
(1999) 04 SHI CK 0003
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 192 of 1991

Krishan Banon

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 26-04-1999

Acts Referred:

Constitution of India, 1950 — Article 162, 226

Citation : AIR 1999 HP 87 : (1999) 3 ShimLC 382

Hon'ble Judges : Surinder Sarup, J; Kamlesh Sharma, J

Bench : Division Bench

Advocate : R.L. Sood, for the Appellant; B.P. Sharma, A.A.G., Anand Sharma, Tarlok Chauhan, H.K. Bhardwaj, Inder Singh, for the Respondent

Judgement

Kamlesh Sharma, J.—This writ petition was filed on 30-4-1991 by impleading State of Himachal Pradesh, The Notified Area Committee, Manali and the Director, Town and Country Planning as party respondents, and M/s. Sagar Tourist Resorts Pvt. Ltd. was added as respondent No. 4 vide order dated 21-5-1991 on their Caveat Application No. 425 of 1991. On the application of respondent No. 3 its name was deleted from the array of the respondents and Kullu Development Authority was substituted in its place by order dated 24-11-1992 passed in CMP No. 1560/1992. As stated in the said application, in supersession of all earlier notifications under the Himachal Pradesh Town and Country Planning Act, 1977 (hereinafter called as "the Act") three notifications dated 2-11-1991 were issued whereby all provisions of the Act came into force w.e.f. 2-11-1991 in Kullu Valley and in exercise of powers under sub-section (1) of Section 66 of the Act. Kullu Valley was designated as special area and u/s 67 of the Act Special Area Development Authority for Kullu Valley Special Area was constituted. Similarly, respondent No. 2 was also substituted by Nagar Panchayat, Manali by order dated 29-10-1997 passed in CMP No. 885/ 97 filed by the petitioner. However, the newly substituted respondent No. 2 did not file fresh reply-affidavit and reply-affidavit filed by the original respondent No. 2 will be read as their reply.

2. For the purposes of pleadings the writ petition dated 14-11-1993 as amended vide order dated 5-10-1994 passed in CMP No. 3713 of 1993 will be referred to. In this amended writ petition the following reliefs have been prayed for :--

(a) Direct the respondent No. 1 to constitute and establish a Kullu Development Authority for the integrated development of the Valley with special emphasis on tourists and tourism. It may also be directed to establish the rules and guidelines with special emphasis in respect of permission relating to number of storeys permissible in Manali Town in particular, and Kullu Valley in general and further directing the respondents not to grant any sanction for the construction of new hotels in Manali especially in respect of building plans received after the 24th of December, 1991 including any revised building plans received thereafter;

(b) Direct the respondents not to change the building bye-laws in respect of number of storeys as detailed in Annexure-P2. However, in the case of the Market Area of Manali Town, a maximum number of three storeys may kindly be permitted. More specifically it may kindly be pleased to restrain respondent No. 1 from accepting the recommendations of respondent No. 2 regarding building bye-laws based on the decision taken by respondent No. 2 on 25-4-1991;

(c) To direct the respondent No. 2 to ensure that construction by hoteliers is carried out by them in Manali in accordance with the building plans sanctioned in their favour respectively in relation to the number of floors and storeys etc. etc. as also set-backs and any deviation in respect thereof may be demolished in accordance with law by the respondent No. 2;

(d) Direct the respondents to provide appropriate water supply facility, sewerage system and infrastructure for disposal of garbage, sullage in the town of Manali and till such time not to accord any building permission to hoteliers within the urban area of Manali;

(e) Direct the respondent No. 4 to strictly comply with the existing building bye-laws and to limit its construction to a maximum of two and half storeys including the attic and further to carry out the construction strictly in accordance with the building plans originally sanctioned in its favour by respondents 1 and 2. The respondents also deserves to be directed to maintain the required set-backs and not to cover more than 50% of the total area owned and possessed by it. The respondent No. 4 also needs to be directed to demolish any construction which may be in violation of the existing building bye-laws and sanctioned plans.

(e) (i) This Hon"ble Court may kindly be pleased to quash and set aside the approval accorded by respondent No. 1 to the revised plan of respondent No. 4 vide its letter No. LSG-F (II) 4/ 90, dated 13th August, 1992 whereby the Notified Area Committee, Manali-respondent No. 2 sanctioned the revised building plan of respondent No. 4 and may further be pleased to direct and order that such sanction of the revised building plan is highly illegal and consequently of no avail to respondent No, 4 and may further be pleased to direct the respondents to demolish at their own costs all such construction which have been

carried out on the basis of the revised sanctioned plan;

- (f) Allow cost of the petition in favour of the petitioner and to call for the records;
- (g) Allow any other relief deemed fit and proper by it in the peculiar facts and circumstances and while allowing the writ petition, in favour of the petitioner and against the respondents."

So far as first relief is concerned, it has become infructuous on the constitution of Kullu Development Authority as noticed hereinabove.

3. The case set up by the petitioner, who is permanent resident of Manali, District Kullu and is an orchardist and hotelier, is that because of lack of proper building bye-laws and their halfhearted enforcement by respondent No. 2 several high-rising buildings of hotels or otherwise have come into existence in Manali Town without the infrastructure required to support the human population that is housed in such buildings from time to time, which has badly spoiled the natural beauty and ecology of Manali Town, which is one of the most important tourist spot in the State of Himachal Pradesh. The petitioner has referred to letter dated 19-8-1985 addressed by the Commissioner-cum-Secretary (PWD) to the Government of Himachal Pradesh to the Deputy Commissioner, Kullu prescribing regulations for development of land that only 50% of the area was permitted to be covered and set-backs of 3 metres each on all sides was required to be provided in the case of a plot over 500 metre and also that two storeys plus attic was allowed in the area around Circuit House and Log Huts being earmarked for tourists complex zone.

He has also relied upon letter dated 29-8-1986 (Annexure-P2) issued by me Secretary (PW) to the Government of Himachal Pradesh to the Director, Town and Country Planning Organisation conveying the approval of the Government to authorise Assistant Town Planner, Kullu and Notified Area Committee, Manali to pass the building construction plan in Manali town in accordance with the existing bye-laws of Notified Area Committee, Manali, except in the area around Circuit House and Log Huts as defined in the said letter. The petitioner has further alleged that taking into consideration the haphazard construction in Manali Town the then Chief Minister of the State of Himachal Pradesh made declaration in the public meeting on 25-10-1990, as appeared in news items of the Tribune dated 26-12-1990 (Annexure P-1) and 2-2-1991 (Annexure P-3) that there will be complete ban on construction of hotels in Manali Town till Kullu Development Authority would be formed and formulate its policies and guidelines and building plans received by Notified Area Committee, Manali before 24-12-1990 would only be processed and approved for construction. In this respect, the Kullu Valley Hoteliers Union (Regd.) had also addressed a letter dated 17-4-1991 (Annexure P- 4) to the then Chief Minister, Himachal Pradesh requesting that high rising buildings should be completely banned in Manali Town in order to preserve its beauty and avoid congestion. On the other hand, in order to appease the powerful hotel lobby consisting of industrialists and entrepreneurs from outside

the State of Himachal, the Notified Area Committee, Manali passed resolution dated 25-4-1991 making recommendations to permit construction of more than two storeys and attic in the Circuit House and Log Huts Area. 4. As per the allegations of the petitioner most of the hotel buildings in Manali Town are constructed in violation of the building bye-laws and also sanctioned plans in connivance with the Notified Area Committee, Manali, which turns blind eye at the time of their construction and later on compound the unauthorised construction on its completion at nominal fee. The petitioner has specifically named Hotels i.e. Hotel Piccadly, Azrim, Hotel Highway Inn, Hotel Holiday Home, Hotel Chetna etc. etc. in this regard. Further referring to M/s. Sagar Resorts Pvt. Ltd., the petitioner alleged that this hotel was being constructed in violation to the building plan sanctioned in their favour. When his oral complaint to the Secretary, Notified Area Committee, Manali did not bring favourable response, he wrote letter dated 24-4-1991 that revised plan of the said hotel might not be recommended to the Government for approval in view of the violation committed by them. He also made request vide his letter dated 25-4-1991 (Annexure P-8) for permission to appear before the General House to bring on record his objections regarding the House Committee's approval of M/s. Sagar Resorts Pvt. Limited's building plan but without granting him permission the recommendations were made to permit them to construct four storeys instead of initial permission of two storeys and attic. According to the petitioner in the note of inspection of the construction of Sagar Resorts held on 8-4-1991 though it was observed that proper set-backs were not left and the then existing structure was not in accordance with the building plan of 21/2 storeys originally sanctioned, yet respondent No. 2 failed to stop the illegal construction. By adding para 17-A by way of amendment the petitioner has challenged the sanction of revised plan of M/ s. Sagar Resorts accorded by letter dated 13-8-1991 as arbitrary and discriminatory and contrary to the stand of respondent No. 1 in paras 12 and 17 of its reply-affidavit dated 13-6-1991 and the reply-affidavit of respondent No. 2 wherein they had let the Court to believe that no revised plan of M/s. Sagar Resorts was pending and under consideration before them.

5. In his reply-affidavit dated 6-6-1991 respondent No. 3 has stated in the para of preliminary submissions that the Act had come into force in Manali Town on 28-5-1984 and the then existing land-use of the Manali Planning Area was frozen/ adopted by notification dated 27-11-1984 under the provisions of Section 16 thereof. Since the development plan could be finalised for want of complete record of Manali Planning Area, as settlement was going on, the Department of Town and Country Planning was giving permission only for change of land-use under the provisions of Section 16 of the Act keeping in view the proposed draft development plan. So far as the permission for construction in Manali Planning Area is concerned it is being granted by the Notified Area Committee, Manali. According to respondent 3 permission for construction of hotel in Manali town after 24-12-1990, as per the information received from the Assistant Town Planner, Manali no fresh case for change of land-use was accepted in his office

after 24-12-1990, but cases received before this date were being sent to District Level Committee for processing them further.

6. In reply to paragraph 6 on merits it is admitted that construction of hotels and commercial establishments in Manali and Kullu urban areas was banned by the Government w.e.f. 24-12-1990 through executive instructions. Admitting the instructions contained in letter dated 29-8-1986 (Annexure P-2) it is explained that under the provisions of Section 16 of the Act, the replying respondent was not legally bound to restrict the height of structure while granting planning permission for change of land-use, though care was being taken to implement these instructions. It is reiterated that the final decision is taken by the Notified Area Committee, Manali in respect of the height of structure as per the N.A.C. bye-laws and the provisions of Municipal Act, 1968 as well as instructions Annexure P-2. It is admitted that permission for development under the provisions of Section 16 of the Act was granted to Sunil Mahajan and Associates, Architects and Interior Designers for construction of Sagar Tourist Resort on 29-3-1988 vide Annexure R3-1 for two storeys and attic and thereafter no further plan was recommended by respondent No. 3 to the Government. Since permission for construction was granted by respondent No. 2 the deviation carried out by M/s. Sagar Tourist Resorts was to be checked by respondent No. 2 only. After the substitution of original respondent No. 3 i.e. the Director, Town and Country Planning to the Government of Himachal Pradesh by Kullu Development Authority by order dated 24-11-1992 passed in CMP No. 1560/1992, fresh reply-affidavit dated 23-12-1992 has been filed stating that before its birth on 2-11-1991 it had no legal control or authority over the construction and growth of various hotels in Manali Town.

7. In reply dated 6-6-1991 filed on behalf of respondent No. 1 on the affidavit of the then Superintending Engineer, Irrigation and Public Health Circle, Kullu the stand taken in the reply filed by Irrigation and Public Health Department in CWP No. 412/90 titled Court on its own motion v. State, has been reiterated. In another reply dated 13-6-1991 filed on behalf of respondent No. 1 on the affidavit of the then Deputy Secretary (LSG) to the Government of Himachal Pradesh, the preliminary objections for non-joinder of parties and writ not disclosing any cause of action accruing to the petitioner were taken. On merits it was emphatically asserted that the replying respondent was enforcing the provisions of various Acts, Rules and Regulations and was taking all possible remedial measures from time to time to regularise the construction activities of hotels, guest houses and commercial establishments in Manali Town. By placing on record the proceedings of the meeting held on 22-11-1990 under the Chairmanship of the Commissioner-cum-Secretary (LSG) (Annexure R-1) it is asserted that the Government was seriously intending to control (the construction of hotels, guest houses and commercial establishments in Manali Town. It is submitted that in the meeting of High Power Committee held on 24-12-1990 at Kullu under the Chairmanship of Hon"ble Chief Minister it was resolved that Kullu Valley Development Authority would be formed urgently and restrictions be

imposed not to sanction any new building plan of hotels, guest houses and commercial establishments after 24-12-1990, which was strictly observed and only such plans (fresh or revised) which were pending with the Notified Area Committee, Manali or with the Government prior to the said date were being considered at the District Level Committee as well as at the State Level Committee for approval under the existing bye-laws as well as the instructions issued from time to time in this behalf by the State Government. It was made clear that no proposal of amendment in the building bye-laws was under consideration by the Government.

8. One more reply on behalf of respondent No. 1 on the affidavit dated 25-11-1992 of the then Joint Secretary (LSG) to the Government of Himachal Pradesh is on the record, in which the averments made in the earlier affidavit dated 13-6-1991 of the then Deputy Secretary (LSG) to the Government of Himachal Pradesh were reiterated. It is further stated that the Kullu Valley Development Authority for Kullu and Manali areas was constituted by the Government on 2-11-1991. In reply to newly added para 17(a) by way of amendment, it is stated that after considering the views/recommendations of the Deputy Commissioner, Kullu and the Director, Town and Country Planning in the meeting held on 19-8-1991 the Government has conveyed its formal approval on 31-8-1991 on the revised plan of Sagar Tourist Resorts with certain technical stipulations. The revised plan was to be further considered by the Notified Area Committee, Manali for according final sanction. It is also stated that the State Government on 29-10-1991 has specifically restricted the number of storeys to two of new constructions in specific Khasra numbers around the Circuit House area in order to protect the natural beauty and cultural heritage and also for the security of VIPs. Of late in a demarcation it had come to the notice of the Government that "Sagar Tourist Resorts" falls in the newly demarcated Circuit House area and a few facts were being ascertained from the Deputy Commissioner, Kullu on receipt whereof if necessary, the former approval of 31-8-1991 would be reviewed.

9. In reply of respondent No. 2 dated 13-6-1991 filed on the affidavit of the then President, Notified Area Committee, Manali-cum-the Deputy Commissioner, Kullu preliminary objections "of non-joinder of those persons/companies whose plans were allegedly sanctioned in violation of the provisions of law and the writ petition not disclosing any cause of action accruing to the petitioner as the replying respondent had not done any thing beyond the purview of the Notified Area Committee bye-laws of dated 1-9-1964, were taken. In reply on merits it is emphatically denied that the replying respondent is not enforcing its bye-laws or the provisions of the Municipal Act and/or other provisions of law with respect to the hotels or any other building. It is asserted that no permission was granted in violation of the interim and new schemes framed under the Act and the construction of hotels and building is regulated by H. P. Registration of Hotels Act and the Rules framed thereunder besides the Municipal Act and Bye-laws. Since a hotel has been declared as an industry, no-objection certificate is also required

from the H. P. Pollution Board. As such, several safeguards have been provided for controlling haphazard construction of hotel premises. Different authorities have been created at different levels from time to time for the purpose of scrutinizing the building plans in Manali Notified Area Committee as a matter of practice, though under the Municipal Act and the Bye-laws there is no provision of such authorities and steps were taken for providing these authorities in the bye-laws by way of amendment. It is specifically denied that any construction was allowed against the provisions of land-use of scheme framed by respondent No. 3 and there was any unsound and unchecked construction going on in Manali town against the Municipal Act or Bye-laws and the allegations of the petitioner in this regard are vague. According to replying respondent No. 2, the petitioner, who himself is an hotelier, is opposing the construction of new hotels in Manali town mala fide to avoid healthy competition. It is admitted that the Hon'ble Chief Minister had announced a complete ban on the construction of new hotel buildings in Manali town keeping in view the saturation point in hotel buildings and accordingly no plan was being entertained after the deadline of 24-12-1990. Referring to the instructions dated 29-8-1986 (Annexure-P2) it is submitted that these stood amended from time to time and these were being adopted by the Notified Area Committee, Manali by passing resolutions. Copies of such instructions dated 19-8-1988 (Annexure R-2/B), dated 29-10-1988 (Annexure R-2/C) and dated 5-7-1990 (Annexure R-2/E) are placed on record. Referring to the minutes of the meeting held on 22-11-1990 (Annexure R-2/F) it is pointed out that recommendations were made that permission may be granted for construction of four storeys building including the basement and attic, and accordingly the building plans are being submitted to the Government. It is further made clear that the municipal bye-laws, which were made applicable in the year 1964 provide for construction up to five storeys including the basement and the attic but despite these bye-laws the Notified Area Committee has been following the instructions of the Government.

10. Referring to number of hotels, as mentioned in para 10 of the writ petition, respondent No. 2 has submitted that their cases were compounded long back in the years 1986-87 to 1988-89 within the purview of building bye-laws and Municipal Act. As far as the case of construction of Sagar Tourist Resorts; Manali is concerned, the Committee has passed its plan by resolution No. 22(14) dated 23-8-1989 for two storeys plus attic. For the violation of basement in a small portion and service floor, the Committee had served a notice dated 16-7-1990 and the proprietor of M/s. Sagar Resorts Pvt. Ltd. had given an undertaking (Annexure R-2/G) that they had stopped the construction and would not undertake it until and unless the revised plan submitted by them was approved by the Committee. As per the stand taken by respondent No. 2, the revised plan of M/s. Sagar Resorts Pvt. Ltd. received on 22-12-1990 was under process and no final sanction was conveyed by the Committee. In response to the representation of the petitioner he was given personal hearing in the meeting of the Committee held on 25-4-1991 and he was also associated in the spot

inspection of Sagar Resorts and the points raised by him with regard to the construction of Sagar Resorts were taken note of and considered by the Sub-Committee. However, it was made clear that the Committee was only making recommendations to the State Level Committee and the final decision is taken by the State Government. The allegations of the petitioners are specifically denied that respondent No. 2 is changing the existing bye-laws of the Committee relating to the norms of storeys and giving sanction to the original/revised plans which have been received after 24-12-1990.

11. Another reply on the affidavit of the then President, Notified Area Committee, Manali-cum-the Deputy Commissioner, Kullu is on the record, in which the averments made in the earlier affidavit dated 13-6-1991 are reiterated and in reply to newly added paragraph 17(a) by way of amendment, it is stated that the petitioner has tried to twist the facts of the case, namely, Notified Area Committee v. Chaman Lal son of Shri Sangat Ram referred to in Civil Suit No. 172/87 instituted on 11-9-1987 and decided on 24-12-1990. Since Chaman Lal had not submitted the required building plan, relevant documents and fee of the building plan before he started the unauthorised construction, his case is entirely different.

12. Respondent No. 4 has adopted the reply of respondent No. 2, as stated in the affidavit dated 22-6-1991 filed by Shri Subhash Sagar. In reply to para 11 of the writ petition it is added that revised plan on behalf of respondent No. 4 was submitted in the last week of August, 1989 and the construction was being carried out in accordance with the sanctioned plan subject to the defects pointed out during the inspection made by the members of the Committee on 8-4-1991. It is denied that construction was carried out in accordance with the revised plan as there was no revised plan as yet sanctioned. As per respondent No. 4, the petitioner is seeking personal vengeance against it based upon business rivalry and has filed the present petition mala fide and actuated by extraneous considerations. It is pointed out that the petitioner had not objected to the construction of Hotel Holiday Home and Hotel Paradise having three storeys adjoining to the hotel being constructed by respondent No. 4. The hotel of the petitioner already has also three storeys. As per respondent No. 4 it was making construction according to the building plan sanctioned on 25-8-1989 for two storeys and had submitted revised plan for four storeys, which was duly recommended by Notified Area Committee to the Government, whose decision was awaited. It is also stated that the defects pointed out during the spot inspection on 8-4-1991 were being removed and the basement floor was already closed as assured to the Court on the last date of hearing. Apprehending that the Court might confirm stay of construction of its hotel already granted on 1-5-1991, respondent No. 4 assured that it would make further construction on its own risk and cost and prayed for vacation of the interim stay.

13. Considering the reply-affidavit of respondent No. 4 and the statement made on behalf of respondent No. 4, this Court passed order on 26-6-1991 in CMP No.

354 of 1991. The relevant portion of this order is as under :--

"It is not disputed before us that in case the basement is not taken into consideration, the fourth respondent has not, so far, transgressed the number of storeys permitted to be constructed by that respondent under the building plan sanctioned by the second respondent and also dial it would not contravene the existing bye-laws of the State Government in that regard subject to the reservation made by Shri R. L. Sood, appearing on behalf of the petitioner, that mezzanine floor constructed by the fourth respondent would constitute a distinct floor and on taking it into consideration, there would be a violation of the number of storeys permissible for construction by the fourth respondent.

Shri Indar Singh has stated further, on instructions as aforesaid, that mezzanine floor has been constructed within the height of the first floor permitted under the sanctioned plan and that it was only to be used for laying down of service pipes etc. in a part thereof.

The interim order made by us on May 1,1991 does not, in terms, preclude the fourth respondent from raising constructions in accordance with the bye-laws. However, we make it clear that subject to an undertaking in writing by the Joint Managing Director of the fourth respondent, to be filed in the Registry of this Court within twenty four hours, on oath, that the basement, which has been closed, shall not be put to any use whatsoever, the fourth respondent may proceed with the construction of its hotel in accordance with the sanctioned plan."

14. Accordingly, as per the above directions Shri Subhash Sagar filed undertaking on 27-6-1991. Supplementary affidavit of the President of Notified Area Committee, Manali-cum-Deputy Commissioner, Kullu was also filed on 30-8-1991 pointing out that the height of the building will increase 4 1/2 feet in case mezzanine floor was to be added and for that purpose the Notified Area Committee, Manali had already issued a notice on 8-7-1991.

15. When revised plan of respondent No. 4 was sanctioned on 31-8-1991, the petitioner again moved CMPs No. 791 and 1016 for staying further construction of Sagar Resorts, which were disposed of by order dated 14-4-1992 on the undertaking of Shri Subhash Sagar to demolish any construction made which respondent No. 4 will be called upon to demolish if ultimately the petitioner succeeds in the matter and Respondent No. 4 was permitted to construct in accordance with the sanctioned plan and/or the revised plan, if and when sanctioned, and in accordance with law. Consequently, the interim order made on 1 -10-1991 restraining the Notified Area Committee, Manali from sanctioning the plan of respondent No. 4 stood vacated.

16. We have heard learned counsel for the parties and gone through the record. The first preliminary objection raised by learned counsel for the respondents is in respect of the locus standi of the petitioner to file this writ petition. Admittedly, no right of the petitioner is invaded or threatened, as such, he has no cause of action to file the present writ petition in his individual capacity but as a member

of the general public of Manali town and being one of the apple orchardists and hoteliers who has the interest to keep the beauty and ecology of Manali town intact, which is one of the most important tourist spots in Himachal Pradesh, the petitioner has locus standi to file this petition as public interest litigation to complain that the respondents are permitting haphazard construction of hotels, guest houses and other commercial establishments in violation of the Municipal Act and building bye-laws made thereunder and instructions issued in this regard.

17. The law with regard to locus standi has undergone a sea-change as brought about by line of judgments of the Supreme Court and we will refer to a few of them. In *Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others*, , it is observed in para 27 of the judgment that :--

".....The right to build on his own land is a right incidental to the ownership of that land. Within the Municipality the exercise of that right has been regulated in the interest of the community residing within the limits of the Municipal Committee. If under pretence of any authority which the law does give to the Municipality it goes beyond the line of its authority, and infringes or violates the rights of others, it becomes like all other individuals amenable to the jurisdiction of the Courts. If sanction is given to build by contravening a bye-law the jurisdiction of the Courts will be invoked on the ground that the approval by an authority of building plans which contravene the bye-laws made by that authority is illegal and inoperative."

And in para 28 :--

"An illegal construction of a cinema building materially affects the right to or enjoyment of the property by persons residing in the residential area. The Municipal Authorities owe a duty and obligation under the statute to see that the residential area is not spoilt by unauthorised construction. The scheme is for the benefit of the residents of the locality the Municipality acts in aid of me scheme. The rights of the residents in the area are invaded by an illegal construction of a cinema building. It has to be remembered that a scheme in a residential area means planned orderliness in accordance with the requirements of the residents. If the scheme is nullified by arbitrary acts in excess and derogation of the powers of the Municipality the Courts will quash orders passed by Municipalities in such cases."

18. In *S.P. Gupta Vs. President of India and Others*, on the question of locus standi all the seven learned Judges constituting the Bench concurred that the traditional rule in regard to locus standi that judicial redress is available only to a person who has suffered a legal injury by reason-of violation of his legal right stood revolutionised with the passage of time and changing need of the hour. It is held in para 17 :--

"It may therefore now be taken as-well established that where a legal Wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in

contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such person or determinate class of persons, in this Court under Article 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons..... This Court will readily respond even to a letter addressed by such individual acting pro bono public. It is true that there are rules made by this Court prescribing the procedure for moving this Court for relief under Article 32 and they require various formalities to be gone through by a person seeking to approach this Court. But it must not be forgotten that procedure is but a handmaiden of justice and the cause of justice can never be allowed to be thwarted by any procedural technicalities. The Court would therefore unhesitatingly and without the slightest qualms of conscience cast aside the technical rules of procedure in the exercise of its dispensing power and treat the letter of public-minded individual as a writ petition and act upon it..... But we must hasten to make it clear that the individual who moves the Court for judicial redress in cases of this kind must be acting bona fide with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the Court should not allow itself to be activated at the instance of such person and must reject his application at the threshold, whether it be in the form of a letter addressed, to the Court or even in the form of a regular writ petition filed in Court. We may also point out that as a matter of prudence and not as a rule of law, the Court may confine this strategic exercise of jurisdiction to cases where legal wrong or legal injury is caused to a determinate class or group of persons or the constitutional or legal right of such determinate class or group of persons is violated and as far as possible, not entertain cases of individual wrong or injury at the instance of a third party, where there is an effective legal-aid organisation which can take care of such cases."

19. In *Bangalore Medical Trust Vs. B.S. Muddappa and others*, it is pointed out in para 35 (at page 1915 of AIR) :--

"Locus standi to approach by way of writ petition and refusal to grant relief in equity jurisdiction are two different aspects, may be with same result. One relates to maintainability of the petition and other to exercise of discretion. Law on the former has marched much ahead. Many milestones have been covered. The restricted meaning of aggrieved person and narrow outlook of specific injury has yielded in favour of broad and wide construction in wake of public interest litigation. Even in private challenge to executive or administrative action having extensive fall out the dividing line between personal injury or loss and injury of a public nature is fast vanishing. Law has veered round from genuine grievance

against order affecting prejudicially to sufficient interest in the matter. The rise in exercise of power by the executive and comparative decline in proper and effective administrative guidance is forcing citizens to espouse challenges with public interest flavour. It is too late in the day, therefore, to claim that petition filed by inhabitants of a locality whose part was converted into a nursing home had no cause to invoke equity jurisdiction of the High Court. In fact public spirited citizens having faith in rule of law are rendering great social and legal service by espousing cause of public nature. They cannot be ignored or overlooked on technical or conservative yardstick of the rule of locus standi or absence of personal loss or injury. Present day development of this branch of jurisprudence is towards freer movement both in nature of litigation and approach of the Courts. Residents of locality seeking protection and maintenance of environment of their locality cannot be said to be busy bodies or interlopers. Even otherwise physical or personal or economic injury may give rise to civil or criminal action but violation of rule of law either by ignoring or affronting individual or action of the executive in disregard of the provisions of law raises substantial issue of accountability of those entrusted with responsibility of the administration. It furnishes enough cause of action either for individual or community in general to approach by way of writ petition and the authorities cannot be permitted to seek shelter under cover of technicalities of locus standi nor they can be heard to plead for restraint in exercise of discretion as grave issues of public concern outweigh such considerations."

20. In Janata Dal Vs. H.S. Chowdhary and Others, it is held in paragraph 66 :--

"Though we have, in our country, recognised a departure from the strict rule of locus standi as applicable to a person in private action and broadened and liberalised the rule of standing and thereby permitted a member of the public, having no personal gain or oblique motive to approach the Court for enforcement of the constitutional or legal rights of socially or economically disadvantaged persons who on account of their poverty or total ignorance of their fundamental rights are unable to enter the portals of the Courts for judicial redress, yet no precise and inflexible working definition has been evolved in respect of locus standi of an individual seeking judicial remedy and various activities in the field of PIL. Probably some reservation and diversity of approach to the philosophy of PIL among some of the Judges of this Court as reflected from the various decisions of this Court, is one of the reasons for this Court finding it difficult to evolve a consistent jurisprudence in the field of PIL. True, in defining the rule of locus standi no "rigid litmus test" can be applied since the broad contours of PIL are still developing space seemingly with divergent views on several aspects of the concept of this newly developed law and discovered jurisdiction leading to a rapid transformation of judicial activism with a far-reaching change both in the nature and form of the judicial process."

And concluded in para 107 after referring to catena of case law from S.P. Gupta Vs. President of India and Others, (supra) onwards :--

"It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will atone have a locus standi and can approach the Court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the Court for vindicating any personal grievance, deserves rejection at the threshold."

21. In the light of these judgments of the Supreme Court on locus standi, the next point for consideration is whether the petitioner has acted bona fide in filing this petition or has oblique motive to create obstacles in the construction of Sagar Resorts, which was coming up in the neighbourhood of the hotel of the petitioner. The manner in which this writ petition has been pursued by the petitioner there remains no doubt that initially the petitioner has started his journey on the main road of public interest litigation with intention to ensure that the respondents should regulate the construction of hotels, guest houses and commercial establishments so that the beauty as well as ecology of Manali town are preserved but after travelling a few steps he has entered into the by-lane of construction of hotel Sagar Resorts complaining that it was being constructed in violation of sanctioned plan as well as the instructions of the Government, mainly, number of storeys, which has definitely changed the nature of litigation from public interest to personal interest. This conclusion is fortified from the fact that in the writ petition the petitioner had made general complaint against number of other hotels, namely, Hotel Piccadly, Azrim, Hotel Highway Inn, Hotel Holiday Home, Hotel Chetna etc. etc. that they had made construction of their buildings in violation of building bye-laws and also sanctioned plans in connivance with Notified Area Committee, Manali, which turned blind eye at the time of construction and later on compounded the deviations at nominal fee, but specific allegations were made and vigorously pursued against M/s. Sagar Resorts only. The interim order passed initially on 1-5-1991 in general terms restraining the Notified Area Committee, Manali from permitting any construction in violation of its building bye-laws and the scheme of town planning turned into the interim directions in the individual case of M/s. Sagar Resorts at the later stages. This casts a cloud over the intentions of the petitioner and put this Court on guard. However, since the writ petition has been pending for the last about eight years, it will not be fair and just to dismiss the writ petition on this ground alone. Therefore, we proceed to consider the writ petition on merits.

22. The allegations of the petitioner that the hotels in Manali town in general and Hotel Sagar Resorts in particular are being constructed in violation of building bye-laws are very vague, as firstly it is not stated in the writ petition that which are those bye-laws which have been violated and secondly what is the nature and extent of violation. The petitioner has referred to the instructions contained in letter dated 29-8-1986 (Annexure P-2) to urge that the norms of building plans prescribed thereby have been violated with immunity. The main emphasis of the petitioner is that the building plans should be sanctioned for two storeys

plus attic in the area around Circuit House and Log Huts alleging that Hotel Sagar Resorts being in the said area its building plan could not be passed for more than two storeys plus attic. The respondents have not denied these instructions, rather they have placed on record further instructions dated 19-8-1988 (Annexure R-2/B), dated 29-10-1998 (Annexure R-2/C) and dated 5-7-1990 (Annexure R-2/E) issued from time to time. As per Annexure R-2/C building plans up to three storeys plus attic could be passed and by instructions Annexure R-2/E all proposals for construction of Hotels, Guest Houses and Commercial Establishments pertaining to M.C. Kullu and N.A.C. Manali were referred to the Government for approval. In the minutes of Meeting held on 22-11-1990 (Annexure R-2/F) under the Chairmanship of the then Commissioner-cum-Secretary (Local Self-Government) recommendations for granting permission for construction of four storeys building including basement and attic were made and accordingly the building plans were forwarded to the Government by the Notified Area Committee. The main emphasis of the petitioner is on the declaration of the Chief Minister in the public meeting on 25-12-1990, which appeared in news items of the Tribune on 26-12-1990 (Annexure P-1) and 2-2-1991 (Annexure P-3) that there will be complete ban on construction of Hotels in Manali Town till Kullu Development Authority would be formed and formulates its policies and guidelines and building plans received by Notified Area Committee before 24-12-1990 would only be processed and approved for construction. According to the petitioner, the building plan for Hotel Sugar Resorts was initially passed of two storeys and attic on 29-3-1988 but its revised plan of four storeys was approved on 31-8-1991 by the Government, which was received after the cut-off date i.e. 24-12-1990 in violation of the alleged instructions of the Government as declared by the Chief Minister.

23. In the above-stated facts the first question arises for consideration is whether the instructions, violation whereof has been complained of by the petitioner, are justiciable, which will depend upon the nature as well as the authority of law under which these have been issued. It is not in dispute that there are building bye-laws made under the Municipal Act which prescribe construction of buildings up to five storeys including the basement and the attic in Manali Town and there is no violation of these bye-laws. No doubt these bye-laws could be supplemented by the executive instructions or guidelines framed by the Notified Area Committee but the instructions with which we are dealing were issued by the State Government from time to time prescribing the number of storeys for sanctioning building plans in Manali town, more specifically, in the area around Circuit House and Log Huts. The perusal of these instructions shows that these are in the nature of guidelines to the Notified Area Committee, Manali during the transitional period in which the Country and Town Planning Act had come into force on 28-5-1984 but the development plan was not finalised and Kullu Development Authority was not constituted till 2-11-1991. The learned counsel for the petitioner has not been able to show that these instructions were issued under Article 162 of the Constitution. He has made a feeble attempt to

show that these instructions were issued u/s 247 of the H.P. Municipal Act. 1968. But after going through this Section we find that the learned counsel for the petitioner is misconceived. Section 247 pertains to the powers of the Deputy Commissioner to suspend any resolution or order of the Committee. There is another Section 252, which pertains to general power of the State Government over the Officers. There is no Section in the Municipal Act of 1968 which gives powers to the State Government to issue instructions and directions to the Notified Area Committee supplementing its bye-laws/rules. In fact in view of five storeys including basement and attic as prescribed under the bye-laws, limiting the storeys up to a lesser number does not supplement the bye-laws but supplant them, which cannot be permitted.

24. In *G. J. Fernandez v. The State of Mysore*, AIR 1967 SC 1754, in para 12 it is held that :--

".....We are, therefore, of opinion that Article 162 does not confer any power on the State Government to frame rules and it only indicates the scope of the executive power of the State. Of course, under such executive power, the State can give administrative instructions to its servants how to act in certain circumstances; but that will not make such instructions statutory rules which are justiciable in certain circumstances. In order that such executive instructions have the force of statutory rules it must be shown that they have been issued either under the authority conferred on the State Government by some statute or under some provision of the Constitution providing therefor....."

Since the learned counsel for the petitioner has not been able to show that the instructions in question were issued under the authority conferred upon the State Government by some statute, these cannot be held justiciable and violation thereof cannot be complained of in this writ petition. It has been consistent view of the Supreme Court that the guidelines in the nature of instructions regulating the actions of its departments and authorities do not have statutory force and are not justiciable. (Please see : *J.R. Raghupathy and Others Vs. State of A.P. and Others*, and *Union of India and Others Vs. S.L. Abbas*,

25. Even if it is assumed that the instructions, violation whereof is alleged by the petitioner, are enforceable by law, next question arises whether the petitioner has been able to specifically prove such violation. Learned counsel for the petitioner has vehemently urged that records relating to the building plan of M/s. Sagar Resorts have been forged, interpolated and dates changed to show that it had submitted its revised plan on 22-12-1990 before the cut-off date of 24-12-1990, which was in fact submitted on 27-12-1990. We are afraid that we cannot go into these disputed questions of fact in exercise of writ jurisdiction. In *D.L.F. Housing Construction (P) Ltd. Vs. Delhi Municipal Corpn. and Others*, it is held in paragraph 18 :--

"In our opinion, in a case where the basic facts are disputed, and complicated questions of law and fact depending on evidence are involved the writ Court is

not the proper forum for seeking relief. The right course of the High Court to follow was to dismiss the writ petition on this preliminary ground, without entering upon the merits of the case. In the absence of firm and adequate factual foundation, it was hazardous to embark upon a determination of the points involved. On this short ground while setting aside the findings of the High Court, we would dismiss both the writ petitions and the appeal with costs. The appellants may if so advised, seek their remedy by a regular suit."

Also see : Jai Singh Vs. Union of India and Others,

26. The result of above discussion is that no relief can be granted to the petitioner as prayed for in this writ petition. As we have already pointed out relief (a) has become infructuous as Kullu Development Authority has been constituted on 2-11-1991, which will regulate the construction in Manali town including the construction of hotel, guest houses and commercial establishments. Relief (b) is also infructuous in view of the consistent stand of respondents 1 to 3 that they did not intend to change the building bye-laws as apprehended by the petitioner. So far relief (c), (e) and (e) (i) are concerned, respondents 1 and 2 owe a statutory duty to ensure that construction is carried out in Manali town in accordance with sanctioned plans and there is no violation of Municipal Act and bye-laws framed thereunder and all other provisions of law applicable. So far relief (d) is concerned, the learned counsel for the petitioner has not pressed it during the course of his arguments. Therefore, the writ petition is dismissed having no merit. No order as to costs.