
(2005) 08 SHI CK 0019

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 1642 of 2002

Smt. Prem Lata Sood and Others

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 16-08-2005

Acts Referred:

Himachal Pradesh Municipal Corporation Act, 1994 — Section 247, 31(1)

Citation : (2006) 1 ShimLC 100

Hon'ble Judges : K.C. Sood, J;A.K. Goel, J

Bench : Division Bench

Advocate : Rajiv Sharma and Surinder Sharma, for the Appellant; M.S. Chandel, General and Ashutosh Burathoki, A.A.G. for Respondents 1 and 2 and K.L. Bali, for the Respondent

Final Decision : Allowed

Judgement

This Judgment has been overruled by : Commissioner of Municipal Corporation, Shimla Vs. Prem Lata Sood and Others, (2007) 7 JT 336 : (2007) 7 SCALE 737 : (2007) 11 SCC 40 : (2007) 6 SCR 898

Arun Kumar Goel, J.—Petitioners have filed this writ petition seeking following reliefs:

(i) That the respondents may be directed to accord necessary planning permission to the petitioners for construction of hotel pursuant to Annexures -PA, PB, PC & PG in a time bound schedule;

(ii) That the impugned Annexures-PD, PE, PF & PH, dated 24.3.1998, 1.9.1999, 6.6.2000 & 8.2.2002 respectively may be quashed and set aside;

(iii) Any other relief as may be deemed just and proper keeping in view the facts and circumstances of the case may also be granted.

2. Facts as they emerge from the pleadings of the parties are, that the petitioners approached respondent No. 2 for grant of planning permission for

construction of four storeyed hotel building on khasra Nos. 310 to 313 and 315 to 322, situate at The Mall, Shimla, near Hotel Cosmos. On 16.1.1998 vide Annexure PB, planning permission by relaxation of ban was approved by the Government. Thereafter Annexure PC was received by the petitioners from the Executive Engineer Development Control Division No. III, Town and Country Planning Office, Kasumpti, Shimla-9. Both these are extracted below:

ANNEXURE PB

Registered Town & Country Planning Department Himachal Pradesh No. HIM/TP-PP(P Reg)-(223) Case No. 6234/17033-34 Dated 16.1.1998

To

Sh Parikshat Mehduda, Talbot Cottage, Asha Deep, The Mall, Shimla-1

Subject: Grant of planning permission for construction of four storeyed hotel building on khasra Nos. 310, 311, 312, 313, 315, 316, 317, 318, 319, 320, 321, 322 in favour of Sh. Parikshat Meduda & others at The Mall, Shimla, near Hotel Cosmos.

JAI HIND

Your planning permission case for construction of four storeyed hotel building on khasra Nos. 310, 311/312, 313, 315, 316, 317, 318, 319, 320, 321, 322 at The Mall, Shimla-1, HP has been approved by the Government in relaxation of ban.

The final planning permission shall be accorded by the Executive Engineer, Development Control Division No. III, Shimla please.

Sd/- Director, Town & Country Planning Deptt. Himachal Pradesh, Shimla-9

Copy to:

1. The Executive Engineer, Development Control Division No. III, Shimla-9 alongwith copies of letter No. TCP-F(6)-/23/96 (Loose) dated 8.1.98, received from Additional Chief Secretary-cum-Secretary (TCP) to the Government of H.P Shimla-2. He is requested to convey the necessary approval to the applicant as per the recommendations made by this office to the Government, The copy of sanction letter be also endorsed to this office as well as to the Government.

Encl. : As Above.

Director, Town & Country Planning Deptt. Himachal Pradesh, Shimla-9.

ANNEXURE PC TOWN & COUNTRY PLANNING DEPARTMENT, HIMACHAL PRADESH
"ORDER"

To

Sh. Parikshat Mehdudia & others, Talbot Cottage, Asha Deep, The Mall, Shimla-171001 (HP)

Subject: Application for permission for development.

Reference: Your application No. NIL Dated 27.6.1994.

You are hereby granted permission under Sub-section (1) of Section 31 of the H.P. Town & Country Planning Department work as mentioned in your application under reference subject to the following conditions namely:

1. Building permission shall be obtained from the local authority concerned before the commencement of the development.
 2. Building operation shall be carried out strictly in accordance with the approved building plan.
 3. Front set back should be 3.00 mtr., side set back 2.50 mtr. each and rear set back 2.00 mtr. respectively. Set back shall be as per approved plan.
 4. Open column above natural ground level should not exceed 2 mtr. in any case,
 5. No projection is allowed within the prescribed set backs.
 6. You shall have essentially to engage a Registered Graduate Engineer for the structural design of the building. Supervision of actual construction will also be done by him and it will be only on this certificate at D.P.C. level. Similarly, the completion certificate will be entertained only through a duly authorized Architect/Planner who will certify the present and future safety of the structure. It will be only after such a completion certificate that the Electricity, Water and Sewerage connections will be allowed by the Electricity Board/ Municipal Corporation. The registered Engineer can also be asked to submit a detailed geo-technical report of the proposed ground on which the structure is to come up. Safety of the surrounding structure will also be ensured alongwith adequate drainage. It is in your interest to ensure that the Architectural Plans fit in completely with the environment.
 7. No tree should be cut without prior permission from the competent authority.
 8. The sanction is valid for three years.
 9. The date of commencement of development shall be intimated to this office.
 10. The certificate at plinth level shall be contained from this office.
- Sd/- Executive Engineer, Dev. Control Div. No. III, Town & Country Planning Office, Kasumpti Shimla-9.
- No. HIM/TCP(S)/Case No. 6234/DCD-IV/97-66182 dated 4.3.1998 Copy of above is forwarded to :
1. The Financial Commissioner-cum-Secretary (TCP) to the Govt. of H.P. w.r.t. Order TCP-E(6)-23/96 dated 8.1.1998.
 2. The Commissioner, M.C. Shimla alongwith copy of a sanction drawing for

information & necessary action please.

3. The Director, Town & Country Planning Deptt. H.P. Kasumpti Shimla-9 for information in respect of his letter No. HIM/TP-PP(P Reg)-(223) Case No. 6234/-17033-34 dated 16.1.1998.

Executive Engineer, Dev. Control Div. No. III, Town & Country Planning Office, Kasumpti Shimla-9.

3. A reading of these Annexures clearly shows that planning permission for the construction of a four storied hotel building by the petitioners at The Mall, Shimla, near Hotel Cosmos in relaxation of ban was approved by the Government of Himachal Pradesh. Thereafter petitioners were called upon by respondent No. 3 to furnish the building plans for their sanction so that further action could be taken. Needful was done by the petitioners. However, vide Annexure PE these were rejected by respondent No. 3. When these were again submitted on 10th April, 2000, these were also rejected and returned on 6th June, 2000 vide Annexure PR. Thereafter petitioners again resubmitted their building plans to respondent No. 3 on 4th December, 2000 after attending to the observations made by respondent No. 3-Municipal Corporation, Shimla. This fact is admitted by respondent No. 3 in Annexure PH. And it is not the pleaded case of this respondent that there is any discrepancy in building plans resubmitted by the petitioners.

4. In the ordinary course of things said respondent it was expected of and it ought to have dealt with the matter keeping in view the communication dated 25th July, 2000, from the Commissioner-cum-Secretary (TCP) to the Government of Himachal Pradesh, addressed to the Commissioner, Municipal Corporation, Shimla. Its copy is Annexure PG and is reproduced as under:

The temporary ban on development activities in the Shimla Planning Area was imposed by the Government on dated 17.4.2000. The building plans approved by the Government before this date need not to be detained. Therefore, the building plan cases already cleared by the Government/Cabinet may be processed further in accordance with the Rules and Regulations.

5. After 4th December, 2000, the matter remained pending correspondence inter se the respondents, and thus petitioners had to file this writ petition with a prayer to quash Annexures PD, PE, PF and PH. As according to them, one after relaxation of ban planning permission to construct a four storeyed building was approved by the Government, respondent No. 3 could not have sat over the matter.

6. Respondents were put to notice. They have contested the claim of the petitioners. So far respondent No. 3 is concerned, its stand is that after rejection of the plans earlier, petitioners resubmitted their building plans after attending to the observations on 4th December, 2000. In its pleadings it is not the case of this respondent that after 4th December, 2000 till date it has conveyed either

rejection or the approval of building plans to the petitioners. According to this respondent since Interim Development Plan was amended, thereafter it was thought fit to seek clarification from the Financial Commissioner-cum-Secretary, Town and Country Planning to the Government of Himachal Pradesh. Its further case is that because the land where planning permission for construction was approved by the Government fell within the core area, no permission for new construction could be granted. As such respondent No. 3 has prayed for dismissal of this writ petition.

7. So far respondents 1 and 2 are concerned, they do not dispute the grant of planning permission for construction of a four storeyed Hotel building by the petitioners on The Mall, Shimla, near Hotel Cosmos. According to both of them after recent amendment in the Interim Development Plan Shimla for the planning area notified vide notification dated 22nd August, 2002, the area under reference fell within the definition of "Core Area", therefore, new construction in this area is only to be allowed in respect of the residential building upto a maximum of two storeys and ancillary uses thereto with the prior permission of the State Government and in case of reconstruction of old existing building, the same shall be permitted by this State Government subject to the condition that plinth area and number of storeys on old line shall remain the same as existed earlier. As such there are no provisions for allowing construction of hotel in the Core Area.

8. We have heard learned Counsel for the parties and have also examined the record of this case.

9. It is undisputed and established fact in this case, that vide Annexures PB and PC planning permission for construction of a four storeyed hotel building on The Mall, Shimla near Hotel Cosmos was accorded by the Government and thereafter in terms of Annexure PD petitioners approached respondent No. 3 for obtaining building permission.

10. Now trouble started for them. Twice building plans submitted by them, were rejected. Reference to Annexures PE and PF clearly indicates that some objections were common, whereas in the later rejection some were new, which clearly supports the plea of the petitioners that objections were being raised in piece-meal and were meant to cause harassment -to them. Otherwise in all fairness and in the ordinary course of things respondent No. 3 was expected and in fact should have raised all objections in one go, so as to enable the petitioners to have removed those and then submitted building plans complete in all respects.

11. Learned Counsel for the Municipal Corporation had no explanation in this behalf except for saying that the petitioners were bound to remove the objections as contained in Annexures PE and PF. For the reasons to be recorded hereinafter this plea has been raised simply to be rejected.

12. In this behalf, when a reference is made to Annexure PH, it is clear as well as admitted by of respondent No. 3, that the petitioners resubmitted their plans on

4th December, 2000 after attending to the observations. Even at the time of hearing when reference to the record was made, nothing could be pointed out on behalf of any of the respondents that these resubmitted plans were discrepant in any manner and/or ground on which those were earlier rejected vide Annexures PE and PF, having not been met with/ fulfilled by removing such objections.

13. It is most unfortunate that while seeking clarification from the Government, stand of respondent No. 3 is that Town and Country Planning has approved six floors, whereas in terms of Annexure PB, which is admitted on behalf of respondents No. 1 and 2, it clearly speaks that planning permission for construction is given for four storeyed hotel building at The Mall, Shimla, near Hotel Cosmos.

14. At the time of hearing learned Counsel for respondents 1 to 3 urged that proposed building in question is situate near defence establishment. Therefore, on this ground alone no planning permission for construction of building can be granted in favour of the petitioners. This plea was strongly controverted by learned Senior Counsel for the petitioners. According to him, starting from Chalet Day School, there are so many hotel buildings which about the so called building of defence establishment. Per him, it is Officers Mess. There are hotels which either touch or are immediately below the a foresaid Officers Mess. These are:

- (a) Himani Regency;
- (b) Hotel Sangeet;
- (c) Hotel Shringar;
- (d) Eves Hotel;
- (e) Cosmos Hotel;
- (f) Holiday Home of Punjab Development Tourism Corporation; and
- (g) Another newly constructed hotel.

15. Number of residential buildings also about the Officers Mess on The Mall Road where the planning permission was accorded vide Annexure PB by the Government as extracted hereinabove. This factual position is not controverted/ disputed on behalf of the respondents, either by learned Advocate General or Shri Bali.

16. Vide Annexure PG supra, the Commissioner-Secretary (TCP) clearly informed Commissioner of respondent No. 3 that temporary ban on development activities in the Shimla Planning Area was imposed by the Government on 17th April, 2000. Building plans approved by the Government before this date need not be detained. Therefore, the building plan cases already cleared by the Government/ Cabinet were to be processed in accordance with rules and regulations. Issuance of this letter is not disputed by respondents No. 1 and 2 and its receipt has also not been disputed by respondent No. 3. As such, it is not understood nor it could

be satisfactorily explained, as to why the plans resubmitted on 4th December, 2000 by the petitioners after attending to the observations made by the Corporation, were not dealt with and sanctioned as per law. But to the contrary those were instead referred to the State Government. This clearly supports the submissions of learned Senior Counsel, that it was for wholly extraneous and irrelevant consideration respondent No. 3 sought the clarification from the State Government, when none was warranted.

17. In this behalf submission of learned Advocate General needs to be noted. Per him, all these facts have no relevance after the area where construction is to be carried out having fallen in the Core Area after amendment of the Interim Development Plan of Shimla. With a view to advance this submission, Shri Chandel laid great emphasis on the notification No. TCP-F(5)-10/2001 dated 22nd August, 2002, issued by the Government of Himachal Pradesh vide which Interim Development Plan Annexure R-1/A was amended. Therefore, according to Shri Chandel unless construction was permitted in the area under as per the amended Interim Development Plan for Shimla planning area, prayer made by the petitioners cannot be allowed in any circumstances whatsoever.

18. Core question in this behalf would be, what is the effect of Annexure R-1/A. Whether it is retrospective or prospective in its application? Whether it takes away the already fructified as well as crystallized rights of a party like petitioners, or not.

19. Suffice it to say in this behalf that a perusal of Annexure R-1/A, the notification, supra relied upon by the respondents does not indicate that it has been made retrospectively applicable to the cases where building plan cases were already cleared by the Government/Cabinet in terms of Annexure PG. Therefore, no benefit can be derived by the respondents from Annexure R-1/A. Its reading also does not suggest that it will cover all the cases like the present one. In addition to this, in the facts and circumstances of this case we have no hesitation in observing that respondent No. 3 instead of dealing with the resubmitted building plans on 4th December, 2000, dilly-dallied with the matter without any justifiable reason much less ground either in law or in the facts and circumstances of this case. It treated Annexure PG as non-est, nor it could be explained by Shri Ball, its learned Counsel why case of petitioners was not dealt with per this Annexure by his client.

20. Learned Counsel for respondent No. 3, as already noted, harped on one fact that after Annexure R-1/A, dated 22nd August, 2002, no construction activity could be carried out in the core area.

21. While dealing with the case of sanctioned plan by the Municipal Corporation, the Division Bench of this Court in *R.S. Santoshi v. State of H.P. and Anr.* Latest HLJ 2001 (HP) 433, has held that new building Bye-laws which came into force on 17th March, 1998 i.e. the date of publication in the Rajpatra, Himachal Pradesh, were not made applicable retrospectively and in the repeal Clause it

was clearly laid down that any building plan sanctioned or approved prior to the commencement of the amendment and any application in relation thereto shall be disposed of in accordance with the provisions of the Bye-laws of 1975 i.e. earlier one as if the said Bye-laws had continued to be in force.

22. On the basis of the aforesaid decision coupled with Annexure PG respondent No. 3 was duty bound in law as directed by the Commissioner-cum-Secretary, Town and Country Planning to the Government of Himachal Pradesh, to have examined the building plans on the basis of Annexure PB submitted by the petitioners after attending to the observations made by respondent No. 3 - Corporation. The said respondent had to consider the building plans resubmitted by the petitioners on 4th December, 2000 and then to have passed appropriate orders, of course in accordance with law.

23. We are also of the view that this would also be a case of deemed sanction in view of the provisions of Section 247 of the H.P. Municipal Corporation Act.

24. Based upon the decision of the Division Bench of this Court in R.S. Santoshi, supra, and the letter of the Commissioner-cum-Secretary in the Department of Town and Country Planning to the Government of Himachal Pradesh (Annexure-PG) which clearly informed the Commissioner of the Municipal Corporation-respondent No. 3 that the building plans approved by the Government prior to the imposition of the temporary ban on development activities on April 17, 2000 should not be detained and cleared/processed by the Commissioner in accordance with the Regulations of the Municipal Corporation. The Commissioner was bound to examine the building plans of the petitioners. Annexure-PB submitted by them after having attended to the observations made by the Municipal Corporation as re-submitted to the respondent No. 3 by the petitioners on December 4, 2000. It was not given to the Commissioner, Municipal Corporation to seek further clarification. We are also of the view that the case of the petitioners in these circumstances, would be a case of deemed sanction in view of the provisions of Section 247 of the H.P. Municipal Corporation Act.

For the reasons recorded above, we allow the writ petition and direct:

(a) The respondent No. 3 shall process the re-submitted building plans furnished by the petitioners un-influenced by the notification of the Government dated 22.8.2002 Annexure R1/A and on the basis of the building bye-laws as were prevalent at that time, i.e. on 17.4.2000 and shall pass the order within four weeks from today;

(b) Needless to say, if any deficiency is found in the re-submitted plans, on the basis of the bye-laws prevalent on 17.4.2000, the petitioner shall remove such deficiency within a week of being pointed out by the Municipal Corporation and the Commissioner in turn shall pass his orders within two weeks thereafter;

(c) In case the respondent No. 3 does not comply with the aforesaid directions within the time frame noticed above, the petitioners shall be at liberty to carry

out the construction as per their re-submitted plans on 4.12.2000 in accordance with the bye-laws as in force on 17.4.2000 after giving intimation to the Commissioner, Municipal Corporation-respondent No. 3.

(d) No Costs.