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

ORIGINAL APPLICATION NO. 635 OF 2017

(M. A. NO.1396/2017 & M. A. NO.1516/2017)

IN THE MATTER OF:

Ramesh Chand
S/o Late Sh. Nand Lal
R/o Village Parchu
P.O. Sujao Piplu
Tehsil Sarkaghat
District Mandi-175024
Himachal Pradesh

.....Applicant

Versus

1. State of Himachal Pradesh
   Through Chief Secretary
   Govt. of Himachal Pradesh
   Shimla-1710002
   Himachal Pradesh

2. Department of Tourism
   Through Secretary Tourism
   Govt. of Himachal Pradesh
   Shimla-1710002
   Himachal Pradesh

3. Department of Town and Country Planning
   Through Additional Chief Secretary
   Govt. of Himachal Pradesh
   Block 32A, Yogna Bhawan
   SDA Complex, Vikas Nagar
   Shimla-1710009
   Himachal Pradesh

4. Himachal Pradesh Public Works Department
   Through Executive Engineer
   National Highway Division
   H.P.P.W.D. Pandoh

5. Himachal Pradesh Pollution Control Board
   Through Member Secretary

Him Parivesh, Phase-III
Shimla – 171009
Himachal Pradesh

6. Department of Forest
Through Principal Chief
Conservator of Forests
H.P. Forest Department
Govt. of Himachal Pradesh
Shimla-1710002
Himachal Pradesh

7. Promila Devi
W/o Sh. Mahener Singh Thakur
R/o Village Chanjyar
P.O. Dhawali
Tehsil Sarkaghat-175024
District Mandi
Himachal Pradesh

8. Rajat Thakur
S/o Sh. Mahener Singh Thakur
R/o Village Chanjyar
P.O. Dhawali
Tehsil Sarkaghat-175024
District Mandi
Himachal Pradesh

COUNSEL FOR APPLICANT

Mr. Raj Panjwani, Senior Advocates with Mr. Aditya Dhawan and Ms. Kiran Dhawan, Advocates

COUNSEL FOR RESPONDENTS:

Mr. D.K. Thakur, AAG and Ms. Seema Sharma, DAG
Mr. Ajay Marwah, Advocate for HPPCB
Mr. Suresh Chander Sharma, Advocate for MC Manali.
Mr. M.S. Kalra, Advocate for Citrus Manali Resort
Mr. Deepak Kaushal, Advocate
Mr. Mandeep Kalra, Adv. and Mr. Nishant Shankar, Adv.
Mr. Sharan Thakur and Mr. Vijay Kumar, Advocates

JUDGEMENT

PRESENT:
Hon'ble Mr. Justice Swatanter Kumar (Chairperson)
Hon'ble Mr. Justice U.D. Salvi (Judicial Member)
Hon'ble Dr. Nagin Nanda (Expert Member)

Reserved on: 15th December, 2017
Pronounced on: 18th December, 2017

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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)

In the Original Application No. 635 of 2017 which relates to illegal, unauthorized and indiscriminate construction raised in Kullu, Manali, various orders including the order dated 27th October, 2017 was passed by the Tribunal directing the concerned authority to submit the detailed report on various aspects. It will be appropriate to us to refer order dated 27th October, 2017 at this stage, which is as follows:-

> *" The Learned Counsel appearing for the respective respondents pray for time to file replies. Let replies now be positively filed within 10 days from today. Rejoinder(s) thereto, if any, be filed within one week thereafter.*
>
> *The State of Himachal Pradesh, Department of Town Planning and the Himachal Pradesh Pollution Control Board shall submit besides answering of the application of the applicant the following:-*
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> 1. *How many hotels are operating in the city of Kullu, Planning Area, particularly in and around the Manali.*
> 2. *Out of them how many hotels have their own STP and other anti-pollution devices installed and how many are operating without obtaining consent of the Himachal Pradesh Pollution Control Board.*

3. *How many hotels out of them are located or constructed on the forest land.*
4. *How many cases of unauthorized construction which includes the construction which has been raised without obtaining sanction of the plan, NOC or deviation or variations by addition of floors by construction of additional rooms beyond the sanction plan.*
5. *What action the State Government and the Pollution Control Board has taken in that behalf.*
6. *We direct Town and Country Planning Department and the State of Himachal Pradesh to submit whether any study or data have ever been prepared for the Kullu Planning Area with particularly Manali and its surrounding areas as to its carrying capacity, kind of development that should be permitted and keeping in view the fact that this area falls under Seismic Zone 4 and 5.*

We make it clear that in the event of default in filing the reply, the Tribunal shall pass appropriate orders in accordance with law.

Notice be issued to Municipal Committee, Manali. They shall also produce the record to the Tribunal to show as how many hotels they have granted NOC.

List this matter on 15th November, 2017."

2. Initially the case related to the hotel constructed by Shri Mahinder Singh Thakur, owner of the Hotel Manali Valley. However, on a subsequent date Mr. Thakur appeared and made a statement that he would demolish the unauthorized construction as well as restore the Government land occupied and take all anti-pollution measures to the satisfaction of the concerned authority. The team headed by S.D.M. ensure compliance and in view of the statement made by Mr. Thakur which was given effect to no further orders were called for and not passed. The other major default pointed out was of

the hotel Citrus Manali Resort at Manali. This hotel is stated to be having raised large scale construction which was not permissible and was operated without the consent of the Board. Besides other deficiencies, discrepancies and environmental offences that it had committed, shortly we will deal with all these aspects in some detail.

3. We may notice that the original records of Himachal Pradesh Pollution Control Board and Town and Country Planning Department had been produced before the Tribunal. The Noticee addressed the Tribunal on various issues and produced certain documents in support of the contention raised by the Learned counsel appearing for the Noticee, however no evidence had been filed. It was stated in the notice that the case was heard on different dates and hence a detailed order passed on 08th December, 2017, thereafter the case was again heard on 12th and 13th December, 2017 when it was listed for further arguments today.

4. The case of the Town and Country Planning Department is that the Town and Country Planning Act came into force in relation to the area in question on 24th June, 1995. The Development plan became effective under the provision of this act on 18th January, 2011. The structures that were in existence at the time of coming into the force of the Act and the development plan, were recorded in the records of the Department. Prior to coming into force of the Act, constructions could be raised in these areas with the permission of the Gram Panchayat provision under section 13 and 14 of the Himachal Pradesh Gram Panchyat Act. The Noticee had applied for sanctioning

of development plan/NOC on 11th August, 2006. Four storeyed constructions were in existence, the sanctioned was sought for raising 2+1 storeys on the existing structure of two storeys adjacent to the four storey that were in existence. There were in all 37 rooms for which the permission was granted and 37 rooms were duly recorded as pre-existing structures. An inspection was conducted on 22nd August, 2006, the case was forwarded to the Director at Shimla on 25th August, 2006 from where it was returned on 07th September, 2006 stating that the local authority itself has approved the plan. Consequently, on 14th September, 2006 the permission was granted. In the inspection report it was also noticed that the distance from the river varies from 15 Meters to 30 Meters.

5. The Noticee had submitted revised plan for raising further constructions on 24th December, 2011. The Noticee had filed an application for submission of revised plan on 02nd September, 2011, however the same had arised on 24th December, 2011 and 28th December, 2011. An inspection was conducted and it was found that there was deviation and impermissible construction raised to the extent of 2776.11 Sq. Meters which included extra floor on the 2 floors construction that was permitted, it also included unauthorized construction of the cottage on ground floor and the an extra floor was constructed on the cottage block beyond FAR. The department then issued a Notice under section 39 of the Town and Country Planning Act for unauthorized construction and demolition etc. On 5th August, 2017 and then on 1st December, 2017, no further action has been taken there upon. It is also pointed out from the record that on 04th

February, 2012, the application of the applicant for composition of offence under section 39-C was rejected by the Department while relying upon the judgment of the Hon'ble High Court permitting only three storied construction. The Learned Counsel appearing for Town and Country Planning Department has also brought to our Notice that the High Court had passed different orders in Civil Writ Petition No. 532/1995 Ms. Trisha Sharma vs. State of Himachal Pradesh. Vide order dated 25th November, 1998 the Hon'ble High Court had directed that no new construction shall be started within the radius of 500 meters from both banks of river Beas and river Ravi in the municipal towns and under the Panchayat jurisdiction of the State. Order was also applied to Mandi town area falling from Mandi to Manali, directions in relation to mining etc. were also passed by the same court. The Hon'ble High Court appointed a Committee which had submitted its report, which report and recommendations were accepted by the Hon'ble High Court and vide its order dated 22nd May, 1995, the Hon'ble High Court had directed as follows:-

(i) *"Residential houses are permitted to be constructed beyond 50 meters from the edge of both banks of rivers Beas and Ravi;*
(ii) *Shop-houses may be constructed beyond 100 meters from the edge of both banks of above two rivers;*
(iii) *House, which are already in existence within 500 meters on both banks of rivers Beas and Ravi are permitted to do necessary repairs and*
(iv) *Cottage industries are also permitted to be established beyond 50 meters from the edge of both banks of above two rivers. No other construction shall take place within the limit of 500 meters from the edge of both banks of rivers Ravi and beas.*
(v) *Further directions were issued to Director, Town & Country Planning to identify the additional planning areas and inclusion of left-out areas (if any).*

(vi) The ban shall not apply to the construction and maintenance of roads and other public utility services."

6. It is contended that the construction raised by the Noticee is in violation to the order of the Hon'ble High Court. The Learned Counsel submits that in view of the deviation and violation, the NOC was not issued, however no specific rejection order was also issued. The Learned Counsel appearing for Pollution Control Board of Himachal Pradesh has submitted that the Noticee had started its hotel without obtaining consent to establish and/or consent to operate initially. As recorded in the order dated 07th December, 2017 the Learned Counsel appearing for the Himachal Pradesh Pollution Control Board, had submitted that "the hotel had moved an application for obtaining consent of the Board to establish. According to the Pollution Control Board they have neither applied for consent to establish and nor applied for consent to operate. In fact the Board has issued Notice on 01st January, 1993. Thereafter the consent to establish was issued in the year 1998 and consent to operate was granted on 29th August, 2002. The Notice was issued to the hotel for operating without consent of the Board in the year 2004. An order was issued for disconnection of electricity and water supply then the order was withdrawn on 27th December, 2004. Consent to operate for renewal is issued vide order dated 31st March, 2005. The consent was granted to them upto 31st March, 2009. Various correspondences were exchanged between the Board and the Noticee hotel in relation to the renewal of consent, upgrading of STP etc. The consent to operate was applied for expansion which was rejected by the Board *vide* order

dated 19th September, 2011. The fee for renewal was submitted but it was never granted by the Board. Show Cause Notice was issued on 08th August, 2013 even the samples collected, had failed." The Learned Counsel appearing for the applicant submitted that the Consent to Operate with 112 rooms was granted for one year 2015-16, and for 37 rooms thereafter the hotel has operated without consent of the board.

7. The Learned Counsel appearing for the applicant referred to the inspection report of the Pollution Control Board dated 18th December, 2009 pointing out that 112 rooms had already been constructed and there were DG set and Noticee was causing pollution and environmental degradation.

8. The Learned Counsel appearing for the Noticee has submitted that the judgment of Hon'ble High Court in the case of Trisha Sharma Supra itself has provided exemption to the existing structures and therefore the case of the Noticee will not fall in the category of violators. It is further stated that the plans for construction were raised prior to coming into the force of Development Plan. The application for further construction filed on 11th August, 2006 had been granted by the department and even the revised plan that had been submitted were also allowed by the department and the applicant had raised the construction in accordance with law. It is further stated and in fact the Learned Counsel has produced before the Tribunal the document dated 14th September, 2006 where the plans have been sanctioned. It is further the contention of the Noticee

that they had applied for obtaining consent to operate from the Board from time to time and even they had deposited the fee in that behalf, however, the department on its own lethargy did not issue any consent to the Noticee. The Noticee has even raised lot of greenery in that area and is compliant of the environmental laws.

9. The Learned Counsel appearing for the Noticee further submits that even as on date the Noticee is within the prescribed FAR 1.75 and in fact even below that. The Learned Counsel also contend that Town and Country Planning Department, has served the Notice for deviation and violation after the lapse of 12 years as there were noticed in 2006 and the Notice had been issued for the first time on 05th August, 2017. In fact, even this Notice has not been received by him and clearly violated the law. The records of the respondents had been produced before the Tribunal and he could not file an affidavit in response thereto.

10. Once the provisions of the Town and Country Planning Act, 1977 (hereinafter referred as 'Act') are made applicable and in furtherance thereto the Development Plan becomes operative. It is mandatory for any person to raise construction strictly in accordance with the Plan and subject to the Development Plan being sanctioned by the Competent Authority. The Competent Authority is under statutory obligation to take into consideration the various stated factors before it sanction the plans. The plans must and ought not to be sanctioned in a routine or in a casual manner without taking into consideration the environmental impacts assessment thereof in accordance with

law. In relation to the area in question at Manali, the Act, came into force on 24th June, 1995, while Development Plan was made applicable with effect from 18th January, 2011. Immediately upon coming in force of the Act the Hon'ble Supreme Court of India in the case of *M.C. Mehta Vs. Kamal Nath & Ors. 1997 (1) SCC 388* while dealing with the construction not only on the bank but even on the river itself held that the doctrine of Public Trust has been violated by the Authorities as well as by the Project Proponents and there was serious degradation of environment and callous interference with the natural flow of the river Beas. The Hon'ble Supreme Court of India not only adversely commented upon the grant of permission but even quashed the lease deed granted in favour of the Project Proponent. The relevant parts of the said judgment read as follows:

> "*27. Our legal system – based on English Common Law – includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.*
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> *28. We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasing complex society, find it necessary to encroach to some extent open lands heretofore considered in-violate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislature the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private*

ownership or for commercial use. The esthetic use and the pres time glory of the natural resources, the environment and the eco-systems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary in good faith, for the public good and in public interest to encroach upon the said resources.

29. Coming to the facts of the present case, large area of the bank of river Beas which is a part of protected forest has been given on a lease purely for commercial purposes to the Motels. We have not hesitation in holding that the Himachal Pradesh Government committed patent breach of public trust by leasing the ecologically fragile land to the Motel management. Both the lease – transactions are in patent breach of trust held by the land which is a part of river – bed. Even the board in its report has recommended delousing of the said area.

30. This Court in Vellore Citizens Forum V. Union of India & Ors. MANU/SC/0686/1996 : AIR1996 SC2715, explained the "Precautionary Principle" and "Polluters Pays principle" as under:

Some of the salient principles of "Sustainable Development" as culled out from Brundland Report and other international documents, are inter – Generational Equity, Use and Conservation of Natural Resources, Environmental Protection, the Precautionary Principle, Polluter Pays Principle, Obligation to assist and cooperate, Eradication of Poverty and Financial Assistance to the developing countries. We are, however, of the view that "the Precautionary Principle" and "the Polluter Pays" principle are essential features of "Sustainable Development". The "precautionary Principle" – in the context of the municipal law – means :

(i) Environment measures – by the State Government and the statutory authorities – must anticipate, prevent and attack the causes of environmental degradation.

(ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

(iii) The "Onus of proof" is on the actor or the developer/industrialist to show that his action is environmentally benign.

(iv) The "Polluter Pays" principle has been held to be a sound principle by this Court Indian Council for Environ-Legal Action v. Union of India MANU/SC/1112/1996 : (1996)2SCR503. The Court observed. "We are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in

this Country". The Court ruled that "Once the activity carried on is hazardous or inherently dangerous, the persons carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carry on his activity. The rule is premised upon the very nature of the activity carried on". Consequently the polluting industries are "absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, pollutants lying in the affected areas". The "Polluter Pays" principle as interpreted by this Court means that the absolute liability for harm to the environment extends not only the compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of "Sustainable Development" and as such polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.

The precautionary principle and the polluter pays principle have been accepted as part of the law of the land.

31. It is thus settled by this Court that one who pollutes the environment must pay to reverse the damage caused by his acts.

32. We, therefore, order and direct as under:

1. The Public Trust doctrine, as discussed by us in this judgment is a part of the law of the land.

2. The prior approval granted by the Government of India, Ministry of Environment and Forest by the letter dated 24, 1993 and the lease – deed dated April 11, 1994 in favour of the Motel are quashed. The lease granted to the Motel by the said lease-deed in respect of 27 bighas and 12 biswas of area, is cancelled and set aside. The Himachal Pradesh Government shall take over the area and restore it to its original natural conditions.

3. The Motel shall pay compensation by way of cost for the restitution of the environment and ecology of the area. The pollution caused by various constructions made by the Motel in the river bed and banks on the river Beas has to be removed and reversed. We direct NEERI through its Director to inspect the area if necessary, and give an assessment of the cost which is likely to be incurred for reversing the damage caused by the Motel

to the environment and ecology of the area. NEERI may take into consideration the report by the Board in this respect.

4. The Motel through its management shall show cause why pollution fine in addition be not imposed on the Motel.

5. The Motel shall construct a boundary wall at a distance of not more than 4 meters from the cluster or rooms (main building of the Motel) towards the river basin. The boundary wall shall be on the area of the Motel which is covered by the lease dated September 29, 1981. The Motel shall not encroach / cover/ utilize any part of the river basin. The boundary wall shall separate the Motel building from the river basin. The river bank and the river basin shall be left open for the public use.

6. The Motel shall not discharge untreated effluent into the river. We direct the Himachal Pradesh Pollution Control Board to inspect the pollution control devices/ treatment plants set up by the Motel. If the effluent / waste discharged by the Motel is not conforming to the prescribed standards, action in accordance with law be taken against the Motel.

7. Himachal Pradesh Pollution Control Board shall not permit the discharge of untreated effluent into river Beas. The Board shall inspect all the hotels/institutions/ factories in Kullu – Manali area and in case any of them are discharging untreated effluent / waste into the river, the Board shall take action in accordance with law.

8. The Motel shall show cause on December 18, 1996 why Pollution – fine and damages be not imposed as directed by us. NEERI shall send its report by December 17, 1996. To be listed on December 18, 1996.

33. The Writ Petition is disposed of except for limited purpose indicated above."

11. The Hon'ble High Court of Himachal Pradesh at Shimla vide its order dated 25th November, 1998 in Civil Writ Petition No. 532/1995 Trisha Sharma Vs. State of Himachal Pradesh, realizing the sever threat to the nature and the ecology of the area had directed that even the residential areas would not be constructed beyond 50 mtrs. from

the edge of both banks of river Beas. The shops and houses were to be constructed beyond 100 Mtrs. from the edge of the rivers banks. The houses within 500 Mtrs. were only permitted to do the repair work. This demonstrates the sensitivity and environmental concern of the Courts in relation to environment and natural resources. The restriction on constructions from the distance of 500 Mtrs., which was absolute earlier in terms was modified by the High Court vide its order dated 22nd May, 1995 relaxation was also limited to the properties mentioned in Annexure A and B in the report of the Financial Commissioner/Secretary.

12. From the above dictum of the Hon'ble Supreme Court of India it is clear that the protection of natural resources had taken precedents over unsustainable development. The exercise of administrative power of the Authorities concerned came to be severely deprecated. However, the Authorities fails in following the dictum of the Hon'ble Supreme Court of India contributed in destruction of natural resources in the same very area.

13. It also needs to be noticed here that the entire area of Himachal Pradesh particularly the area forming part of the Himalayan including Shimla, Dharmshala and Manali fall in seismic zone of IV and V respectively. These are eco-sensitive and ecologically fragile areas with limited resources. They ought not to be subjected to indiscriminate and unsustainable development and should be protected by adopting precautionary principle. The larger Bench of this Tribunal had the occasion to examine at some length, the

consequences of indiscriminate and unsustainable development in Shimla in the case of *Yogendra Mohan Sengupta Vs. Union of India and Ors.* – Original Application No. 121 of 2014 decided on 16th November, 2017. Before this judgment was pronounced the Tribunal had appointed a high powered Committee of specialized experts from different fields of environment and ecology and that Committee had submitted a detailed report dated 24th May, 2017. The Committee commented adversely upon indiscriminate unauthorized constructions all over Shimla including the core area and also declared that carrying capacity of Shimla would not permit further constructions particularly which are unauthorized multi-storied and do not adhere to the prescribed norms. The Committee also referred to shortage of drinking water and capacity to deal with the municipal solid waste and sewage etc. The recommendations of the Committee were accepted by the Tribunal and even the meeting of all the stake-holders were held before the judgment was pronounced. The relevant part of judgment which has bearing on the matter in issue is read as under:-

> *"It is not clear what studies had been carried out and what data was collected to satisfy essential requirements of the Act of 1977 for the purposes of classification of areas, relaxation in construction and other stated parameters. It is expected from a public authority that it would carry proper studies and collect scientific data before and record the reasons for recommending substantial change in the Interim Development Plan. There are no reasons whatsoever stated before us as to why the Interim Development Plan could not be finalized and a Development Plan as contemplated under Section 18 to 20 of the Act of 1977 was not published. No plan would require a period of more than 30 years to be finalized, creating scope for unauthorized, unplanned and haphazard development to be carried on in the entire city and the State. The Core area, Restricted area and the Green areas*

were defined, but that was not sufficient because only the areas that fell under these categories was stated in this Notification, which excluded some of the areas that were specified in the Notification of 2000. The 'other areas' were stated to be the areas that comprised of all other parts of Shimla excluding Core and restricted areas. Would that mean that the green areas would be treated as other areas and not a special class as stated in the earlier Notification?

75. The areas falling under High Sinking prone areas and Sliding areas were specified in this Notification. It also specified the building regulations in relation to the specified areas. The regulations applicable to Core areas were also to be applicable to the Heritage area. Besides which, it was also required that façade of the buildings should be maintained on the old lines in case of reconstruction of existing buildings. The façade of new buildings on vacant plots was required in conformity with the architectural features and elements of the adjoining buildings for maintaining aesthetics of existing surrounding buildings and no new construction was to be allowed in green patches in this areas. The Green areas construction was allowed on old lines permissible with same plinth area and number of stories. The Core and Restricted area, regulations specified in clause 10.4.8 along with regulation, permitted reconstruction and new construction on vacant plot shall be on the basis of a structural design in consonance with Geological Report from the competent authority. It permitted mixed land use, sub division of land, provided minimum area height etc., in regard to the entire Shimla Planning Area. In the event, breach of the terms and conditions, the NOC issued shall liable to be withdrawn. The inspection squad consisting of State Town Planner, Tehsildar and Planning Officer were required to conduct random checks of the construction activities and perform inspection of records pertaining to planning permissions, NOC and unauthorized constructions going on in Shimla Municipal Corporation Area, taking cognizance of deviations and taking appropriate action without undue delay.

76. The State of Himachal Pradesh vide Notification dated 13th January, 2014, constituted a Committee of Urban Development Minister as Chairman, Pr. Secretary-cum-FC (Revenue) and Secretary (Town and Country Planning) as Member to examine anomalies in the demarcation of green pockets in Shimla Planning Areas and submit its report to the Government within one month.

77. Yet another Notification was issued by the State of HP on 17th August, 2015, being notification dated 13th August, 2015 amending para 10.4 of Interim Development Plan as notified on March, 1979. Para 10.4 titled as Zoning

Regulations in the Interim Development Plan is primarily intended to promote planned development, demarcation of Shimla Planning Areas and zone wise categorization of such planning area. This Notification stated the areas to be Core area, Non-core area, Green area, Heritage area, Heritage buildings, Cemeteries and Sliding areas. The Notification on somewhat similar lines like the Notification dated 24th March, 1979 stated the composition of these respective areas. It prohibited establishment of an industry in the core area and provided the dimensions of the minimum Plot Area, minimum Set Backs, maximum Floor Area Ratio and maximum height. Non-core areas were identified as the areas except Green area, Heritage area and Rural area and provided the regulations to cover such areas. In this area change of land use and change of building use were permitted by the competent authorities. Even in the core areas change of land use and change of building use both were permitted subject to the conditions as may be imposed by the competent authority. Reconstruction of existing buildings on old lines except heritage buildings was also permitted. It also prescribed the minimum width of path abutting one side of plot as 3 mtr. The green area falling in core area and non-core area was also detailed under para 10.4.3 and it covered all the forest areas stated under the 17 categories. In green area only reconstruction on old lines was permissible with same plinth area and number of stores. In existing buildings, the need based additions of lift, ramp, toilet and underground rain water harvesting tank, shall be permissible by the State Government on abutting land without felling of trees. The heritage area, heritage buildings and cemeteries were also detailed in para 10.4.4 (1). The heritage area was further divided into two categories, namely, built heritage and natural heritage. Construction of new buildings on vacant sites, in this area was also permitted upon compliance of the conditions spelled out in sub paras of para 10.4.4 (3). Limit of rural areas of non-core area were also prescribed. In the rural area any person who owns land was exempted from permission for the development activities as specified under sub-section (1) of Section 30-A of the Act of 1977 upto prescribed limit as stated. Clause 10.4.6, defined and provided the limits of sinking and sliding area and large area comprised of the same. Regulations as applicable for core area and non-core area shall be applicable in sinking and sliding area. Reconstruction or new construction on vacant plot shall be allowed on the basis of a structural design and soil investigation report and in consonance with the Geological Report of the competent authority.

78. This Notification dated 13th August, 2015, postulates construction and/or reconstruction practically in all areas without exception, of course subject to compliance of the

conditions stated in the Notification. At the cost of repetition, we may notice that no study, data scientifically collected and/or any appropriate consideration/proposal upon due application of mind to various aspects of environment and ecology have been placed on record before the Tribunal, which could justify such wide range amendments to the interim development plan that to without even finalizing the development plan in consonance with the provisions of Section 18-20 of the Act of 1977. There is not even an iota of material placed by any of the official respondents, which could even remotely suggest that such indiscriminate and unsustainable development in the eco-sensitive Core areas, forest areas and particularly the areas which are Shrinking and Sliding and/or are open to serious seismic threats, such development would not meet the ends of protecting the environment and the natural resources. In fact, in our considered view, the authorities would need very strong reasons for making such widespread amendments of such magnitude."

14. We may also still refer to another judgement of this Tribunal in the cases of *Society for Preservation of Kasauli and its Environs (SPOKE) Vs. Bird's View Resort, Chelsea Resorts, Hotel Pine View, Narayani Guest House and Nilgiri Hotel'* in the judgment pronounced on 30th May, 2017. More recent judgment of the Tribunal is in the case of Society for Preservation of *Kasauli and its environs (SPOKE) Vs. Barog Heights Hotel – Original Application No. 274 of 2017*. In both these judgments again upon the recommendations of the Committee constituted by the Tribunal, orders were passed including directing demolition of the unauthorized and unplanned construction and payment of environmental compensation.

15. In the case of *Centre for Public Interest Litigation and Ors. V. Union of India and Ors.* (2012) 3 SCC 104, the Supreme Court of India provided the dimensions of this doctrine and duties of the State as follows:

> *"69. As natural resources are public goods, the doctrine of equality, which emerges from the concepts of justice and fairness, must guide the State in determining the actual mechanism for distribution of natural resources. In this regard, the doctrine of equality has two aspects: first, it regulates the rights and obligations of the State vis-à-vis its people and demands that the people be granted equitable access to natural resources and/or its products and that they are adequately compensated for the transfer of the resource to the private domain; and second, it regulates the rights and obligations of the State vis-à-vis private parties seeking to acquire/use the resource and demands that the procedure adopted for distribution is just, non-arbitrary and transparent and that it does not discriminate between similarly placed private parties."*

16. Despite the above enunciation of principles of law in the field of environment the Authorities still persisted with permitting unsustainable developments in these areas. The constructions were permitted on the river Banks/floodplains, contrary to the permissible gradient and in the green areas. Huge construction of concrete has been permitted in the eco-sensitive area. It has created a blot on the beauty of the natural and pristine hills and put intolerable pressure on the natural resources. They had even gone to the extent of cutting of hills and converting them into plains for construction purposes. In those beautiful areas of Himalayan no appropriate measure for management of municipal solid waste and sewage system had been taken and measures for environment protection were directed to be taken on repeated occasions.

17. It was in such cases that Hon'ble Supreme Court of India directed that compounding is not to be done with the violations that are deliberate in design and are reckless or motivated. Only marginal or insignificant accidental violations made unconsciously after endure

to comply with the requirements of law can alone qualify for regularisation of compounding, which itself not a rule but a rare exception. We may refer to the judgment of the Hon'ble Supreme Court of India in the cases of *Friends Colony Development Committee Vs. 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. Vs. State of Haryana and Ors.,* (2006) 7 SCC 597. In these cases the Hon'ble Supreme Court of India not only denied the relief of regularisation to the Applicant but even directed demolition of property/market including in the case of *M.I. Builders Pvt. Ltd. vs. Radhey Shyam & Ors. (1999) 6 SCC 464*.

18. Following the above principle, the Tribunal notice various judgment including one referred above had also directed demolition as there could be no escape from compliance to the law and adherence to the principle of sustainable development. The persons who raise constructions without even taking recourse to the prescribed procedure for grant of sanction of plans and raise huge constructions particularly on the river bank or flood plain and in violation of other norms relatable to the protection of natural resources and environment cannot even be heard to take up plea of regularisation or compounding.

In light of the above principles of the environmental jurisprudence, now we revert back to the discussions on merits of this case.

19. It is not even in dispute that the constructions on the area admeasuring about 4831 Sq. Mtrs. which according to Noticee is 6000 Sq. Yards (5016.722 Sq. Mtrs.) was raised without taking any permission from the concerned Gram Sabha. Once the Act came into force, according to the Department of Town and Country Planning there were 4 – storied structure in existence along with inter-connected to another block of 2 storeys. This construction was raised without any permission. Even when the Act came into force in the year 1995 neither the steps were taken by the Noticee to get the Plan sanctioned in accordance with law, nor the Department took any steps to ensure whether such structure could be permitted to operate as the commercial activity right on the river bank. All the Departments of the Government were completely silent on the issue. It may be noticed here that the Tourism Department is required to issue registration certificate for carrying hotel activity, the Planning Department is to ensure that sustainable construction in adherence to the provisions of the Act takes place and the Pollution Control Board has to ensure that the construction does not cause pollution of any kind and operates only upon taking Consent to Operate from the Himachal Pradesh Pollution Control Board. It is regretful that none of these Departments ever took any steps for enforcing the laws on the one hand and protection of the environment on the other.

20. In the year 1995, during the floods the Noticee lost the area of nearly 1000 Sq. Mtrs. which was corroborated by Noticee in the Government records. This itself shows that the land upon which the construction was raised even prior to the coming into force of the

Development laws was right onto the river bank or flood plain of river Beas.

21. It was for the first time on 11th August, 2006, the Noticee applied for permission and sanction of plan for construction of two storeys and one attic floor. It is stated that the Department had conducted inspection on 22nd August, 2006. After the inspection for which no proper inspection report is available on record, however noting of the noting sheet file reflects, the existing structure at the site with number of storeys, number of rooms, set-backs and the presence or otherwise of the protection measures, facilities available and the anti-pollution measures that have been taken by the Noticee in relation to municipal solid waste, sewage and protection of natural resources. On the basis of the application, the Competent Authority is stated to have granted permission/sanction for construction of two storeys and an attic floor on the existing structure of two stories on the block on land in question. On the basis of this permission and subsequent there to, without any further permission, the Noticee constructed many rooms on the same piece of land. At this stage we would refer to certain facts that appears from the original record of the Department. For the following reasons, amongst others, we express our serious doubt in relation to correctness and authenticity of the so called permission granted by the Department:-

(a) No proper inspection report giving the above details had been prepared at site. In fact all the officers present before the Tribunal including the Additional District Town Planner and Ms.

Reetu Mahindroo, Assistant Town Planner, O/o. Divisional Town Planner at Kullu; Mr. Jagdeep Singh Thakur, Planning Officer, O/o. Planning Office, Manali and Mr. Naveen Thakur, Junior Engineer, O/o. Planning Office, Manali, nobody even was prepared to own responsibility that they have actually visited the site and measured the existing construction and the basis for granting further permission.

(b) The relevant page of the noting sheet which is unpaged is also in torn/mutilated condition. Although notings on the back of the same page of the same year and time is intact and no further page of noting sheet is mutilated in the file. However, a copy of it is available which we would shortly discuss.

22. The permission that is alleged to be issued on 14th September, 2006 itself does not stand the test of scrutiny. Firstly, one file number was written on that paper in black ink which was scored out and on another file number `1857' was written. Interestingly, the number stated to be the number of file which is written in blue ink with the date as 14th September, 2006 in blue ink, while the hand written content is in black ink. This letter does not contain any specification as to how many storeys were permitted to be constructed, what was the total covered area and what was the design of the building that was permitted to be constructed under this letter. Even the column with regard to reference of the application by the Noticee was kept blank. However, the signatures of the officer are again in blue ink. The

Noticee during the course of hearing had even placed on record the plan that was stated to be sanctioned by the authority.

23. According to this plan, plot area was stated to be 5016.72 Square Meter while the Sanctioning Authority noticed that the plot area as 4831 Square Meter on the same Khasra Numbers as specified. This sanctioned plan does not bear the date on which it was sanctioned. According to this plan, the total covered area is stated to be 5780.89 Square Meters which included the proposed as well as the existing structures. The Map does not contain any date of sanctioning. According to the Noticee, the revised plans were again submitted by him on 24th December, 2011. The inspection was conducted and it has been noticed again on the noting file, it was found by the Department that an excess area of 2776.11 Square Meter was constructed by the Noticee which was unauthorised and in complete deviation to the permission granted. This included construction of an extra floor on the existing structure of two storyed as well as extra floor on the cottage block. The applicant contends that its plan for construction of 112 rooms had been sanctioned by the authorities.

24. On the basis of this inspection report and keeping in view the order of Hon'ble High Court of Himachal Pradesh vide letter dated 04th February, 2012 the application for permission to compound dated 24th December, 2011 on the same Khasra numbers admeasuring 4831.00 Square Meters was rejected and it was stated that no compounding in view of Hon'ble High Court's order could be

permitted. The Noticee submits that vide the sanction dated 14th September, 2006, the entire proposed construction had been sanctioned and nothing more was required to be done. This contention is contradictory to the very stand of the Noticee and his conduct before the Department as well as before the Tribunal. If the entire structure had been sanctioned on 14th September, 2006 as stated, there was no occasion for the Noticee to file an application on the basis of revised plan, either for fresh structure or regularisation/compounding of the existing structures. The Noticee had attempted its best to take advantage of the irresponsible performance of duties by the Department, but really that is of no consequence as the obligation lies upon the Noticee to comply with the laws in force and cannot infer such compliances by virtue of claiming that the Noticee is a law abiding citizen.

25. The Town and Country Planning Department, despite its persistent lethargy did issue Show Cause Notice on 05th August, 2017, in relation to the facts that the construction raised had not been raised in accordance with sanctioned plan. In furtherance to this on 01st December, 2017 they have also issued Notice-Cum-Order under Section 39 of the Himachal Pradesh Town and Country Planning Act and to comply with the directions contained in the order dated 14th September, 2006. It was stated that on this Khasra Numbers construction has been raised in contravention of the permission granted, however no details thereof were provided even in this. It may be noticed that all these steps were taken by the

respondents-official when the matter was taken before the Tribunal. Another feature is that the application which had been submitted by the Noticee on 11th August, 2006 is stated to have been received by the department on 24th December, 2011, under Diary No. 1311.

26. Furthermore, Form XVII-D in terms of Rule 19(e) is unfilled and not a single column thereof has been filled. It was expected the Noticee to give existing constructed area, floor-wise deviation extra coverage of the plot, excess coverage, land use, storeys and photographs were also required to be annexed. Though, the Applicant had left the columns of the application blank for the reasons best known to the Noticee, but still the application was processed by the Department, as alleged.

27. The application dated 02nd September, 2011 is also having similar blanks and is on unfilled Proforma. Here the total area is stated to be constructed is 5016.72 Sq. Mtrs. Even the application filed under the signature of the Director of Noticee in the year 2006, is undated of course it was received on 11th August, 2006. The case was forwarded to the Directorate on 25th August, 2006, which was responded to by the Directorate at Shimla, saying that the Local Authority to deal with the same *vide* application dated 07th September, 2006. According to the Applicant in the application it was stated that there were 37 rooms and they want to add another 42 rooms, however in the letter written to the Directorate, entirely different picture was presented. The case of the department before us

is that the entire construction admeasuring more than 2776.11 Sq. Mtrs. is increased illegally without any permission of the department.

28. Besides the above, we must also notice certain facts as are apparent on the record before the Tribunal including the documents filed by the Noticee. All these documents are entirely inconsistent as far as measurement of the constructed as well as the proposed constructed area is concerned, there are substantial variances. According to the Noticee, he is well within the prescribed FAR 1.75, while according to the department they have already crossed the prescribed FAR 1.75 and currently one at FAR 1.77. Besides this, there has been substantial reduction in the plot area as the Noticee has stated land measuring 1000 Sq. Mtrs. have been lost. The contention of the Noticee, there was no rejection of the plot, it is factually incorrect as sanction is to be granted by specific exercise of authority and in writing. The Department vide its letter dated 24th December, 2011 had issued clear order with regard to rejection of the revised plan. Another aspect which we need to deal with same emphasis is considerable reduction in the setbacks and green areas. According to the record placed before us in the year 2006, the left side set back were 20 Mtrs. while in the inspection in the year 2011, it was found to be 4.66 meters. There is front setback from minimum 10 meters to 6.03 Sq. Meters, right side set back from 5.20 Sq. Mtrs. minimum to 3.80 Sq. Mtrs, rear setback of minimum from 15 meters to Nil. The construction is in violation of the prescribed gradient and is intruding into the river bank/flood plain. It is argued on behalf of

the department that there could be no construction within 100 meters from the edge of the river Beas, while the present building is located on a land abutting the river which is confirmed by the fact that it had lost more than 1000 meters on the flow of river Beas. Further, efforts had been made by the Applicant to raise construction on all sites and/or available to it, whether it was abutting the road or river in violation of the prescribed minimum setbacks by destruction of the nature and ecology. There is apparent complete inadequacy with respect to establishment sewage treatment, management of municipal solid waste and proper utilisation of natural resources. With regard to prohibition against installation of borewell, the Noticee had not shown what is it's source of water. The entire construction of the hotel from the photographs shows to be new construction and not a construction or any part thereof which is more than 25 years old.

29. The Learned Counsel appearing for Pollution Control Board, contended that the Noticee has violated all environmental norms, firstly, it has operated from 1993 to 1998 without obtaining consent from Board from its inception till the year 1998 in relation to existing structure which is stated to be 37 rooms. The Board had served Show Cause Notice on 11th January, 1993 upon the Noticee stating that as to why they have not obtained the consent of the Board either to establish or to operate. The Consent to Operate was applied thereafter which was granted by the Board. Consent to Establish was granted in the year 1998. The Board states that it had conducted

inspections from time to time and found the Noticee non-complying and issued notices for compliance.

30. The Board had granted consent for 37 rooms on 16-09-2011valid up to 31-03-2013. After 2013, the Noticee has applied for obtaining consent but the same has not been renewed as it was not found complying with the environmental norms. In the meanwhile, the Noticee had also applied for Consent to Operate in relation to the entire hotel that is expended project by construction of additional rooms. This was rejected by the Board vide its letter dated 19-09-2011, wherein it was stated that Consent to Establish for (Expansion) which the applicant has applied to the Regional Office has been rejected. In other words right from its inception till 1998 the Noticee has operated without Consent to Operate even for 37 rooms. It has also operated without grant of Consent to Operate in relation to 37 rooms after 31-03-2013 till date. As far as Consent to Operate for additional rooms to permit 37 rooms, the consent was never granted right from the year 2006 onwards and thus the Noticee has violated the provisions of Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 and the provisions of Environmental (Protection) Act, 1986. The Board had even issued show cause notices on different times including 12-11-2013, 04-04-2014, 02-09-2014, 04-09-2014 and 23-05-2016. In the last letter dated 23-05-2016 even it was shown that the parameters were showing in violation to the prescribed limits particularly in relation to the BOD and COD. The Board had at no point of time taken any action though it kept on serving notices. It had vide its

letter dated 03-07-2017 issued an order under Section 33 A and 31 A of the Water and Air Act were issued and it was stated as to why the consent be not withdrawn. However, this notices never culminated into passing of any order in accordance with law. The hotel kept on operating and carrying on its business while the officers of the Board became mere spectator to the persistent violation for all these periods.

31. From the above narrated facts recorded before the Tribunal, it is clear that the officers/official of all the concerned departments have failed to perform their duties in accordance with law. They have not even cared to take any appropriate action even after serving the notices under Section 39 of the Himachal Pradesh Town and Country Planning Act, 1977 and 31(A) and 33(A) of Air (Prevention and Control of Pollution) and Water (Prevention and Control of Pollution) Act respectively. If the timely action would have been taken in accordance with law, damage and degradation of environment and ecology could have been prevented. Not only this even the land admeasuring more than 1000 sq. m. of land washed off and submerged under the water of river Bias belonging to the Noticee could have been prevented by taking proper preventive and precautionary measures. The records produced before the Tribunal by these respective departments and Board of the State demonstrate a pathetic state of affairs of which the Noticee has taken undue advantage by shifting the responsibility to the officer/official of the department and claiming himself to be a law abiding citizen.

Recommendations were made on 16-11-2017 for disconnection of electricity which again was not complied with.

32. Learned Counsel appearing for the Noticee has vehemently contended that Noticee was moving application for renewal from time to time and was depositing the fee but consent was not granted.

We find no substance in this contention firstly, the law places an obligation upon the person carrying on an activity or industry to obtain the consent. Secondly, the applicant was not remediless. It could have invoked the jurisdiction of appropriate court/forum for issuance of directions that the consent should be granted. The Noticee did nothing of the kind except merely carry on its commercial activity for economic benefits without registration under the provision of HP Tourism Development and Registration Act, 2002. It is mandatory for any person carrying on hotel/resort activity in any part of the State of Himachal Pradesh to obtain the Certificate of Registration from the Department of Tourism, of the State of Himachal Pradesh. The law also requires that in the event there is expansion of the project then the fresh registration should be obtained. In this case the applicant has not placed any Certificate of Registration from the Department of Tourism on record. However, on the file of the Pollution Control Board there is a Certificate of Registration available dated 31-03-2006 issued by the Department of Tourism. This certificate was issued to hotel consisting only 37 rooms. Thereafter, no certificate of the Tourism Department for 37 rooms was issued. Thereafter, there is no certificate issued by the Department of Tourism for additional rooms.

33. According to the Learned Counsel appearing for the Noticee it is stated that the tourists-arrival-returns were filed before the authority from time to time. Though, he has placed proof of such returns on record but has avoided to place on record the certificate issued by the Department of Tourism. Thus, this is another statutory non-compliance on the part of the Noticee.

34. From the above discussion, it is evident that Noticee has raised unauthorised and illegal construction. The Noticee has failed to comply with the statutory requirements. The Noticee has failed to obtain at the appropriate stage such Consent to Establish and Consent to Operate from the Himachal Pradesh Pollution Control Board. In fact, the Noticee has actually operated without obtaining the consent of the Board from its inception till 1998 and then from 2013 till date in relation to 37 rooms, while for remnant of 112 rooms were operated all through by the noticee without consent of the Board. The prescribed parameters as per the various analysis reports placed on record have been violated. The statutory certificate from the Tourism Department has not been obtained after 2006 particularly when the alleged expansion took place.

35. According to the Department of Town and Country Planning, which again appears to be on the lower side unauthorised construction admeasuring about 2776.11 Sq. Mtrs. has been raised by the Noticee despite loss of more than 1000 sqm. of land in the flood in the year 1995. The effect of loss of land area is bound to result in reduction of available area for construction. Further, as provision of

Water (Prevention and Control of Pollution) Act, came into operation in the year 1974, thus, the industry could not have operated right from their inception without obtaining consent of the Board. The entire stand of the Noticee appears to be that it is a law abiding citizen and has done all acts bonafidely interestingly at the fag end of the hearing and has also filed an affidavit dated 15-12-2017 stating that he has constructed 112 rooms on multiple occasion since the year 2006 and had paid requisite fee by making the application to the PCB. He further referred that he would take steps in the interest of environment by planting of 1000 trees, constructing 300 dustbins, providing parking area, would comply with the Solid Waste Management Rules and would keep the premises locked which are in violation of the permission granted. The sewage plant would be regularly serviced. This generosity has been shown by the Noticee when he found himself in a difficult position for violating the norms, policy of the Government and the statutory provisions that have caused un-sustainable damage of the environment and ecology in that pristine area.

36. The lip service offered at this stage would be of no consequences as he has caused serious degradation of environment and ecology. The attitude of the Noticee that obligation laid on the Government departments and the Pollution Control Board to act and it was not his obligation to comply with the law is ill founded in terms of Section 17(3) of the NGT Act, 2010. The Tribunal has to apply the Principle of Strict Liability while deciding the case raising the substantial serious

environmental issues making applications or depositing fee does not absolve the applicant of his statutory responsibility and constitutional obligations. The Principle of Absolute Liability imposes upon the person who is likely to pollute the environment and cause even minimum damage to the ecology to take all protection and required steps in law to ensure that on one hand it does not cause any pollution or environmental degradation while on the other it strictly comply with all the law enforced in relation to development and prevention and control of pollution. Such material and intentionally default cannot be overlooked. The law mandates the Tribunal to act in accordance with law and pass such orders or directions which even may vest the Noticee with civil consequence and punitive consequences.

37. Hence, we pass the following order and directions:

1. For the offence and breach committed by the Noticee resulting in apparent environmental degradation and operating without Consent to Establish as well as Consent to Operate of the State Pollution Control Board, we impose environmental compensation of Rs. 20 lacs (Rupees Twenty Lakhs only) in terms of Section 14 and 15 of the NGT Act, 2010. The compensation should be paid within two weeks from today. Seventy Five per cent (75%) of which shall be deposited with the State of Himachal Pradesh Environmental Department in its Environment Fund and remaining Twenty Five per cent (25%) shall be paid to the Central Pollution Control Board. The compensation so paid shall be utilised for restoration and restitution of the environment and

ecological degradation resulting therefrom by the said Department of Environment of State of Himachal Pradesh in consultation with the Himachal Pradesh Pollution Control Board.

In the event the said compensation is not paid the same shall be recovered as arrears of land revenue by the Dy. Commissioner of District Kullu in accordance with law.

2. We direct the Respondent/Noticee to demolish the unauthorised, illegal and unsustainable structures constructed by Noticee right from 2006 till date to the extent of 2776.11 sq. meters. This area includes an extra floor with attic floor constructed on then existing structure of two storeyed. It also includes extra floor with attic floor constructed on the cottage. Besides that all the area which has been constructed without specific permission of the Town and Country Planning Department shall be demolished.

The demolition should be effected by the Noticee within two weeks from the date of this Judgment. In the event of default, the Town and Country Planning Department of Himachal Pradesh, the State Pollution Control Board and Department of Environment shall demolish the said structure at the cost of the Noticee.

The C&D waste so generated upon demolition would be disposed of by the Noticee/Department as the case may be in accordance with the C&D Waste Rules at the cost of the Noticee.

In the remnant constructed area of the hotel the applicant/Noticee, if he wants to conduct any hotel or tourism

activity, shall obtain Consent to Operate afresh from the Himachal Pradesh State Pollution Control Board. The application in that behalf should be filed within one week from today. If filed, the Pollution Control Board shall conduct a complete and comprehensive inspection, prepare a report at site as well as collect samples and analyse them in accordance with law. If the consent is granted, the Noticee could carry on his hotel tourism activity and not otherwise till this process is completed in accordance with law.

With these directions, the Noticee shall not carry on any activity which requires consent of the State Board for the premises and the building in question.

The Noticee shall obtain Certificate of Registration from the Tourism Department, State of Himachal Pradesh in accordance with law.

3. We direct the Chief Secretary of State of Himachal Pradesh to take appropriate disciplinary action in regard to dereliction of duty and for not maintaining the records and taking action in accordance with law against all the employees, officers and officials who have dealt with this file whether they are in service or have retired and providing undue advantage to Noticees. In the case of retired officers/officials, the action would be taken for reduction in pension as per rules. The employees may be of the Department of Town and Country Planning, the Government of Himachal Pradesh, Department of Tourism, State Pollution

Control Board or any other agency of the Government as may be deemed proper by the department.

38. The application is disposed of with the above directions while leaving the parties to bear their own cost.

M. A. No.1396 of 2017 and M. A. No.1516 of 2017

39. These applications do not survive for consideration as the main application itself stands disposed of.

SWATANTER KUMAR
CHAIRPERSON

U.D. SALVI
JUDICIAL MEMBER

NAGIN NANDA
EXPERT MEMBER

New Delhi
18th December, 2017.