

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

Original Application No. 726/2023

In re: News item appearing in The Hindu dated 25.11.2023 titled “Deforestation, ill-planned constructions and unscientific illegal mining behind Himachal Pradesh’s monsoon catastrophe”

Date of hearing: 20.12.2023

**CORAM: HON’BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON’BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Respondent: Mr. Anup Kumar Rattan, Advocate General with Mr. Divyanshu Srivastava, Adv. for the State of Himachal Pradesh (Through VC)

ORDER

1. This original application under Sections 14 and 15 of National Green Tribunal Act, 2010 (hereinafter referred to as ‘**NGT Act, 2010**’) has been registered in exercise of *suo moto* power based on an news paper item published in daily newspaper “Hindu’ on 25.11.2023 under title: ‘Deforestation, ill-planned constructions and unscientific illegal mining behind Himachal Pradesh’s monsoon catastrophe’.

2. Report says that relentless monsoon in Himachal Pradesh brought the hill states to its knees by causing immense damage to life and property.

3. Interim report suggest that deforestation, ill-planned construction activities, illegal mining along the river beds are few reasons responsible for natural calamity in the State.

4. Advanced notice was issue to State of Himachal Pradesh, pursuant whereto, a report has been filed on behalf of Town and Country Planning Department, Kasumpti, Shimla, HP wherein due to high level of rainfall, damage caused to the person and property in the State is admitted. It is

also stated that development plans are in the process of preparation, taking into account the following guidelines:

“

- *Effective Implementation of Building Bye Laws*
- *Identification of newer areas for the future development*
- *Better public transport & Improved vertical mobility*
- *Conservation of heritage buildings*
- *Introduction of Urban Design Guidelines*
- *Development of more open spaces- parks & Garden*
- *Protection of eco – sensitive areas*
- *Development from tourism network Centre & Encouragement to eco-tourism view*
- *Diversify the New economy*
- *Conservation of Forests & Plantation area*
- *Physical and Social Infrastructure Strategy Formulation*
- *Implementation Mechanism through building Bye-laws and Guidelines”.*

5. Sh. Anup Kumar Rattan, Learned Advocate General, State of Himachal Pradesh has put in appearance and stated that indiscriminate and haphazard construction including multi-storey buildings on either side of the road in District Solan is an issue pending before Himachal Pradesh High Court at Shimla in CWPIL No.13/2021 and drew our attention to High Court’s order dated 13.01.2023 where in Court has observed in para 13 and 14 as under:

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

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

development activities. It is further provided therein that the service connections (i.e. water, electricity or sewerage connections) or Completion Certificate shall not be issued unless a "No Objection Certificate" is issued by the concerned Gram Panchayat as provided under section 83A of the Act. Under Regulation 6(1) of Appendix A (under the head 'Remarks'), it is stated that the benefit of exemptions shall only be available to the residents and original inhabitants of the areas, who owned the property at the time of commencement of the Act and their natural heirs only and not to the persons who purchased land in rural areas. It is provided/clarified that for all development activities exempted from permission under section 30A, 'beyond' the prescribed limits/restrictions in Appendix 8 of the Rules, are required to apply for permission to the Director under rule 15 and subrule (1) of rule 16 of the Rules. It is also required to be noted that the provisions of the Panchayati Raj Act envisage preparation of a model plan and Development Plan. We are told that no such model plan or Development Plan is in place at present and the provisions of the Panchayati Raj Act have remained on paper. However, what is rather worrisome, is that the areas beyond planning areas and special areas are left totally unregulated. The 6 kilometer stretch, which is the subject matter of the PIL, as filed, is a case in point. It is admitted in the Affidavit of the Chief Secretary that no department or authority is vested with the powers to grant sanction for construction of buildings in the said area. The said report of the fact finding Committee appointed by the Government brings out that multi-storeyed buildings have come up on either side of the road, ranging from 4 to 9 storeys for different uses, such as residential and commercial/ tourism. From the photographs annexed to the PIL from page 84 onwards, it appears that hills have been cut and trees felled for the purposes of constructing the buildings.

14. In the facts and circumstances of the case, we find that there has been inaction and failure on the part of the State Government and its authorities, including the local authorities, to control the haphazard and indiscriminate development activities and in discharging their statutory duties under the Act, Rules, the Panchayati Raj Act and the Environment (Protection) Act, 1988 and the constitutional obligations under Article 48A of the Constitution of India. The State, as a trustee, is under a legal duty to protect the natural resources and the environment and prevent its degradation under the 'Public Trust Doctrine'. Moreover, there has been non-observance of principles of 'sustainable development' as well as 'precautionary principle' by the State which envisages that if there is risk of severe damage to humans and environment, absence of incontrovertible conclusive or definite scientific proof would not be a reason for inaction.

6. High Court has issued following interlocutory directions to the State:

- (i) The Director, Town and Country Planning, shall take steps to prepare and publish the draft Regional Plans for all the

Districts in the State of Himachal Pradesh (which Districts are already notified as 'regions' under various Notifications issued, as far back as on 23 August, 2016), after carrying out necessary survey of the regions and preparing an existing land use map (inter- alia indicating the natural hazard prone areas), which exercise the Director is duty bound to carry out under Section 5 of the Act. We direct that the Regional Plans shall inter alia also indicate/provide for "No Development Zones" for conservation and preservation of areas in their natural state, particularly the hills. This exercise shall be carried out and completed within a period of 1 year from today. We are told that in respect of two Districts ie. Solan and Lahaul & Spiti, steps have already been taken for preparation of the Regional Plans.

- (ii) The State Government shall take immediate steps to identify areas and issue appropriate Notifications so as to include such areas (as may be specified in the said Notifications), as planning areas and special areas (so as to extend the existing planning areas and special areas already notified) and/or constitute further planning areas under Section 13(1) and designate further special areas under Section 66(1) of the Act (apart from the 55 notified planning areas and 35 notified special areas), more particularly areas which have high potential of development/growth, like tourists areas and areas having proximity with tourist areas, as also areas having valley views. This shall be done within a period of 4 months from today.*
- (iii) After the Notifications are issued as directed in clause (ii) above, the Director shall prepare and publish or cause to be prepared and published (through Special Area Development Authorities in special areas, if permissible) appropriate Interim Development Plans/Development Plans in respect of these areas or part thereof after following due process including consultation with the local authorities, if any. This exercise shall be completed within 4 months from the date of issuance of the Notifications as directed in clause (ii) above. The Interim Development Plans/Development shall inter alia also indicate/provide for "No Development Zones" for conservation and preservation of areas in their natural state, particularly the hills/hills having valley views.*
- (iv) In respect of those areas which are already notified as planning areas or special areas, but there is no Interim Development Plans/Development Plans in place, the Director shall prepare and publish or cause to be prepared and published (through Special Area Development Authorities in special areas, if permissible) appropriate Interim Development Plan/Development Plan in these areas or part thereof after following due process including consultation with the local authorities, if any. The Interim Development Plans/Development shall inter alia also indicate/provide for "No Development Zones" for conservation and preservation of areas in their natural state, particularly the hills/hills having valley views. This exercise shall in the first instance be carried out for at least 3 Districts having high potential of*

development/ growth and shall be completed within 6 months from today. In rest of the Districts, this exercise shall be completed within 1 year from today. We are told that there is already an Draft Development Plan for Shimla District and proceedings in respect whereof are now pending before the Supreme Court and NGT.

- (v) After the Development Plans are notified and published, steps may be taken to prepare and publish Sectoral Plans, where deemed necessary.*
- (vi) The State Government is directed to frame a policy document in respect of conservation and preservation of hills and cutting of hills in the State, in consultation with Department of Environment, Science and Technology and such other Departments, as may be necessary, including the Pollution Control Board. This shall be done within 2 months from today. We direct that the Pollution Control Board shall play an active role in bring out the above policy document. This direction is necessary as we find that in the affidavit in reply filed by the Pollution Control Board, it has sought to extricate itself, as if it has no role to play, despite the specific stand of the petitioner that the constructions were being carried out by cutting of hills.*
- (vii) We direct that there shall be no cutting of hills in the entire State of Himachal Pradesh, unless permission is obtained from the Director, who shall call for a report and "No Objection Certificate" from the Pollution Control Board, before granting such permission.*
- (viii) In respect of areas beyond planning areas and special areas, the concerned competent authorities/local authorities are directed to prepare or cause to be prepared model plan(s) and development plan(s) in terms of the provisions of the Himachal Pradesh Panchayati Raj Act, 1994 providing for control on erection of buildings. After following due procedure, the same shall be submitted to the State Government not later than 3 months from today. The State Government shall examine and approve the same with or without such modification/s, as it deems appropriate. This entire exercise shall be carried out and completed within 6 months from today. While preparing the model plan(s) and development plan(s), the authorities shall consider all aspects including environment concerns.*
- (ix) Till the model plan(s) and development plan(s) in terms of the above direction are prepared and approved, the limitations/restrictions laid down in Section 30A of the H.P. Town and Country Planning Act read with Rule 18 and Appendix 8 of the Rules shall operate even in areas of the State which are outside/beyond the planning areas and special areas. Liberty is granted to the owners who are affected by this interim order and whose land falls outside/beyond the planning area or special area, to apply to this Court for consideration of their proposal/Application by the Director, Town and Country Planning, if such proposal/Application is made to the Director under Rule 15*

and 16(1) of the Rules, (notwithstanding the fact the land is located in an area outside the planning area or special area). We make it clear that in respect of all areas falling outside the Interim Development Plan/Interim Development Plan, irrespective of whether they fall 'within' the planning area or special area or 'outside' the planning area or special area, as stated in Regulation 6(1) of Appendix A (under the head 'Remarks'), the benefit of exemptions shall only be available to the residents and original inhabitants of the areas, who owned the property at the time of commencement of the Act and their natural heirs only and not to the persons who purchased land in rural areas.

- (x) We hope and trust that the authorities of the State Government comply with this order in letter and spirit so as to save this beautiful State of Himachal Pradesh from further haphazard and indiscriminate constructions/development activities, particularly by cutting hills, which is causing immeasurable harm to the environment and which is in violation of the principles of sustainable development, not to mention the risk to the lives and property of occupants on account of any possible mishap of such building whose construction may be substandard and/or the building being constructed without taking into account the slope stability and sub-soil conditions.*
- (xi) We make it clear that any constructions/development in violation of this order shall entail an order of demolition.*
- (xii) We may not be understood to be against development in any manner. Our endeavour in issuing the above directions is only to see that the development activities in the State are regulated.*
- (xiii) The Director shall file an Action Taken Report every two months setting out the progress made in respect of the above directions and the directions issued by earlier orders passed by the Court. The timelines directed by this order shall not be extended unless an appropriate Application is made by the Respondents.*
- (xiv) This interim order would be subject to such further interim orders/directions as may be modified by the Court. We also make it clear that we have not gone into the issue of arbitrariness or reasonableness of exemptions from permissions and/or the limits prescribed in section 30A or Rule 13/18 and Appendix to the Rules.*
- (xv) The ad-interim directions issued by earlier orders passed by the Court would continue to operate."*

7. Learned Advocate General has also pointed out that units indulged in illegal mining have also been identified and their operations have been suspended. When questioned, it could not be disputed that neither any

environment compensation has been imposed upon identified violators by applying the principle of Polluter Pays' nor punitive or preventive action has been taken under the provisions of Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as '**Water Act**'), Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as '**Air Act**') and Environment Protection Act, 1986 hereinafter referred to as '**EP Act**').

8. Further, report has been filed by Additional Secretary EST &CC on behalf of Chief Secretary, Government of Himachal Pradesh but there also we do not find any effective steps taken for preventing illegal deforestation, mining etc. as complained in the newspaper report.

In our view substantial question relating to environment due to implementation of scheduled enactment under NGT Act, 2010 has arisen.

We accordingly implead the following as respondents:

- 1) State of Himachal Pradesh through Chief Secretary, Shimla;
- 2) Himachal Pradesh Pollution Control Board, Him Parivesh, Phase-III, New Shimla-171009;
- 3) Principal Secretary, Town and Country Planning, Govt. of HP, Shimla;
- 4) Additional Chief Secretary/Principal Secretary, Forest/Environment, Himachal Pradesh, Shimla;
- 5) Director, Mining/Industries, Himachal Pradesh, Shimla.

9. Sh. Anup Kumar Rattan, Learned Advocate General State of Himachal Pradesh assisted by Sh. Rakesh Daulta, Additional AG, HP accepts notice on behalf of all respondents except HPPCB.

10. Registry is directed to issue notice to HPPCB i.e. Respondent No.2.

11. All the respondents shall file their response/reply within two months.

12. List the matter on 29.02.2024.

Sudhir Agarwal, JM

Dr. A. Senthil Vel, EM

December 20, 2023
Original Application No. 726/2023
JG