
(2018) 08 SHI CK 0034

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 10772 of 2012

Dr. Amar Singh Sankhyan

APPELLANT

Vs

State of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 27-08-2018

Acts Referred:

Citation : (2018) LatestHLJ 1306 (HP)

Hon'ble Judges : SANJAY KAROL, J;AJAY MOHAN GOEL, J

Bench : Division Bench

Advocate : T.S. Chauhan, Ashok Sharma, Adarsh K. Sharma, Rajesh Sharma, Bhupender Gupta, Poonam Gehlot, Naresh Gupta, Sanjeev Bhushan, Rakesh Chauhan

Final Decision : Disposed Off

Judgement

Sanjay Karol, J.

Petitioner has prayed for the following reliefs :-

1. That respondent No. 1, respondent No. 3, respondent No. 4, respondent No.5, respondent No. 6 and respondent No. 7 may be restrained from

raising any construction over the Green Land in front of House No. B-4, Lane-1, Sector-2, New Shimla.

2. That the respondents may be further restrained from allowing any type of construction over the Green Land in violation of the Development Plan

and the Sector Plan in New Shimla, including Green Land shown in Annexure P-6 which has been approved by respondent No.1 and respondent No.3

under Section 88(2) (b) read with Section 60 of the Act.

3. That respondent No. 5 may be directed to remove the illegal structures of public toilet and rain shelter and restore the iron fencing between the road

and the green area.

4. That respondent No. 5 may be directed to plant the three trees on the road side which it removed to construct rain shelter, dumper stand and the public toilet. It may further be directed to restore the plants, vegetation and eco system which the respondent No. 5 destroyed while laying down the foundation of the public toilet on the green area in front of the house of petitioner No.1.

5. That respondent No. 5 be restrained from dumping garbage in front of petitioner's house on the public road and may be directed to take necessary legal action against the unauthorized shopkeeper for dumping the garbage on the road in front of the house.

6. That respondent No. 4 may be directed to report to the Hon'ble Court the names of all the persons/departments that have made encroachments on the park, parking and green area and to remove the encroachment on the same. The Hon'ble Court may consider appropriate action against the encroachers.

7. That respondent No. 5 may be directed to vacate its encroachment on the park adjacent to B-5, Lane-I, Sector-2 and respondent No. 4 may be directed to complete the development of the park in accordance with the Development Plan and the Sector Plan for which the allottees have been charged.

8. That respondents may be restrained from changing the land use of the green area, park parking, community centre and guest house and restore the land use of the same as approved in the original Development Plan of respondent No. 4.

9. That respondent No. 4 may be directed to disclose to the Hon'ble Court the specific area, lane and sector-wise information depicting the specific location of the park, parking and the green area in the original Development Plan and the Sector Plan approved by respondent No. 3 and respondent No. 4.

10. That respondent No. 4 may be directed to disclose to the Hon'ble Court as to why land use was changed illegally and the land earmarked for the park, parking and the green area used for other purposes. Also, the same may be asked to reveal the identities of the beneficiaries thereof.

11. That respondent No. 1, respondent No.3, respondent No.4, respondent No.5,

respondent No. 6 may be directed to restore the guest house and community centre as approved by respondent No. 4 in the original Development Plan for the use of allottees.

12. Honâ??ble Court may quash the fraudulent illegal transactions of reselling the parking, green area, open areas and parts of community centre and

enquiry may be ordered against the erring public servants responsible for the same.

13. That an inquiry be ordered against the erring officials so as to hold responsible those who have engaged in the diversion of the funds allocated by

respondent No. 2 to respondent No.5 and respondent No. 6 for the construction of public conveniences at four places under the integrated

development of â??Shimla-Theog -Narkanda Tourist Circuitâ?? on NH-22.â??

2. Annexure P-6 is the information obtained by the writ petitioner under the Right to Information Act.

3. It is a matter of record that on 24th December, 2012, when notice was issued in the petition, petitionerâ??s prayer for interim relief was rejected,

clarifying that construction raised, if any, shall be subject to the outcome of the writ petition.

4. On 15th January, 2013, respondents were restrained from raising any construction over the green area in New Shimla. Thereafter, matter came up

for consideration on several dates and on

6 th March, 2018, this Court issued certain directions, which are reproduced as under:-

â??(a) The Chief Secretary, Government of Himachal Pradesh is directed to forthwith convene meeting of all the stake-holders engaged in the

development of the area and ensure that before the next date of hearing, the interim/final development plan is made available in the Court for

inspection by the parties.

(b) No construction activity shall be allowed to be carried out in the New Shimla area, save and except, in accordance with law. The Commissioner,

M.C. Shimla and the Deputy Commissioner, Shimla shall ensure compliance of the same.

(c) We clarify that ongoing constructions shall be strictly in accordance with the plans duly sanctioned by the authorities concerned.

(d) No construction of any nature shall be carried out by the Municipal

Corporation, Shimla over the vacant/green/common area, without leave of the Court. The Commissioner, Municipal Corporation, Shimla shall file his personal affidavit disclosing the construction carried out by the Corporation and the status and stage thereof.

(e) The Commissioner, Municipal Corporation, Shimla and the Deputy Commissioner, Shimla shall carry out an inspection drive and have all the premises of New Shimla colony inspected for ascertaining as to whether any illegal or un-authorized activity of construction or user is being carried out or not. If it is found that any of the premises allotted and meant to be used for residential purposes is used for any other purposes, such illegal activity shall be ordered to be closed forthwith.

(f) The inspection shall also be carried out for ascertaining as to whether construction raised is as per the sanctioned plan and within the permissible deviations allowed as per the Municipal Regulations/Law/Byelaws. Construction, raised in excess of the permissible limit, shall be ordered to be demolished forthwith, in accordance with law. In any event, water and electricity supply to such unauthorized premises shall be disconnected.â??

5. We notice that as a consequence of such directions, respondents did take certain, but limited, action, compelling certain residents seek clarification of order passed by this Court, which was so done.

6. On 1st May, 2018, we had also directed the Residents Welfare Society (Registered), New Shimla-respondent No. 7 to install CCTV Camera. Same day, deliberations also took place with the Director, Town and Country Planning, ensuring implementation of provisions of law as also finding solutions for the problems faced by the residents.

7. We notice that the learned Advocate General had also assured that appropriate police protection would be provided to the writ petitioner at all times.

8. Today, when the matter was taken up for hearing, learned Advocate General clarifies that police protection shall continue to be provided to the writ petitioner, subject to, of course, assessment of threat perception and cost born by the applicant.

9. At this stage, petitioner clarifies that only when he had invited attention of this Court to the threat perception, based on documents so submitted,

which are on record, necessary orders were passed.

10. Be that as it may, at this stage, we clarify that the writ petitioner has to independently approach the authorities, seeking police protection based on the threat perception. Accounting for the statement made by the learned Advocate General, we are sure that decision thereupon, shall be taken, in accordance with law, with utmost speed. In fact, we direct the Superintendent of Police, Shimla for taking prompt action on such request, in accordance with law.

11. Further, the learned Advocate General states that the issue, subject matter of present writ petition, can best be resolved by the State, for which purpose a three member Committee, headed by not less than the Principal Secretary (Town & Country Planning) shall be constituted for examining all the issues and taking action, in accordance with law. He states that under all circumstances Rule of Law must prevail. But then, this court may be precluded from passing orders, more so in the absence of cogent and reliable material.

12. Having heard learned counsel for the parties, we are inclined to agree with the suggestions made by the learned Advocate General. As such, we dispose of the present petition in the following terms:-

a) The State shall constitute a Committee of at least five persons, headed by the Principal Secretary (Town & Country Planning) to the Government of Himachal Pradesh for examining the issue and make recommendations for taking appropriate action for strict enforcement of provisions of law.

b) Two of the members of such Committee shall be from (i) the Residents Welfare Society, duly registered in accordance with law, and (ii) the civil society. The Chief Secretary, Government of Himachal Pradesh, shall nominate such persons within one week.

c) The said Committee shall examine all the issues, subject matter of the present lis, and positively take a decision within a period of three months from today. It shall also be filed in the Registry of this Court.

d) The recommendation shall be made after affording opportunity of hearing to all, more so the residents of the area and also taking note of issues raised by them.

e) The recommendations made shall be implemented with promptitude and in accordance with law by the State and the Municipal Authorities.

f) The Committee shall also prepare an action taken report of implementation of its recommendation and place the same before the State for necessary action, if any.

g) It shall be open for anyone of the residents/ members of the civil society to take recourse to such remedies, as are otherwise available in accordance with law, assailing anyone of the decisions taken by the Committee or implementation thereof.

h) Learned Advocate General and Mr. Naresh K. Gupta, Advocate, state that all developmental activities in the area (commonly termed as New

Shimla, so developed by HIMUDA or its predecessor-in-interest) shall be carried/ allowed to be carried out strictly in accordance with law. Taking

such statement on record, we dispose of all the applications.

The writ petition stands disposed of, so also the pending applications, if any.