a construction, and more particularly, huge construction is raised without getting plans approved, permission for raising such construction and for change of such land use is permitted to be raised. It would unquestionably destroy the very concept of planned development. Planned development is the essence of sustainable development. While granting permission the authorities would taken into consideration various factors including load bearing capacity, water availability, importantly that such construction would not disturb environment and ecology of the area and would not add to the seismic imbalance. Furthermore, it will have to be considered whether such huge structures can be permitted to be raised in that eco-sensitive areas whether the waste effluents and other wastes such as municipal waste, sewage and other wastes generated can be firmly dealt with and disposed of by the unit in accordance with the rules in force. Upon their due consideration and applying the balancing principle the authorities would grant or refuse to

grant permission for development. The cases where unauthorised and indiscriminate huge construction is raised without compliance to these laws leads to dual violations/disadvantage. Firstly, the authorities are deprived of applying their mind to appropriate factors to ensure compliance of law, secondly, the adverse impacts on environment and ecology including seismic imbalance. The consequences of such serious violations can be very significant and could bring disastrous result which can easily be avoided by compliance to the law and rules in force.

The scheme of the Act provides for development to happen in a very planned and structured manner. This is evident from the approach taken in the scheme of the Act. A step by step process has been outlined, which must be followed when coming up with plans and then carrying out development in accordance with them. Further, powers have been provided to the TCPD to correct the defaulters who have undertaken their construction in contravention with the provisions provided for in the Act.

First, regions are established and a regional plan developed under the provision of Chapter III entitled Regional Planning. This involves, identification of the region under section 4, the Director's power to come up with a

regional plan in terms of section 5, survey to be carried out in terms of section 6 and other sections in this chapter provide for the contents of the regional plan, Preparation of regional plans finalization of regional plan, restriction on use of land or development, exclusion from claims of amount in certain cases and review of regional plan.

Once the regional plan is in place, the Act stipulates for Planning Areas and Development Plans in Chapter IV. This involves identification of planning areas under section 13 and obligation upon the director to prepare the development plan. It also provides for freezing of land use, interim development plans, development plan, publication and sanction of draft development plan.

Chapter 5 discusses Sectoral Plans. Once the development plan has been published or thereafter, if required by the State Government, the Director shall within six months of such requisition, prepare a sectoral plan. The chapter further provides for content of sectoral plan, its publication, sanction and even its review.

In the light of the above, a clear structure emerges, wherein the legislature in its wisdom wanted the development to happen in a phase by phase manner going from the macro to the micro. First identifying a region and then making its plan to further identifying planning areas,

creating development plans and then further preparing sectoral plans. This shows that heavy stress is placed upon the importance of planned development. In this context, Chapter 6 provides for control of development and use of land. The relevant sections of this chapter have already been discussed and they give wide powers to the Department of Town and Country Planning to stop unauthorized developments. The reason for this is to ensure that the planned structure in which the Act has been enacted is preserved.

18. Rule 35 of the Rules of 2014 deals with four different kinds of offences that are contemplated under the said Rule and the composition fee chargeable thereupon. Upon discussion, we find that under Rule 35 (3), especially Sl. No. 2 and 3, there is mention of situations where plans have not been approved but constructions were carried out in terms of the Act and Rules or where the constructions were carried out without approval of the plans and beyond the permissible limits under Rules and Regulations. Either of them does not mention the expression deviations. Thus, unauthorised and illegal construction must not be understood as deviations. The word deviation even in its common parlance would mean some variation from a planned or a permissible limit. What could be regularised upon payment of composition fee are deviations carried out

within and not beyond the permissible limits. Lastly, those cases could be regularized where plans were not approved but constructions have been carried out as per the Act of 1977 and the Rules of 2014 or in accordance with the Development Plan. Where neither of them exists, the question of regularization would not arise. Any interpretation to the contrary would render the entire scheme under Section 38 to 39-C of the Act of 1977, as redundant and inconsequential. No rule of statutory interpretation would permit such an approach as it would render the law in force, and environment and ecology in distress. The concept of composition, therefore, must be understood in its correct perspective and in consonance with the object of the said Act. In those cases, where a person does not submit the building plans and raises construction indiscriminately, unauthorisedly, illegally and in violation of the provisions of the Act of 1977 and the Rules of 2014, the relaxation or remedy of composition fee or compounding cannot be made applicable. To that extent, the contradiction appearing in various sections of the Act of 1977, and the said Rules would have to be harmoniously constructed without declaring the Rules as *ultra vires* to the Section or beyond the scope of Section. Payment of composition fee cannot be an adequate resolution to such issues either in law or in fact.

The Act contains no legislative mandate which would support the view that these unauthorised structures can be regularised within the scope of composition of offences. On the contrary, the provisions of Section 38 read with Section 39(1) and 39A would be rendered nugatory and inconsequential. The law specifically provides that where the construction is being carried on without permission under the Act or where the permission has been revoked, the direction would be to restore the land to its original condition before the development took place. In default thereto, the provisions of sub-section (2), (3) and (7) of Section 39A would come into play. This being the scheme of the Act the approach that such illegal and unauthorised structures constructed, contrary to the Principle of Sustainable Development can be regularised would be unacceptable, as it would frustrate not only the object of the Act but violate even its statutory provisions. Once, the consequences of a default are provided for in the statute itself, then to render them *otiose* by process of interpretation of subordinate legislation would be impermissible in law. The law must take its course as prescribed and cannot be made ineffective through administrative mechanism which is not in consonance with the Act.

Furthermore, it will lead to complete subjective

satisfaction of the officers concerned, necessarily introducing the element of arbitrariness. As a consequence of which, the unauthorised and illegal structures will be regularised and raise a serious question about the extent to which a matter falling purely in the realm of satisfaction of the subjective officers can be tenable in law, without there being any specific guidelines in that regard. Reference to the table provide under sub-rule (3) of Rule 35, the composition is restricted to deviation or the cases where the construction is in consonance with the provisions of the Act, Rules and Development Plan. Development plan for this area had come into operation on 8th August, 1998 and all these unauthorised constructions have come subsequent thereto. Hence, they are uncondonable.

Irretrievable damage to nature, environment and ecology is beyond the element of being compensated in terms of money. Prevention and protection of the environment, ecology and natural resources are required to be taken at the threshold. Indiscriminate construction in violation of development plan and without taking preventive and protective measures would frustrate the concept of planned development. Not only in the Himalayan zone but even in other parts of the country illegal, indiscriminate, unauthorized and haphazard construction is being carried out in flagrant violation of law. With commercialization

leading to fast depletion of natural resources, there is a need to check real estate activities and initiate action against unauthorized construction atop hills and other places. The Hon'ble Supreme Court of India has dealt with large number of cases, where the builders/owners have raised construction in violation of law, sanction plans and have caused damage to the environment and ecology besides violating the laws with impunity. It needs to be noticed with precision that where the violations are deliberately designed, reckless or motivated, compounding of such unauthorized construction should not be done. The Courts have also taken the view that only marginal or insignificant accidental violations unconsciously made after trying to comply with all the requirements of the law can alone qualify for regularization, which is not a Rule but a rare exception. This principle attains a greater significance and requires more stringent compliance in the States like Himachal Pradesh.

The State of Himachal Pradesh which was hailed as nature's heaven once, is losing its charm not only for the visitors but also for the locals. It is losing its original character of hill architecture and environment friendly buildings, peaceful and clean atmosphere and taking the shape of a concrete jungle as huge structures of concrete are coming up unabatedly. Neither systematic nor

planned development of this beautiful town is taking place and rules and regulations for constructions are not being adhered to. Unplanned, unsystematic and haphazard constructions in the city and its suburbs are going on unabated. Hill sides are being flattened, greenery is vanishing, and Mother Earth is being dug out down below to the water level to construct the huge structures.

A dishonest builder, who raises construction without any sanctioned plan, cannot be treated at par with an honest builder who, in the process of raising construction with a sanctioned plan, makes minor deviations, unintentionally. So far as the dishonest builder is concerned, no leniency should be shown to him and/or to the illegal construction raised by him and in cases where such construction is raised by such a builder with profit motive and/or for commercial exploitation out of such illegal construction then the Municipal Authority should not relax the Building Rules and Regulation for regularizing such illegal construction by keeping in mind that exercise of such power of relaxation is an exception to the Rule.

If such activities are to stop, some stringent actions are required to be taken by ruthlessly demolishing the illegal constructions and non-compoundable deviations. The arms of the law must stretch to catch hold of such

unscrupulous builders.

The municipal laws permit deviations from sanctioned constructions being regularized by compounding but that is by way of exception. Unfortunately, the exception, with the lapse of time and frequent exercise of the discretionary power conferred by such exception, has become the rule. Only such deviations deserve to be condoned as are bona fide or are attributable to some misunderstanding or are such deviations, where the benefit gained by demolition would be far less than the disadvantage suffered. Other than these, deliberate deviations do not deserve to be condoned and compounded. Compounding of deviations ought to be kept at a bare minimum.

Structural and Area Regulations authorize the municipal authorities to regulate and restrict the height, number of storeys and other structures; the percentage of a plot that may be occupied; the size of courtyard and open spaces; the density of population; and the location and use of buildings and structures. All these in our view do achieve the larger purpose of public health, safety and general welfare. The private interest stands subordinate to the public good.

Regularization of such unauthorized structures would

defeat the very purpose of introducing the rules of Planned Development to the city and, thus, cases of such unauthorized constructions must be dealt with sternly.

Even otherwise, compounding is not to be done when the violations are deliberate, designed, reckless or motivated. Marginal or insignificant accidental violations made unconsciously after endeavour to comply with all the requirements of the law can alone qualify for regularization which is not the rule, but a rare exception.

Reference can be made to the judgment of the Hon'ble Supreme Court, where the apex Court had enunciated the above principles in the case of *Friends Colony Development Committee v. State of Orissa and Ors.*, (2004) 8 SCC 733, *Mahendra Baburao Mahadik and Ors. Vs. Subhash Krishna Kanitkar and Ors.,* (2005) 4 SCC 99 and *Royal Paradise Hotel (P) Ltd. v. State of Haryana and Ors.*, (2006) 7 SCC 597.

The Zonal Development Plans or the Sectoral Development Plans are statutory documents. They form a part of the statute itself. Under Section 21 of the Act of 1977, Zonal and Sectoral Development Plans are required to be prepared and once such plans are prepared and enforced, there is complete prohibition on any development being carried out in contravention thereto and without

following the prescribed Development Plan. In the case of *Delhi Development Authority and Ors v. Nehru Place Hotels Ltd. and Ors.,* AIR 1984 Delhi 61 and *M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Ors.*, (1999) 6 SCC 464, the High Court and the Supreme Court have clearly stated the principle that these plans have statutory force and they ought to be complied with. The Zonal Plans deal with both the user of the land as well as the development that could be carried out. Once a builder does not even care to apply in accordance with law and violates the law, such person would be disentitled from claiming benefit of any beneficial provisions under that very law. To draw an analogy, a reference can be made to the deeming provision for sanction of plans under certain laws. It is only if a person moves an application, complete in all respects that it could claim the benefit of deeming fiction. The beneficial provision would not be applicable if a person raises a construction and then claims protection under the deeming provision. In fact, the view of the Hon'ble Supreme Court in relation to unauthorized construction has been consistent. The Court has not only declined regularization of such unauthorized structures but has even directed demolition of such structures.

In the case of *Friends Colony Development Committee v. State of Orissa and Ors.* (2004) 8 SCC 733,

the Hon'ble Supreme Court held as under:

> "20. Builders violate with impunity the sanctioned building plans and indulge in deviations much to the prejudice of the planned development of the city and at the peril of the occupants of the premises constructed or of the inhabitants of the city at large. Serious threat is posed to ecology and environment and, at the same time, the infrastructure consisting of water supply, sewerage and traffic movement facilities suffers unbearable burden and is often thrown out of gear. Unwary purchasers in search of roof over their heads and purchasing flats/apartments from builders find themselves having fallen prey and become victims to the designs of unscrupulous builders. The builder conveniently walks away having pocketed the money leaving behind the unfortunate occupants to face the music in the event of unauthorised constructions being detected or exposed and threatened with demolition. Though the local authorities have the staff consisting of engineers and inspectors whose duty is to keep a watch on building activities and to promptly stop the illegal constructions or deviations coming up, they often fail in discharging their duty. Either they don't act or do not act promptly or do connive at such activities apparently for illegitimate considerations. If such activities are to stop some stringent actions are required to be taken by ruthlessly demolishing the illegal constructions and non-compoundable deviations.
>
> 22. In all developed and developing countries there are emphasis on planned development of cities which is sought to be achieved by zoning, planning and regulating building construction activity. Such planning, though highly complex, is a matter based on scientific research, study and experience leading to rationalisation of laws by way of legislative enactments and rules and Regulations framed thereunder. Zoning and planning do result in hardship to individual property owners as their freedom to use their

> property in the way they like, is subjected to Regulation and control. The private owners are to some extent prevented from making the most profitable use of their property. But for this reason alone the controlling Regulations cannot be termed as arbitrary or unreasonable. The private interest stands subordinated to the public good. It can be stated in a way that power to plan development of city and to regulate the building activity therein flows from the police power of the State. The exercise of such governmental power is justified on account of it being reasonably necessary for the public health, safety, morals or general welfare and ecological considerations; though an unnecessary or unreasonable intermeddling with the private ownership of the property may not be justified.
>
> 24. Structural and lot area Regulations authorise the municipal authorities to regulate and restrict the height, number of storeys and other structures; the percentage of a plot that may be occupied; the size of yards, courts and open spaces; the density of population; and the location and use of buildings and structures. All these have in our view and do achieve the larger purpose of the public health, safety or general welfare. So are front setback provisions, average alignments and structural alterations. Any violation of zoning and Regulation laws takes the toll in terms of public welfare and convenience being sacrificed apart from the risk, inconvenience and hardship which is posed to the occupants of the building."

While in the case of *Shanti Sports Club v. Union of India,* (2009) 15 SCC 705, the Hon'ble Supreme Court enunciated the following:

> "52. In the last four decades, almost all cities, big or small, have seen unplanned growth. In the 21st century, the menace of illegal and unauthorised constructions and encroachments has acquired monstrous proportions and everyone has been paying

heavy price for the same. Economically affluent people and those having support of the political and executive apparatus of the State have constructed buildings, commercial complexes, multiplexes, malls, etc. in blatant violation of the municipal and town planning laws, master plans, zonal development plans and even the sanctioned building plans. In most of the cases of illegal or unauthorised constructions, the officers of the municipal and other regulatory bodies turn blind eye either due to the influence of higher functionaries of the State or other extraneous reasons. Those who construct buildings in violation of the relevant statutory provisions, master plan, etc. and those who directly or indirectly abet such violations are totally unmindful of the grave consequences of their actions and/or omissions on the present as well as future generations of the country which will be forced to live in unplanned cities and urban areas. The people belonging to this class do not realise that the constructions made in violation of the relevant laws, master plan or zonal development plan or sanctioned building plan or the building is used for a purpose other than the one specified in the relevant statute or the master plan, etc., such constructions put unbearable burden on the public facilities/amenities like water, electricity, sewerage, etc. apart from creating chaos on the roads. The pollution caused due to traffic congestion affects the health of the road users. The pedestrians and people belonging to weaker sections of the society, who cannot afford the luxury of air-conditioned cars, are the worst victims of pollution. They suffer from skin diseases of different types, asthma, allergies and even more dreaded diseases like cancer. It can only be a matter of imagination how much the Government has to spend on the treatment of such persons and also for controlling pollution and adverse impact on the environment due to traffic congestion on the roads and chaotic conditions created due to illegal and unauthorised constructions. This

Court has, from time to time, taken cognizance of buildings constructed in violation of municipal and other laws and emphasised that no compromise should be made with the town planning scheme and no relief should be given to the violator of the town planning scheme, etc. on the ground that he has spent substantial amount on construction of the buildings, etc.

53. Unfortunately, despite repeated judgments by this Court and the High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master plans, zonal development plans, sanctioned plans, etc., have received encouragement and support from the State apparatus. As and when the Courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance with laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorised constructions, those in power have come forward to protect the wrongdoers either by issuing administrative orders or enacting laws for regularisation of illegal and unauthorised constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorised constructions and stop their support to the lobbies of affluent class of builders and Ors. Else even the rural areas of the country will soon witness similar chaotic conditions."

And in the case of *M.C. Mehta v. Union of India and Ors.,* (2004) 6 SCC 588, the Hon'ble Court held as under:

"49. In the present case, the land cannot

> be permitted to be used contrary to the stipulated user except by amendment of the Master Plan after due observance of the provisions of the Act and the Rules. Non taking of action by the Government amounts to indirectly permitting the unauthorized use which amounts to the amendment of the Master Plan without following due procedure."

In the case of *Deepak Kumar v. The Kolkata Municipal Corporation & Ors.,* (2013) 5 SCC 336, the Hon'ble Supreme Court while dealing the case of violation of sanctioned plans of the building and raising of unauthorized construction by the builder held that the unauthorized construction of the building not only destroys the concept of planned development which is beneficial to the public but also places unbearable burden upon basic amenities and facilities provided by the public authorities. Such construction would become hazardous for public and therefore, the public authorities were required to demolish construction and also enforce appropriate penalty. Similarly, in the case of *MI Builders Pvt. Ltd. v. Radhey Shyam Sahu & Ors.,* (1999) 6SCC 464, the Supreme Court in the case where underground shopping complex in Jhandewalan Park was illegal, arbitrary and unconstitutional. While referring to Section 114, 128 and 136 of the Uttar Pradesh Municipal Corporation Act, 1959 found that even the corporation had failed to perform its duties and obligations under the Act and there was no

appropriate study for granting permission for such construction and directed dismantling of unauthorized construction and held as under:

> 13. There is no alternative to the construction which is unauthorised and illegal to be dismantled. The whole structure built is in contravention of the provisions of law as contained in the Development Act. The decision to award contract and the agreement itself was unreasonable. The construction of the underground shopping complex, if allowed to stand, would perpetuate an illegality. Mahapalika could not be allowed to benefit from the illegality. A decision of this Court in Seth Badri Prasad and Ors. v. Seth Nagarmal and Ors. [1959] 1 Supp. SCR 769 was referred to, to contend that the court could not exclude from its consideration a public statute and since the construction of the underground shopping complex was wholly illegal it had to be dismantled. No question of moulding a relief can arise as the builder made construction on the basis of the interim order of this Court and at its own risk.
>
> 62. Jhandewala Park, the park in question, has been in existence for a great number of years. It is situated in the heart of Aminabad, a bustling commercial-cum-residential locality in the city of Lucknow. The park is of historical importance. Because of the construction of underground shopping complex and parking it may still have the appearance of a park with grass grown and path laid but it has lost the ingredients of a park inasmuch as no plantation now can be grown. Trees cannot be planted and rather while making underground construction many trees have been cut. Now it is more like a terrace park. Qualitatively it may still be a park but it is certainly a park of different nature. By construction of underground shopping complex irreversible changes have been made.
>
> 74. It is not disputed that there is a Master Plan applicable to city of Lucknow. This

Master Plan is prepared under the Development Act.

80. We find force in the submissions of respondents that by granting licence to the builder to construct underground shopping complex of permanent nature and to hold on to the same for a period which is not definite and then under the impugned agreement builder having been authorised to lease out the shops on behalf of the Mahapalika, it is a dubious method adopted to subvert the provision of Section 128 which apply as well in the case of lease and thus the transaction will also be covered by the expression "otherwise dispose of any interest in the property". It is, therefore, difficult to accept the argument of the builder that transaction is outside Section 128 of the Act. Now, first licence has been granted to the builder to enter upon the park and to execute a work of permanent character and incur expenses in the execution of the work, thus making the licence irrevocable. However, the licence is deemed to be revoked after the licensee has recovered his full cost on the construction plus 10% of the profit on the investment made by him. When this purpose is achieved by the licensee is anybody's guess. Not only that licensee, i.e., the builder is then authorised to lease out the shops so constructed on behalf of the Mahapalika. The result would be that to the builder provisions of Section 129 of the Act, cannot be thus made applicable. In such a situation for the builder to contend that the transaction is not covered by Section 128 and, therefore, Section 129 will not apply is certainly incredulous. Provision of Section 129 of the Act has, therefore, been flouted. Impugned agreement dated November 4, 1993 is bad having been executed also in contravention of the requirement of Section 129 of the Act.

87. In the present case we find that the builder got an interim order from this Court and on the strength of that order got sanction of the plan from the Mahapalika and no objection from the LDA. It has no doubt invested considerable amount on the

construction which is 80% complete and by any standard is a first class construction. Why should the builder take such a risk when the interim order was specific that the builder will make construction at its own risk and will not claim any equity if the decision in the appeal goes against it? When the interim order was made by this Court Mahapalika and the State Government were favouring the builder. As a matter of fact Mahapalika itself filed appeals against the impugned judgment of the High Court. Perhaps that gave hope to the builder to go ahead with the construction and to take the risk of getting the construction demolished and restoring the park to its original condition at its own cost. The builder did not foresee the change in stand not only of the Mahapalika but also of the State Government. It also, as it would appear, over-rated its capacity to manage with the State Government to change the land use of the park. Builder is not an innocent player in this murky deal when it was able to get the resolutions of the Mahapalika in its favour and the impugned agreement executed. Now, construction of shops will bring in more congestion and with that the area will get more polluted. Any commercial activity now in this unauthorised construction will put additional burden on the locality. Primary concern of the Court is to eliminate the negative impact the underground shopping complex will have on environment conditions in the area and the congestion that will aggravate on account of increased traffic and people visiting the complex. There is no alternative to this except to dismantle the whole structure and restore the park to its original condition leaving a portion constructed for parking. We are aware that it may not be possible to restore the park fully to its original condition as many trees have been chopped off and it will take years for the trees now to be planted to grow. But beginning has to be made.

94. Number of cases coming to this Court pointing to unauthorised constructions

> taking place at many places in the country by builders in connivance with the Corporation/Municipal officials. In the series of cases, this Court has directed demolition of unauthorised constructions. This does not appear to have any salutary effect in cases of unauthorised construction coming to this Court. While directing demolition of unauthorised construction, court should also direct inquiry as to how the unauthorised construction came about and to bring the offenders to book. It is not enough to direct demolition of unauthorised construction, where there is clear defiance of law. In the present case, but for the observation of the High Court, we would certainly have directed an inquiry to be made as to how the project was conceived and how the agreement dated November 4, 1993 came to be executed.
>
> 95. We direct as under Block 1, 2 and 4 of the underground shopping complex shall be dismantled and demolished and on these places park shall be restored to its original shape."

19. From the above referred judgments of the Hon'ble Supreme Court of India and the Tribunal, it is clear that in cases of constructions which are totally unauthorised, illegal and are in complete violation of the planning laws particularly where the persons started raising construction without even initiating the process for taking planning permission, consent of the Board and satisfying other legal requirements, should not be dealt with on the ground of sympathy and economic loss. Considering such grounds will result in encouraging such illegal practices and in fact would tantamount to putting a premium on the violation of laws.

Furthermore, it has been stated in these judgments that purely economic and particularly individual economic interest cannot take precedence over environment, ecology and environmental protection. The Hon'ble Supreme Court directed demolition of structures which had been raised after spending a large amount of money and were in violation of fundamental laws of planning, having adverse impacts on environment, ecology and public interest. The Hon'ble Supreme Court did not condone serious violations of planning laws and degradation of environment in the light of economic benefits. Constructions, in the present cases before the Tribunal were raised without even initiating procedures under the law. Provisions of planning were violated to the hilt. The concerned departments firstly, overlooked violations of law and secondly, passed orders of demolition, sealing and restoration of the land only after issuance of notices by the Tribunal. However, none of such notices were brought into effect. Where three rooms were sanctioned, seven storeyed hotel was raised. Where two storeys were allowed, six storeys were constructed. When there were landslides, rather than taking protective measures, additional structures were raised even below the ground level. Thus, these persons not only violated the law but also caused tremendous pressure on natural resources and degradation of environment, ecology and sustainability

of the eco-sensitive Himalayan zone.

20. Upon analysis of the above enunciated principles by the highest Court of the land, it becomes evident that a person raising unauthorized and illegal construction by fragrantly violating the law, cannot claim equity for having invested money or having raised huge constructions. Such a builder cannot claim protection under the law and such unauthorized and illegal construction must be directed to be dismantled. The concept of regularization would have no application to cases of such violators. The undue pressure on natural assets, essential facilitates like water, cannot be permitted to happen as it would cause public health hazards on the one hand while environmental and ecological degradation on the other. More particularly, in relation to a state like Himachal Pradesh, it would be adding to the adverse impacts upon the areas being hit by earthquake as it causes seismic imbalance. Most of the Noticees have placed their reliance upon the Notification issued by the State of Himachal Pradesh dated 15th June, 2016, where there is a general scope for regularization of raised structures. We do not propose to comment upon the validity or otherwise of this Notification for different reasons. Firstly, we have already held that concept of regularization and composition fee is not attracted in the case of such unauthorized and illegal construction. This

observation, we are making in the context of the environmental impacts of such illegal and unauthorised constructions and not *per se* with regard to the provisions of the Town and Country Planning Act. Secondly and more importantly, the said Notification has been challenged before the High Court of Himachal Pradesh at Shimla which is pending hearing. In that Writ Petition, we are informed that the State Government has made a statement that Government would not grant any benefits under the said Notification till the disposal of the concerned Writ Petition. The matter being sub-judice before the High Court, it would not be appropriate for this Tribunal to examine the merit or otherwise or validity of said Notification and its consequences.

21. **HIMALAYAN RANGE ECOLOGY BEING ECO-SENSITIVE AND FRAGILE-ADVERSE IMPACTS OF UNAUTHORIZED, UNPLANNED AND UNSUSTAINABLE DEVELOPMENT**

Many indicators suggest that we are using natural environment in an unsustainable way. Ecosystems can be characterised as environmental assets that, like other capital assets, provide a flow of services over time. If these services are consumed in a sustainable manner, the capital can be kept intact. In recent decades, however, ecosystems have been under increasing pressure as a result of human activity. The Millennium Ecosystem Assessment found that nearly two thirds of the services provided by nature to

humankind are found to be in decline, worldwide. In effect, the benefits reaped from engineering of our planet have been achieved by running down natural capital assets. We need to understand that value in Himalayan ecosystem service will further help the cause of environmental preservation of the Himalayas. Himalayas cover approximately 1500 miles (2400 km) and pass through the nations of India, Pakistan, Afghanistan, Tibet, China, Bhutan and Nepal.

The Himalayas, are fold mountains and are the result of an ongoing orogeny, the result of a collision between two continental tectonic plates. This immense mountain range was formed by huge tectonic forces and sculpted by unceasing denudation processes of weathering and erosion. The Himalayan region is virtually the water tower of Asia. It supplies freshwater to more than one-fifth of the world's population, and it accounts for quarter of the global sedimentary budget.

The Himalayas which contains unending natural resources, are considered as a pristine ecological area with so many natural habitat and is among one of the biodiversity hotspots of the world.

As the Himalayas are young mountains and since the two continental plates, namely, Indian and Eurasian are in

a state of collision, there can be instances of earthquake, which could trigger landslides and cripple the lives of people staying in that region. As Himachal Pradesh fall under seismic zone IV and V, it has the maximum probability of confronting an earthquake. So it is mandatory for the people of hilly areas to restrict themselves to construct more as it would put more burden on the base ground.

To a large extent, environment degradation is caused by:

- Population growth
- Unplanned Urbanization
- Polluting Industries and allied sectors

Unauthorised Structures: Unauthorised Colonies are normally born out of greed with intent to secure unmerited benefits. Generally, these structures are constructed without getting prior Environmental Clearance without any Impact Assessment. Thus, the impact that these structures would have depends upon the life cycle assessment of the building. That is, from clearing land for construction to build the complete structure and thereafter.

The CAG Report for State of Himachal Pradesh has identified earthquakes and fire as two major hazards to which the State is most vulnerable. The State has a high

seismic sensitivity, and 7 out of 12 districts in the State have over 25 per cent of their area falling in seismic zone V, while remaining part of the State falls in seismic zone IV. It is also on record that a large part of construction in this zone is not regulated by the Act of 1977 or the Rules of 2014, in that behalf more particularly in the rural areas. Haphazard construction in urban areas provide no space for easy access of fire and Emergency Vehicles or for providing relief and rehabilitation in the event of disaster, either on account of fires of earthquakes. Large numbers of structures raised in these areas have been found to be unsafe and open to hazards of earthquakes. Unauthorized construction or subsequently regularizing the same leads to compounding of offences and encouraging illegality to perpetuate with serious consequences for environment, life and property. It is, now, widely recognized that rich and diverse Himalayan ecosystem is fragile and unsustainable changes in the ecosystem should be carefully avoided. The Himalayan ecosystem is vulnerable and susceptible to the impacts and consequences of (i) changes on account of natural causes, (ii) climate change resulting from anthropogenic emissions and (iii) developmental paradigms of the modern society. It is very significant that the developmental path in this State should be consistent with the sustainability of the prevailing ecosystem. Landslide is

one of the major disasters. Seismicity in Himalayas is much in evidence. Historical records reveal that devastating earthquakes have been a regular feature of entire Himalayan ecosystem. From the seismicity point of view, the State of Himachal Pradesh which forms a part of Northern Western Himalayas is very sensitive. During last century, the State has been shaken by a number of micro as well as macro earthquakes.

22. With this background, now, let us examine the adverse impacts from unauthorized structures which are constructed illegally, unauthorizedly and in violation of the law in force. Such unauthorized and illegal structures besides damaging the nature and natural resources also expose the entire ecosystem to disaster. The adverse impacts of such unsustainable development are large and diverse. However, we may mention some of them hereafter:

- Landslides: Due to construction activity the trees are cut, which otherwise make the soil loose resulting in landslides. Landslides result in loss of settlement, lives and livestock.
- Loss of biodiversity: Due to expansion in human population and construction activities taking place, there happens to be a loss of biodiversity. Habitat destruction and habitat fragmentation are threatening the survival of many endangered species which are

native to that place.

- Waste Management: Due to unavailability of landfill site in the hilly areas, it is difficult for the municipality to dump waste. More over most of the hilly places are situated besides a river catchment, so the domestic waste water from the unauthorised colonies, generally drains out in the river, altering the river ecology.
- Decrease in agricultural land for food sufficiency: As the land is encroached for construction activities, it generally loses the soil fertility and hence becomes unproductive for agriculture purpose.
- Haphazard, unauthorized and illegal constructions become impediments in disaster management and protection of people at large.
- Such unsustainable development causes undue pressure on natural resources. It leads to scarcity of water, environmental degradation and loss of green cover.
- Indiscriminate, unplanned and huge constructions like in the present case would prejudice adverse impacts as the hill regions which are ecologically sensitive zones normally would have lower carrying capacity.
- Excessive and unsustainable development causes environmental degradation in the form of changes in

micro climate, loss of vegetation cover, disturbance of hydrological regimen, flooding, pollution and increased occurrences of instability.

- There will be unavoidable traffic congestion and resultant air and environment pollution, specially, in the case of present situation, where parking areas have been converted into living areas or commercial areas. It would be unavoidable for tourists to park their vehicles on the main road, thus causing air pollution by emissions and dust due to traffic congestion.
- Under the HP Town and Country Planning Rules, 2014, the permissible gradient (slope) for raising construction is 45 degrees. Most of the Noticees have raised construction beyond this limit of 45 degrees. This involves greater cutting of hills thus, damaging the ecology.
- Unauthorized, illegal and construction contrary to planned development completely defeats the law and concept of planning in relation to such eco sensitive areas.

23. More often than not, these adverse impacts cause irreparable damage to environment and ecology. They have an effect of placing a huge amount of pressure on the natural resources. Appropriate building regulations

considering the topographical and other intrinsic locational characteristics of different areas, along with proper land use and transportation planning are essential for ensuring sustainability of environment in the hill regions. There is deterioration in the quality of living environment due to unsuitable and unsafe building stock for habitation, insufficient infrastructure, narrow roads, inadequate open spaces and reduction in green areas, which are outcomes of wrong planning and building regulations and inappropriate planning and design solutions. More so, the constructions have come about in complete disregard to the planning laws. Human activities triggering landslides are mainly associated with construction and its consequential changes in slope and in surface-water, ground-water regimes. Changes in slope result from terracing for agriculture, cut-and-fill construction for highways, the construction of buildings and mining operation. The unplanned and improperly designed construction can increase slope angle, decrease the lateral support, or load the head of an existing or potential landslide.

The statutory scheme clearly postulates prior compliance with the law and by its own default and illegal activity, one cannot be permitted to convert it into post construction permissions while completely frustrating the object of the Act.

24. **DISCUSSION ON MERITS IN REFERENCE TO ENVIRONMENT:**

There is degradation of environment, ecology and natural resources. Their restoration is necessary. In fact, the provisions of Section 15 & 17 of the National Green Tribunal Act, 2010 (for short, "Act of 2010) would come into play with regard to the restitution and restoration of the natural resources. The liability of these Noticees would be both on account of causing damage to environment and ecology by their unauthorized and illegal construction and other activities connected thereto, as well as expenditure that would be incurred for restoration thereof. This liability is coexistent with the default on the part of the Noticees. As already noticed, some of them have damaged the earth and the ecology to the extent that there were landslides, while in other cases the damage had to be checked by raising other constructions. All these Noticees have caused environmental degradation even by cutting the trees, bushes and forest. They also have no mechanism for dealing with the MSW and the sewage that would be generated or is being generated from their activities. Strangely, some Noticees, who have constructed septic tanks do not even know where the sewage is thrown, when they are emptied. The capacity of such septic tanks is inadequate as originally, the permission was granted for three rooms or seven rooms but they have constructed five

or seven storeys thereupon. Inadequacy of such a system is apparent on the face of it. None of them have cared to install their own STP though they have raised huge constructions. There is no regular mechanism for collection and disposal of the MSW much less in compliance to the Solid Waste Management Rules of 2016 (for short, "SWM Rules 2016"). The cumulative effect of the above mentioned violations and inadequacies or deficiencies are causing pollution and degradation of environment.

At this stage, we may make reference to some of the judgments, which will deal both with the aspect of eco sensitivity of the Himalayan zone as well as the adverse effects of unauthorized constructions upon it. The view taken by the Tribunal not only deals with the Precautionary Principle but even with the liability of the defaulters under the Polluter Pays Principle, to the extent of paying compensation for restoration of environment and ecology. In the case of *Court on its Own Motion v. State of Himachal Pradesh, 2014(1) All India NGT Reporter Part 3 page 66*, the Tribunal held as under:

> "1. The State of Himachal Pradesh is mostly mountainous nestling in western Himalayas, neighbouring Tibet and China in the east, Jammu and Kashmir in the north and north-west, Punjab, Haryana and Uttarakhand in the south. It has a geographical area of 55,673 square kilometres with a population of 6.1 million and is located at altitudes ranging from 350 to 7000 meters (1050 feet to 21,000 ft.). The forests of Himachal Pradesh

> constitute about 2/3rd of the State's geographical area; are storehouse of rich biodiversity, vital in preserving the fragile and sensitive Himalayan ecosystem and are the primary source of livelihood of the residents. The recorded forest area is 36,986 sq. km. as per the Forest Survey of India report for the year 2011, which is 66.43% of the total geographical area and the forest cover spreads over 14,679 sq. km. One of the most significant gifts of nature to mankind in the wide Himalayan range is Rohtang Pass at a height of 13,500 feet above the sea level. The satellite spots of major tourist destination at Manali in the north-western Himalayas are mostly spread in snow (environment) and include Rohtang Pass, Marhi, Kothi, Salang Nala apart from other spots."
>
> "The liability of the polluter is absolute for the harm done to the environment which extends not only to compensate the victims of pollution but is also aimed to meet the cost of restoring environment and also to remove the sludge and other pollutants. A large number of tourists and vehicles which are using the roads and are carrying on such other activities for their enjoyment, pleasure or commercial benefits must be made to pay on the strength of the 'Polluter Pays' principle. It will be entirely uncalled for and unjustified if the tax payers' money is spent on taking preventive and control measures to protect the environment. One who pollutes must pay. The Tribunal issued directions in consonance with the Constitutional mandate contained under Articles 21, 48-A and 51-A(g) which are the very essence of the Act of 1986."

In the case of *Society for Preservation of Kasauli and its Environs* (supra), the Tribunal stated that Himalayas are considered to be geologically week and fragile. Thus, their protection has to be given priority in terms of the

Environment (Protection) Act 1986, and in light of this it would be necessary to direct proper data based study to be carried out for Kasauli.

In the case of *Rajiv Savara v. Darrameks Hotels & Developers Pvt. Ltd. and Ors.*, in O.A. No. 315 of 2015 pronounced on 23rd March, 2016, the Tribunal while dealing with the unauthorised construction in Uttarakhand, again an ecologically sensitive area held as under:

> "It was acknowledged by the Tribunal that it is well known that major part of Uttarakhand is ecologically and geologically fragile. Indiscriminate and unauthorized construction and development will be detrimental to the geographical and ecological characteristics of the State, particularly, when such construction activity, project or development is carried out right on the banks of a river or at the heights and slopes of hills which are ecologically sensitive. Such development would be completely opposed to the expected norms of Sustainable Development which finds a statutory expression in the provisions of Section 20 of the National Green Tribunal Act, 2010. Every area has to be developed keeping in mind the environmental and ecological limitations therein. It is evident that construction of any building/ structure on the river banks, as at any other place, is possible only after clearing of existing plant cover followed by levelling of the said area. Once the plant cover is removed or disturbed and levelling of the land is undertaken, the chances of soil erosion due to rainfall increase significantly. Being in the close proximity of the river, chances of the eroded soil to enter in to the river itself are quite high and this activity is responsible for raising the level of the river bed. This ultimately affects the water flow as well as the flooding

> pattern of the river. A proper plant cover along the river banks is very important for avoiding soil erosion from the banks that leads to siltation of river bed and results in flooding of the downstream. Therefore, protection of the plant cover along the river banks, whether falling in the flood plain or beyond/above it, is of utmost importance for the maintenance of ecological balance in this geologically and ecologically fragile zone."

25. From the records before us and the afore-referred cases, it is evident that the damage to the environment, ecology and natural resources is apparent on the face of the record. There are specific representations from the officials of the Department about the acute shortage of water in Kasauli, where all these properties are located. In the case of *M/s. Chelsea Resorts* and *Narayani Guest House*, it is on record that there were landslides during the period when construction was being raised. Strangely, rather than protecting further damage to nature and the bare earth, these persons have either constructed additional storeys or have raised pillars to take development even beyond the ground level. Forests have been removed causing deforestation. As evident in the photographs on record, these properties are surrounded by trees, heavy green bushes and greenery, which in accordance with the judgment of the Hon'ble Supreme Court of India, in the case of *T.N. Godavarman Thirumulpad vs. Union of India and ors (1997) 3 SCC 312* would be a forest. Thus, issues such as pressure on natural resources like water, strength of the

hill, damage to the forest area, ecological imbalance and environmental pollution have surfaced. With the passage of time they are bound to increase and cause environmental degradation especially, if such illegal constructions are permitted to be regularized and for this, the law provides no scope. Governance and performance of functions by the Government Department or its instrumentality has to be in accordance with law. No department or governmental authority can function contrary to law. All these illegal and unauthorized structures, therefore, must be demolished, in any case, to the extent where they have no sanction plans, no permission for development and are in violation of the law. The notices served under Section 39, 39-A of the Act of 1977 completely establish the case against the owners, as their unauthorized constructions are a sore on the natural beauty and a blot on the application of law.

FAILURE TO PERFORM - DUTIES AND FUNCTIONS BY PUBLIC SERVANTS:

Discharge of public duties and functions in accordance with law is an essential feature of good governance. There is unquestionable obligation on the part of the public servants to act in accordance with law and to comply with the provisions of the statute under which they function. Public authorities in principle should be subject to all normal duties and liabilities which are not inconsistent

with their Government functions and the laws in force. The public functions should be performed in a duty conscious manner rather than power charged. Rule of Law contemplates governance by law and not by humour, whims or caprices of the men to whom the governance is entrusted, presently. The HPPCB has been constituted under the provisions of the Water and Air Act. It is a statutory board, constituted primarily with the object of preventing and controlling the water and air pollution and protecting the environment, in accordance with the provisions of the Environment Protection Act, 1986. Vast powers are vested in the officers of these statutory boards and a duty cast upon them to ensure strict compliance of the provisions of the Act. There is a complete mechanism provided, as was even pointed out by the Chairman of the Board, for an applicant to apply for Consent to Establish/Operate which has to be dealt with by the department and consent granted or refused for valid and proper reasons accordingly. The consent orders are required to be passed upon due inspection by the officers after satisfying themselves that there shall be no pollution arising from that activity and activity other than in accordance with law.

We have already referred to the records of various Noticees where applications were not submitted for

obtaining Consent to Establish or Operate before commencement of the construction of the commercial activity. Wherever and whenever the applications were submitted, they were incomplete, lacking the material particulars necessary for proper application of mind by the concerned officers. The format of the application is prescribed and it requires all material particulars necessary for carrying on such activity which were never submitted. No project reports were submitted at initial stages and in fact, at any stage except one case which itself is a complete farce. In none of the cases, the officers of the Board bothered to check these documents and they granted consent to establish/operate in a most callous, reckless and routine manner. There is a statutory obligation upon the officers of the Board to conduct physical inspection by collecting and analysing samples, examining the capacity of the Project Proponent, to treat and control the pollution resulting from such activity. Nothing of these obligations was performed. In fact, even when it came to the notice of the officers of the Board that the activity was being carried on unauthorizedly, illegally and without obtaining the consent of the Board, they did not take any action in accordance with law. Of course, the officers did not hesitate in granting post-facto consent and consent for future as well without following the prescribed procedure under the law.

The original records produced before us by the Board depict a pathetic state of affairs prevailing within it. These officers have helped violators rather than punishing them in accordance with law. Leaving aside punitive actions, they even failed to take preventive actions which were necessary, given the facts and circumstances of these cases. The damage to environment, ecology could have been reduced and better control and prevention could have been easily enforced, provided these officers had acted in accordance with law and had discharged their statutory and public functions effectively and sincerely. Even complete records have not been maintained in relation to some of the Noticees and wherever there are some records maintained they are inadequate and insufficient for granting consent to establish/operate. The orders granting such consent lack all material particulars and conditions which in the event of such activity ought to be stayed. There is no mention as to the capacity of the septic tank to deal with the quantum of sewage that would be generated, stating its sufficiency or insufficiency thereof. It was not even examined that the total constructed areas and number of rooms, where there were seven and five storeyed hotels, whether they had applied to install a STP on their own. In the case of Hotel Pine View, according to the officer concerned there were seven rooms for which he had granted consent while when

he visited there was a seven storeyed hotel, in operation. However, he refused for reasons best known to him to even mention the same on the file and much less take any action.

There were no considerations as to how the generated MSW would be collected, disposed of and whether there existed sufficient mechanism in that behalf or not. It did not even find mention in the consent order as to what preventive and precautionary measures they were required to take so as to check the degradation of environment and ecology. How much trade effluent would be generated and how that would be treated and what kind of anti-pollution devices, the Hotel was required to construct or establish, is a matter left to the imagination of anyone. In fact, even in some of the cases at hand, the noting sheets did not tally with the documentations on the file. This clearly shows the non-performance of duties by the officers of the Board. We would have no hesitation in observing that these officers have acted in collusion with the Noticees and have certainly helped in the perpetuation of the illegalities and violations committed by them. They have been instrumental in degradation of environment in various respects, despite having known about the huge illegal unsustainable development and unauthorized construction, they turned their eyes and took no action against the Noticees.

At this stage, it may be relevant to refer to the Court

proceedings where not only the demur of these officers of the HPPCB was noticed but their omissions and commissions which were not entirely bonafide also became evident. On 27th April, 2017, the Tribunal recorded as follows:

> "Mr. Praveen Gupta, Sr. Environmental Engineer is present, who had granted the consent to the hotels. He had never visited the site before issuing the consent order dated 18th June, 2016.
> Mr. Praveen Gupta and Mr. Anil Kumar, officers of the Board have produced the original records which have been directed to be retained in the court. We are shocked by the answers provided by the two officers to the queries of the Tribunal. According to them, there is no prescribed procedure in the Board for submission, processing and passing of the consent under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 and any other matters falling in the jurisdiction of the Board. The Chairman and the Member Secretary of the Board who are present before the Tribunal stated that it is factually incorrect, as they have duly prescribed procedure for submission of Application, processing and passing of consent order.
> Mr. Praveen Gupta and Mr. Anil Kumar, have submitted that no consent to hotels can be granted without actually verifying the intake and discharge from the said hotel."

> "It needs to be noticed that initially, according to the applicant he had constructed 4 storeys which consisted of basement, ground, 1st and 2nd floor. He again constructed portion below the basement as according to him the geological strata of the soil was so weak, that he had to go to the depth beyond the prescribed sanctioned plan. He claims to have obtained sanctioned plan for that purpose, then he constructed another

storey which is presently not converted into the room. This made the extra construction below basement and top totalling up to 6 storeys.

The Town Planner who is present and has produced the record before us submits that in the year 1997, the plans were sanctioned and the sanction was given for 3 storeys and for parking. The basement was the parking area and above that 3 floors were ordered to be constructed. No basement was permitted under the ground, however, keeping in mind the slope of the hill they were permitted to make a basement within 11 Ft. from top to bottom of the slope.

The concerned J.E. Mr. Yavneshwer Singh Naryal is present before us. The whole area of the Tehsil comes under his jurisdiction. He Submits that as per his normal duty to visits different sites, under his jurisdiction. On 31st March, 2016 he visited the site in question and during inspection this officer noticed that the Noticee had constructed another floor on pillar and then after putting roof made another floor and covered it with roof. The existing rooms besides these floors were not counted during the inspection. The basement which was meant for exclusively for parking has been converted into a habitable portion. The officer has no explanation as to why he has not noticed the fact in his note that the basement had been converted for residential purpose as opposed to the prescribed purpose of parking. This officer or his seniors took no action for in furtherance to the alleged Notice on 05th April, 2016. The applicant, however disputes that he never received this Notice.

Mr. S.K. Shandil, Environmental Engineer, Himachal Pradesh Pollution Control Board who is patently telling lies before the Court submits that according to him he visited the site in January, 2017 and he did not prepare any inspection note. The file does not reflect that he at all visited the site in question. The officer claims that he had visited that area everyday/month thereafter. The officer for the Board submits that the consent was granted for 4

> rooms. The officer initially refused to answer of the question of the Tribunal as to how many rooms he has visited, since he cannot give a guess work. Only one septic tank which was made for the existence of 4 rooms and now 6 storeys has been existed. None of the officers can state as to how many rooms were in existence when they visited."

The conduct of officers of the TCPD is no exception, in fact, their role is more significant. They have not only permitted unauthorized and illegal structures to be raised despite having knowledge thereof, but have even provided a shelter under the umbrella of their statutory powers in permitting as well as continuing with unauthorized and illegal structures. In their files they took note of all illegal, unauthorized construction and even issued notices but took no further actions. Their actions were primarily to keep the paper work complete or at least pretend to complete the paper work while taking no actual action in accordance with the provisions of Sections 38 to 39-B of the Act of 1977. Whenever they visited the site, they refused to make note of huge structures standing there and even permitted further construction by allowing these hotels to raise floor after floor. In the case of *M/s. Chelsea Resorts* and *Narayani Guest House* when there were landslides, these officers remained as mere onlookers without taking any constructive action in the files or on the field. The Noticees taking advantage of the said situation constructed

extra floors or extended their area. Powers like demolition, sealing of the structure, removal of the occupant from the premises and recovering of compensation for such actions from the Noticees remained a mirage for the developmental officers and public at large, only for the benefit of the Noticees. These officers did not even produce complete records before the Tribunal. The Development Plan had come into force in the year 1998 and all these structures, constructions have been raised thereafter, in flagrant violations of the statutory provisions, rules and the Development Plan. The records produced before us by the TCPD leaves much to be desired, in fact, the officers concerned have showcased a collusive and irresponsible attitude. *Ex-facie*, there is enough material before the Tribunal to support the view that these officers have acted unfairly and in violation of their statutory and public duties. To support this further, it will be useful to refer to the proceedings before the Tribunal when their demur, hesitance and attempt to prevaricate before the Tribunal was observed and specifically noticed by the Tribunal as follows:

> **OFFICERS OF HP POLLUTION CONTROL BOARD**
>
> "Mr. Anil Kumar, Junior Engineer had conducted inspection along with Mr. Brij Bhushan, Executive Engineer who is in service. It is unfortunate that these senior officers are stating blatant lie before the Tribunal. The record produced before the Tribunal completely shows that there are in collision with the Noticee – the hotel owner.
> Firstly, Mr. Anil Kumar who are sitting yesterday

in court and for the reason best known to him, however never informed that he had conducted inspection along with Mr. Brij Bhushan, Executive Engineer. Today when the documents have been produced before us, he has stated that the inspection had been conducted by him. In the inspection, as ever referred that there is no trade effluent which is factually incorrect statement. Consent to establish was granted for 24 rooms and 1 Bungalow. The inspection was conducted in August, 2014, still the officer did not notice that there was no compliance to the conditions of the consent to establish and took no action.

The Inspection was conducted to consider the grant of consent to establish which was issued on 14th August, 2014. The inspection note further does not even say whether the STP has been installed or what was the project in that behalf. It is interesting to note by that time the Town Planning Department has already cancelled the permission for development which was not taken note of. Another patent feature of collusion is that the Noticee has filed a Project Report in their reply, which according to him, has been submitted to the Pollution Control Board along with the application for consent to establish on 01st July, 2014, however, that the report is not on the original file produced before us by the Board. In fact that contains totally different project report where it seems to be project of very high value. It is stated that the cost of constructions including the hotel, plant and machinery for the hotel is Rs. 174.95 Lakh while for the plant and machinery it was Rs. 67.78 Lakh. This was a resort project and total cost is Rs. 332.72 Lakh. Nothing in this file is mentioned about the inspection or in the consent to establish. The consent to establish was never revoked for non-compliance, unauthorized construction and in fact the Board and its officers continue to shield the Noticee – hotel owner."

OFFICERS OF TCPD (NILGIRI HOTEL)

"Yesterday, we were informed that the electricity to the premises was restored in furtherance to the order of the court. This stand also reiterated even today. When we asked the order to be produced before us, the facts are entirely different. The Learned Trial Court, Solan had passed order of status-quo which came to be vacated by an injunction. The application for interim injunction was dismissed by the Trial Court vide order dated 26th May, 2016, for the reason best known to the department, despite the order the electricity supply to the hotel is restored. When we made query to the officer, he again reiterated that there was order of the court. When we asked the order to be produced before the Tribunal, direction passed by the Lok Adalat was brought to our notice. In the Lok Adalat order passed on 10th

September, 2016, it is again misrepresentation before the Tribunal, because it is stated in the said order that the respondent may it restore electricity and the matter does not want to proceed any further. It clearly shows that the department and particularly this officer is in collusion with the hotel – Noticee and has mislead the court as well as this Tribunal.

We may notice with concern that despite direction for disconnection of electricity issued by Himachal Pradesh Pollution Control Board under Section 33A in the Water (Prevention and Control of Pollution) Act, 1974 read with Section 3 and Section 5 of the Environment (Protection) Act, 1986, has not been acted upon by the authorities.

It is unfortunate that such senior officer in the State and its instrumentalities go to the attempt of misleading courts and then take shelter under the order of the court to achieve their unjustifiable cause. Thus we impose further cost of Rs. 25,000/- upon this officer. The sum of Rs. 50,000/- in terms of today's and yesterday's order, will be recovered in 3 equal instalments with total deduction not being more than one third (1/3) of the total salary. The Learned Counsel appearing for the Noticee – hotel submits that the report prepared by the Town Planner as well as Himachal Pradesh Pollution Control Board are clearly incorrect as there are only 22 rooms and no banquet hall. In the project report the Applicant has stated that there are 24 rooms, 1 banquet hall and 1 restaurant. Despite directions, Mr. Yavneshwer Singh Naryal, Junior Engineer and Ms. Leela Shyam, District Town Planning Officer who are present, failed to produce appropriate record before the Tribunal. The records that has been produced before us are incomplete and contrary to what was stated. The Junior Engineer says that he has visited the site and does not say that how many rooms there are, whether there is restaurant or not, which he does not remember. The Junior Engineer is also misleading the Tribunal again. Whenever it is convenient to him, he made visit to the site and took note, despite such procedure is required to be followed, he is duly supported by District Town Planning Officer. They are apparently in collusion with the hotel and intentionally have not brought on record whether 1 banquet hall and 1 restaurant in fact is there or not. The officers are entirely evasive and intended to interfere in the proceedings of the court. Action would be taken subsequently as the matter is reserved."

In light of the above proceedings before the Tribunal and the records that have been produced, we are

constrained to observe that these officers have not acted fairly and their collusion with the Noticees is evident on the face of the record.

26. **ORDERS AND DIRECTIONS**

The above narration of facts and principles of law enunciated by the Court and the Tribunal show that the cases at hand are not cases of default simpliciter or violations but they are the cases which have tremendous adverse impacts on ecology, environment and natural resources. They will be a source of regular pollution in the realm of municipal solid waste (MSW), discharge of trade effluents and sewage etc. We have already noticed that there exist no appropriate anti-pollution devices for prevention and control of such pollution. The record before the Tribunal clearly demonstrates the callous and irresponsible attitude adopted by the public authorities including the Pollution Control Board. This has helped the Noticee to violate the law with impunity. The Great Himalayan Ranges are fragile and eco-sensitive and therefore require more protection. It cannot be subjected to indiscriminate haphazard, illegal and unauthorised constructions. The result of such activity will be disastrous in various environmental aspects. Section 20 of the Act of 2010 requires the Tribunal to apply the Principle of Sustainable Development, the Precautionary Principle and the Polluter Pays Principle which are in any case the

fundamentals of environmental jurisprudence across the globe. In present cases, all three principles are attracted and can safely be applied. We need to pass directions which will require authorities to take precautions and preventive steps, to ensure that there is no further degradation of environment and ecology. Certain coercive directions would be necessary to bring these cases within the framework of Sustainable Development and then to be followed by the Precautionary Principle. Unless and until, these structures are brought within the scope of planned development as contemplated under the Act of 1977 and Rules of 2014 and satisfy the requirements of Sustainable Development, the features of planned development are to be strictly adhered to, to ensure Sustainable Development. These standards are to be applied with all their rigour, otherwise imbalance in ecology, environment and natural resources would be the inevitable result. This area is a seismically active zone and tremors of earthquake have shown their drastic results in various parts of the country. We need to be very cautious and not expose such eco-sensitive areas of the country to indiscriminate, illegal and unauthorised construction. It requires strict adherence to planned development. There is definite evidence on record to show that there is serious water scarcity, no sewage system, no common STP plant where sewage can be taken, and treated in accordance with concerned rules. Damage to the greenery and removal of

trees in the area is rampant. In terms of Section 17(3) of the Act of 2010, there is the Principle of Strict Liability or No Fault Liability which is to be applied in cases of environmental degradation. It is for the person carrying on the activity, which is likely to cause pollution, to show that he has strictly adhered to the law and has taken all necessary permissions and precautions required. In default thereto, the liability automatically accrues upon such person. In terms of the Act of 2010, Polluter Pays Principle mandates that a polluter must pay compensation for causing pollution as well as on account of restoration and restitution of the environment of the area in question such is the scheme of the Act of 2010. In the present case, the Noticees have not only failed to comply with the law, but have intentionally and knowingly violated the law in relation to planning, environment and regulatory regimes. They have further raised illegal and unauthorised constructions which have caused pollution and have placed undue and undesirable pressure on natural resources. Despite the fact that two of the Noticees faced landslides during construction, they did not stop the activity but on the contrary, extended scope of development by constructing additional storeys. Thus, their liability under the Polluter Pays Principle is incontrovertible.

In order to arrive at a composite and just solution, we have to issue a wide range of directions with reference to the

three above-stated principles of environment. Ergo, we pass the following order/directions:

1. We direct that the unauthorised and illegal construction raised in violation of the planning laws affecting environment, ecology and natural resources adversely, should be demolished in terms of the provisions of the Act of 2010. Thus, we direct that each of the five Noticees shall demolish the following structures/construction raised by them:

Name of Noticee	**Permission Obtained**	**Excessive Construction**
Bird's View Hotel	5 Rooms + 2 Cottages	9 Rooms + 1 Cottages A 3-storey frame structure has been added adjoining to the existing building without obtaining prior approval from Town & Country Planner, Solan.
Chelsea Resorts	2 Blocks with three storeys each.	The firm has constructed 4 blocks as against 2 blocks approved by TCP Department. Two of the blocks are having 4 storeys as against 3 permissible. Proposed construction of retaining wall in front of Block D, even though this was done in the interest of the environment. Twin parking units constructed.
Hotel Pine View	3 Storeys in 1 block (Total of 7 rooms)	The owner has constructed a 7-storey structure in two inter-connecting building blocks as against only 3 storeys in one block approved by the Town & Country Planner, Solan vide sanction dated 5.12.1997. This unit has got registered only 7 rooms with the H.P. Tourism Department out of 50 rooms created at site.
Narayani Guest House	3 storeys + 1 parking floor. The CTO was granted till 2011 that too only with regard to 4 rooms.	The owner has constructed a 6-storey building as against approval of 3 storey + 1 parking floor.
Nilgiri Hotel	Three storey structures were permitted to be raised and permission was granted on 3rd February, 2017.	Based on photographs, it is evident that including basement, there are eight storeys of the building and eighth storey is under construction. Thus, it is not a case of construction of two extra storeys but in fact four extra storeys have been constructed. It violates the prescribed height as well as destroys the basic features of the earth in that area.

2. The above demolition should be effected by the

respective Noticees within two weeks from the date of pronouncement of this judgment. In the event of default, the Town and Country Planning Department along with State Administration shall demolish these structures and recover the cost incurred thereupon as arrears of land revenue in terms of Section 38 and 39 (6) (b) of the Act of 1977.

3. Despite the fact that Noticees have already been served with notices under Section 39 of the Act of 1977 directing demolition of unauthorised and illegally constructed portions of the buildings. These constructions need to be demolished to prevent further degradation of environment and ecology in that area, as well as to ensure that no undue pressure is put on the natural resources causing tremendous scarcity of resources like water. The various adverse environmental impacts of these unsustainable constructions have already been discussed by us at length in the judgment itself.
4. We also direct that all the specified parking areas in the respective buildings of the Noticees shall be restored and used only for the purpose of parking and no other purpose. This would help in avoidance of traffic congestion, air and environment pollution as well. Furthermore, it will also be in compliance with the planning laws.

5. Even where the structures have been raised in accordance with sanction, plans/permission to develop, the Noticee shall provide complete mechanism for collection of sewage, its transportation and disposal in accordance with the relevant Rules and in accordance with the provisions of Environment (Protection) Act, 1986.

6. Appropriate mechanism should be provided for collection, handling and disposal of MSW from such hotels/guest houses, in accordance with the Solid Waste Management Rules, 2016.

7. It shall be the responsibility of these Noticees to ensure transportation of waste from their respective premises to the MSW treatment plant (Waste to Energy Plant) at Shimla at their own cost and responsibility.

8. They shall also ensure and take appropriate steps for treatment of the trade effluents that are discharged by these complexes from their kitchen, restaurant and other commercial premises which shall be analysed and the HPPCB shall issue appropriate directions for treatment and disposal of the same.

9. We hold and direct that each of these Noticees shall pay environmental compensation in terms of Section 15 and 17 of the Act of 2010 for causing irretrievable damage to the ecology, for polluting the environment, raising unauthorised and illegal constructions and thus, putting undue pressure upon the natural resources. The environmental compensation we are determining is on the basis of unauthorised and illegal constructions/structures raised and the total number of rooms presently existing after such demolition i.e. the environmental compensation would have direct relation with the extent of the unauthorized construction raised. The environmental compensation to be paid by the concerned Noticees is as follows:

I. Bird's View Hotel – Rs. 5,00,000/- (Rupees Five Lakh only)
II. Chelsea Resorts – Rs. 7,00,000/- (Rupees Seven Lakh only)
III. Hotel Pine View – Rs. 7,00,000/- (Rupees Seven Lakh only)
IV. Narayani Guest House – Rs. 7,00,000/- (Rupees Seven Lakh only)
V. Nilgiri Hotel – Rs. 10,00,000/- (Rupees Ten Lakh only)

Each of these five Noticees shall pay the said environmental compensation within two weeks from the date of pronouncement of this order, failing which the same shall be recovered as arrears of land revenue and their premises shall be liable to be sealed and water & electricity supply shall also be disconnected.

10. The environmental compensation afore-stated shall be payable to the HPPCB which shall utilize the amount so received for protection, restoration and restitution of the ecology and environment in this area. In other words, this amount shall be used for plantation, soil/moisture conservation measures like check dams, contour trenching and bunding of terraces strengthening of the slopes to avoid landslides and to provide more greenery in the area. At least 10 times of the trees particularly the broad leaved species which have been felled by each one of the Noticees shall be planted in that area.

The Forest Department of State of Himachal Pradesh shall appoint a team for the purpose which shall work in full co-operation and co-ordination with the HPPCB, to ensure compliance of this direction.

11. All the Noticees shall submit Project Report, complete in all aspects along with application for obtaining consent to operate from HPPCB. These applications shall be duly received by the said Board. A team of two officers i.e. Environment Engineer and Junior Engineer from different regional offices would inspect the premises, prepare spot inspection report in accordance with law, collect samples of trade

effluents, sewage, get them analysed and impose appropriate conditions and methodology for treatment of the respective wastes. Consent order shall be a reasoned order providing conditions with regard to all aspects i.e. sewage, trade effluents, use of generators, MSW utilisation, source of water and complete adherence to the environment protection etc. All Noticees should construct rain water harvesting systems and the concerned authorities should not clear the development plans without making rain water harvesting systems an integral part of the clearance mechanism.

12. After preparing the report, the above-mentioned file shall be placed before the Member Secretary of the Board or before the Board itself, as the case may be, for grant or refusal of consent in accordance with law. Wherever, the consent is granted, it shall not be in excess of two years and its renewal thereof shall be granted only after due inspection and in absolute compliance of the conditions imposed in the earlier order.

13. Every Noticee shall obtain permission from Himachal Pradesh Irrigation and Public Health Department or Central Ground Water Authority (CGWA) or Himachal Pradesh State Ground Water Authority in relation to

extraction of groundwater.

14. The Committee which has been already constituted by the Tribunal *vide* its judgment dated 6th March, 2017 in Original Application No. 506 of 2015 shall also cover the area in question where the complexes of the present Noticees are situated. It will submit a complete and comprehensive report particularly in relation to carrying capacity in that area with particular reference to eco-sensitivity and seismicity of the area in question. The plan should be sanctioned by the authority only after the report submitted by the Committee is placed before the Tribunal and appropriate directions have been passed accordingly.

15. The Pollution Control Board, Town and Country Planning Department, Sub-Divisional Magistrate of concerned areas shall ensure compliance of these directions and shall submit the compliance report to the Tribunal within six weeks from the date of passing of this order.

16. During the course of arguments, it was also pointed out that there is a deficiency of staff and infrastructure with the Board and the Department, which is an impediment in carrying out their duties and functions effectively and in accordance with law.

Therefore, we direct the Chief Secretary of the State of Himachal Pradesh to consider the proposal of the respective departments for enhancement of staff and infrastructure to make functioning of the Board and the Department effective. The Department should submit the proposal within two weeks from today.

17. Since we have arrived at a clear finding that the officers of the HPPCB and the TCPD and even the Electricity Department have acted, if not in direct collusion with these Noticees, they have certainly failed to discharge their statutory and public duties appropriately. They have also failed to maintain the standards of performance expected from such officers. They, in fact, completely ignored the violations by the Noticees on both counts, environmental and town planning laws and took no effective action. We have even referred to the Court proceedings which clearly demonstrate the omissions and commissions of these officers which apparently are unbecoming of a public servant. Thus, we direct the Chief Secretary, State of Himachal Pradesh to take action against all the erring officers, particularly, Mr. Pravin Gupta, Senior Environmental Engineer, Anil Kumar, Junior Engineer and other officers of the HPPCB. One Ms. Leela Shyam, District Town Planner, Mr. Yavneshwar Singh

Naryal, Junior Engineer and other officers of the concerned department and the erring officers of the Electricity Board as well. Appropriate action against such officers shall be initiated in accordance with law, within four weeks from the date of pronouncement of this judgment and status thereof be brought before the Tribunal.

18. We further direct the Chief Secretary of the State of Himachal Pradesh, not only to confine disciplinary action against the above officers/officials but even all such other officers whether they are presently in service or not but who are found to be responsible for such omission and commission leading to these adverse environmental impacts.

27. In view of the above orders and directions, the Original Application Nos. 69 of 2017, 70 of 2017, 71 of 2017, 72 of 2017 and 73 of 2017 are disposed of with no order as to costs.

Swatanter Kumar
Chairperson

Bikram Singh Sajwan
Expert Member

Ajay A. Deshpande
Expert Member

New Delhi

30th May, 2017