

(1996) 11 SHI CK 0029

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 1215 of 1993

Baljit Malik

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 18-11-1996

Acts Referred:

Citation : (1997) 2 ShimLC 133

Hon'ble Judges : M. Srinivasan, C.J.; L.S. Panta, J

Bench : Division Bench

Advocate : Rajiv Sharma, for the Appellant; Indar Singh, General for Respondents No. 1 to 3, 6 and 7, Shyama Dogra, for Respondent No. 5, R.K. Gautam, for Respondent No. 10, Bhupender Gupta, for Respondents No. 13 and 14, C.B. Barowalia, for Respondents No. 15 and 19, K.D. Sood, for Respondents No. 36, 44, 45 and 46, N.K. Sood, for Respondents No. 37, 38 and 50, B.S. Kanwar, for Respondent No. 47, Devyani Kuthiala, for Respondents No. 48, 49 and 51, Ajay Mohan Goel, for Respondents No. 39 and 43, Y.P.S. Dhaulta, for Respondent No. 52, Anand Sharma, for Respondent No. 53, Shrawan Dogra, for Respondents No. 55, 56 and 57 and B.K. Gupta, for Respondents No. 56 and 57, for the Respondent

Judgement

M. Srinivasan, C.J.—We have heard learned Counsel at some length in this matter. We find that the following order will meet the ends of justice and satisfy the interests of all the parties concerned.

2. Though the writ petition was originally with respect to pollution caused by the motor vehicles by not following the relevant statutory provisions and rules, later by order of this Court the scope of the writ petition was enlarged. By such order, this Court came to consider not only violation of pollution control laws but also violation of laws relating to mining activities and laws relating to construction of buildings in various parts of the State. In particular, this Court was concerned with the building activities in Shimla to Parwauoo and Kasauli area.

3. Number of interim orders have been passed which by themselves take care of the matter over which scope of the writ petition was extended.

4. It is enough if we now give the following directions to the concerned authorities and the parties:

(a) With regard to mining activities, which are said to be unlawful and unauthorised, a Commission which was constituted by the State Government vide Notification No. TCP-1-200/93- Commission, dated 27-1-1995, in terms of the judgment of this Court dated 5-7-1994 passed in C.W.P, No. 971/93, shall submit its report to the chief Secretary to the Government of H.P. and the Government will take such action as may be necessary after considering the said report By order dated 18 3 1996, certain matters were set out and referred to the Commission for investigation and report within a period of six months from that day. Those matters related to:

(i) Haphazard and illegal construction;

(ii) Mining activities;

(iii) Protection of Forests;

(iv) Pollution being caused to rivers and disposal of garbage;

(v) Unauthorised construction being raised in violation of H.P. Roadside Control Act, 1968; and

(vi) Industrial Pollution and pollution being caused by motor vehicles and pollution being caused by mining activities in and around Shimla.

The Commission prayed for extension of time for submitting its report by Anr. six months. Though that prayer has not come to this Court in the form of an application, the communication dated 13-11-1996, was sent by the Commission to the Registrar (Vigilance) of this Court.

(b) We direct the Commission to submit its report to the Chief Secretary to the Government of H.P. within a period of six months from today and it is not necessary for the Commission to file any report in this Court. On receipt of such report, the Government shall consider the same and take appropriate action with regard to the matters set out in the said report.

(c) That direction will apply to all matters which are referred to the said Commission.

(d) As regards unauthorised construction said to have been erected in the areas of Shimla, Parwanoo and Kasauli, it is found from the record that action has been taken by the concerned authorities under the provisions of the Town and Country Planning Act and other relevant Acts. Such action can proceed and if ultimately any person is aggrieved by the orders passed by the authorities concerned, it is open to such person to seek remedies in accordance with law in the appropriate forum. If on the other hand, permission is granted by the statutory authority for such construction including the planning permission, which they find to be within the four corners of the law, it is not necessary for such person to come before

this Court for further orders as directed earlier by this Court. If anybody is aggrieved by the grant of such permission in favour of certain individuals it is open to such person(s) to take appropriate action as may be available to him under the law.

(e) It is stated that some persons have already approached the Civil Courts as certain action have been taken by the statutory authority. The Civil Courts are directed to dispose of the matters pending before them in accordance with law as expeditiously as possible and preferably within a period of six months from this date.

(f) By interim order passed by this Court earlier, the right of parties to approach the Civil Court as against the action taken by the statutory authority was suspended and it was directed that no Civil Court should entertain any such proceedings at the instance of such person. The interim order is vacated and it is open to the aggrieved party to approach such forum as may be available to them under the law.

5. It is brought to our notice that the District Judge, Solan has sent a report in pursuance of the directions of this Court as regards unauthorised construction on the National Highway 22 from Solan to Shogi and Solan to Parwanoo. The Registry is directed to forward a copy thereof to the Commission referred to earlier as appointed by the State Government. The Commission shall take into consideration the said report before submitting its report to the Government.

6. The learned Counsel for the Petitioner brings to our notice the Tamil Nadu District Municipalities Act and suggests that similar provisions can be introduced in this State. That is not a matter within the jurisdiction of this Court. It is open to him to approach the concerned authorities to bring out a legislation, if so advised. This Court cannot issue any direction regarding passing of any legislation.

7. With regard to Panchayat areas, it is stated by the learned Counsel for the Petitioner that there is no provision of law expressly dealing with the construction activities within the Panchayat areas. For that matter also, it is open to the Petitioner to move appropriate authorities to bring into existence such rules as may be necessary by the Government or concerned authorities.

8. By order dated 10-1-1996, this Court appointed one Commission consisting of H Advocates for the purpose of visiting the site of M/s. Gabriel India Limited, Parwanoo and to submit its report whether the construction, stabilization and installation of an effluent treatment plant was done scientifically. Another Commission consisting of three Advocates was also appointed by the same order to see if the complex of H.P. Horticulture Produce Processing and Marketing Corporation was environmentally and ecologically sound and submit its report to this Court. None of the Commissions has submitted any report to this Court.

9. Mr. D.C. Jisthu, who is one of the members of the Commission referred to

above has stated that the report is under preparation and it will be submitted shortly. The first Commission headed by Pandit Om Prakash, is directed to submit its report on or before 30-11-1996 in the Registry of this Court. The second Commission shall also file its report in the Registry on or before 30-11-1996. The Registry shall forward these two reports to the Commission appointed by the Government. The Commission may take into account these two reports also before submitting its final report to the State Government.

With the above directions, this writ petition is disposed of.

C.M.Ps. Nos. 1949/95, 1668/96, 1772/96, 817/96, 696/96, 3966/96, 3965/96, 3967/96, 3968/96, 3969/96, 3970/96, 3971/96, 3972/96, 3973/96, 3974/96, 3975/96, 695/96, 816/96, 3501/96, 3314/96, 3502/96, 3541/96, 4033/ 96 and 4034/96.

In view of the disposal of the writ petition, the C.M.Ps. are dismissed as unnecessary.