

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

ORIGINAL APPLICATION NO. 121 OF 2014

**(M.A. NOS. 356 OF 2014, 525 OF 2014, 785 OF 2015,
1495 OF 2016, 474 OF 2017, 626 OF 2017 AND 947 OF 2017)**

AND

ORIGINAL APPLICATION NO. 505(T_{HC}) OF 2015

(M.A. NO. 396 OF 2016)

(CWP NO. 1370 OF 2005)

IN THE MATTER OF:

Yogindra Mohan Sengupta
C/o. Runa Basu, Narayana Building
Middle Sangti, Summer Hill
Shimla-171007
Himachal Pradesh

.....Applicant

Versus

1. Union of India
Through its Secretary
Ministry of Environment and Forest
Paryavaran Bhawan
CGO Complex, Lodhi Road
New Delhi-110003
2. State of Himachal Pradesh
Through its Chief Secretary
Govt. of Himachal Pradesh
Secretariat
Chhota Simla-171001
3. Department of Town and Country Planning
Govt. of Himachal Pradesh
Yojna Bhawan, Block No. 32A
SDA Complex, Vikas Nagar
Shimla-171009
Himachal Pradesh

4. Department of Forest
Through Principal Chief Conservator of Forest
Hoff, Himachal Pradesh Forest Department
Government of Himachal Pradesh
Talland, Shimla-171001
Himachal Pradesh

5. Municipal Corporation
Through Commissioner
Municipal Corporation Building, Mall Road
The Mall, Shimla-171001
Himachal Pradesh

.....Respondents

AND

ORIGINAL APPLICATION NO. 505(T_{HC}) OF 2015

(M.A. NO. 396 OF 2016)

(CWP NO. 1370 OF 2005)

IN THE MATTER OF:

Smt. Sheela Malhotra
W/o Shri Sutikshan Malhotra
R/o Craigs Villa, The Mall
Shimla, Himachal Pradesh

.....Applicant/Petitioner

Versus

1. State of Himachal Pradesh
Through its Secretary
Town & Country Planning
Govt. of Himachal Pradesh
Shimla

2. Municipal Corporation, Shimla
Through its Commissioner
Shimla, Himachal Pradesh

3. Secretary Town & Planning
Shimla-171002
Himachal Pradesh

.....Respondents

COUNSEL FOR APPLICANTS

Mr. Ritwick Dutta & Mr Rahul Chaudhary, Advocates
Mr. Narender Thakur & Mrs. P.Malhotra, Advocates

COUNSEL FOR RESPONDENTS:

Mr. Pinaki Mishra, Senior Advocate for State of Himachal Pradesh
Mr. D. K. Thakur, AAG with Mrs. Seema Sharma, DAG for State of HP
Mr. Aditya Dhwan, Advocate
Ms. Shradha Karol, Advocate
Mr. Krishna Kumar Singh, Adv. for MoEF
Mr. Ajay Marwah, Advocate for HPPCB
Mr. Sanjeev Ralli, Advocate for DPCC
Mr. B. V. Niren, Advocate
Mr. Amit Sibal, Senior Advocate
Mr. Ajay Marwah, Advocate for HPPCB

JUDGEMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Mr. Justice Raghuvendra S. Rathore (Judicial Member)

Hon'ble Mr. Bikram Singh Sajwan (Expert Member)

Hon'ble Dr. Nagin Nanda (Expert Member)

Reserved on: 13th October, 2017

Pronounced on: 16th November, 2017

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)

Sustainability of nature is paramount for human existence. Unsustainable and irreversible interference by human conduct with our natural assets leads to destruction of such assets and profoundly contributes to natural calamities. The elements of 'Precautionary Principle' for conservation or preservation of nature can be defeated by indiscriminate and disproportionate damage to natural assets; unsustainable development exposes our natural assets and makes them vulnerable to vagaries of disasters and calamities. The cases in

hand are the glaring examples of consequences that will flow from violating the Principle of Sustainable Development and Precautionary Principle with impunity. As per the report of the Government of India on Spatial Distribution and Concentration of Landslides released in 2003, nearly 97.42% of the total geographical area of Himachal Pradesh is prone to landslides. Shimla, among the other districts in the State of Himachal Pradesh, falls in the severe landslide hazard risk category. Development involving reckless and excessive constructions and indiscriminate felling of trees is the root cause of a spurt in landslides, taking heavy toll on human lives and destroying property. Undisputedly, these are ecologically fragile areas as these are part of the youngest mountain ranges and also fall in seismic zone IV and V. The slope landslides are mostly man-made.

2. As per the report of the Revenue Department, Government of Himachal Pradesh loss due to damages on account of flash floods, cloudburst and landslides during the monsoon season of 2016 is approximately Rs.863.97 crores; the total human lives lost in these disasters are estimated at 40 and structural damages amount to Rs. 2,283 crores.

3. As per the report of Kinnaur district for 2017, there have been 6 instances of landslide, 3 instances of flash floods and cloudbursts and 3 instances of falling of rocks which left 5 people dead. With regard to Mandi district for the period 2016-17 and up to 31st August, 2017, there have been 48 instances of landslides. With regard to Shimla district in the year 2016-17 and up to 31st August, 2017,

there have been 4 instances of landslides, 2 instances of building collapse, 2 instances of cloudbursts and 1 earthquake related damage.

4. As per the report of Kullu district in 2016-17, there have been 4 landslides, 1 earthquake and 21 instances of flash floods. For the year 2017-18 till 21st August, 2017, there has been 1 instance of landslide and 13 instances of flash floods. For Bilaspur district, there have been 4 minor instances of landslide and 1 minor instance of flash flood. Recently, in a major landslide incident in Himachal Pradesh at Kotrupi near Padhar on Mandi–Joginder Nagar Road about 50 people died when State Road Transport Buses got trapped under the landslide debris.

5. Data for Solan, Baddi, Nalagarh and Kanda Ghat shows 18 and 13 landslides in the year 2016 and 2017, respectively. It is on the record of this Tribunal that there has been large scale tree felling for development, huge construction activities are being carried on in various parts of Himachal Pradesh particularly in district Shimla without providing for any safeguards and environmental protections. The afforestation is hardly complied with and adequate protective and restorative measures are rarely undertaken. The unplanned and indiscriminate development in the Core, Non-core, Green and Rural areas in Shimla Planning Area has given rise to serious environmental and ecological concerns. Over the past, and even in different cases before the Tribunal, it has come on record that there are inadequate facilities in relation to water supplies, sewage treatment, collection

and segregation of different kind of wastes. The rise in construction has inevitable consequences of increasing generation of these wastes and sewage etc. treating which in itself is becoming a humongous task for the State Government. The people of Shimla and even the tourists are exposed to health hazards especially jaundice because of mixing of raw sewage water with drinking water. This case is separately pending before the Tribunal being *Abhimanyu Rathor V. State and Ors.* (O.A. No. 109/2016). These multi-dimensional environmental issues thus arise for consideration of the Tribunal in the facts and circumstances of the case, which we shall shortly revert to.

6. Original Application No. 121 of 2014 has been instituted under Section 18 read with Sections 14 and 15 of the National Green Tribunal Act, 2010 (for short, "Act of 2010") by one Shri Yoginder Mohan Sengupta who claims to be an ecologist and is concerned with the environmental issues particularly with reference to the State of Himachal Pradesh. According to the Applicant, Shimla city (Queen of the Hills) and its surrounding hills constitute an integrated ecosystem which was originally planned to hold a population of 25000 only, while the population as of today is even more than 2,40,000 besides the floating population of tourists, etc. The base of Shimla city is not on a stable valley. It is mostly built on steep slopes. 90% of the core city area has been constructed on slopes above 60°. All these constructions are against all the architectural and geological norms and this makes Shimla highly unstable and susceptible to natural

disasters and also leads to soil erosion. It is situated on seismic zone IV on the earthquake proneness scale. This not only means that probability of large earthquakes is high but also that the frequency of micro and mini tremors is much more, which keep occurring, and this leads to the weakening of the structural matrix of the body of Shimla hill ecosystem, leading to a perceptible increase of its hazards. In the past few years, large numbers of trees have been felled. There are cracks in the soil profile, mini-cave-ins, sinking and sliding of large areas in different parts of the city, besides small and large landslides. These landslides and uprooting of trees sometimes lead to deaths, extensive loss of property, loss of livelihood, ruins roads and infrastructure. Recently, there is creeping caving-in at the Ridge, on the Mall in Shimla.

7. The State of Himachal Pradesh issued a Notification dated 7th December, 2000 wherein it declared 17 forest areas to be Green areas under the Regulation No. 10.4.1.2 (x)(C)(i) of the Interim Development Plan of Shimla. These 17 areas covered most parts of Shimla where greenery was feasible. These areas were also declared as Green areas and regulated under the Interim Development Plan in terms of original Notification dated 24th March, 1979. Besides issuing Notification dated 7th December, 2000, the State Government also issued a Notification dated 11th August, 2000 in exercise of powers conferred upon it under sub-section 4 of Section 17 of the Himachal Pradesh Town and Country Planning Act, 1977 (for short, "Act of 1977"). *Vide* this Notification, it amended the earlier Interim

Development Plan for Shimla in terms of the Notification dated 24th March, 1979. It will be relevant at this stage to reproduce the contents of the Notification dated 11th August, 2000;

“Amendment No. 1. Regulation 10.4.1.2(x) shall be 10.4.1.2(x) substituted as under namely:

(a) All Private as well as Government constructions are totally banned within the core area of Shimla Planning Area. Only reconstruction on old lines shall be permitted in this area with the prior approval of the State Government. The core area shall comprise of the following:

“Central Shimla bounded by the circular cart road starting from victory Tunnel and ending at Victory tunnel via Chhota Shimla and Sanjau and the area bounded by Mall Road starting from Railway Board Building to Ambedkar Chowk, covering Museum, Hill by a road starting from Ambedkar Chowk, on the north side, joining the chowk of Indian Institute of Advance Studies and following the road joining Summer Hill post office and via upper road to Boileauganj Chowk and then joining the cart Road, along Cart Road to Victory Tunnel.”

8. The Notification dated 11th August, 2000 made it clear that no construction was allowed in the green belt area. 17 locations have been identified as forest areas and they are not only green belt areas. No, construction was allowed in the green belt area, though the ban on construction is in existence but various constructions have come up illegally in the past threatening the existence of Shimla city. Any non-forest activity in the identified areas would attract the provisions of Section 2 of the Forest (Conservation) Act, 1980. Though amendments have been made to the various Interim Development Plans from time to time but till date the authorities and the State Government have not come up with final development plan for

Shimla, in accordance with the provisions of the Act of 1977. The Department had constituted the Committee to examine the anomalies vide Notification dated 13th January, 2014 and to submit its report within one month. It is averred that the purpose of constituted committee was to defeat the purpose of the Notification dated 7th December, 2000. Any constructions in the green belt are in direct conflict with the National Forest Policy, 1988, as held in the judgement of the Hon'ble Supreme Court of India in the case of *Lafarge Umiam Mining (P) Ltd. Vs. Union of India (2011) 7SCC 338*, and also with the provisions of Section 2 of the Forest Conservation Act, 1980. In terms of the dictum of the Hon'ble Supreme Court of India in the case of *T.N. Godavarman Thirumulkpad Vs. Union of India & Ors. (1997) 2 SCC 267*, the provisions of Section 2 of the Act of 1980 would not only include 'forest' as understood in the dictionary sense but also any area recorded as 'forest' in the government records. The state government should have identified all these areas as stated in the Notification dated 7th December, 2000 as forest and it was required of the State to comply with the provisions of the Act of 1980 and not permit any non-forest activity or use in the land in question. According to the Applicant, the Shimla Municipal Corporation though has belatedly prohibited any construction on slopes steeper than 45° but large constructions have already come up on such slopes. 90% of the central Shimla is built on a 60° slope, and is covered with buildings which are four to five storeys high. In the event of an earthquake or tremor, devastation could be enormous with buildings on slopes steeper than 45° collapsing like a house of cards. As per the

sloping aspect analysis, most of the areas have Southeast facing aspect with 17.4% of total area, followed by south 14%, northeast 14.3%. Southeast and north facing aspect have lower percentage of aspects in Shimla Planning area. The indiscriminate constructions contrary even to the Interim Development Plan have been raised in various parts of Shimla including the forest/green areas. Natural setting of Shimla has already been disturbed due to felling of trees by foul means to give way for construction. Actual estimate for construction and damages must be proportionately investigated through vegetation index based analysis. The unregulated constructions have been raised in most parts of Shimla Planning Area in violation of the provisions afore-stated. Large number of trees have been felled, damaged, thus adversely impacting the environment and ecology of the area.

9. The Applicant also relies upon various newspaper cuttings and report/articles published by the Institute of Town Planners, India in its journal with regard to construction in Shimla, which states that the Cart road is servicing more than four times of its capacity. Congested built up area, traffic hazards, over concentration of buildings, unauthorized construction, land degradation impacts, indiscriminate land use, growing vehicular pollution are common problems of Shimla and these are getting aggravated with each passing day and the most important issue appears to be lack of proper planning.

When this application came up for hearing before the Tribunal on 30th May, 2014, the Tribunal passed an injunction order restraining construction in the areas covered under the Notification as well as in terms of the order of the Hon'ble Supreme Court dated 12th December, 1996 in the case of *T.N. Godavarnman Thirumulkpad vs. Union of India & Ors.* (1997) 2 SCC 267. The said order dated 30th May, 2014, reads as under:

“Learned Counsel appearing for the Applicant heavily relies upon the Notification dated 07th December, 2000 where the areas have been declared as green belt under the regulations of the ITP Shimla and also relies upon Order of the Hon'ble Supreme Court of India dated 12th December, 1996 where these areas are to be treated as forest area having been entered in the revenue records of the Government as forest area. According to him, the notification itself refers the area in question as forest area. Thus, no non-forest activity can be carried out in that area and need to be specially protected.

We issue Notice to the Respondents by registered post/acknowledgment due and Dasti as well.

Requisites to be filed within three days from today.

Learned counsel appearing for the Respondent no. 1 waives service, accept Notice and pray for time to file reply. Let the Reply be filed within four weeks from today with advance copy to the Learned Counsel appearing for the Applicant who may file Rejoinder thereto, if any, within two weeks thereafter.

List this case on 30th July, 2014.

In the meanwhile, we restrain all the Respondents and particularly the Municipal Corporation of Shimla and the Government State of Himachal Pradesh from raising or permitting any construction in the areas covered under the Notification dated 07th December, 2000.”

As a result of the above order, various applications and miscellaneous applications were filed on behalf of the various departments of the Government as well as the private persons. These were registered along with main case, i.e. O.A. No. 121 of 2014. We

may also notice here that the scope of the original application stood expanded as a result of these applications and other specific pleas that were raised before the Tribunal during the course of hearing of the main application. The details thereof, we would be dealing with, in later part of this judgement.

10. Original Application No. 505 of 2015 (THC), *Sheela Malhotra Vs. State of HP & Ors.* was filed raising a challenge to the orders dated 1st August, 2005 and 13th October, 2010. On the ground that they were null and void, ultra virus of the Constitution of India and the petitioner was entitled to raise construction in accordance with the plans that she had submitted to the Municipal Corporation. In this application challenge was also made to the Notifications dated 22nd August, 2000, 7th December, 2000 and 28th February, 2011 issued by the State of Himachal Pradesh Town and Country Planning Department on the ground that it was ultra virus and unconstitutional. It was averred that the Notification dated 28th February, 2011 should be declared ultra virus to the extent it declares the green area within the Shimla Planning Area and the same should be quashed.

11. The father of the Applicant had purchased the property known as CRYDON, Jakhu Shimla on 30th March, 1970 the total land measuring 5,827 square yards vide settlement deed dated 9th July, 1995. It became owner of the land measuring 600 Sq. yards in khasra no. 1257 and 1258. The Applicant had submitted its plans for construction to the authorities concerned even prior to the issuance

of the Notifications dated 7th December, 2000 and 22nd August, 2000. This was rejected on the technical ground which the petitioner could not comply with as she was abroad. She submitted revised plan on 1st June, 2004 before the Architect Planner, Municipal Corporation, Shimla. This was also rejected vide order dated 31st July, 2004/2014 being beyond the period of 60 days. Against the order of rejection, the Applicant preferred a revision before the Appellate Authority in terms of the Section 403 of the Municipal Corporation Act, 1994. This revision was also rejected vide order dated 1st August, 2005 in which it was stated that premises falling under the green belt and the construction in this area was banned in terms of the Notifications afore-stated. The legality of these orders was challenged on the ground that conclusion of the authorities was without referring to the site plan and revenue record, the slope of the site is steep but is not more than 30 degrees. The Notifications are not applicable as the Petitioner had filed the application before issuance of such Notification. Applicant was entitled to get the benefit of deeming fixation as the plan was not disposed of in accordance with law, within 60 days from their filing. Rejection of the application on the basis of Interim Development Plan was illegal and incorrect. The Notifications are contrary to the Town and Country Planning Department of Himachal Pradesh where there is no provision that total ban on construction could be imposed.

12. The applicant is being denied the right to enjoy her property in violation of Article 300A of the Constitution. On these grounds, the

Applicant prayed for quashing of the orders dated 1st August, 2005 and 13th October, 2010 and the Notifications dated 22nd October, 2000 and 7th December, 2000. The order dated 1st August, 2005 was challenged before the High Court. The High Court of Himachal Pradesh vide its order dated 23rd July, 2010 had directed to consider the application on the basis of existing record and the Interim Development Plan. The Appellate Authority vide its order dated 13th October, 2010 declined to interfere with the order and relying upon the Notification dated 7th December, 2000 and 11th August, 2000 held that it would not be possible to accede to the representation without change in policy that permits fresh construction in the green belt area and the appeal was thus dismissed.

This application was originally filed by the Applicant before the High Court of Himachal Pradesh bearing Writ Petition No. 1370/2005 with the prayers as afore recorded. Vide order dated 26th October, 2015 and upon the statement of the learned Counsel appearing for the parties, the application was transferred to the Tribunal for being heard on merits.

13. In light of the above facts, the Applicant in O.A. No. 121 of 2014 has prayed for following reliefs;

1. Direct the State Government and Respondent nos. 3 and 4 to recognize the areas mentioned in Notification dated 7th December, 2000 as forest and any non forest activity should not be allowed without prior permission under Section 2 of the Forest Conservation Act, 1980.

2. Direct the State Government not to change the land use in any forest/green belt area as stated in clause (d) of notification dated 11th August, 2000 to protect the ecology, environment and future of Shimla.
3. Pass any other orders as the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

14. In addition to the above grounds, the applicant claims that her property is in a deprecated condition and if she is not permitted to construct the property again, the whole property may collapse. On these averments she has claimed the reliefs as afore-indicated in the OA No. 505/2015. On 29th April, 2016, she also filed an application being MA No. 396/2016 praying that the orders of the Tribunal dated 30th May, 2014 and 12th October, 2015 should be modified and relaxed to the extent that the applicant should be permitted to reconstruct the house at least on Old lines so that she could stay in her own residence and to that extent the Municipal Corporation should be directed to allow the construction.

Along with this application, she has filed some photographs showing the present condition of the property in question.

M.A. NO. 525 OF 2014

15. This is an application filed by the Secretary, Town and Country Planning Department to the Government of Himachal Pradesh at Shimla, praying that the order dated 30th May, 2014 passed by the Tribunal be modified and the applicant be permitted to re-notify and

extend the old building of the Himachal Pradesh Public Service Commission, Nigam Vihar, Shimla which falls in the Green Area. It is stated that Cabinet of the State Government had granted its approval for such construction on 25th June, 2014 with the condition that prior permission from this Tribunal shall be obtained. The Public Service Commission stated that there is shortage of office accommodation and to provide better facilities of modern library, strengthening the furnishing of strong rooms and interview rooms in the existing building, besides providing parking place for the official vehicles of the Commission and other vehicles, there is need to raise the construction as prayed in the application. The additional documents were filed annexing the plans and the photographs of the existing building and the space in support of the prayers made in this application.

M.A. NO. 785 OF 2015

16. This application was also filed on behalf of the Town and Country Planning Department for construction of Convention Centre at UP Mohal Raj behind Peterhoff Shimla. It was proposed to raise construction of the Convention Centre which will be five-storeyed, four plus parking, on Khasra No. 39/1 at Peterhoff, Shimla. This is located in the heart of city at Chaura Maidaan. The original heritage construction got burnt in a devastating fire in 1981 and thereafter the building was constructed in phased manner since 1991. It has been constructed to match the hill architecture. Nearly 17 different items are proposed to be constructed. Provision is to be made even for a

kitchen, which will serve 1500 persons including other facilities. Thus, it is prayed that this application should also be allowed by modifying the order dated 30th May, 2014.

M.A. NO. 1495 OF 2016

17. This application has been filed like other applications under Section 18(1) read with Section 19 of the National Green Tribunal Act, 2010 on behalf of the Chief Engineer, Deepak Project Mintoo Court, Shimla-4. According to the applicant, the Project Deepak was established primarily for the construction of the strategically important Hindustan-Tibet Road. Under the project, 21 roads with total length of 1000 kms had to be constructed in Kinnaur, Lahul and Spiti. The existence of headquarter at Shimla is of utmost importance to coordinate the working of the project and other activities. The administrative office building of the applicant was completely gutted in fire which broke on 1st November, 2014. Presently, the office of the applicant is working from a temporary construction, therefore, it has proposed for construction of same plinth location of the old building. It is also stated that no trees are to be cut and no ground to be levelled. The applicant has not submitted the proposal for the construction of building in the green area and wants to construct in the same plinth and shape of old building. The construction does not pose any harm to the environment or the ecology. In these circumstances, it is submitted that the order of the Tribunal be modified and they be permitted to construct the said building.

M.A. NO. 474 OF 2017

18. This is an application filed on behalf of the Forest Department of the State of Himachal Pradesh by the Principal Chief Conservator of Forest stating that the land comprised in Khasra No. 1710 to 1716 and 1722 to 1726 measuring 3469.60 square meters situated in UP Mohal, Bamloe Tehsil, is in possession of the said Department. The building was constructed long back without due adherence to the structural engineering fundamentals of designing of buildings. A part of the old original structure was declared unsafe and has already been demolished. The remaining existing old building is not habitable and has no proper provision for earthquake and fire resistant features, accessibility to handicapped, optimum circulation for 300 to 600 officers/officials and commuters, space for parking for vehicles, proper entry and exit of vehicles etc. The department has proposed to reconstruct the existing complex by demolishing the entire old forest complex. The administrative approval of Rs.15 crores and expenditure sanction of Rs. 2,48,47,000/- for the construction of the building has been accorded by the Government. The building plans had been submitted by the applicant to the Respondent No. 5, Municipal Corporation, which *vide* its order dated 17th January, 2017 rejected the said plan. In that order, the Corporation has stated that in terms of Clause 9 of the Notification dated 7th December, 2000 and Clause 10.4.3 (ix) of Notification dated 13th August, 2015, the area falls in the Green Belt of the Shimla Planning Area where no permission for fresh construction could be accorded. Thus, the building plans were

rejected and a reference was also made to the restraint order of the Tribunal dated 30th May, 2014.

Aggrieved from the said order, the applicant prays that the letter dated 17th January, 2017 be quashed. They should be permitted to raise construction and to that extent the order of the Tribunal dated 30th May, 2014 be modified.

M.A. NO. 626 OF 2017

19. This is an application filed on behalf of the Public Works Department of the State of Himachal Pradesh through its Engineer-in-Chief seeking modification of the order dated 30th May, 2014. It is stated that HPPWD raised a rest house which was under general administration of the State and is in existence since 1971-72 with 29 rooms in addition to four stores, two dormitories and one reception. It is a three-storeyed building. This rest house provides accommodation to the officers and officials visiting Shimla. Between 24th July, 2014 to 28th July, 2014 massive landslides occurred above the rest house building from Lokayukta side, whereupon six deodar trees fell down over the roof, causing substantial damage to the building. The building is beyond repair. The Government wants to reconstruct the rest house with a sanctioned expenditure of Rs.9.15 crores. A survey report was prepared and drawing and plans for construction were submitted to the Municipal Corporation. In support of the application some photographs of the building have been annexed. The Corporation, vide its Survey Report dated 1st August, 2015 had declined the approval and therefore, it is prayed that the order dated

30th May, 2014 of the Tribunal be modified and they be permitted to raise the construction.

M.A. No. 947 of 2017

20. This is an application filed on behalf of one Mrityunjay Tripathi, who has submitted that he was staying at Charlie Villa Cottage, situated at Mohal Khalni in district Shimla during his visit. He was shocked to notice that adjacent to that house in a densely forested area, indiscriminate construction activity was being carried out. The applicant, upon enquiry, learnt that the construction was being raised by one Shri Sanjay Kumar and he was raising 5 storeyed building at the site. This construction was found to be illegal and unauthorized. It is stated that the construction is contrary to the directions of the Hon'ble Supreme Court as contained in its order dated 12th December, 1996 as well as in violation of the order of Tribunal dated 30th May, 2014. It also violates the Notification dated 7th December, 2000. The green belt covers the area of Charlie Villa with an area of 12.27 hectare. The construction is being raised on the steep slopes in an unauthorized manner without leaving any proper setbacks. The buildings are too close to each other. Shimla city is located in a fragile hill environment, which is exposed to a range of natural hazards- earthquakes, landslides, forest fires and flash floods. The development being carried on is unplanned and hazardous. Shimla and its surrounding areas lie in seismic zones IV and V, which represent the highest levels of seismicity in India. Shimla is also susceptible to landslides due to its terrain, soil conditions and steep slopes. There

are reports to suggest that 87% of the area in Shimla falls in landslide prone zone. The density in construction has had a huge impact on the sewage system, water supply, collection and disposal of municipal solid waste, transportation and environmental ecology. Relying upon the order of the Tribunal dated 12th October, 2015 passed in O.A. No. 121 of 2014, the Applicant prays that this illegal construction upon khasra No. 139/34 Khatauni No. 169/164 to 167 measuring 2100.23 sq. mtrs. out of total land Kita-30 measuring 2632-12 sq. mtrs. situated at Mohal Khalini, Tehsil and district Shimla should be ordered to be demolished and the respondent nos. 1 to 4 should be directed to stop the said construction forthwith.

M. A. No. 192 of 2017

21. This is an application filed by the Applicant– Mr. Justice R.F. Nariman praying for modification of the order dated 30th May, 2014 and to permit the Corporation of Shimla to consider and forward their application dated 22nd November, 2016 to the competent authority for necessary approval. The Applicant, while maintaining the original structure of the building, wants to install a lift along with a car park to ensure that the access for elderly parents of the Applicant is made convenient and possible as there is slope of the hill which is sharp and it can cause injury to the elderly people. The design submitted ensures zero alteration in the facade of the existing structure, no tree would be cut and no changes would be made in the heritage architecture of the property and the aesthetics of the hill. Vide order dated 22nd February, 2017, the miscellaneous application was

disposed of with the direction that the matter be referred to the competent authority for appropriate action in accordance with law. In the order it was specifically stated that all actions taken including passing of the order would be subject to the final orders that may be passed by the Tribunal in O.A. No. 121/2014.

22. The matter was again mentioned before the Tribunal as for considerable time and despite the order dated 22nd February, 2017 no action had been taken by the Corporation and the competent authority. Learned Counsel appearing for the State of Himachal Pradesh had then submitted before the Tribunal that the matter was pending effective consideration before the competent authority. Vide order dated 2nd August, 2017, the competent authority was directed to dispose of the matter within two weeks from the date of passing of order, as no action had been taken right from February, 2017 till August, 2017. On 29th August, 2017, the learned Counsel appearing for the State submitted that the Chief Secretary had directed inspection of the site and report is to be submitted to him within two or three days.

23. On the basis of the recommendations of the State Heritage Advisory Committee held on 15th September, 2017, the application of the Applicant dated 22nd November, 2016 has been rejected and it has been stated that access can be created by converting the present existing steps into a ramp by Municipal Corporation Shimla. It will be relevant at this stage even to reproduce the order dated 20th September, 2017, which reads as under:

“I am forwarding herewith a copy of letter no. MCS/AP/992/Sarkar/17-84-17-19 dated 18.09.2017 of Commissioner, Municipal Corporation, Shimla is addressed to the Architect of the applicant and copy endorsed to this Department on the subject cited above.

Besides, this it is submitted that the matter regarding proposed extension of lift and parking for Charlie Villa House, Kh. No. 24 to 30 at Mohal Khalini Tehsil & Distt. Shimla, in favour of Justice R.F. Nariman was placed before the State Heritage Advisory Committee on 15.09.2017. the above matter discussed in the meeting and the relevant portion of the minutes of Heritage Advisory Committee on this issue are as under:-

“The site was inspected by the Members of HAC on 14.09.2017 and it was observed that the site falls in Green Area, Heritage Area as well as in Core Area. As per sub-clause (iii) of clause (a) of Regulation 10.4.(1) of Interim Development Plan Shimla, the said building falls in “one building depth on either side of Mall Road from of IAS upto Chhota Shimla Chowk via SBI, Scandal point, Shimla Club and Oak Over”. The proposal is for construction of lift and parking. The roof of proposed lift will be 2.50m above the Mall Road. A direct opening of 6.05m to the Mall Road has been proposed. The proposed construction activity will disturb and impede the façade of existing building, which would be in contravention of clause (iii) of sub-Regulation (3) of Regulation 10.4.4 of Interim Development Plan Shimla which read as, “The original façade shall be maintained. The façade shall have the admixture of wood, stone, glass, slate and tiles as in the original building. If natural materials are not available, the alternative ones shall be given the same touch.” Further the Member of HAC are of the opinion that the proposed construction would disturb the historic character of the serene Mall Road. Such requests/proposals would be difficult to resist in case the present proposal is accepted. All the owners of land abutting Mall Road starting from Boileauganj to Chhota Shimla will be tempted to apply for such type of constructions and will become precedence. Hence the proposal cannot be considered/recommended in view of the preservations and conservation of “The Mall”. However, the concern of the applicant for

barrier free access from the Mall Road to the cottage seems to be quite genuine. In light of same, the access can be created by converting the present existing steps into a ramp by MC Shimla.”

In view of the above, you are requested to take further action in the matter and also to apprise the Hon’ble National Green Tribunal in this regard.”

The Applicant has thus challenged the above order before the Tribunal and has prayed that the order dated 30th May, 2014 of the Tribunal be modified as prayed and they be permitted to construct the lift with a parking within their premises.

24. From the above factual matrix, it is evident that the Applicant (in O.A. No. 121/2014) has prayed before the Tribunal that there should be strict adherence to the Notifications dated 7th December, 2000 and 11th August, 2000. There should be no construction in the Green/Forest area and no non-forest activity should be permitted in the forest area without strict compliance to the provisions of Section 2 of the Forest Conservation Act, 1980. The State Government should be restrained from changing the land use in any Forest/Green belt in terms of the Notification. There should be strictly regulated development that too only in accordance with the law in force. It was submitted that keeping in view the lack of amenities various environmental issues including public health, ecology, landslides and the area being IV and V seismic zone, there should be no further construction raised in the notified areas. In fact, the Applicants pray for complete stoppage of construction.

25. Of course, as above referred; there are some applications which are praying for modification of the order dated 30th May, 2014.

In order to deal with all the environmental issues before the Tribunal effectively and in a comprehensive manner, it is necessary for us to refer to the stand taken by the official/private respondents in relation to the main application as well as the miscellaneous applications.

STAND OF THE RESPECTIVE RESPONDENTS:

26. The Municipal Corporation, Shimla has stated that no new construction is permitted in the declared green belt area but reconstruction in old lines can be raised as per the Regulation 10.4.12 (x) Clause-C (i) of the Notification dated 11th August, 2000. The Corporation is a Regulatory Authority and the construction activities within the limits of Respondent Corporation are being regulated in terms of the regulation, framed by the State of Himachal Pradesh.

27. As regards the illegal structures are concerned, according to the Corporation, appropriate proceedings for raising unauthorized constructions under the provisions of Himachal Pradesh Municipal Corporation Act, 1994 and Building Bye-Laws framed under, Himachal Pradesh Town & Planning Act, 1977 and as per Interim Development Plan are being initiated against the violators. The construction activities are being regulated under the relevant provisions. It is stated that the Corporation has independent means to deal with the construction activity and monitoring of the ongoing

construction is also being undertaken by the Architecture Planner which is also responsible for initiation of the demolition proceedings against the violators within the town.

28. In relation to M.A. No. 947 of 2017, it has been stated that the Corporation has not granted any permission for raising construction in the notified green belt after 30th May, 2014. In relation to the construction in Khasra No. 139/34, Mahol Khalini, the permission was granted in favour of Bhupender Singh and others vide order dated 25th March, 1982. It was for construction of two blocks of Type-I, three blocks of Type-II and single block of Type-III. This was granted prior to the issuance of the Notification dated 7th December, 2000. The Applicant had also submitted revised building plans for aforesaid type block which was also approved vide order dated 22nd October, 2007 on the basis of original sanction granted in the year 1982. According to the Corporation, there is no violation of the Notification dated 7th December, 2000. There is no five storeyed structure being raised at the site and no permission has been granted to Mr. Sanjay Kumar. The Corporation has therefore prayed for the dismissal of the application. It needs to be noticed here that in the different replies filed by the Corporation the extent of unauthorized and illegal construction raised in the Shimla Planning Area and number of properties against which actions have been taken, has nowhere been stated.

29. The detailed reply on behalf of the Respondent Nos. 2 to 4, i.e., State of Himachal Pradesh and its various departments have been

filed. It is stated that the application has been filed only on mere surmises and conjectures and as such it has no merit. The State Government had not violated or contravened any of the provisions of the Forest Conservation Act, 1980. On merits, it is submitted that use of forest land for non-forestry purpose cannot be allowed without prior approval of the Government of India. For regulating the construction in the Core and Restricted area of Shimla Planning Area regulations have been notified by the State Government vide Notification dated 28th February, 2011. It is admitted that 17 Green belts have been notified in terms of the Notification dated 7th December, 2000. Only reconstruction on old lines is permissible within the same plinth area and with same number of storeys. These Green belts/areas do not fall under the classification of forest in terms of the notification. However, the Green belt at some places also includes forests. It is denied that the Committee had been constituted with the intention to defeat the purpose of earlier Notification. The purpose of the Committee was to examine the anomalies in demarcation of the Shimla Planning Area. Wide publicity was done and nearly 57 objections/suggestions had been received from the general public regarding the anomalies in the boundaries of the earmarked green pockets of Shimla Planning Area and the same are under consideration of the Committee. The permission of the Government of India is needed only in the areas where there is forest or areas which are covered as deemed forests in terms of the judgement of the Hon'ble Supreme Court in *T. N. Godavarman Vs. Union of India* (supra). That in compliance of the order of the Hon'ble

Supreme Court dated 12th December, 1996 and on the basis of the recommendations of the Expert Committee, the Government of Himachal Pradesh issued the Notification of 19th February, 2011 declaring the definition of the 'forest'. It is stated that the respondents shall not allow any non-forest activity on the forest land without approval of the Government of India.

Union of India for reasons best known to it chose not to file any reply either to the main application or to the miscellaneous applications filed on behalf of the different parties.

REJOINDERS:

30. A common rejoinder has been filed on behalf of Applicant to the replies filed by Respondent Nos. 2 to 5. The Applicant besides reiterating the statement made in the main application also places some documents to provide information that substantiate such statements. Mainly, the documents relied upon are the Environment Impact Assessment Report in relation to 17 Green areas in Shimla Planning Area, the draft of City Disaster Management Plan, 2012 and a Report on Shimla Heritage prepared by Town and Country Planning Department of the State of Himachal Pradesh amongst others. The Applicant also submits that the Green belt areas notified under the Notification dated 7th December, 2000 are forest areas and attract the provisions of the Forest (Conservation) Act, 1980. According to them, Respondent No's. 2 to 4 are misleading the Court by averring that the Green belt does not mean forest area and it includes non-forest areas. There is no developable vacant land within the Green belts. It is

submitted that forest is not characterized by thick tree cover in all parts of the forest. There are spaces between trees that form an integral part of the Forest Eco-system. The attempt made on part of the respondents is to open up the forest area for non-forest activity by calling the space 'developable vacant land'. It is submitted that the TCP Department has been trying to regularize the illegal constructions within the Green belt for many years or attempts are repeatedly being made to provide a "relaxation" in the condition with regard to no construction in the Green belt areas. The mandate of the internal committee is not to comment upon the green cover and the status of the localities in the letter dated 26th August, 2014 written by the Town and Country Planning Department to the Secretary. There is mention of letter dated 31st July, 2014 by which it had directed that the Minister of Town and Country Planning desires that all 57 objections/ suggestions as received from the general public regarding anomalies in the demarcation of 17 Green pockets of Shimla Planning Area may be heard personally and thereafter proposal with recommendation may be sent to State Government. It was also stated that it is in the public interest that construction activity may be allowed in 17 green pocket areas of Shimla Planning Area in a restrictive manner.

31. The Corporation has miserably failed to take any action with regard to illegal construction currently going on in the Shimla town including the green areas. It is submitted that the Jakhu Ropeway is being constructed within the Green belt area and the Environmental

Clearance for same has yet not been granted by the MoEF&CC. The project has also not obtained renewal of “Consent to Establish” from the HPPCB. The project has carried out construction of 13 floors when it had permission for 11 only. Without any concern for the ecology, stability of construction, its impact on the hill and its slopes, in the Jakhu Ropeway project two additional floors were given approval by giving a penalty fee of Rs.60,68,491/-. The ground for this penalty was the deviation during construction from the sanctioned plan. Such relaxation for ongoing construction within green belt and core area is illegal.

32. The Environment Impact Assessment was carried out as per the terms of reference to assess the impact of construction in the green pockets by the Society of Environment Protection and Sustainable Development which is a society under the Department of Environment, Science and Technology. This study was based on analysis of all the available environmental data, physical survey and this study report also covers the fields surveys carried out in study area, compilation and analysis of topographic records, revenue records, slope surveys, Google maps, etc. Thus, this study shows how the Shimla city-hill ecosystem is on the brink of a disaster and how the borders of the green/forest pockets have been crucial to protect the same to a large extent. The report concludes that it is imperative that areas with predominant green cover are not opened for construction activities, and factually, the construction need to be completely banned in entire Shimla.

33. The draft of the City Disaster Management Plan, 2012 has been prepared by the City Disaster Management Cell, M.C. Shimla under the Government of India and UNDP which provides an in-depth view into the precarious position of Shimla and states that the landslide is most common disaster in Himachal Pradesh. Loss of life, damage to houses, roads, means of communication, agricultural land, and floods are some of the major consequences of landslides. The vulnerability of the geologically young, unstable and fragile rocks of the State has increased many times in the recent past due to various unscientific developmental activities. The State of Himachal Pradesh had issued an ordinance on 6th September, 2014 to amend the Himachal Town and Country Planning Act, 1977 as an attempt to regularise the various illegal and unauthorised construction raised, however, the same was withdrawn subsequently.

HIMALAYAN ECOSYSTEM, HIMACHAL PRADESH, SHIMLA – SUSTAINABLE DEVELOPMENT:

34. Himalayas, Sanskrit for ‘abode of snow’, stretch across the north-west to north-eastern portion of India. They cover approximately 2,400 km and pass through the nations of India, Pakistan, Afghanistan, China, Bhutan and Nepal. The Himalayan range is made up of three parallel ranges often referred to as the Greater Himalayas, the Lesser Himalayas and the Outer Himalayas. Large number of rivers have their source in Himalayas including the Ganges and Indus. Climate ranges from tropical at the base of the mountains to perennial snow and ice at the highest elevations. These

complex and diverse eco-regions are interconnected: an ecological threat to one is ultimately a threat to many. The unique floral and faunal wealth is undergoing structural and compositional changes due to climate change. The increase in temperature and destruction of forests is causing species to migrate to higher elevations. As per the data documented by the International Centre for Integrated Mountain Development (ICIMOD), the region is bio-culturally rich. It contains whole or part of four global biodiversity hotspots, 60 eco regions, 27 Ramsar wetland sites, 488 protected areas, and 13 UNESCO heritage sites. The Hindu Kush Himalayas comprise of approximately 39% grasslands, 20% forests, 15% shrub lands, and 5% agricultural land. It is even called as 'Water Tower of Asia'. The Himalayas alone have nearly 4000 cu. km of snow and ice. The ecosystem services provided by the Himalayas directly form the basis for livelihoods for a population of around 200 million people; indirectly the river basins supply water and other ecosystem services to 1.3 billion people, a fifth of the world's population. The services provided by the Himalayas are: source of many glaciers, regulates the climate of South Asia, religious significance, lush flora and medicinal plants, rich wildlife and source of many minerals. The Himalayas have a profound effect on the climate of the Indian subcontinent and the Tibetan Plateau. Himalayas are the result of an ongoing orogeny, the result of a collision between two continental tectonic plates. It is considered as pristine ecological area with many natural habitats. The Himalayas are young mountains and their environmental degradation is being caused by population growth, unplanned urbanization, polluting

industries and allied sectors. Unauthorized colonies are mushrooming out of greed with intent to secure unmerited benefits. The effects of unauthorized colonies/structures in eco-sensitive zones are landslides, loss of bio-diversity, poor waste management, and decrease in agricultural land for food production, environmental and ecological degradation of natural assets. The Himalayan ecosystem is vulnerable and susceptible to the impacts and consequences of changes on account of natural causes, climate change resulting from anthropogenic emissions and developmental paradigms of the modern society. The sustainability of Himalayan ecosystem is crucial for the livelihood of large number of people in Asia. It is now widely recognized that the rich and diverse Himalayan ecosystem is highly fragile. Un-sustainable changes in the ecosystem should be carefully avoided. The developmental trajectory of the States in Indian Himalayan region should be consistent with sustainability. The episodic events releasing large amounts of energy pose a challenge to the planners as well as to development objectives of the States in the region. Many indicators suggest that we are using natural environment in a unsustainable manner. Ecosystems can be characterized as environmental assets that, like other capital assets provide a flow of services over time. If these services are consumed in a sustainable manner, the capital can be kept intact.

In the recent decades, however, ecosystems have been under increasing pressure as a result of human activities. Valuing ecosystem services serves a number of purposes. Valuing the benefits

both current and future from natural environment illustrates its significant contribution to wellbeing and high dependency of society on its ecological base. The local communities and the State are the custodians of these resources. The unregulated exploitation in the light of the economic importance of the genetic resources available in these bio-diversity rich regions must be prevented. Under the Convention on Biological Diversity, it has been stated that internationalization should be considered as one of the guiding principles for selecting appropriate incentive measures to prevent, arrest or reverse the loss of bio-diversity and take into account other relevant environmental concerns. External costs, and benefits are essentially environmental 'side effects' of economic activities and incentive measures strive to internalize a greater proportion of these effects in the calculation of decision makers and consumers.

The value of biological diversity for subsistence, cultural or commercial purposes should be recognized. For its valuable contribution, the Himalayas need to be prevented and saved from indiscriminate invasion into its natural and biodiversity assets.

35. The State of Himachal Pradesh as a whole is vulnerable to different kinds of disasters, natural as well as man-made. These areas are especially vulnerable where development over the years has further accentuated the problems by upsetting the natural balance of various physical processes operating in the mountain eco-system. The increased pressure on the mountain environment has contributed in some measures to environmental problems such as landslides, land

subsidence, removal of vegetation and soil erosion. According to the estimate, about 58.36% of the land is subjected to intense soil erosion, majority of which is located in the Himalaya. The manmade and natural disasters both are matters of immediate concern to the stakeholders in the State of Himachal Pradesh. The earthquakes, landslides, cloud bursts, flash floods, snow avalanches and droughts are causes of natural hazards. Another major contributory factor is human actions, interference, indiscriminate development, unauthorized and unplanned activities in these eco-sensitive areas. The fragile ecology of the mountain state coupled with large variations in physio-climatic conditions has rendered it vulnerable to the vagaries of nature. The concept of vulnerability leads to calculation of risk. Risk management would, therefore, mean the level of social and economic ability to cope with resulting event in order to resist major disruption or loss. This susceptibility and vulnerability to each type of threat will depend on its respective differing characteristics. The State in general is prone to 25 types of hazards out of 35 identified by the Government of India. The seismic sensitivity of the State is high and 7 out of 12 districts in the State have over 25% of the area falling in seismic zone V (very high damage risk zone). The percentage seismic sensitivity in relation to some districts is as high as 99%. It is 91% in Hamirpur, 99% in Kangra and 97% in Mandi.

36. Shimla is said to be the 'Queen of Hills' and number of tourists visit this beautiful hill capital every year not only during the summers but even throughout the year. Sustainable development requires that

the capital city is developed keeping in view not only the residential population but also the floating population of tourists and the consequent pressure exerted on the physical environment & infrastructure and hence protection of forest, biodiversity, water bodies, sky slopes, etc. should be essential ingredients for planning process. Interim Development Plan for Shimla was made for the year 1979 under the department of Town and Country Planning in terms of Section 17 of the Act of 1977 and till date the final development plan in accordance with the provisions of the Act has not been prepared and notified. Shimla lies at 31.61° North, 77.10° East in south- western range of Himalayas. It has average altitude of 2,206 meters above mean sea level and extends along a ridge with seven spurs. The city and its surrounding areas fall in zone-IV, i.e. high damage risk zone as per the Earthquake Hazards Zonation of India. Weak construction designs and architecture and increasing population posed a serious threat to earthquake prone regions. There are no water bodies near the main city. The closest river is the Sutlej, which is about 21 km away. Other nearest rivers are the Giri and Pabbar, the tributaries of Yamuna. The green belt in the Shimla planning area is spread over 414 hectares (1,020 acres) and the main forests in and around the city are of pine, deodar, oak and rhododendron. Environmental degradation due to the increasing number of tourists every year without the infrastructure to support them has resulted in Shimla losing its popular appeal as a tourism destination. Shimla is known for its natural forests. These forests contribute to value of Shimla by improving air and water supply

besides maintaining its quality. Out of total of 9,950 ha of Shimla Planning Area, about 1,475 ha (15% of total area) is under various uses and 6,080.15 ha area is under forests which constitute about 55% of the Shimla Planning Area. The ecosystem of Shimla, like any other natural ecosystem, provides provisioning, cultural, regulating and supporting services. Shimla and its surrounding areas lie in Shimla Zone-IV and V which represent the highest levels of seismicity in India, and can experience earthquake of intensity VIII on the Modified Mercalli (MM) scale. Such an earthquake will cause total collapse of poorly built structures and partial collapse of ordinary buildings. Shimla is also susceptible to the landslides due to its terrain, soil conditions and steep slopes and human interference. As per Landslide Hazards Zonation Atlas of India 2003, 18% of the Shimla district comes under severe to very high landslide risk 67% of the area is susceptible to high risk. Between 2000 and 2009, Shimla was the most landslide prone district in Himachal Pradesh. The buildings and structures constructed in Shimla are not built to withstand high seismic disturbance. The houses/buildings have been constructed in Shimla and around its areas on very steep slopes. The building regulations in Shimla permit construction on slopes with a 45° incline but as per Geological Survey of India, suitable slope for urban development is less than 30°. The slope regulations have been violated. Risk analysis based on slope is prerequisite for planning in hilly areas such as Shimla, which has not been adhered to. High rise buildings are being permitted. Buildings are constructed without any setback, excessive ground coverage and ignorance of checks and

balances required for disaster risk management. There is unregulated heavy vehicular traffic causing air pollution, lack of infrastructure including absence of proper water and sewage treatment facilities. To put it simply but precisely, it is evident that the city of Shimla and its surrounding areas are facing a very high risk. It is not introduction of check and balance system simplicitor which would help the stakeholders to prevent such natural or manmade disasters but definite, effective and drastic measures are required to be undertaken by the State Government, concerned stakeholders and even the public at large to protect the environment, ecology, public health and property. It is inevitable to adopt and follow the ingredients of the Principles of Sustainable Development directly and without exceptions.

37. The concept of 'Sustainability' and 'Sustainable Development' is a catch word for the policy makers particularly in such eco-sensitive areas rather than being a guiding mantra for policy planning and implementation.

In 1987 the "Brundtland Commission" submitted their report entitled "Our Common Future". This report is considered a landmark publication which coined the term 'Sustainable Development' and popularized its definition. Sustainable development is a core concept within global environmental policy. It provides a mechanism through which society can interact with the environment while not risking or damaging the natural resources for the future generations. In the core area the tenets of sustainable development have to be incorporated

while undertaking re-construction and urbanization. The resources used should be in proportion to developmental output with lesser ecological footprints.

38. History has led to vast inequalities, leaving almost three-fourths of the world's people living in less-developed countries and one-fifth below the poverty line. The long-term impact of past industrialization, exploitation and environmental damage cannot be wished away. It is only right that development in this new century be even more conscious of its long-term impact. The problems are complex and the choices difficult. Our common future can only be achieved with a better understanding of our common concerns and shared responsibilities.

39. The World Conservation Strategy (WCS) although did not define the concept of Sustainable Development, however, the WCS describes that "living resources conservation improve the human conditions in an environmentally sustainable way." Sustainable Development implies using living resources in a manner that 'does not exceed their natural capacity for regeneration' and using natural resources in a manner which ensures the preservation of the species and ecosystem for the benefit for future generations

40. "Sustainable Development encompasses "improving the quality of human life while living within the carrying capacity of supporting ecosystem". An eminent environmentalist, Dr. M.S. Swaminathan defines Sustainable Development as: "*Sustainable Development*

implies a future in which standard of life is improved world wide through economic development where local environment and biosphere are protected and science is mobilized to create new opportunities for human progress.”

41. Pearce defines Sustainable Development as *“a situation in which the development vector that is, the vector of desirable social objectives that include access to resources, as well as increase in real income per capita, improvement in health and nutritional status, educational achievement, fairer distribution of income and increases in basic freedom does not decrease overtime.”* Stephen Viederman, emphasizes that *“sustainability is a vision of the future that provides us with a road map and helps to focus our attention on a set of values and ethical and moral principles by which to guide our actions, as individuals and in relation to the institutional structures with which we have contact-governmental and non-governmental, work relations and other”*.

42. In sum, “Sustainable Development “ensures continuing growth and progress for humankind, whilst arresting and changing those processes which cause irreversible damage to the environment over all, it exposes a concern which focuses on human need rather than human want”.

The above stated Principles of Sustainable Development commands that development must be made so as to not cause irreversible or irretrievable damage to the nature and natural assets. Causing such damage would result in depleting our natural resources

that it would not only offend the inter-generational equity principle but would even cause disasters during our lifetime. The Principle of Sustainable Development has been applied by the Hon'ble Supreme Court and other Courts in our country without exceptions. There are judgements by various Courts where directions were passed to demolish the building structures or activities carried on in violation to law and offending the Principle of Sustainable Development. In the later part of the judgement, we would be dealing with such cases to substantiate the view that the development must go hand in hand to the protection of nature. Both these concepts must exist together and be not taken as destructive of each other. The Doctrine of balancing which is inbuilt both into Precautionary Principle as well as Sustainable Development contemplates that the development be carried with due regard to natural assets. It is primarily for the reasons that the natural assets if destroyed would cause irreversible damage to the human life. Thus, be it range of Himalayan hills, State of Himachal Pradesh and particularly city of Shimla we must ensure strict adherence to the Principles of Sustainable Development.

DISCUSSION ON REPORTS OF THE COMMITTEES PLACED BEFORE THE TRIBUNAL:

43. Discussion of these reports is significant for the reason that they deal with different aspects of environment and ecology with reference to the conditions prevailing in the Shimla Planning Area and surrounding areas. On material issues, we hardly find any substantial variations. The views expressed by the Committees read in conjunction with the line taken by the respective parties to the *lis*

would certainly provide greater clarity to the relevant aspects of the case.

In light of the above and before we proceed to examine the merits of the contentions raised before the Tribunal; it is necessary for the Tribunal to analytically examine the various reports that have been placed on record. Some of the reports have been placed by the parties on record, while the others have been submitted by the Committees constituted under the orders of Tribunal. The parties to the proceedings had ample opportunities to file their response to these reports and they were heard at length by the Tribunal.

44. The Comptroller and Auditor General of India on Social, General and Economic sector had prepared its report for the period ending 31st March, 2016 which was placed before the Tribunal. The CAG report for Himachal Pradesh has identified earthquakes, fire and massive unplanned construction as major hazards to which the State of Himachal Pradesh is most vulnerable. In this report, it was stated that the Town and Country Planning Rules do not regulate construction in rural areas. Despite high seismic sensitivity building construction particularly in rural areas (89%) is not regulated by any Act and Regulation. Construction of earthquake resistant buildings in rural areas is not being ensured. The acceptable slope for construction of building in urban areas is stated to be 45°, compliance to the same is either absent or deficient. Haphazard construction particularly in urban areas like Shimla provides no space for easy access to fire & emergency vehicles or for providing

relief and rehabilitation in the event of disaster either on account of fires or earthquakes. As per National Disaster Management guidelines, the State Disaster Management Authority is required to carry out screening of lifeline building structures for assessment of their vulnerability in the event of disaster. The performance Audit Report has pointed that out of the 300 lifeline buildings selected for study in Shimla city, 249 (83%) were found structurally unsafe. The new construction should not only adhere to the structural design but the material used must enable the buildings to withstand the hazards of earthquakes and fire etc., existing buildings require to be retrofitted to withstand earthquakes and to prevent hazards which can cause damage to the life, property and the environment. The existing practice of permitting haphazard construction and subsequently regularizing through compounding encourages illegality to perpetuate with serious consequences to the environment, life & property.

45. This report adversely commented upon preparedness for disaster management in the entire State. It has been recorded that the plans were not updated annually in accordance with the provisions of the Disaster Management Act, 2005. The State Disaster Response Authority for works not related to natural calamities, emergency operations centres were yet to be fully equipped with necessary communication systems, lifeline building had not been identified for retro-fitting to withstand earthquakes, techno-legal regime with regard to follow up of construction of buildings on slopes was not

followed and action was not taken to act upon the cases of unauthorized and haphazard constructions. In the report it was stated that the State is prone to various types of disasters causing destruction of life and property. Seismic sensitivity of State is high and 7 out of 12 districts in the States have over 25% of their area falling in seismic zone-V.

46. The report also stated about the earthquake preparedness unfavourably as it stated that there was complete non-functioning of Hazard Safety Cells, as well as construction standards and status of houses in the State was not compliant. The report further recommended training on construction of seismically safe buildings. The techno-legal regime for earthquake risk reduction was identified. The authorities were required to take fire safety measures as well as the buildings to take clearance in that regard. The report specifically touched upon and mentioned with emphasis the haphazard construction of buildings in Sanjauli and Krishnanagar areas in Shimla that provided no space for relief and rehabilitation which may result in abnormally high casualty. These constructions were stated to be not only unauthorized and unplanned but also completely hazardous having undoubtedly a significant impact on environment, utilization of natural resources and the resulting pollution therefrom.

The comments relevant for the purpose of this case in the conclusion given in the said report reiterated the above and also made some recommendations to the government for implementation.

47. The learned Counsel appearing for the Applicant had relied upon various articles and publications during the course of hearing. The learned Counsel had also relied upon, amongst others, on article published in journal of Environment Research and Development which stated that the environmental quality of a settlement is an outcome of its natural, as well as built environment. The intensity and pattern of built environment not only affects its appearance and efficiency. It affects the environmental quality of the area significantly in terms of variations in the micro climate, the extent of surface run off/recharging of aquifers and water table, the extent of soil erosion, quality of water resources, quality of vegetation. It recommended proper building regulation considering the topography alongwith proper land use and transportation planning for ensuring sustainability of built environment in hilly region. Reliance was also placed upon the report prepared in relation to the City Disaster Management Plan, Shimla in which hazard risk analysis of Shimla was dealt with at length. Natural as well as human induced hazards were specified. Tree falling, monkey menace, traffic jams, fires, utilities failure, accidents and other relevant considerations were stated. The plan particularly referred to the population congestions, slopes and terrain, transport network, rapid unplanned growth, distorted land use and building utilization, poor accessibility, inadequate infrastructure and lifeline services, poor building conditions, inappropriate building heights, old building age, poor enforcement of laws, social and economic awareness and more particularly rapid unplanned growth. It was stated that the city was

planned for a maximum population of 16000, which now supports a population of 2,36,000 as per provisional census figures for 2011. A combination of lack of planning and haphazard growth, has resulted in construction of buildings on steep and unstable slopes with improper construction in practice. In this background, it stated as regards to the vulnerability of Shimla in relation to landslides, sinking zone, flash floods and heavy snow fall. The report heavily relied upon the vulnerability, susceptibility of human hazards as afore-referred. The risk factors also were specified in relation to the above. Importantly, risks of tree felling were elaborately dealt with. It was stated that probability of tree falling in the ridge area in Shimla was very high. This was result of apathy of Departments and non-availability of advance equipments to cut the trees, which is another issue. Most of the risk factors were stated to be very high in the Shimla Planning Area.

48. Keeping in view the findings recorded in the above report, the Tribunal vide its order dated 12th March, 2015 had directed the learned Counsel appearing for the State Government and the Union of India to take instructions that an Expert Committee could be constituted to submit a complete and comprehensive report in relation to ecology, environment and forest protection of the depleted forest areas as well as the impact of existing structures on the environment and ecology, sewage system and water supply, etc.

49. No steps were taken by the State of Himachal Pradesh as recorded in the order of the Tribunal dated 30th September, 2015. In

that order, it was noticed that despite passage of nearly a year no study had been carried out by the State of Himachal Pradesh in terms of the directions of the Tribunal. It was also noticed that the city of Shimla alone was generating nearly 60 to 70 tonnes of municipal solid waste everyday and it was increasing with the passage of time. Further time was granted to the State of Himachal Pradesh to comply with the directions. Vide order dated 12th October, 2015, while noticing the earlier orders passed by the Tribunal, the Tribunal directed constitution of an Expert Committee consisting of different officers from the State of Himachal Pradesh, National Disaster Management Authority, Senior Scientists from Wadia Institute of Himalayan Geology, Dehradun, Experts from G.B. Pant Institute, Professors from School of Planning of Architecture, New Delhi, etc. In the meanwhile, the State of Himachal Pradesh had also constituted a committee in furtherance to the earlier orders of the Tribunal, which submitted its report.

50. The Committee constituted by the Tribunal vide its order dated 10th October, 2015 had visited Shimla and conducted certain inspections. This report was not filed till 14th July, 2016 on which date last opportunity was granted to the State and the Chairman of the Committee to ensure that the report is filed. The report was filed and *vide* order dated 9th November, 2016, the parties were granted liberty to file response to the report of the High Powered Committee. Subsequently, it came to be noticed that the report that had been filed before the Tribunal had not been signed by all the members of

the Committee constituted by the Tribunal. In fact, it was also discovered that some of the members of Committee had serious objections to the recommendations made and particularly the amendments that had been made by the Chairman of the Committee. This was noticed in the order dated 16th February, 2017 and all the members of the Committee including Chairman were directed to be present before the Tribunal. It was noticed that the members were not satisfied with the report, which had been submitted to the Tribunal and in fact that report was not even circulated to the Members of the Committee. The objections particularly related to construction in green area, the possible and preventive steps that should be taken for disaster management and with regard to other aspects keeping in view the Himalayan ranges, the forests, etc. The last meeting was held on 9th August, 2016 for which no minutes were recorded.

51. The Tribunal observed that the Chairman of Committee and Mr. Sandeep Sharma dictated the said report ignoring opinion of the members, which was certainly irresponsible on the part of the said officer. The Tribunal while expressing displeasure in terms of the order dated 22nd February, 2017 directed that the objections should be considered and all the Members should be present in the chamber meeting to be held on 28th February, 2017 at the Tribunal. On 28th February, 2017, all the Members appeared and while expressing reservation about the draft report, they tendered an apology to the Tribunal for not complying with the directions. The members of the Committee were present and after hearing all concerned, the Tribunal

directed that the Chairman of the Committee Mr. R.D. Dhiman, IAS, Principal Secretary, Environment, Science & Technology would not be the Chairman any further. Mr. Tarun Kumar, Additional Chief Secretary was appointed as the Chairperson and Mr. Shashi Shekhar, former Secretary, MoEF&CC and a nominee of Director, NEERI were added as additional members of the Committee. This Committee then finally held the meeting and considered the reports as well as detailed directions passed by the Tribunal in its order dated 22nd February, 2017 and finally submitted the report before the Tribunal on 24th May, 2017. Copies of the same were provided to all the counsel appearing for the parties in the case and they were granted time to file replies/objections to this report, which were filed accordingly. The learned Counsel appearing for the parties were heard at length in support of their responses/objections and comments upon the report.

52. The High Powered Committee appointed by the Tribunal met on different occasions under the Chairmanship of Mr. Shashi Shekhar, which deliberated on variety of environmental issues in terms of the orders of the Tribunal as well as the important recommendations that were noticed in the order of Tribunal dated 28th February, 2017. The Committee submitted a detailed and comprehensive report on all the aspects including the proceeding sheets and even other reports that had been considered and/or relied upon by this Committee in support of the findings recorded by it. It will be appropriate to reproduce the relevant extracts of this comprehensive report rather than concisely stating the gist thereof.

53. Relevant excerpts from the Expert Committee Report filed on 24th May, 2017 are reproduced below:

“3.1 Recommendations on Disaster Risk Management

From a disaster risk management perspective, Shimla has far exceeded its carrying capacity. Uncontrolled and unsafe construction over decades has created an extremely vulnerable built environment in Shimla. A major earthquake will lead to unprecedented loss of lives, cripple the administration and disrupt all sectors of the economy particularly the tourism sector. Any further increase in the density of the built environment will exponentially increase the risk of damages and losses from disasters. In fact, there is a need to reduce the density of Shimla by taking some bold steps including some “conservative surgery” of the current built environment by removing or retrofitting some of the most vulnerable buildings.

The Committee presents its recommendation in three categories:

- i) **Stop** the creation of new vulnerabilities and risks;
- ii) **Reduce** existing vulnerabilities and risks; and
- iii) **Increase** local emergency response capacity for a major earthquake.

Stop the Creation of New Risks

Recommendation 1: Revise the current building bye-laws to ensure their suitability for the hill environment.

The impact of bye-laws on the safety of the overall built environment must be considered. For example, permissible building height that does not take into account slope stability and sub-soil conditions will lead to a large number of unsafe buildings. The building bye-laws should be left substantially unchanged for at least fifteen years. Frequent changes in bye-laws have affected the safety of buildings adversely in Shimla. In conjunction with BIS codes for earthquake safety, the bye-laws should promote the implementation of BIS codes for slope stability and landslide prone areas.

Shimla should draw upon the experience of two other states-Mizoram and Sikkim—in this regard. In April, 2017, the Government of Mizoram notified, the **“The Aizawl Municipal Corporation Site Development And Slope Modification Regulations.”** The Government of Sikkim has prepared **“Proposed Amendments in Sikkim Building Construction**

Regulations 2013”, which is yet to be notified. Both these examples show how site development and building construction regulations can be developed to suit the fragile hill environment.

A corollary of this recommendation is that a land use zoning policy related to slope stability and mass movement must be adopted.

Recommendation 2: Slope Stability Norms. In addition, to the recommendation above on development of detailed slope stability and site development regulations, the Committee would like to make following specific recommendation that should be implemented immediately:

- The general **slope angle for construction** should be not more than 35° for slope covered with soil and 45° for rocky slopes.
- Most of the slopes in the area are in meta-stable conditions, therefore any change in geological/geomorphological and environmental conditions will lead to destabilization of the slope and may have consequential affects in terms of landslides. It is strongly suggested that immediate **slope intervention** in terms of slope stabilization must be adopted, if necessary.
- Reports prepared by the HP State department suggest that the **safe bearing capacity** of the rocks present in the township is 20-25 ton/m², thus buildings must be designed taking this into consideration.
- Construction may be permitted in the adjoining rural areas, however, as most of the slopes in the area covered within veneer of sediments having overburden of the order of <5m, it is suggested that foundations of the **building must be footed firmly on the in-situ rocks**, and under no conditions these should be allowed in the landslide prone areas, or in areas that are topographically located below the active landslide zone.
- Since most of the mass movement in the Shimla township and its surroundings are due to oversaturation of the overburden materials, it is recommended that proper lined drains on the slopes be constructed to drain water away from the slope so that there is minimum ingress of water into the slope.

Recommendation 3: There should be no new retention policy to allow deviation from building bye-laws. Over the last twenty years, retention policies, guidelines, compounding rules have been introduced at least seven times for significant

deviation from building bye-laws. This has not only allowed but also encouraged unsafe construction in Shimla. There should be a complete and permanent moratorium on allowing such deviations in the future. There should be no discretionary provisions with regards to application of building bye-laws. New buildings that do not follow that building bye-laws must be demolished at owner's expense and neither the Government nor the legal institution should have any discretion for ratification for any such building.

Recommendation 4: Improve coordination between institutions responsible for land use planning and building bye-laws. Currently building byelaws are developed by Town & Country Planning office (TCPO) and these supersede the building construction rules (if any) of Municipal Corporation. Building byelaws are approved by TCPO and Municipal Corporation has the responsibility for implementation. Coordination between the TCPO and the Municipal Corporation needs to be improved.

Recommendation 5: Streamline the building approval process by introducing an electronic building permit system, to bring about greater transparency. At present, the building approval process has many loopholes. Completion certificates are granted at different steps of construction process compromising the overall safety of the building. This is one of the reasons for proliferation of soft stories in the building stock of Shimla. We recommend **structural design** of all buildings greater than 2 stories to be peer reviewed. As Municipal Corporation does not have strength and capacity to check every design, it is suggested to establish a panel of practicing engineers for the review of structural designs. It may also be necessary to provide additional capacity (qualified manpower) to the Municipal Corporation. It has been observed that most of the buildings in the town are located in geomorphologically unsafe areas. It is strongly recommended that new construction in these areas should be preceded by a **Geological Feasibility Report** by a qualified Geologist. For any State Government building, the report must be vetted by Geologists employed by the Central Government.

Recommendation 6: Make certain measures mandatory for building safety. While the provisions of the BIS codes for earthquake safety should be strictly enforced, based on an analysis of the current building practice in Shimla, a few 'non-negotiable' measures should be identified and made mandatory. These may include a combination of the

following: sheer walls, no soft stories allowed in lower and intermediate floors without adequate strengthening measures; and minimum standards for detailing in reinforced concrete frame buildings.

Recommendation 7: Identification of no new construction areas. Areas classified as High Sinking Prone area (covering Lakkar Bazar, including Central School extending Auckland Nursery School and extending down below upto Dhobighat below the Idgah Electric Substation) and Sliding area (covering Ladakhi Mohalla, Krishna Nagar, the spurs below the office of the Director of Education and the surrounding areas of Clarks Hotel) must be avoided for any new construction. In order to preserve the ecology of the town and to avoid any further degradation to the heritage area, no new construction in the Heritage Area should be allowed.

Recommendation 8: On Construction in Green Areas. No. new construction of any kind or addition to an existing building should be permitted in the Green Areas. The committee observed during the field visit that a few private vacant plots without any green cover or trees are sandwiched between already constructed buildings. Prima facie it appears unfair that these landowners are not able to construct houses on land that was brought for this purpose before the green area notification came into place. However, given the current (extremely poor) status of implementation of building bye-laws, we do not feel confident that this will not unleash rampant construction activity on these sites leading to proliferation of unsafe buildings and damage to green areas. Also, any new construction will have its environmental footprint in terms of traffic, waste generation, slope destabilization etc. As opposed to allowing construction in the Green Areas, the boundary of Green Areas should be extended to include adjacent public forest land in the vicinity of green areas.

Reduce Existing Risks

Recommendation 9: Undertake a seismic safety analysis and retrofitting of life-line buildings: As described in Sections above, a large part of the building stock in Shimla is extremely unsafe. It is not possible to make this building stock safe overnight. However, the process needs to be started. It is important to prioritize life-line buildings – hospitals, administrative buildings, schools—in this regard, undertake their assessment and identify structural and non-structural measures for improving their safety. Retrofitting of 5% of current

building stock every year combined with strict adherence to building codes in all new buildings will ensure that in two decades majority of the building stock in Shimla will be seismically safe. The beginning needs to be made now.

Recommendation 10: Relocating Institutions:

Shimla is home to several state and national level institutions. Some of these institutions were established in Shimla decades ago perhaps to take advantage of its favourable climate. Shimla offers few, if any, other locational advantages to these institutions. However, the presence of these institutions burdens the already overwhelmed carrying capacity of Shimla. The Committee recommends that over a period of next ten years, the government gradually relocates all such institutions, that do not have to essentially be in Shimla by virtue of State Government institutions) and the country (in case of Central Government institutions).

Recommendation 11: Decongesting Shimla: Some part of Shimla, most notably Sanjauli and Dhali, are so over-built that in case of an earthquake even extrication of dead bodies and injured person will be problematic. The State government must initiate a scheme that would provide incentives for owners of existing buildings to systematically demolish some of the most vulnerable buildings and relocate to safer areas. This will require establishment of qualified technical teams including structural engineers, geo-technical engineers, town planners and community organizers to undertake site-specific studies and suggest specific measures for decongestion. Shimla has the opportunity to set an example for other cities in the country.

Increase Emergency Response Capacity.

Recommendation 12: Upgrade the capacities of Shimla Fire Service:

As described in Situation Analysis above, the current capacities of the Fire Service are severely limited, which leaves a large part of Shima under-served in normal times. This will get worse in a major disaster. Therefore, there is a need to do a systematic analysis of their current capacities and invest in enhancing their preparedness and capacities.

Recommendation 13: Community preparedness:

Building on the excellent work of the municipal corporation of Shimla, it is important that preparedness of communities at the Ward Level and below is enhanced. The Ward Level disaster preparedness plans need to be practiced and updated regularly. Since communities themselves will be first

responders, there is a need for providing basic search and rescue training as well as some basic equipment to the community level workers.

Recommendation 14: City level disaster preparedness planning: The city disaster response plan needs to be practiced and updated. This needs to take into account provision of open spaces, emergency water supply, access to emergency services, emergency communication system etc. in different parts. We recommend that city of Shimla hold a similar mock exercise every year.

3.2 Recommendation on Mobility

- Widening & maintenance of Shoghi-Mehli Bypass road for movement of traffic bound for upper Shimla must be prioritized.
- Widening of all city roads so as to increase their carrying capacity, constructing walls and covered drains so as to increase the effective carriageway for vehicles.
- Constructions of new bus stand at Dhalli in place of HRTC workshop.
- The private mechanical workshop running along roadsides at panthaghati, Vikasnagar, Sanjauli, Dhalli, Kacchighati & Bhatta Kufar Etc. need to be shifted to the outskirts of Shimla City to prevent congestion on Roads.
- Encouraging use of public transport system (buses) by private schools.
- Heavy buses of HRTC plying within the city need to be replaced with small buses because of their faster movement
- construction of multi-storey parking near H.P. Secretariat, Chakker, D. C. Office, New Shimla Kasampati Commercial complex Panthaghati, Vikasnagar, Mehli, Boileauganj, Totu, Sanjauli, Tara Devi, Hospitals & Schools etc.
- Construction of Multi-storey parking complexes near Tata Devi, Tutu, Boileauganj and Dhalli can help tourists and daily commuters to park their vehicles there and visit Shimla by buses. This will help reduce PCUs drastically.
- Approval of building maps by M.C./TCP must ensure parking floor/ provision. The same should be strictly enforced.
- Making all major as well as other roads free from road-side parking, be it on payment basis or otherwise. This will help in utilizing roads to their optimum capacity and also reduce traffic plus accidents. Idle Parking of vehicles on the roads/ streets should be prohibited.

- To remove all condemned vehicles, debris building material from roads.
- Shifting of grain mandi & sabzi mandi from Core Area.
- Heavy buses of HRTC plying within Shimla City need to be replaced with small sized buses.
- To improve important junctions particularly Crossing near Tuti Kandi, Khalini Chhota Shimla Panthaghati, Sanjauli Boileauganj, Totu etc.
- Town and Country Planning Department/ Municipal Corporation has been allowing additional floor as parking floor. It is mostly seen that such floors either were not earmarked or converted to residential floor illegally. Concerned departments must take steps to create/ recover the parking floors in the houses abutting the roads.
- To improve and provide pedestrian paths along vehicular roads.
- To provide traffic lights, zebra crossings and foot bridges wherever feasible.
- Proposals given in the Comprehensive Mobility Plan for Shimla City prepared under JNNURM should be implemented.
- A fast track Public Transport System needs to be put in place at the earliest. While private vehicles should be taxed in various respects public transport should be almost free so as to relieve the city roads from ever increasing number of PCUs.
- PSD/MC Shimla must create lay-byes on the main roads for parking of buses/ trucks especially near the bus-stop so that traffic movement does not come to stand still.
- The GoHP must take every measure to reduce use of personal vehicles as they severely choke the road and the parking areas. The solution does not be in creating more and more of parking areas, but in reducing the number of personal vehicles for individual's mobility. The GoHP should encourage through appropriate policy, cab aggregators like Ola/ Uber for mobility of people. The cabs have vehicle utilization factor of nearly 50% as against only 5% of personalized vehicles. Therefore, one cab can displace nearly 10 personalized vehicles from the road and parking areas. The GohP can demand the cab aggregator to provide electric vehicles as cabs with adequate

number for batter swapping stations. Aggregators' cabs are available within 10 minutes of call and are found to be much cheaper compared to individual transportation. An electric cab will be more cheaper to people.

3.3 Recommendation on Water Supply System:

Recommendation 1: Addressing the Present Status of Water Supply: With regards to addressing the present status of water supply, the committee would like to present three sub-recommendations: a) The first priority should be to **improve the current bad situation** of water supply in Shimla. Water distribution system is inefficient as reflected in 40-50 % water losses in the for of NRW. Other immediate and short term measures such as reduction of losses of water treatment plants & wayer distribution lines, replacing old energy inefficient pumps, mapping and hydraulic modelling of water distribution system, water leak detection and timely repair, improved complaint redressal system, metering of build and commercial users, public awareness for judicious use of water etc. should be implements. b) **Water and energy audit** should be first completed for operationalizing immediate and short term measures. Water theft and ghost pipes should be identified and users should be severely penalized and their connections should be discontinued. Activities requiring substantial quantity of water such as swimming pool, water sports etc., should be minimized, particularly in summer season. It may be possible to price water supplied to commercial establishments including hotel etc. differently at higher rate. Such resorts/ hotels should be encouraged to install decentralized greywater/ sewage treatment plants and treated greywater / sewage should be used for non-potable purposes: and c) It is necessary to prepare an **auto-cad map of entire water distribution system**. In addition, pipeline crossing sewer, drains, roads having heavy traffic etc. should be appropriately mapped as they are potential hazard sources.

Recommendation 2: Address Increasing Water Demand: Water demand in Shimla is expected to grow from present 62 MLD to 106 MLD by 2050. Uncontrolled growth coupled with unauthorized constructions, appear to be one of the key reasons even for present water & wastewater related situations. Therefore, the same must be checked strictly and possible stopped immediately, otherwise the proposed interventions/projects involving huge investments will not bear desire results.

Recommendation 3: Water Resources – Catchment area protection: The anthropogenic activities namely, overgrazing collection of fuel, fodder, timber and expansions of orchards in the higher elevations have caused rapid depletion of forests due to which catchment efficiency is compromised. Catchment degradation needs to be immediately stopped. Watershed management practices should be encouraged to improve water availability in the rivers and springs. The anthropogenic activities viz., overgrazing, collection of wood as fuel, fodder, timber and expansions of orchards in the higher elevations must be stopped, which has led to the depletion of forests. The natural forests need to be protected and the forest cover should be increased through plantations of natural species of that area. Degraded land must be rejuvenated scientifically. There is a need to increase the forest cover through plantations of broad leaved species for example, *Quercusleucotricchophora*, *Quercus floribunda*, *Cornusmacrophylla*, *C. capitata*, *Toona, serrata*, *Aesculusindica*, *Perseaduthiei*, *Prunuscerasoides*, *Fraxinumsicrantha* and *Alnusnitida* and coniferous species such as *Cedrusdeodara*, *Pinuswallichiana* and *Piceasmithiana* in the degraded forests, habitats, agroforestry systems, barren and landslide areas by the local communities in collaboration with Forest Department and relevant R & D organization. Other location specific natural species can also be selected. Nursery of the relevant species at different elevations needs to be developed for ensuring the quality planting material, Bio – engineering techniques using local species including tussock forming grasses for checking the water runoff, soil erosion and siltation in the degraded areas need to be applied. For the conservation of rain water and snow water and checking the soil erosion, trenches may be developed on the slopes. Rain water harvesting should be mandated. The natural forests need to be protected and monitored regularly. Protection of forest areas and plantations from seasonal fires should be ensured. Crate walls and stone walls need to be erected in landslide and flood prone areas to check the soil erosion, landslide and siltation. Education and awareness programmes for the conservation of ecosystems of the water for the inhabitants are urgently required. These practices would help in the restoration of natural habitats, increasing the water recharge, and as a whole in the conservation of ecosystems and environment of the Watershed.

Recommendation 4: It would be essential to declare the catchment areas of the five water sources as eco-sensitive zone under the Environment (Protection) Act, 1986 with a detail list of negative and positive activities for preservation and rejuvenation of the catchment areas that support the water sources. These catchment areas are actually water sanctuaries.

Recommendation 5: Upgradation of water treatment plants & water distribution system: WTPs are very old & water distribution system is inefficient. WTPs at Shimla are very old. Periodic improvement if any done, has been adhoc in nature. Super-chlorination to initially maintain chlorine up to 2 mg/l is undertaken in view of reported cases of jaundice recently. However, this may lead to formation of disinfection by products. Hence these DBPs should be monitored and public complaints of poor taste of water should be handled appropriately.

3.4 Recommendations on Liquid Waste Management System

Recommendation 1: Sewage & Storm water management:

Sewer network 7 Sewage collection efficiency: SMC issued 27318 domestic water connections and 4900 commercial water connections whereas the total sewerage connections issued were only 13752. This implies that more than 50% households do not have sewer network connection. The city is under served w.r.t. sewer network & collection. The SMC should lay emphasis on providing more sewer network coverage in SMC region as well as peripheral town areas and to make serious efforts to collect 100% of generated sewage. Site specific solutions for effective collection and treatment of sewage should be sought from organization like CSIR – NEERI. The sewage collection systems are mostly old and a regular inspection & maintenance is a must. As planned under the WB and AMRUT schemes, the same be completely changed / upgraded.

Sewage Treatment:

- Only 9.65 MLD sewage has been collected and treated in STPs while total designed capacity of existing 6 STPs is 35.63 MLD. The STPs are grossly underutilized. This also indicates that there is need for enhancing sewage collection efficiency.
- It needs to be checked with respect to each STP as to how much sewage is collected and treated. It is possible only some STPs are operational while some other receive sewage. Moreover, it is not clear as to where the uncollected sewage goes and

also as to how and where the treated sewage is discharged / managed. The scenario needs to be linked with available health data.

- SMC to engage professional agency/institute for the needful technical guidance on site specific technological solutions for improving efficacy / adequacy of sewage management & treatment.

However during the site visit of one of the STPs, it was observed that the STP is overloaded resulting in adverse impact on treatment of sewage. Therefore, collection and treatment needs to be optimized.

Recommendation 2: Water availability & Storm Water Drainage & Collection:

At present, the maximum available water for Shimla is about 52 MLD against 62 MLD demand. Storm water drainage covering 30% city area exists. However, SMC indicated in SLIP 2017 – 18 documents that no ongoing drainage projects exist in the city. Shimla being hill region receives approximately $\geq 1000\text{mm}$ precipitation annually. If collected, the storm water could be goods supplemental water to the existing water sources. The storm water drainage coverage should be enhanced to capture entire storm water by laying storm water drains in the remaining city areas / adjoining areas. Storm water may be used for agriculture purpose; while adequately treated storm water could be used for different purposes. SMC to engage professional agency/institute for the needful technical guidance on site specific technological solutions for improving efficacy/adequacy of sewage management & treatment. To overcome the problem of choking of storm water drainage, hydrodynamic separators can be used, separators such as CDS, Downstream Defender, Stormceptor, Vortechsetc can be used according to the need. This type of project needs to be taken up on priority as the city does face serious health risks due to water logging. Carrying capacity of these drains is not sufficient and need through design checking. Catchments of the drains improperly selected with respect to their topography. The drains are constructed for longer distances with much lesser gradients than actually required in order to keep the drains at higher level than the water level in the discharging bodies. Thus, these drains are not able to carry the peak flow of the catchment / water shed.

Recommendation 3: Construction activity versus water & sewage infrastructure in Shimla: Continuing with construction activities would put pressure on the existing urban infrastructure by demanding more water supply & increase in wastewater generation. The major concern is un-authorized constructions, for which even

sewage collection system is not in place. The officials informed the team that they are making lot of efforts for collection of sewage from such houses and other buildings using honey sucker and other means. While local site conditions such as vulnerable slopes & sensitive areas need to be considered such as prime factors for preventing further construction in Shimla city; more construction implies more demand for urban infrastructure. Shimla as of now does not have adequate water resources and sewer network and sewage collection efficiency. Further construction would lead to unmanageable pressure on Local Urban Body to provide for enhanced water supply & wastewater collection and management facilities. These issues also need to be addressed fully before considering permissions for further construction in Shimla.

Recommendation 4: Sewage collection from areas beyond MC limits and those not easily accessible: The city of Shimla is expanded uncontrolled and there are significant number of houses and other constructions beyond the MC limits. Some of these areas are deprived of sewage collection facilities, which may have adverse impacts on water bodies/streams. The proposed plans suggest provision of sewage collection and treatment in these areas as well, however the same must be implemented adhering to the scheduled and specifications. During the visit officials told the team that some de-centralized systems are also being explored for the places where sewage collection is not feasible. However, most of these localities are those with unauthorized constructions without any adequate access.

Other issues: The committee members also visited a lab, attached to STP and was told that there are other labs for regular monitoring of water and treated wastewater quality. However, these labs need up-gradation as well as regular maintenance of instruments. There is a slaughter house functional at Shimla and the waste and wastewater generated is being treated. Such facilities also need up-gradation to meet future demand. MC officials pointed out the issues of sludge management during the visit of STP. Although the sludge quantity generated is not large, they mentioned that the contractors are not willing to transport or handle the sludge. Sludge digesters can be installed to generate gas fuel which can be used including that for heating of digester in winter. There are advanced options available for sludge drying and utilization and the same should be explored during the proposed projects.

a. Recommendations on Solid Waste Management

Shimla city looked visible clean as no garbage was seen littered during the visit showing the efforts of MC and good inspection of various rules. Door-to-Door collection together with User Fee scheme is functioning very well. Though no polybag was found littered anywhere on the roads or hill slopes, given that waste is not segregated at source as required under the Solid Waste Management Rules, 2016 into three streams, viz. (i) Bio-degradable Wet Waste; (ii) Recyclables and Non Bio-degradables; and (iii) Domestic Hazardous waste, many recyclables waste get soiled rendering them unfit for recycling. Sanitary napkins and diapers are not packed in different pouches for incineration. Segregation of domestic hazardous waste at source would eliminate toxic elements and heavy metals from the waste which would result in good quality compost. Decentralized treatment of wet waste will reduce transportation cost and thus the carbon foot prints, air pollution and less diesel smell as well. As per the rule, there should be no landfills in the hilly areas and old landfills need to be capped scientifically.

NEERI in its report recommended that “The paper and plastic content of the waste at all the dumping sites is high. Due to comparatively higher moisture content of the solid wastes at all the four disposal sites, the wastes may not be suitable for its use as a material for refused derived fuel (RDF)’. Still the Govt. of HP decided to go ahead with W2E plant which is making RDF first. The viability of the plant is doubtful. **NEERI further recommended** that ‘the groundwater and surface water quality may get highly polluted in near future. Hence, a scientific way of waste management and handling; and engineered waste processing and disposal would required to be carried out on priority.

Recommendations:

Following are the recommendations of improving solid waste management in Shimla city-

- i. Shimla should start waste segregation at source, into three streams as given above, as per the Solid Waste Management Rules, 2016 immediately. They should implement the waste hierarchy and treatment line given in the rules. This would reduce the cost of waste management for Shimla city tremendously.
- ii. The parameters such as carbon content, moisture content, C/N ratio and NPK content in the MSW samples indicated that MSW is more suitable for bioprocessing. Therefore, Shimla should recover the

energy content of its wet/bio degradable waste through composting/bio-methanation which would be at a very low cost and shall work out to be cheaper than any other technology. Lessons from past composting projects should be learnt and improved composting should be encouraged. Segregation of waste at source would improve the quality of compost as heavy metals present in MSW would be eliminated.

- iii. Decentralized composting/bio-methanation (energy recovery) should be practiced, at least at all commercial establishments, hotels, vegetable and meat markets. Bio-gas may be used for street/park lights or for cooking in kitchen.
- iv. Expert guidance and proper technology should be taken by MC for composting/bio-methanation processes. Proper training to the operating staff should be imparted.
- v. Public awareness on reduce, reuse, recycle, segregation and house hold composting should be made a regular feature of solid management programme in Shimla and Shimla Planning area.
- vi. Health and safety of the sanitation workers should be improved and they should be insisted to wear uniforms, gloves and Gum boots etc. while collecting waste.
- vii. All horticulture waste, garden waste, agriculture waste, green leaves should be collected separately and processed in decentralized manner into manure.
- viii. Bio-degradable waste and wet waste should be prohibited for land filling in the city.
- ix. Landfill site should not be created in the hilly areas in accordance with the SWM Rules.
- x. Only the inert residual waste should be disposed of in sanitary landfill (SLF). This would increase the life of SLF and prompt recycling of the other components of waste.
- xi. Storage of waste in open must be stopped as it may cause contamination of both, the ground water and surface water sources due to run off from hills during precipitation. Heavy rainfall may even carry the waste with the flood water. Water

- pollution may create health hazards to the residents and the tourists as well.
- xii. Land filling Tax may be started in Shimla city or Landfill charges may be levied to restrict land filling of waste.
 - xiii. Environmental Clearance for W2E plant may be taken before commissioning to avoid any violation.
 - xiv. Chaar from W2E should be utilised for brick making or road making or should be disposed of at the secured landfill.
 - xv. The dry or non-biodegradable waste such as paper/ plastic, rubber, metal, glass etc. should be sent to the authorized recyclers; for its use in manufacturing.
 - xvi. The rural areas must have such set up on self-sustaining basis. It could be on the lines of the Society functioning within M.C. Shimla.
 - xvii. SADAs and the Gram Panchayats should jointly work together to address this issue.
 - xviii. Abandoned Landfill should be either mined and waste may sent to the W2E plant or should be capped scientifically, as per the SWM, 2016 Rules and guidelines of CPCB&MUD. This is supported by the **study of NEERI also** that reports that the groundwater quality and surface water quality may get highly polluted in near future. Hence, a scientific way of waste management and handling; and engineered waste processing and disposal should be carried out on priority.
 - xix. C&D waste recycling plant should be set up as soon as possible.
 - xx. Plastic Waste Management Rules, 2016 should be implemented so that plastic waste goes for recycling rather than to W2E plant.
 - xxi. State Pollution Control Board should enforce Bio- Medical Waste Rules, 2016 immediately and organize training for HCFs for segregation of their waste and proper disposal. They should monitor HCFs regularly and more vigorously. For monitoring, one outside expert from a good institution should be involved.
 - xxii. It needs to be ensured that no Bio-Medical waste gets mixed up with the solid waste, for this random checks should be carried

out by both SPCB and MC by opening the bags at the HCFs itself.

- xxiii. The subject of solid waste management should be included in the curriculum for schools.

CHAPTER 4 **CONCLUSION**

The Committee made an in-depth analysis of the carrying capacity of Shimla city and Shimla Planning Area (SPA), the trend of growth of population, construction, vehicular population and ecological impacts of solid waste, sewage, destruction of forest, water supply, etc, on the ecology. The Committee studied the carrying capacity in greater detail with reference to disaster risk, mobility, water supply, liquid and solid waste management and forest management.

The Committee analysed the principal natural hazards including the seismic hazard (possibility of earthquakes that will produce peak ground acceleration of ground shaking of destructive potential) and landslide hazard. The Committee took into account other factors such as the geomorphological conditions (nature of subsoil and rocks) and the effects of climate change and the resulting patterns of intense rainfall that may exacerbate the effects of these two principal hazards. The analysis of the principle hazards was complemented with the analysis of exposure (how many buildings of what type) and vulnerabilities (strength of the buildings) based on secondary data sourced from Shimla's Hazard Risk and Vulnerability Assessment (2015) as well as field visits. This gave a picture of the damage and loss potential of the two principal hazards. An analysis of the local level emergency response capacity helped understand the challenges that would arise should a major disaster occur in Shimla.

Based on secondary source analysis as well as field visits, the committee analyses issues around: current situation vis-à-vis availability of water, measures required for ensuring adequate and sustainable supply of water in view of the growing demand; issues around vehicular population and sustainable solutions in view of limited infrastructure for ensuring efficient mobility without environmental side-effects; disposal of solid waste and sewage; and sustainable management of forests.

The Committee unanimously came to several conclusions, which are detailed in the recommendations presented in Chapter 3. However,

it was considered necessary to highlight certain issues given their far-reaching implication. They are presented below.

1. The entire Himalayan belt, including Shimla and its surrounding area, falls in Earthquake Zone-IV and V. Shimla can be affected by not only earthquakes occurring in its vicinity, but also the ones that take place in other parts of the State. Earthquake of high magnitude of over 6 on the Richter scale are entirely possible in this region. It can cause severe ground shaking with peak ground acceleration (PGA) up to 4.0 m/s in and around Shimla. Given the volume and quality of current building stock, this will have huge destructive potential. Given the poor quality of constructions ignoring the underlying geological settings, proneness to earthquake and landslide, as discussed in detail in situation analysis (Chapter-2), most of the buildings will collapse in an earthquake causing PGA of 4.0 m/s and above. The situation will get compounded on account of pounding and cascading effect, which may significantly increase loss of lives, which would be difficult to estimate.
2. The hazard risk gets further aggravated considering most of Shimla and SPA are prone to landslides, which, it is observed in the recent past, get accentuated due to climate change induced intense rainfall and unscientific cuttings of slopes for construction purpose. The Committee found that most of the buildings are constructed over land with slopes exceeding 45 degrees, and in certain cases the buildings are constructed on the slopes exceeding 70 degrees. Such constructions require huge cutting of the contour that makes the land susceptible to landslides. Subsidence of land in a number of areas and landslides are becoming frequent.
3. It is evident that Shimla and surrounding area seem to face great risk of life and property in case of earthquake and big landslide. There is an urgent need to decongest Shimla and SPA-particularly areas like Sanjhauli, Dhali, Tutu, Lower Lakkar Bazar. All the institutions, including the Defense establishments, which are not required to operate from Shimla, must be relocated to the plains or other areas. Secondly, all the buildings, which have been constructed ignoring the seismic sensitivity

and load bearing capacity and those which are constructed very close, must be identified by a group of experts and the Government through the process of incentives and disincentives within a time-frame, say 5-10 years, and if required through law, ensure demolition, relocation and reconstruction. For this purpose, detailed new construction guidelines, suitable for the hill environment of Shimla, should be developed with the help of experts in this field. These guidelines should take into account the earthquake and landslide risk, load-bearing capacity of different localities, slope angle, structural design of the buildings and the quality of construction including their foundations (in accordance with applicable BIS codes) that can withstand a probable earthquake. The Government or any institution should have no discretion to regularize any new building which violates the above guidelines. Such buildings should automatically be demolished and there should not be any legal relief to such construction.

4. At the current level of population 2.34 lakhs in the SPA, it was reported by the authority that people get water supply for about 990 minutes every day, which reduces to 45 minutes during summer. However, meeting with people gave the Committee to understand that in most of the areas, water supply is once in 3-4 days only. This means that the water supply is not adequate to be able to sustain provide even decent quantity even to the current level of population, leave alone the projected population and water demand by 2020 or 2030. Shimla as of now does not have adequate water resources and sewer network and sewage collection efficiency. Further construction would lead to unmanageable pressure on Local Urban Body to provide for enhanced water supply & wastewater collection and management facilities. These issues also need to be addressed fully before considering permissions for further construction in Shimla.
5. The Committee studied the sources of water supply and also studied their catchment areas. It is observed that the catchment areas of these water sources, which were full of natural vegetation that would absorb rainwater and sustain the streams on which the water sources have been developed, round the year.

The Committee observed that unfortunately the catchment areas have been denuded to a certain extent and are giving way to apple orchards and other anthropogenic activities. Apple orchards, denudation of natural forest and soil erosion, all the three together would result in lower availability of water in the streams, particularly during the lean season. If water supply to the population in SPA is to be sustained at a decent level, the catchment area of the water sources will be required to be declared as eco-sensitive zone under the Environment Protection Act, with the detailed dos and don'ts, some of which are: no further conversion of forest to apple orchard, increasing plantation of trees with native species, construction of trenches at regular intervals and extensive mandatory water harvesting structures in the orchard areas, so that sub-soil system absorbs more rain water to sustain the streams. The already degraded catchment areas should also be rejuvenated on priority to make those water resources sustainable.

6. The Committee recommends several actions as short term measures to improve the current water supply situation, including reduction of losses at water treatment plants & water distribution lines, mapping and hydraulic modelling of water distribution, water leak detection and timely repair, metering of bulk and commercial users, public awareness for judicious use of water etc.
7. Water and energy audit should be quickly completed for operationalizing immediate and short term measures. Activities requiring substantial quantity of water such as swimming pool, water sports etc., should be minimized, particularly in summer season. It may be possible to price water supplied to commercial establishments including hotels etc. differently at higher rate. Such resorts/hotels should be encouraged to install decentralized greywater/ sewage treatment plants and treated greywater/ sewage should be used for non-potable purposes. In general re-use of treated water for the non-potable purposes within a time-frame will make available huge quantity of fresh water. This would significantly ease water situation in Shimla and SPA.

8. Another area, the Committee would like to highlight is transport and mobility. Significant increase in vehicular population in Shimla town and SPA, together with increase in movement of big vehicles carrying goods and passenger, has reached a level, which the current infrastructure is just unable to cope with. In most places, it is not possible to widen the roads. Idle parking and a large number of garages choke the roads. The Government will have to discourage purchase of new vehicles and do well to incentivize Ola/Uber type of cab aggregators for mobility of people. The utilization factors of personal cars is less than 5%, as observed by the Committee; whereas Ola/Uber cabs will have more than 50% utilization. This means that one Ola/Uber cab can displace 10 private cars from the road and free the parking areas. The Government should further encourage Ola/Uber type of companies to provide electric vehicles to reduce pollution. The technology available in the country today would enable such arrangements to do a viable business. The Government will have to significantly increase the parking charges and ensure their enforcement by installing CCTV's at important locations, to discourage parking of private vehicles.
9. Evidently, the carrying capacity of Shimla has been far exceeded. There is an urgent need to decongest the town and SPA by shifting certain institutions and establishments and to ensure that further population and construction growth are seriously discouraged. The authorities will have to take certain hard decisions, in the right earnest. Any further delay could be only at its peril.
10. In terms of the vulnerability of the built environment to earthquakes and landslides, other hill towns of the country, particularly in the Himalayan belt, are facing similar issues. They are also facing similar environmental challenges. Shimla has the opportunity to set an example as to how our hill cities can be made disaster resilient and environmentally sustainable.
11. The Committee has deliberately decided not to make any recommendation for construction in the 17 Green Belt notified by the GoHP in August/December, 2000 as the earlier Committee has also recommended no construction which has been noted by the Hon'ble NGT

in its order Dt 28.2.2017. This Committee has strongly recommended to decongest and depopulate Shimla.

54. Besides submitting the detailed report and its recommendations, the Committee also relied upon and made the following integral part of the comprehensive report:

- (a). Natural Hazards exposure vulnerability and disaster risk in Shimla prepared by National Disaster Management Authority.
- (b). Engineering Geological Contribution prepared by Wadia Institute of Himalayan Geology, Dehradun.
- (c). Water supply system in Shimla, current status, future plans and recommendations including sewage generation, collection and disposal was prepared by G. B. Pant Institute of Himalayan Environment and Development, Himachal Pradesh Unit.
- (d). Forest, bio-diversity, water supply systems, watershed management, ecosystem services, climate change, impact of climate change and water sanctuaries in Shimla prepared by the same Institute.
- (e). Carrying capacity based, spatial zoning.

These reports are integral part of the main report, which also includes the respective recommendations finalised upon due to deliberation of the High Powered Committee.

55. As noticed, the parties were provided an opportunity to file their objections/response to the final report of the Committee. To this,

State of Himachal Pradesh first filed an interim response on 12th July, 2017 followed by its final response/objections on 29th July, 2017. In the response filed by the State of Himachal Pradesh, there is hardly any definite objections/opposition filed to the report. The primary concern of the State appears to be that there should be some activity and construction permitted even in the green areas and emphasis have been laid on proposed steps by the State Government in relation to various aspects. In relation to the recommendations on disaster risk management and disaster preparedness planning, it is submitted that it needs to reduce the impact of disaster by means of systematic efforts by the State of Himachal Pradesh. The Municipal Corporation of Shimla has already undertaken a study to carry out seismic safety analysis through Rapid Visual Screening of life line buildings in Shimla town and from structural safety point of view. Regarding the slope stability norms, it is stated that slope stability norms have been stated in building bylaws since 2000 and no constructions are allowed on slopes having angle more than 45° slope as per interim development plan of Shimla. There is restriction on hill cutting more than 3.5 meters of height. Shimla town has qualified for Smart City funding through Ministry of Urban Development. It is stated that there is improved co-ordination between Town and Country Planning Department and Municipal Corporation of Shimla and a Committee has been constituted for proper implementation of building bylaws and eliminating the ambiguities. In the last one year, the Department of Town and Country Planning has made a total paradigm shift from manual work to web based services. People apply online and

sanction/rejection, notices, observations are conveyed online. Efforts are also being made to provide access to citizens, and ensure transparency, accountability, efficiency and to customise online building approval process.

56. The Government is planning to prepare a master plan under “AMRUT” scheme being funded by the Government of India. The development plan will invariably include a layer of hazardous slopes, sinking-sliding zones and the green areas which shall be proposed to be restricted for construction activities. The Government proposes that there should be construction in the green areas. Reliance is placed on the judgment of the Hon’ble Supreme Court in the case of *‘Rajiv S. Jethmalani & others Vs. State of Maharashtra & others in civil appeals no. 8274-75 of 2003*, where it is stated that the Government cannot deprive a person from using his land vide order dated 5th May, 2005. It was also stated in the said judgement that areas should be provided for benefit of ecology, gardens or parks. It was also held by the Hon’ble Supreme Court of India that Government can acquire the land for such common benefits. The Municipal Corporation Shimla, as well as the State, have expressed their inability to acquire the vacant land in green pocket and reasonable restrictions should be placed with reference to the ‘no construction zone’. In the green area, reconstruction on old lines with same original structure shall be permissible with same plinth area and number of storeys. 35% covered area should be allowed without involving cutting of any trees subject to maximum of 100 sq. mtrs. built up area at any level. No

apartment/commercial buildings should be allowed. No tree should be allowed to be cut and to ensure distance of 2.00 mtr. from tree. It is stated that relocation of Institutions is concern of the State Government and it has done earnest endeavours to improve and augment the existing infrastructures in Shimla for better civic life. Certain buildings and complexes have been shifted from congested areas. Transport and urban mobility is one of the major concerns which have been discussed. It is stated that parking infrastructure on PPP mode has been developed in Shimla Town at Chotta Shimla, Sanjauli and Cart Road near Lift. Efforts are being made to identify the parking site, roads are being widened for smooth traffic, charging congestion tax especially from schools and other educational establishments thereby encouraging them to use buses for transport. The State is proposing to upgrade the facilities of Shimla fire services. Efforts in relation to development of Van Sarovar in forest area to harvest rain water are being made. The tank would be connected to a dedicated fire line running along the motorable road, fire censor shall be installed and five fire fighting vehicles added to fleet. In relation to water supply in Shimla, up-gradation of water treatment plant and distribution and solid waste management the State has responded that a large number of tourists come to Shimla and therefore, requirement of water supply to its residence and various users in tourism is a major stress point and a challenge for the State. Non revenue water loss is a major concern. The Shimla Municipal Corporation has been asked to get a study and assessment done in this regard for which the procedural formalities are under way. There

is scheme to lift additional quantity of 65 MLD water which is proposed from Koldam with the assistance of World Bank. Municipal Corporation Shimla has taken measures and is in process of taking further action to upgrade and improve the safety treatment plant. The funds provided by the Central Government are being utilised. Shimla Municipal Corporation has set up a Waste to Energy Plant at Bhariyal through M/s Elephant Energy Pvt. Ltd. on Gasification Technology through Refuse Derived Fuel. The orders of the Tribunal has facilitated in operationalization of the said plant. The State has also stated that it is proposing to take notice of the other recommendations made in the report and take appropriate steps.

57. The Applicant also filed his response to various reports including the final report. In the response, the Applicant has laid specific emphasis on carrying capacity, forest protection, water supply and solid waste management in relation to the Shimla planning area. It is stated that the recommendations need to be rigorously followed, however, their violations on various material issues have been reported in other reports placed on record of this case. The report is silent on the issue of construction raised within core area and large scale unsafe construction in unsafe areas of the Municipal Corporation. The Committee has recommended avoiding of construction only in some areas like Lakkar Bazar including Central School, upto Auckland Nursery School and up to Dhobighat, while it missed other similar areas. The recommendations made in Annexure I and II of the report are practically contradicted by Expert Committee

report. It has been stated that there should be no new retention policy to allow deviation of building bylaws. There should not be discretionary provisions with regard to application of bylaws. There should be complete and permanent moratorium on allowing such deviations in future. It is stated that it is strongly recommended that new construction in these areas should be preceded by geological feasibility report by a qualified geologist.

58. The other objections of the Applicant are with regard to the slope of construction being excessive to the prescribed standards. It is stated that the construction which should not be in excess of 45°, the construction in nearly 90% of Shimla is built 45° – 60° slope and in some places like Kachighati, Dhalli, Cemetery, Sanjhauli, buildings are built on 70° – 75° slope and even structures of 4 to 5 storeyed buildings have been built. It is stated that majority of construction is built on these kind of slopes without any heed given to prevention against disasters and earthquake. According to the Applicant, risk of hazards of construction on steep slope is increasing rapidly as newer areas not recorded under the said tabulation are coming up very fast in the environmental hot-spots that will exponentially increase the risk of damages and losses from disaster. The constructions are unsafe and will cause huge cascading damage to all surrounding areas. There is inadequacy in bylaws and even the existing bylaws are not being adhered to properly. The standards for natural hazards prone area should clearly apply to the Shimla Planning Area. The unauthorised structures should not be permitted at all and none of

such unauthorised structures should be regularised as in that event no amount of adherence to the existing bylaws can save the city from further damage. No constructions should be permitted in the Shimla Planning Area. The EIA report of the Department of Environment, Government of Himachal Pradesh in 2013, had placed complete ban on any type of construction activity in the entire Shimla Planning Area including 17 green areas and renovation of existing building private, as well as government sector. The report of the Committee does not consider the same. The history of the Shimla Planning Area shows that the ban on green belt has hardly achieved its purpose. In the eventuality of a severe earthquake, the casualty levels will be much more than the 20,446 as estimated by the Expert Committee. As per the study, 'what will happen to Shimla in a major earthquake' it is recorded that in a severe earthquake 39% of the buildings will suffer total collapse and/or severe damage which include 40% of stone masonry buildings, 31% of the RC frame buildings and all the mud/rammed earth buildings. The casualty would, therefore, be much higher. In the event of some natural calamity or disaster, wards like lower bazaar, Ruldu Bhatta, Kaithu, Chamiana, Phagli having more than 80% of the households staying away from the motorable road, nearly 72% of the structures are not accessible through motorable roads, will make rescue operations difficult if not an entirely impossible challenge. This averment is based on the study and article 'the last resort'.

59. Large areas of prime forest land are being diverted and destroyed in the name of public interest and construction of parking and

tourism complex. Massive landslides occurred in Tutikhandi area due to excavation work, thus, all such activities must be stopped. No permission to cut the hill should be given especially where unstable slopes are involved and wherever environmental clearances are granted in favour of a public body, it should be subjected to higher and stringent levels of scrutiny to prevent any instances of this kind.

60. There should be proper governance process to meet the scarcity of water supply. The people and visitors of Shimla have to suffer from acute water scarcity and epidemics originating from the mixing of sewage and drinking water. Large scale epidemic of jaundice broke out during 2007-08, 2010-11, 2013 and 2015-16 when more than 20 deaths were recorded in Shimla alone. The report does not suggest any effective measures in that behalf. Reduction of water demand is necessary and for that decongesting the city and declaration of key water sources and their catchments around Shimla as Ecologically Sensitive Zone are steps that must be taken. It is not wise to declare the stretches within a forest area as 'open' or 'vacant'. Such declarations would only give rise to unauthorised constructions or commercial constructions in such pockets and would destroy the very character of forest in that area. At best, the people whose areas are located within the forest area could be given compensation for not constructing but in no way constructions should be permitted within the forest areas. The Applicant has placed on record the comments of the Expert Committee and Environmental Impact Assessment Report in support of its contentions and has also relied upon the

amendments that were suggested to the Town and Country Planning Act and the other reports specifically referred to above.

61. As is evident from the above narrative, State of Himachal Pradesh, its various departments and others are *ad idem* with regard to the areas where construction should be permitted with slight variations. The report is acceptable and indicates the existing conditions apropos the threat and vulnerability from natural or manmade disaster to which the area is exposed. The report finally makes acceptable and comprehensive suggestions taking into consideration the above mentioned concerns on nature. The applicant, while accepting the report, has prayed that further and more rigorous restrictions are required to be imposed, if the Shimla Planning Area and its surrounding areas are to be saved from natural calamities, as well as for protection of the environment and public health. The report of the Expert Committee proceeds to the stated areas in the notification issued by the State of HP and/or the other reports attached to the main report submitted by the Committee. The Shimla Planning Area, which is stated to be 22,450 ha, is witnessing fast growth generally in an unplanned manner. The population shows a decadal growth of 33.24%. In 2001, it was receiving 56,000 commuters/tourists on peak days while in 2011 this increase to 76,000 per day and now, it is nearly above one lakh. The term 'carrying capacity', refers intrinsically to the notion of limitations of the environment to provide resource support and to assimilate waste for a population and its activities in a given physical setting on a

sustainable basis. Normally, carrying capacity constituents of an urban area are supportive carrying capacity and assimilative carrying capacity. In a place like Shimla, which is located in eco-sensitive Himalayas the other relevant factors are natural hazards, exposure, vulnerability and disaster risk. In Shimla, mobility in terms of transportation without affecting the air quality, how to sustain and augment the increasing demand of water supply and what kind of liquid and solid waste management systems should be adopted to ensure environment and public health protection and finally the forests cover comprise supportive carrying capacity and enhancement thereof. The report specifically states that Shimla is exposed to multiple natural hazards, earthquakes, cloud burst and landslides by itself or triggered by earthquake, which may interfere and cause absolute or irreversible damage to the natural assets like streams, forests etc. From the point of view of earthquake, Shimla and its surrounding areas are in seismic zones V and IV, thus, highly exposed to the damage and hazards resulting therefrom. A maximum Peak Ground Acceleration (PGA) of 4.0m/s^2 can be expected, which will mean the building will likely experience 40% of the gravitational force in lateral direction. On the basis of studies referred, 18% of the Shimla district comes under very heavy landslide risk while 67% area is susceptible to high risk. Shimla was the most landslide prone district in Himachal Pradesh in terms of number of landslide events that occurred in 2014. The study team of the Committee ascertained the geotechnical characterization of rocks and soils of the Shimla township; in some parts it was shallow of the order of less than 5 mtr.

while in other areas the overburden is about 10-12 mtr. The strength of these deposits is very low and friction angle is variable between 27° and 35° as deduced from the laboratory tests. Composition of these deposits is mainly sandy-silt or silty-sand with admixture of clay. The rock mass quality present in the Shimla Township can be classified as poor or very poor as per Rock Mass Rating (RMR) system of geo-mechanical classification system of rocks. Similarly, the Committee also undertook the study of slope conditions.

62. There are two prominent subsidence/sinking zones in the area, particularly, Ridge, Grand Hotel, Lakkar Bazar, Central School, Auckland Nursery School, Dhobighat, Ladakhi Mohalla and surrounding areas of Hotel Clark. They have been identified as high sinking zones and any further addition of building load could be disastrous. There are continuous incidences of landslides and subsidence in these two zones. The reports suggest the problem of landslides is a result of mass movement in the area. These phenomena occur either during construction or due to oversaturation of the slope, either by increased rainfall activity or concentrated household disposal. This indicates that most of the slopes in the town are in meta-stable conditions and any change in natural condition, particularly, from slope cutting will destabilize the slope and that would results into landslides. Over urbanization, unplanned and unregulated construction and growth with frequent changes in municipal boundaries and building byelaws has adversely affected the built environment and ecology of the city. Even the residential areas

are seen to be extensively commercially used. Mall Road, Lower Bazar, Krishna Nagar, Summer Hill and Totu are highly commercialized where upto 50% of the total buildings are used for commercial purposes out of which only 9% is used for residential purpose. As a result, agricultural area has shrunk from 21% to 6% of Shimla Planning Area. It means immense construction activity will take place in Shimla with further reduction of open areas used as agricultural/green land. Vulnerability of environment of Shimla is very high. In Shimla most of the RC frame construction is inadequately designed and hardly ever supervised by a qualified person. A visual survey of ongoing construction sites revealed that detailing of reinforcement was always incorrect. Some of the most prevalent and visible causes of physical vulnerability include presence of soft story, irregular plan, pounding effect in buildings made together, lack of frame action in RC frame structure, incorrect detailing of reinforcement including stirrups, short column effect on building built on slope and inadequate foundation design leading to differential settlement of foundation. These comments of the Committee are based upon detailed analysis carried out. Lack of a stable techno-legal regime is one of the important causes of disaster risk in Shimla. Unstudied frequent amendment of byelaws made it difficult, if not impossible, to manage the growth of buildings made in the city. Some of the buildings are built on 70°-75° slope and are covered with average 4 to 5 storeyed buildings and approximately 90% Shimla is built on 45°-60° slope. The debris from slope is dumped in the valley or near water channels, obstructing the natural

drainage, which damages the environment and creates possibility for flooding. The buildings to the extent of 7-8 storeys have been permitted. Most of the buildings are taller than the prescribed building heights and similar is the status with regard to floor area ratio. Set back regulations, approval of structural designs, site checks, retention policies/compounding rules and ground coverage are the other relevant factors leading to destabilization of hills and natural assets in Shimla. A hazard risk and vulnerability assessment study of Shimla, undertaken by TRAU Leading Edge with support of UNDP, assessed the vulnerability of building stock of the city. In a severe earthquake, 39% of the buildings will suffer total collapse or severe damage. Due to such earthquake, estimated number of casualties was calculated to 20,446. However, this does not take into account the cascading effect of collapsed buildings on adjoining building, which will further escalate the losses. One of the most important problems of Shimla city is mobility. More than 1,00,000 vehicles routinely cross various traffic points daily with the municipal corporation areas and there are nearly 30,000 vehicles in Shimla during the apple season. The peak hour count is 60,000 vehicles approximately. 6% of the road network has road width less than 5mtr while 73% of the road network has road width from 5 mtr to 10 mtr. There are more than 22 bottleneck points in the city. There is acute shortage of parking space. The water supply system in Shimla is unstable and unsound. We have already noticed that water supply is irregular and sometimes even once in 3-4 days. The quantum of non-revenue water is estimated at 40% to 50%. It is also on record before

the Tribunal that water supply in Shimla is around 60-90 minutes every day during non-lean period and for around 45 minutes on alternative days during the lean period. Existing shortfall is about 7 MLD which increases to 17 MLD during summer for various other factors, not even 70% of city is covered by water supply. There is a plan to introduce certain infrastructure and services, as recorded by the Committee and a new department is created for augmenting and improving water supply system but there appears to be nothing for resolving the issue in the long term. Sewage collection and disposal is a matter of great concern. There is a shortage of public toilets and urinals. The septage collected from households that are not connected to sewer systems is indiscriminately disposed of in low lying areas, which is a completely unacceptable practice. The existing service levels and its efficiency for collection, disposal of sewage and network services are far from satisfactory (65% coverage of sewerage network, 35% efficiency of collection of sewage and 25% less in sewage treatment efficiency).

63. The STP plants are underutilized as the sewage does not reach these plants. There have been repeated incidents of mixing up of sewage with the potable water that has caused serious public health hazards. It is on record of this case, as well as other cases pending before the Tribunal that similar incidents also occurred in 2007-08, 2010-11, 2013 and 2015-16 when more than 20 people died and 1500 suffered from serious hepatitis of various kinds.

64. Solid Waste Management is another serious problem persisting in the entire State of Himachal Pradesh, more particularly, in Shimla. Municipal Corporation of Shimla exercises jurisdiction over 25 wards and the city of Shimla is generating garbage and waste which is increasing day by day. 87 MTD of waste was being generated per day in 2006, which became 116 MTD in 2016 and is estimated to rise to 137 MTD by 2021. Waste generation increases by 30% in peak season. There is complete failure of segregation, transportation and disposal of the waste. There are no proper landfill sites, no segregation is being carried out in Shimla at source or otherwise. Under the orders of the Tribunal, some waste was directed to be sent to Chandigarh because there was no treatment plant in the State of HP, which could treat this quantity of waste. Now under the directions of the Tribunal, M/s. Elephant Energy Pvt. Ltd. was awarded the work for setting up a Waste to Energy Plant near Shimla. However, the said plant has not commenced its operation and presently it is producing Refuse Derived Fuel (RDF) with the capacity of 70 TPD. The plant proposes to use gasification technology at Bhariyal for energy generation. There is a proposal to setup a biogas plant and also to recycle the C&D Waste and plastic waste by segregation.

65. Forests in Shimla were subjected to detailed analysis by the Committee for Forest Management. There are large areas of natural forests. It adds to the value of Shimla by improving air and water supply besides maintaining its quality. The city is dominated by

Cedrus deodara (Deodar), Quercus leucotrichophora (Ban Oak), Pinus roxburghii (Chir Pine) and Rhododendron arboretum (Burash) forests. Besides it has shrubs, Berberis lycium and other species within the municipal limits of Shimla. The forests of designated 17 green belt areas help in regulating the environment of the city. As per the revenue records the green belt of Shimla Planning Area cover 414 ha, out of which 78% area is either under 'forests' or 'open area' and the remaining 22% is built-up area. About 42% of the total green area is under forest cover and 36% is open area occupied by shrubs, bushes and grasslands etc. From the representations placed on record as well as the other cases pending before the Tribunal, it is clear that there has been serious destruction of forests. There are cases of enormous illegal and unauthorized tree felling. The authorities are even giving sanctions for cutting of trees without complying with the fundamental requirements of compensatory afforestation. It has to be a condition precedent to diversion of any area which requires felling of trees and the activity must be performed simultaneously with any development activity. Deposit of money with the Forest Department is not compensatory afforestation. The trees, forest must be permitted to grow along with the development and it should not be a performance left in abeyance.

We do find merit in the submissions made by the applicant. Even if there cannot to be an absolute ban as suggested by the applicant on construction activity in the city of Shimla and its different identified areas, in some of the areas construction activity must be

totally prohibited while in the others it should be strictly regulated if the city of Shimla has to be protected from natural and manmade disasters in the coming times. If unplanned, health hazard and unsustainable development continues it will be absolute violations to the principle of intergenerational equity. It is also correct that same areas have repeatedly seen and borne massive environmental disasters due to large scale landslides that have disrupted the arterial Cart road for months. There was a major landslide in Dhalli area that ruptured the Tatukandi-Dhalli Bypass road in September, 2017. The construction outside the core area and particularly, in areas where decongestion is necessary, fresh construction cannot be allowed. Construction in unsafe areas and even in the newly added areas has to be considered with seriousness for its consequential results. The rampant construction must stop. The techno-legal regime should not be mere eyewash but should have effective control and strict penal consequences. It is on record that all unauthorized and illegal constructions are regularized or at least attempted to be regularized without realizing their impact on environment, ecology and sustainability. Complete scarcity of natural and supporting resources is the last consideration that prevails with the authorities. The byelaws are primarily intended to regularize rampant, unauthorized and excessive construction in contrast to compliance of the byelaws in their true spirit and substance and enforcing the required actions contemplated under Section 3a of the Town and Country Planning Act, 1977 (for short, the TCP Act). Regularization of unauthorized construction on public land and particularly, the forest area or the

green areas would not only frustrate the Forest Act and other laws but would also encourage discrimination between people who are law abiding and those who are flouting causing serious environmental degradation. The cutting of hill tops should be stopped or at least very sternly regulated and allowed only after proper impact analysis and in rare situations. There must be appropriate determination of zones in that area and only permissible activities should be allowed and rampant construction should be debarred. The vehicular congestion and the population resulting therefrom have to be regulated. The forests and green area have to be protected. The open patches in the forest areas cannot be viewed as land open for construction that would be defeating the entire law relating to the forests and environment.

66. The Municipal Corporation and the local authorities should generate funds by invoking "Polluter Pays" Principle and should provide essential facilities to the people of Shimla, as well as the floating population. Sustainably providing water, collection of waste, its disposal and absolute control in treating the sewage and hazardous waste under the relevant rules should be strictly implemented by the State and its instrumentalities. Multi-storeyed buildings and house on top of a house should be totally prohibited in the entire area.

NOTIFICATIONS ISSUED BY THE GOVERNMENT OF HP, THEIR INTERCONNECT AND ENVIRONMENTAL IMPACTS:

67. To make provisions for planning, development and use of land, to ensure soundness in the preparation of development plans and

sectoral plans with a view to ensure effectiveness and efficiency in town planning schemes and their execution the Department of Town and Country Planning was created. The HP Legislative Assembly, enacted the Himachal Pradesh Town and Country Planning Act, 1977, which extends to the entire State of Himachal Pradesh. It came into force on such dates as the State Government, by notification, appointed for different areas and for different provisions of this Act. The act specified the items to which it was not applicable. Section 2(e) of the act defines 'commercial use' and section 2(g) of the act defines 'development' as follows:

“(e)“commercial use” means the use of any land or building or part thereof for the purpose of carrying on any trade, business or profession or sale or exchange of goods of any type whatsoever and includes running of with a view to make profit hospitals, nursing homes, infirmaries, educational institutions, hostels, restaurants and boarding houses not being attached to any educational institution, sarais and also includes the use of any land or building for storage of goods or as buildings for storage of goods or as an office whether attached to any industry or otherwise;”

“(g)“development” with its grammatical variations means the carrying out of a building, engineering, mining or other operations in, on, over or under land, or the making of any material change in any building or land or in the use of either, and includes sub-division of any land;”

68. Other relevant definitions under the Act are reproduced here.

'Development plan' means Interim Development Plan or Development Plan prepared under this Act. 'Planning area' means any area declared to be planning area under this Act. 'Building regulations' means the rules or regulations or bye-laws made under any law for the time being in force for the erection or re-erection of buildings or

parts thereof and for the purpose of this Act includes Zoning Regulations framed under any law for the time being in force. 'Existing land use map' means a map indicating the use to which lands in any specified area are put at the time of preparing the map. 'Development works' means external and internal development works. It will also be useful to refer to the two definitions which are related to the issue before the Tribunal. 'Natural disaster' and 'Natural hazard prone areas' have been defined in the act as follows:

“(zp)“Natural disaster” means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or manmade causes or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of property or damage to, or degradation of environment and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area;”

“(zr)“Natural hazard prone areas” means areas likely to have,- (i) moderate to very high damage risk zone of earthquakes or (ii) significant flow or inundation or (iii) landslide potential or proneness or (iv) one or more of these hazards;”

69. The Act comprehensively provides the methodology for preparation of Zonal Master and Zonal Development Plans. In terms of Section 14 of the Act, the Director has to prepare the Development Plans with reference to the existing land use maps and in terms of Section 15-A, freezing of land use, pending preparation of existing land use map in terms of Section 15(1), is to be imposed. Under Section 17 and after the declaration of a planning area, the Director shall, within such time as may be necessary, prepare, after consultation with local authorities concerned, if any, and submit to the State Government an Interim Development Plan for the planning

area or any of its parts. The Interim Development Plan shall indicate broadly the land use proposed like residential, industrial, commercial or agricultural purposes; open spaces, parks and gardens, green belts, zoological gardens and play grounds; public institutions and officers and any special purposes as deemed proper by the Director. It shall also provide the pattern of National and State highways. Importantly, to make proposals for general landscaping and preservation of natural areas; project the requirement of the planning and of such amenities and utilities as water, drains, electricity and suggest their fulfilment. He is expected to make provisions for broad based traffic circulation patterns in the city; suggest architectural control features, elevation, frontage of buildings, structures and submit the plan to State Government for approval. The State Government may approve the Interim Development Plan, as it is or with modifications. The Interim Development Plan is to provide for the various aspects identical to the one afore-stated. In terms of Section 19, it has to prepare the Draft Development Plans to which the objections are pointed out and considered in accordance with the scheme prescribed under these provisions and in terms of Section 20, contemplates that the State Government shall publish Development Plan as approved under sub section (1) - (3) of Section 20 and Final Development Plan shall come into force and be operative from the date of its publication in the Official Gazette and shall be binding on all local authorities. The provisions of this Act do not contemplate regularization of illegal and unauthorized structures and Section 39 vests the authorities with wide powers to ensure compliance of the

permissions, which are issued in consonance with the Interim or Final Development Plan. In the event of violation the authorities are vested with powers of stopping the construction, demolishing the same and even recover amounts from the owner/builder of the building that has violated the provisions of the plans. It is not necessary for us to discuss this aspect in great detail as that aspect has been dealt at some length by a Bench of the Tribunal in the case 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.

70. When we examine the statutory scheme of this Act of 1977 and the objects of this Act, it is evident with certainty that the development contemplated is entirely in conformity with the basic Principles of Sustainable Development. The Act has been enacted to make better provisions for preparation of Development, Plans, Sectoral Plans and to ensure obligation that has been placed on different stakeholders and particularly, on the builders and mandates controlled development and use of land. Different aspects related to proper development are specified in Section 17 and 18 of the Act. Once this exercise of preparing a plan is complete, there has to be a *status quo* in relation to construction and use of land in that area. Section 16 before us is a prohibition stating that no person shall institute or change the use of any land or carry out the development of land for any purpose other than as enacted in the land use map

without the permission of the Director. The various provisions of this Act clearly prescribe that the development of land has to be in consonance with the Interim or Final Development Plan and any unauthorised constructions raised need the rigors of Section 39 of the Act. The discretionary powers vested with the authorities cannot be abused for the purposes of regularizing illegal, unauthorized construction in violation of the provisions of the law and more, particularly, having severe adverse impacts on environment, natural resources and particularly, the public health.

71. In exercise of the powers conferred on the State in terms of sub sections 4 & 5 of Section 17 issued an Interim Development Plan for Shimla that was notified on 24th March, 1979.

Though Interim Development Plan had been prepared in the year 1979 despite lapse of 38 years, no Final Development Plan in terms of Sections 19 and 20 of the Act of 1977 has been notified till today. The Interim Development Plan has been amended on different occasions but not with an intention to enhance sustainable development or controlled development and land use as contemplated under the Act but primarily with the object of frustrating provisions of the Act and its object by condoning the irregularity and unauthorized constructions raised all over the State, particularly, Shimla.

72. *Vide Notification* dated 11th August, 2000, the State Government amended the Interim Development Plan and substituted regulations

10.4.1.2 (x) in relation to the prohibition and regulation of construction/re-construction:

“ Regulation

Amendment No. 1. 10.4.1.2 (x) shall be substituted as under namely:

10.4.1.2 (x) (a) All Private as well as Government constructions are totally banned with in the core area of Shimla Planning Area. Only reconstruction on old lines shall be permitted in this area with the prior approval of the State Government. The core area shall comprise of the following

‘Central Shimla bounded by the circular cart road starting from Victory Tunnel and ending at Victory Tunnel via Chhota Shimla & Sanjauli and the area bounded by Mall Road starting from Railway Board Building to Ambedkar Chowk, covering Museum Hill by a road starting from Ambedkar Chowk, on the north side, joining the chowk of Indian Institute of Advance Studies and following the road joining Summer Hill post office and via upper road to Boileauganj Chowk and then joining the cart Road, along Cart Road to Victory Tunnel.

(b) No development, unless specifically permitted by the State Government shall take place in the restricted area which shall comprise of the following:-

Area outside the core area defined vide para 10.4.1.2 (x) (a) above and bounded by Cart road with Tuti Khandii-Khalini-vikas Nagar Bye Pass starting

near barrier to the junction of the Kasumpti Junga Road near Parimahahal, starting from this Junction along with old Kasumpti Junga Road upto boundary building and following South-East path upto Dhobighat Nallah and then following the Nallah upto petrol pump of Himfed. On cart road, Sanjauli area bounded by Municipal Boundary from Rockey-Knob to Sanjauli Tunnel to Dhingoo Devi Temple on South to Cremation ground to Sanjauli Chowk to North circling Sanjauli Hillock, Longwood-Shankali Ruldubhatta area bounded by Tara Hall School to Tapovan to Lower Kaithu along road on East to Cart Road along external Municipal road on North and West meeting Cart Road near Hotel Hans.

For cases falling within the restricted area the existing regulations of IDP, Shimla shall stand modified to the following extent:

- (i) Construction up to three storeys only shall be permissible. The height of the individual storey shall not be less than 2.75 mtrs. and not more than 4.0 mtrs. No mezzanine/intermediate floor shall be permissible. Slopping roof with roof height not exceeding 2.50 mtrs. shall have to be provided. Terrace at roof level shall be allowed up to 1/3rd floor area of the top floor. In this area, the owner can also construct

glass house/terrace garden subject to the condition that such glass house does not go higher than the ridge of the road. In case the plot is accessible by a vehicular road, a parking floor exclusively for parking of vehicles shall have to be provided with the condition that the height of the storey created for parking does not exceed 2.20 mtrs. Such a floor created for parking shall not be used for habitable or storage purposes. Where it is essential to develop plot by cutting, it shall be the responsibility of the plot owner to provide according to the engineering specifications, retaining and breast walls so that such cutting of natural profile of the land may not harm the adjoining uphill side properties. However, cutting of natural profile shall not exceed more than one storey (3 meters in any case having a provision of diaphragm wall for step housing).

- (ii) For proposals involving creation of infrastructural facilities like education, medical, parking places, community services, Govt./Semi govt. offices etc. the same provisions as provided at (i) above shall be applicable.
- (c) All areas possessing substantial green cover but not classified as forest, whether in public or private ownership, to be henceforth called as Green Belt.

- (i) For the green belt, every effort shall be made to preserve and protect the character of the green belt. No subdivision of land in this area shall be allowed for urban functions. Activities promoting afforestation, wild life, picnics and tourism alone shall be permissible in the green belt. Under tourism, only such activities shall be allowed whereby tented, temporary, small and make-shift accommodations are proposed. Hill cutting for construction of approach roads would not be allowed. Felling of trees shall not be allowed for any of the activities mentioned above. Reconstruction of existing structures shall be permissible on old lines. The Director (TCP) shall undertake a survey of all such areas falling within the green belt and notify the same within 6 months period.

Provided that no development/construction shall be allowed in the areas falling within the purview of Forest Conservation Act, 1980.

- (ii) Henceforth no construction shall be allowed within a radius of 5 meters from the green belt boundary or 2 mtrs. from an existing tree.
- (d) Change of lands in the core and restricted areas shall be approved by the Government. No change of lands shall be permissible in the green belt.

73. Besides the above, certain other amendments were also carried out in different sub-regulations of Chapter X. They are related to regulation 10.4.1.2 (xi) that was amended to say that no additional storey shall be permitted. An important amendment was made to the regulation 10.4.1.4 (A) (F) to say if otherwise not specified under these regulations the maximum number of storeys shall not exceed four except in the core area, restricted area, sinking/sliding zone and heritage zone. Regulation 10.6 was amended to direct that sliding and sinking areas as delineated in regulation 10.6.1 and 10.6.2, only one storeyed construction with light weight material shall be allowed by the Director. In terms of amendment regulation 10.7, no development for reconstruction, unless specifically recommended by the 'Heritage Advisory Committee' and permitted by the State Government shall take place in the Heritage zone delineated in the said regulation. The relevant paras of the Notification dated 11th August, 2000, that we have reproduced (supra), clearly put an embargo on any Government and private constructions in the core area of Shimla Planning Area. Only reconstruction on old lines was permitted subject to the approval of the State Government. The Competent Authority identified Core Shimla area, to be bounded by the circular cart road starting from Victoria Tunnel and ending at Victoria tunnel via Chhota Shimla & Sanjauli and the area bounded by Mall Road starting from Railway Board Building to Ambedkar Chowk covering other various areas and buildings that have been stated in clause (a). Even in the restricted area as defined in clause (b), no development could be carried on

without approval of the State Government and only construction up to three storeys as per prescribed height could be carried out but no mezzanine/intermediate floor were permissible. Height is specified in the said regulation.

74. In pursuance of the Notification dated 11th August, 2000, a survey of Green areas within existing Core and Restricted areas of Shimla Planning Area was carried out. Thereafter *vide* Notification dated 7th December, 2000, the concerned authority declared the green belt in terms of regulation 10.4.1.2 (x)(c)(i) of the Interim Development Plan for Shimla. This notification mentioned areas with reference to a 'forest areas' though declaring them as green belt areas. Various parts of Shimla Planning Area were covered in this notification. For instance forest area bounded by bye-pass and cart road starting from the junction of barrier following the cart road to Parivahan Bhawan Nallah near Government Press along with some houses located there. Nabha Forest bounded by bye-pass and Cart road from Tuti-Khandi near Government High School following the part to Cart road to Nabha road and following down alongwith HPPWD Godown. Bamloe Forest bounded by Cart road and bye-pass starting from lift nallah moving along cart road then following down the path near Government Quarters meeting at junction or cart road to Bamloe road along with post office building. In this amendment it defined and prescribed 17 areas falling in Green belt, primarily forest and areas like Summer Hill Forest etc. Thereafter on 28th February, 2011, the Government of Himachal Pradesh in exercise of its powers further

amended the Interim Development Plan for Shimla Planning Area dated 24th March, 1979. As per the proposal received *vide* letter dated 6th September, 2010, in terms of Section 71 of the Act of 1977, Notification dated 28th February, 2011 substituted para 10.4, delineated the Shimla Municipal Corporation Area of Shimla Planning Area under different categories the earlier paragraph of the Interim Development Plan. It categorized the area into core area, restricted area, green area, heritage area and other areas besides specifying the heritage buildings, sinking and sliding areas. It specified the permissible construction regulations for land use. Simplifying the process of sanctioning of plans, Inspection Squad, Single Umbrella Committee for the purposes of according building plan approvals in all types of areas were established. This notification to a great extent diluted the earlier notifications issued by the State of Himachal Pradesh.

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.

79. The provisions of the Act of 1977, envisaged a planned development of the areas and the scheme of the Act is in consonance with the principle of sustainable development. Besides providing for use of land and development thereupon, the provisions even dealt with a restriction placed upon a Registrar or a Sub-Registrar to register any sub-division of land unless the approval to that effect was granted by the Director and that too subject to the Rules framed there-under. The purpose was that the lands should not be subjected to partitions with the ulterior motive of frustrating the provisions of the Act and avoiding regulated, controlled and sustainable development. The Notification dated 11th August, 2000 had provided that all private as well as government constructions are totally banned within the core area of Shimla Planned Area, permitting only reconstruction on old lines with prior approval of the State Government. As already stated, similar restrictions were already placed upon the restricted areas, areas having green cover and not classified as forests. It specifically provided that for the green belt every effort should be made to preserve and protect green belt and no sub-division of the land in this area shall be allowed for urban

functions. Vide Notification dated 7th December, 2000, survey of the green belt, existing core area and the restricted areas was carried out and their demarcation was done by this Notification specifying 17 segments which included the forest, core area and the green areas, etc. The Notification dated 22nd August, 2002 diluted the regulations of notification of 1979 as well as earlier notifications and stated that new construction in the Core area shall be allowed in respect of residential buildings upto maximum two storeys with prior permission of the State Government. If, reconstruction was permitted, number of storeys would remain the same. It also detailed the areas covered as Core areas. Notifications for amendment of Interim Development Plan were issued from time to time, varied the number of storeys in relation to different purposes like commercial constructions, public and semi-public areas, recreational buildings, etc. The Notification of 22nd August, 2002 led to relaxation even in relation to construction in the core area. It also varied the FAR and storeys that would be constructed in the residential area, etc.

80. Again vide Notification dated 5th June, 2003, Interim Development Plan was amended and it provided regulation for natural and built heritage. Health and educational institutions were permitted even in the Green belt having 4+1 storeys including parking. This was entirely an unwanted relaxation. Still, again vide Notification dated 28th November, 2011, the interim development plan was amended and FAR for core and restricted areas was increased from 1 to 1.50 mtrs. and other areas increased to 1.75 mtrs. This Notification has left open

the subject with regard to storeys that could be constructed and the height that could be prescribed while allowing the buildable slope to 45°. Surprisingly, this notification did not deal with the height regulation. It provided core, restricted and other areas including 17 green areas as already stated.

81. Notification dated 13th August, 2015 again amended the Interim Development Plan. The areas were classified as Core and Non-core areas, Green area, Heritage area, Heritage buildings and Cemeteries alongwith Sinking and Sliding areas that were prescribed in the notification. The Non-core area was stated to be comprising of an area falling outside the core area and upto the Shimla Planning Area. In Non-core area reconstruction of existing building on old lines except heritage buildings was permitted.

Vide Notification dated 28th June, 2016, provision was widened, wherein the power of change of land use was given to the Director, Town and Country Planning instead of the Administrative Department and this notification also removed the valley view restriction.

82. In light of the these notifications, it is evident that the entire area of Shimla was primarily segregated into three segments and different authorities were required to exercise jurisdiction in relation to planning and development. The core area that is rounded by cart road and above it, was under the jurisdiction of Municipal Corporation, Non-core area and other areas were under the jurisdiction of Shimla Special Area Development Authority and the

Deputy Commissioner, Shimla was the competent authority to grant approvals. While in relation to Additional Planning Area, the jurisdiction vested with the Town and Country Planning Department. In other words, there were different authorities for granting approval/NOC in relation to different areas in the city of Shimla.

83. It needs to be noticed here that the Government of Himachal Pradesh brought a Retention policy/Regularization policy intending to regularize all the structures howsoever they were constructed upon sanctioning of plans or otherwise with deviation or complete illegal construction by amending the Town and Country Planning Act of 1977 vide Ordinance No. 1 of 2016, which duly received the assent of the Hon'ble Governor. This Ordinance certainly would do much greater harm to the environment, ecology and environmental sensitivity of the area which needs to be checked in the interest of sustainability, public welfare and environmental protection.

84. The perusal of amendments to the Interim Development Plan carried over the years reveals that the authorities have erred in defining the extent of area/act to begin with. As a matter of fact, the authorities should have given the delineation of individual constituents along with its regulation for removing any ambiguity whatsoever. For example, the Green belt includes all areas possessing substantial green cover but not classified as forests whether in public or private ownership. The IDP Amendment Notification dated 11th August, 2000 gave the extent of green belt; rather it should have made detailed elaboration of individual constituents and its regulatory

characteristics including definitions. No clear distinction has been drawn and there is a likelihood of interchangeable use of different categories of areas.

85. As per the provisions contained in 11th August, 2000 Interim Development Plan amendment, all private as well as government constructions were totally banned in the Core area of Shimla Planning Area. Only reconstruction on old lines was permitted in this area with the prior approval of the State Government. This aspect got diluted in 22nd August, 2002 Interim Development Plan amendment whereby new constructions in Core area was allowed in respect of residential buildings up to maximum two storeys with prior permission of the State Government and this led to the proliferation in the construction activity without any consideration to the fragile hill ecology of Shimla.

86. The Development Plan is a document, which can transform the future of a city by impacting its development positively in the years to come depending upon the infrastructural resources existing or which could be augmented. Unfortunately, this did not happen in case of Shimla. This city, famously known as the 'queen of hills' has been surviving on the crutches of Interim Development Plan since 1979. Authorities and all successive governments found an easy way to play with bylaws by resorting to an easier Interim Development Plan route where an amendment can be made without calling for any objections/suggestions of general public whereas on the contrary, development plan requires a full-fledged public hearing before proposing any change. As many as 18 amendments in interim

development plan of 1979 have been carried out which shows adhocism, anarchy and arbitrariness in functioning and decision making. Therefore, all successive governments have faulted in their duty of beholding of public trust for short-term gains.

87. The frequent change in building regulations such as setbacks, height, number of storeys, FARs, etc. has been without scientific impact assessment. Ideally classification of lands in stability zones should have been carried out and prohibition should have been imposed on construction on sites which are susceptible to soil liquefaction and landslides.

88. If one traverses through the 1979 Interim Development Plan Notification, and subsequent amendments till date it reveals that there have been dilutions of regulatory regime with respect to height, number of storeys and maximum FAR. However, with regard to setbacks there has not been a consistent pattern of relaxation. With regard to buildable slopes, identification and zonation of green belts, heritage area, heritage buildings, sinking and sliding areas, etc. there has been a positive trend, which maintains and conserves the hill environment and ecology.

89. One more aspect which warrants attention is the provision of Section 16(c) of the HP Town and Country Planning Act, 1977. The provisions of this section impose restriction on the change use of land or on carrying out of any development except for agriculture purposes. Sub-section 'c' of Section 16 imposes a restriction on registration of

any deed or document of transfer of any sub-division of land by way of sale or otherwise, unless the sub-division of land is duly approved by the Director, subject to the rules framed. To this section, there are relaxations stated in the proviso. The purpose of this provision is not to permit registration of a document sub-dividing the land keeping in view the development plan and the manner in which such development should take place. This, in fact, is to avoid adverse impacts on the environment and ensure sustainable development. If the land in the hilly terrain, which is eco-sensitive, is divided and sub-divided, there will be hardly any possibility for open spaces, roads, infrastructure and for providing appropriate development facilities to the public at large. Sanjauli in Shimla is a glaring example of such indiscriminate development by violating the provisions of Section 16(c) of the Act.

This Section has been blatantly violated by the Revenue Authorities of the town by not insisting on approval of sub-division of land parcels from the Town and Country Planning Department while undertaking registry of land parcels. This has resulted in large unauthorized sub-division of plots without corresponding infrastructure. The multiple registries without supporting infrastructure have led to haphazard construction and violation of building bylaws and spoiled the aesthetics of Shimla city besides impacting the micro-environment. The provisions of the Section 16(c) needs to be strictly adhered to and the plots approved by the TCP Department should be superimposed on the revenue maps by the

Revenue Authorities before registering any land parcel. Adherence to the provisions of Section 16 shall protect the environment with aid of Principle of Sustainable Development while its violation or circumventing would lead to adverse impacts on environment and ecology and would expose such construction to natural hazards and endangering human lives.

90. Adding to the damage, there has been a consistent practice of bringing in 'retention policies' to regularize the building bylaws violations which has virtually made Shimla one of the most vulnerable towns of northern India. Such actions have rather been encouraging unauthorized constructions. No concrete action seems to have been taken against violators indulging in unauthorized construction. There is no inventory on record to give insight of quantum of unauthorized construction in Shimla Planning Area. Further, the details of illegal or unauthorised construction and action taken thereon have not been placed on record. Non-availability of such data compelled the Tribunal to pass specific directions to all the concerned authorities, i.e., Town & Country Planning Department, Municipal Corporation Shimla, Additional Shimla Planning Authority and Shimla Area Development Authority to produce records and file a specific statement in relation to the unauthorised structures. Vide order dated 13th September, 2017, the Tribunal had asked for details in regard to landslide incidents that occurred in the year 2017, the guidelines prepared by the Town & Country Planning Department keeping in view the application of mind for sanctioning of building plans and the stand of

the Government and the Corporation for permitting construction in the forest area/green area/core area. On 10th October, 2017, learned Counsel stated upon instructions from the officers including the Director of the Town & Country Planning Department present before the Tribunal that plans were being sanctioned earlier as a double window system, first they use to come before the Town & Country Planning Department and the Corporation used to sanction the plan. However, from 1994, the Corporation exercises its authority to grant NOC or give sanction to a plan. The officers admitted before the Tribunal that no study was ever carried out as to whether any plan could be sanctioned in a particular area and whether such construction should or should not be permitted. A study with regard to disaster management was carried out. On behalf of the State of Himachal Pradesh it was submitted that the Town & Country Planning Department never carried out any study or survey to find out as to how the development activity in relation to construction should be permitted keeping in view the ecology, carrying capacity, availability of natural resources and other relevant factors. It was also stated by the officers that the lifts have been permitted in the private buildings as well as the government buildings which have installed lifts for public conveniences in the core area.

Thereafter a statement was filed on behalf of these authorities stating that 5143 applications had been received for regularization the constructions raised in small or 'serious deviations from approved plans' as well as the 'unauthorised constructions' which were raised

without any NOC or even making applications for sanction of plans. Out of the stated figure, 3342 applications fell in the first category, i.e. deviations from approved plans, while 1801 applications fell in the latter category, i.e. total unauthorised constructions. The senior officers present before the Tribunal also stated that there might be cases of illegal, unauthorised constructions in the entirety or unauthorised deviations made in the construction of property. But, however, the Corporation, the Town & Country Planning Department or the Special Development Authority have shortage of staff and infrastructure and, therefore, there is no information available with them as to how many constructions of this kind exist beyond the persons who have submitted their applications in that regard. With this the callousness on the part of the various Departments of the State and the local authorities is writ large. The worst is that there is no check and control upon such illegal and unauthorised constructions which admittedly are increasing by the day. It seems that 'Retention Policy' had been a tool deployed to regularize such illegal or unauthorized constructions.

91. It is found that no study was undertaken or data collected after the notification of 13.01.2014 whereby a committee was constituted to examine anomalies in the demarcation of green pockets in Shimla Planning Area and to submit its report to the government within one month. Till date, no document is on record which brings out such anomalies and action taken by the Government.

Another aspect which emerged during the course of hearings before the Tribunal is that to defeat the provisions of the Town & Country Planning Department and even the Municipal Laws, particularly, in relation to restrictions on gradient of the hill and distance from the national highway in relation to plots abutting the roads is that they cut the hills first without applying for sanctioning or development plans and/or obtaining NOCs. After lapse of some time, they show it as a plain area and apply for sanctioning of plan or issuance of NOC under the Act. Constructions are being raised even on the controlled width, leaving no scope for widening of roads. Hill cutting is not permissible in this manner. Cutting of hill is a serious matter and has to be permitted by the authorities strictly in consonance with the provisions of the Town & Country Planning Department Act, Forest and the local laws which declared the areas as controlled areas and/or areas where hill cutting is prohibited. The concerned department of Science does not pay any attention on that behalf and hill cutting is being permitted indiscriminately. Once the hill is cut, the very purpose of prescribing the gradient and distance of the road stands defeated. This is colourable methodology adopted by the builders/applicants to defeat the application of the statutory provisions which needs to be stopped. The lack of co-ordination and co-operation between the various departments of the State of Himachal Pradesh, is one of the major causes for succeeding of ill-designs of the builders. Preventive and protective steps in that behalf need to be taken.

92. Proper planning and development has been overlooked by various concerned authorities for variety of reasons and circumstances. Firstly, there are multiple authorities under these notifications, which even act in contradiction to each other. There is complete lack of co-ordination between these authorities. There are serious lapses in exercise of regulatory and supervisory powers. The huge numbers of unauthorized and illegal cases have not been taken to their logical end, thus, providing an incentive or a premium on illegal and unauthorized constructions. Every person would presume and to some extent rightly that they could get away without complying with the laws in force at the cost of environment and destruction of natural resources.

GENERAL DISCUSSION ON MERITS OF THE CASE

93. Having deliberated on specific issues, now we may need to revert to discuss the substantial environmental issues arising in the present case. Our discussion necessarily has to proceed on the principles stated by the legislature under Section 20 of the NGT Act, 2010. The Tribunal is mandated to apply the Principle of Sustainable development, Precautionary Principle and the Polluter Pays Principle while passing necessary orders or directions. With reference to the facts and circumstances of the case as afore-stated, in our considered view, the case has to be examined in two independent phases, though, in a way they would be interlinked to arrive at final conclusions. The former would relate to damage already done by indiscriminate and unsustainable development which could be

resolved only by taking corrective and restorative measures and while applying Polluter Pays Principle. The later would relate to environmental and ecological damage that is likely to occur in future. The vulnerability of environment and disaster risk to which the entire area of Shimla is exposed, for which the Tribunal should take recourse to the Precautionary Principle and Principle of Sustainable Development with due regard to inter-generational equity.

94. More often than not, the Courts and Tribunals in India have taken recourse to the **Public Trust Doctrine** for protecting the environment and preventing its degradation. Unlike the English Common Law that extended this doctrine only to certain traditional uses such as navigation, commerce and fishing. The American Courts in recent times have expanded the concept of this doctrine. In India, public trust doctrine has been applied to environment, ecology and to eco-systems operating in the natural resources. Public Trust Doctrine is consistently has been treated as a part of environmental jurisprudence. The State, as a trustee, is under the legal duty to protect the natural resources. These resources are meant for public use and should be made freely available to the public at large with exception of limited private use or commercial purposes that are permitted. The resources being a gift of nature deserve extensive interpretation and the doctrine puts an implicit embargo on the right of the State to transfer public properties to private party, if such transfer affects public interest, mandates affirmative state action for effective management of natural resources. For example, renewable

and non-renewable resources, associated uses, ecological values or objects in which the public has a special interest are held subjected to the duty of the State not to impair such resources, uses or values, even if private interests are involved. The same obligation applies to forest, mountains, parks and the public domain and other public assets. The Public Trust Doctrine is a tool for exerting long-term public rights over short-term public rights and private gain. Today, every person exercising his or her right to use the air, water or land and associated natural ecosystems has the obligation to secure the same for the benefit of others for long run and enjoyment by future generation. 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.”

95. The State-owned or public-owned property is not to be dealt with absolute discretion of the executive. Certain precepts and principles have to be observed. Public interest is the paramount consideration.

Mechanism and methods should be devised to secure public interest for disposal of such assets and their distribution. The natural resources must not be jeopardised. There should be nothing suggestive of discrimination on the one hand and improper utilization of the resources on the other. Appearance of public justice is as important as doing justice. The courts have held that the State is a legal owner of the natural resources as a trustee of the people and although, it is empowered to distribute the same, it should be in consonance with the doctrine of equality and larger public good. This is how the Courts have without hesitation accepted the contention that public interest is an integral part of the doctrine of public trust more particularly in relation to natural resources. There can be no doubt that distribution as well as utilization of natural resources should and ought not to be in a manner destructive of the assets and human life, itself. The obligation on the State is unquestionable. This could further be dissected into two distinct segments. First, holding of natural resources as trustee for the public at large and the second is ensuring proper regulation and utilization of resources or natural resources even in the hands of private parties to ensure sustainable development and adherence to the laws of the State in that behalf.

96. The Public Trust Doctrine is not adhered in Shimla as the basic infrastructure and the mandated norms for building construction have not been followed thereby making Shimla vulnerable to landslides and disasters. It was the duty of the public and the authorities for adherence to building bylaws and to follow the tenets

of sustainable development. But due to rampant and mindless urbanization, the lives of people are at risk in Shimla Planning Area. Shimla needs to be protected not only for residents but for the entire society. Sustainable Development requires that the capital city is developed with focus not only on resident but also migrant population, and hence protection of forest, biodiversity, meadows, water bodies, sky slopes, etc. should be essential ingredients for planning process. Even the Interim Development Plan 1979, did not specify the fundamental of sustainable development, precautionary principle and public trust doctrine but its amendments as referred above further diluted the essence of sustainable development, thus, increasing the vulnerability of Shimla to man-made and natural disasters. The constructions in the core area had been banned but this specifically relaxed to some extent by permitting the constructions on old lines with the prior approval of the Government but the adoption of regularization policy of illegal, unauthorized and untenable development certainly offended both the public trust doctrine and the Precautionary Principles. There has been a blatant misuse of natural resources due to anthropogenic activities resulting in making the State's capital vulnerable to natural disasters. The Government certainly has not been able to preserve the diversity and the ecology of the green areas. The natural resources of green areas must be preserved and should not be destroyed or compromised by urbanization.

97. Precautionary Principles and Inter-generational Equity are inbuilt facets of Sustainable Development. They have to be effectively

examined with a futuristic point of view for protection of natural resources. Writers and Environmentalists have cautioned 'we need nature, nature doesn't need us'. This is sufficiently indicative of the requirements on the part of the people enjoying the benefits of natural resources to conserve and protect the same. Unplanned, haphazard and indiscriminate constructions all over Shimla including its core area are unquestionable. The areas like Sanjauli, New Shimla, lower Bazar are some of the glaring examples of unsustainable construction and development. This has not only exhausted the natural resources thus putting limitations even on availability of natural resources like water but have caused infrastructure degradation to the extent that even the sewage generated by the city is not treated and managed effectively; there have been repeated instances of the sewage mixing with drinking water causing health calamities including death of large number of people.

98. The reports on record clearly suggest that there is dire need for strictly regulating and enforcing the development laws particularly in relation to construction to the extent that in most of the areas construction activity needs to be stopped in its entirety. The studies have established on record before the Tribunal that the entire city of Shimla falls in seismic zone IV and V and is sensitively vulnerable to the earthquakes. The indiscriminate and unplanned constructions raised in various parts of Shimla are not sustainable to face even the earthquakes of a lesser gravity. Most of the structures are brick structures with sheet roofs and hence are not earthquake proof. In

the event of any natural calamity or manmade disasters, the expected human casualty is more 25,000 beside massive damage to property and development. The prescribed hill gradient has been violated in most of the cases. The carrying capacity of Shimla city cannot afford any further building load, traffic load, destruction of green belt, forests and besides all that there is extreme scarcity of natural resources more particularly water. The roads of Shimla are choked, due to which visitors and residents are stuck in traffic jams for hours together. There has been continuous and persistent degradation of environment and ecology in that area raising serious environmental concerns. There has also been large scale tree felling in the area in the name of development without undertaking precautionary measures including afforestation. Himachal Pradesh, particularly Shimla & its surrounding areas has been exposed to number of natural and manmade calamities including landslides, cloud burst, floods, change in temperature with huge financial costs and property loss including human lives which we have already discussed in some detail. As per the Government of India report on spatial distribution and concentration of landslides nearly 97.42% of the total geographical area of Himachal Pradesh is prone to landslides.

99. At the cost of some repetition, we must notice that there have been cases of rampant unauthorized constructions besides the cases which are not known to the Department of Town, Municipal Corporation Shimla, Additional Shimla Planning Authority and Shimla Area Development Authority. There are more than 5143 cases

where rarely any action has been taken now for years by the authorities concerned. Besides that it is a callous and irresponsible approach adopted by the State and its instrumentalities. This has very serious adverse impacts on environment and ecology of this eco-sensitive area and natural resources.

100. The cannons of **Precautionary Principle** envisage that if there is risk of severe damage to humans and the environment, absence of incontrovertible, conclusive, or definite scientific proof is not a reason for inaction. Therefore, this principle shifts the burden of proof to the person who is asserting that the activity would not be harmful. This principle would not permit any new construction or mass development as it would adversely impact environment and ecology of the already stressed Shimla Core and Planning Areas. The planning machinery of the State has failed to yield the required results. Unsustainable development, hill cutting, indiscriminate felling of trees, etc. are the devices adopted by the builders and developers of the property to defeat the essence of precautionary measures. The Rule of gradient is frustrated by cutting the hills to a large extent in the event of submission of the plans so as to show it as the plain area which obviously is without the knowledge of the concerned authorities. Lack of proper development and providing of basic facilities and amenities prior to sanctioning of the plans is adding the cause of haphazard and unsustainable construction. In the present case before us, there is no uncertainty of scientific proof. There are reports before the Tribunal to substantiate issuance of directions

founded on precautionary principles and requiring the authorities to wake-up to the alarming situation prevailing in that area. The principle involves in anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activities. Environmental protection not only aims at protecting health, economic interest but also protect the environment for its own sake. Of course, there should be justifiable concerns or proper risk potentials. The burden lies upon the authorities and those who want to change the status quo to show that there shall be no damage or minimal damage to the environment or ecology. This principle would have to be applied with all its rigours particularly when it relates to eco-sensitive areas. Serious or irretrievable damage would squarely fall inside the realm of Precautionary Principles.

101. The courts even in other parts of the world have stated that it may not be possible to define non-negligible risk with exactitude the burden of proof is to be placed on those attempting to alter the status quo. They are to discharge this burden by showing the absence of a reasonable ecological or medial concern. That is the required standard of proof. The result would be that if insufficient evidence is presented by them to alleviate concern about the level of uncertainty, then the presumption should operate in favour of environmental protection referred, i.e. "*in dubio pro natura*" as was noticed in the case of *Ashburton Acclimatization Society V. Federated Fanners of New Zealand* (1998) 1 NZLR 78. The required standard now is that the risk of harm to the environment or to human health is to be decided in

public interest, according to a 'reasonable persons' test. (see Precautionary Principle in Australia by Charmian Barton) (Vol. 22) (1988) Harv. Env. L. Rev. 509 at 549).

102. In the case of *Goa Foundation and Peaceful Society V. Union of India and Ors.*, 2013 ALL (I) NGT REPORTER (NEW DELHI) 234, the Tribunal stated that precautionary principle is permissible and is opposed to actual injury or damage in terms of Sections 14 and 15 of the NGT Act. The applicability of precautionary principle is a statutory command to the Tribunal while settling environmental disputes. Thus, any violation or even an apprehended violation of this principle would be actionable by any person before the Tribunal. In the case of *S. P. Muthuraman and Ors. V. Union of India and Ors.* 2015 ALL (I) NGT REPORTER (2) (DELHI) 170, the Tribunal while setting aside the memorandums issued by the MoEF&CC in that case stated that memorandums offending the precautionary principle, which is one of the statutory determinative principles by the Tribunal, held that memorandums were opposed to sustainable development and therefore not sustainable. There could be cases where precautionary principle may lose its material relevancy because of the damage has already been done. There are the Courts and Tribunals resort to restorative, curative and even punitive measures. Precautionary principle is a proactive method dealing with the likely environmental damage.

103. Examined from the point of view the irresistible conclusion on the facts and circumstances of the case in hand is that rigours

enforcement of precautionary principle coupled with the sustainable development is the only way to make prevent further environmental degradation as well as terrible loss of person, property and natural resources in Shimla. If appropriate protective, preventive and prohibitory measures are not taken even now in relation to unsustainable construction activity, deforestation, disproportionate use of natural resources, regulatory regime is not enforced with its rigours, the inevitable would be drastic consequences. It is the duty of the Government, its instrumentalities, local authorities and public at large to discharge their constitutional duties under article – 51A (g) of the Constitution and be guided by precautionary principle, principle of sustainable development and inter-generational equity. The present generation is duty bound to pass to the next generation the city of Shimla in a better condition and free from environmental mess in which it is today. There have been large numbers of landslides resulting from haphazard and unsustainable constructions. There have been large scale development activities of road, construction and building of multi-storeys buildings without proper study and examining possible risks therefrom. Large number of trees have been felled or cut as a result of cutting of hills all through the areas. Nothing can justify such unsustainable development which exposes generations to come to such imminent threats of natural and manmade disasters.

104. Argument was also advanced that unauthorised and illegal constructions have already been raised and the Governments have

issued notification for regularization of the constructions relatable to a cut off date. These constructions include the constructions which were raised without even applying for NOC or sanctioning of development plans or cases where development was started after obtaining sanction plans but there have been substantial and material deviation in construction activities including raising of extra storeys putting huge burden on municipal infrastructure as well as natural resources. Besides this, there are persistent threats of natural and manmade disaster, as they fall squarely much beyond the carrying capacity of the city of Shimla. We have already noticed that such cases where applications have been modified are more than 5000 besides large number of other similarly situated properties which are not even within the knowledge of the authorities. The statutory provisions empower the authorities to stop such construction and even demolish the same at the cost of the builder/owner. Section 39 of the Town and Country Planning Act, mandates the action by the authorities which they have miserably failed to take in relation to any illegal and unauthorised property. No Court or Tribunal should encourage such activities and provide incentive and encouragement for unauthorised and illegal construction activity at the cost of irreversible damage to the environment, ecology, natural resources and the municipal infrastructure in the city of Shimla. This issue need not detain us any further as this entire concept of regularization of unauthorised structures was discussed and even demolition of the properties was directed by the Tribunal in the case of *Society for Preservation of*

Kasauli and its Environs V. Bird's View Resort and Ors., O.A. number 69/2017, 70/2017, 71/2017, 72/2017, 73/2017 decided on 30.05.2017 where the Tribunal while directing demolition of unauthorised construction and held as under:

“17. Since we have arrived at a clear finding that the officers of the HPPCB and the TCPD and even the Electricity Department have acted, if not in direct collusion with these Noticees, they have certainly failed to discharge their statutory and public duties appropriately. They have also failed to maintain the standards of performance expected from such officers. They, in fact, completely ignored the violations by the Noticees on both counts, environmental and town planning laws and took no effective action. We have even referred to the Court proceedings which clearly demonstrate the omissions and commissions of these officers which apparently are unbecoming of a public servant. Thus, we direct the Chief Secretary, State of Himachal Pradesh to take action against all the erring officers, particularly, Mr. Pravin Gupta, Senior Environmental Engineer, Anil Kumar, Junior Engineer and other officers of the HPPCB. One Ms. Leela Shyam, District Town Planner, Mr. Yavneshwar Singh Naryal, Junior Engineer and other officers of the concerned department and the erring officers of the Electricity Board as well. Appropriate action against such officers shall be initiated in accordance with law, within four weeks from the date of pronouncement of this judgment and status thereof be brought before the Tribunal.

18. We further direct the Chief Secretary of the State of Himachal Pradesh, not only to confine disciplinary action against the above officers/officials but even all such other officers whether they are presently in service or not but who are found to be responsible for such omission and commission leading to these adverse environmental impacts.”

Furthermore, challenge to the notification issued by the State Government has been raised before the Himachal Pradesh High court in Writ Petition No. 1370 of 2005 where the State Government has

stated that it will not process any application for regularization of these structures till disposal of the writ petition.

105. There is constitutional duty upon every citizen to protect the environment and natural resources in terms of the article 51A(g) of the Constitution. There is also a statutory duty on the persons desirous or altering the status quo by raising construction in the eco-sensitive areas to strictly adhere to and obey the laws of development under the Town and Country Planning Act, Municipal Laws and the Environmental Laws. The persons who have flagrantly violated the constitutional and statutory duties cannot be permitted to contend that they have invested monies and raised constructions which are environmentally and ecologically dangerous and are a heavy burden on the natural resources. They must face the consequences of their unsustainable activities in accordance with law, wherever the law requires the property or part thereof ought to be demolished. It is a matter of common knowledge that huge structures have been raised in the city of Shimla without complying with the environmental laws on one hand and by not providing for or taking any anti-pollution measures for prevention and control of pollution resulting from such residential or commercial activities.

106. No one can claim right to carry on any construction or development in violation to the laws in force on the ground that the land or the natural resources within that piece of land belong to him and as such he would have an absolute right to carry on any activity in the manner as the person may deem proper. Such an approach

would be impermissible in law. It is certainly opposed to the settled principles of sustainable development. Under the TCP Act of the State of Himachal Pradesh structures in violation of the Act are liable to be demolished as the power to regularize the deviations is very limited and cannot be exercised to frustrate the very object and purpose of legislation. The provisions of the environmental protection laws mandate that illegal and unauthorized constructions cannot be permitted to degrade or damage the environment and ecology on the plea of private interest or investment. The Hon'ble Supreme Court in various cases has adopted the approach that wherever the builders have violated the sanctioned building plans with impunity and indulge in deviations much to the prejudice of the planned development and at the cost of inhabitants in the city at large or deviations pose a threat to ecology and environment resulting into unbearable burden on infrastructure consisting of water supply, sewerage and traffic movement facilities, such constructions must face consequences of ruthless demolition and the purchasers who have invested the money should be adequately compensated. In the case of *Friends Colony Development Committee V. State of Orissa and Ors.* (2004) 8 SCC 733, the case related to constructions raised or deviations made which prevented the staff of the concerned local or other authorities from discharging their duties. Emphasising upon the importance of planned development and limited scope of regularizing by compounding deviation the Hon'ble Supreme Court held as under:

“22. In all developed and developing countries there is emphasis on planned development of cities which is sought to be achieved by zoning, planning

and regulating building construction activity. Such planning, though highly complex, is a matter based on scientific research, study and experience leading to rationalization of laws by way of legislative enactments and rules and regulations framed thereunder. Zoning and planning do result in hardship to individual property owners as their freedom to use their property in the way they like, is subjected to regulation and control. The private owners are to some extent prevented from making the most profitable use of their property. But for this reason alone the controlling regulations cannot be termed as arbitrary or unreasonable. The private interest stands subordinated to the public good. It can be stated in a way that power to plan development of city and to regulate the building activity therein flows from the police power of the state. The exercise of such governmental power is justified on account of its being reasonably necessary for the public health, safety, morals or general welfare and ecological considerations; though an unnecessary or unreasonable intermeddling with the private ownership of the property may not be justified.

23. The municipal laws regulating the building construction activity may provide for regulations as to floor area, the number of floors, the extent of height rise and the nature of use to which a built-up property may be subjected in any particular area. The individuals as property owners have to pay some price for securing peace, good order, dignity, protection and comfort and safety of the community. Not only filth, stench and unhealthy places have to be eliminated, but the layout helps in achieving family values, youth values, seclusion and clean air to make the locality a better place to live. Building regulations also help in reduction or elimination of fire hazards, the avoidance of traffic dangers and the lessening of prevention of traffic congestion in the streets and roads. Zoning and building regulations are also legitimized from the point of view of the control of community development, the prevention of over-crowding of land, the furnishing of recreational facilities like parks and playgrounds and the availability of adequate water, sewerage and other governmental or utility services.

24. Structural and lot area regulations authorize the municipal authorities to regulate and restrict the height, number of stories and other structures; the percentage of a plot that may be occupied; the size of yards, courts, and open spaces; the density of

population; and the location and use of buildings and structures. All these have in view and do achieve the larger purpose of the public health, safety or general welfare. So are front setback provisions, average alignments and structural alterations. Any violation of zoning and regulation laws takes the toll in terms of public welfare and convenience being sacrificed apart from the risk, inconvenience and hardship which is posed to the occupants of the building.

25. Though the municipal laws permit deviations from sanctioned constructions being regularized by compounding but that is by way of exception. Unfortunately, the exception, with the lapse of time and frequent exercise of the discretionary power conferred by such exception, has become the rule. Only such deviations deserve to be condoned as are bona fide or are attributable to some misunderstanding or are such deviations as where the benefit gained by demolition would be far less than the disadvantage suffered. Other than these, deliberate deviations do not deserve to be condoned and compounded. Compounding of deviations ought to be kept at a bare minimum. The cases of professional builders stand on a different footing from an individual constructing his own building. A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed to be deliberate and done with the intention of earning profits and hence deserve to be dealt with sternly so as to act as a deterrent for future. It is common knowledge that the builders enter into under hand dealings. Be that as it may, the State Governments should think of levying heavy penalties on such builders and therefrom develop a welfare fund which can be utilized for compensating and rehabilitating such innocent or unwary buyers who are displaced on account of demolition of illegal constructions.”

107. In the case of *Shanti Sports Club V. Union of India* (2009) 15 SCC 705, the Hon'ble Supreme Court observed that in the 21st century, the menace of illegal and unauthorized constructions and encroachments has acquired monstrous proportions and everyone has been paying heavy price for the same. In most of the cases of illegal and unauthorized construction the officers of the municipal and other

regulatory bodies turn blind eye either due to the influence of higher functionaries of the State or due to other extraneous reasons. Those who construct buildings in violation of the relevant statutory provisions, master plan etc. and those who directly or indirectly abet such violations are totally unmindful of the grave consequences of their actions and/or omissions on the present as well as future generations which will be forced to live in unplanned cities and urban areas. The Court from time to time took cognizance of buildings constructed in violation of municipal and other laws and emphasised that no compromise should be made with the town planning scheme and no relief should be given to violators of the town planning scheme on the ground that he has spent substantial amount on construction of the buildings. Compassion and hardship cannot be grounds for protecting such wrongdoers. Irreparable harm to the concept of development of cities and urban areas is the result of such activities. In the case of *M.C. Mehta V. Union of India and Ors.*, (2004) 6 SCC 588, the Hon'ble Supreme Court directed shifting/relocation of industries operating in residential/non conforming areas of Delhi while enforcing the provisions of the Delhi Municipal Corporation Act, 1957 and National Capital Region Planning Board Act, 1985. The ground of inconvenience or facing hardship was rejected by the Hon'ble Supreme Court. The Hon'ble Supreme Court while upholding the judgement of the Bombay High Court in the case of *Mahendra Baburao Mahadik and Ors. V. Subhash Krishna Kanitkar and Ors.*, (2005) 4 SCC 99, clearly observed that power to grant permission for construction can be exercised within the purview of building byelaws

and the Municipal Council has no jurisdiction to direct regularisation of unauthorised construction by passing a resolution beyond the provisions of Section 44 of the Maharashtra Regional and Town Planning Act, 1966. The Court held that even recovery of taxes in relation to unauthorized construction does not imply regularization. Offences relating to unauthorized or illegal constructions cannot be compounded and thus structures have to be demolished. Regularization of such unauthorized structures would defeat the very purpose of introducing the rules of planned development of the city and the cases of unauthorized constructions should be dealt with sternly. This approach was again adopted by the Hon'ble Supreme Court in a very recent judgement in the case of *Esha Ekta Apartments Co-operative Housing Society Ltd. and Ors. V. Municipal Corporation of Mumbai and Ors.*, (2013) 5 SCC 357 dealing with Section 377 and 351 of the Mumbai Municipal Corporation Act, 1988. The circular issued by the Corporation could not enunciate the reason for regularization of unauthorised structures. In fact, the Court while referring to the case of *Royal Paradise Hotel (P) Ltd. V. State of Haryana and Ors.*, (2006) 7 SCC 597 held as under:

“We would like to reiterate that no authority administering municipal laws and other similar laws can encourage violation of the sanctioned plan. The Courts are also expected to refrain from exercising equitable jurisdiction for regularization of illegal and unauthorized constructions else it would encourage violators of the planning laws and destroy the very idea and concept of planned development of urban as well as rural areas.”

The above law enunciated by the highest court of the land and has been followed by the Tribunal in its various judgements leaves no

doubts in our mind that unauthorized and illegal structures raised must face the rigors of law and cannot be granted regularization with the aid of byelaws for compounding deviation. The deviations must fall within the framework of the principal statute and they cannot be permitted to defeat the provisions of the principal Act. It is sufficient to note that not only the existing unauthorized and illegal structures should abide by the enforcement of law but even due precaution should be taken to ensure that such construction activities are not permitted to be carried out in future at any cost. All these illegal, unauthorized and unplanned constructions cause irreparable damage to the natural resources, environment, ecology and particularly, the infrastructure resources created by the State or the local authorities, water supply, sewerage, collection and disposal of waste, roads and other facilities. This in our considered opinion cannot be permitted and must stop forthwith.

108. Deforestation as an activity and illegal, indiscriminate felling of trees are significantly relevant considerations for discussion on environment and climate change in its correct perspective. Shimla is known for its natural forests. We have already discussed that, nearly, 55% of the Shimla Planning Area falls under forest/green area. Earlier Shimla Municipal Corporation and now, Department of Forest is engaged for better and efficient management of forests in the State of Himachal Pradesh and more, particularly, in Shimla. The Shimla city supports evergreen coniferous and broad leaved forests. These forests not only regulate the environment of the city and surrounding areas

but also attract the tourists. The ecosystem of Shimla provides recreational services as it is known for the religious or heritage values, natural and recreational experiences including ecotourism, outdoor sports etc. Among the regulating services, carbon sequestration, climate regulation, waste decomposition and detoxification, purification of water and air, and pest and disease control, etc. are popular. The ecosystem services that are necessary for protection of all other services are called supporting services. Shimla is one of such cities, where forests play critical role in maintaining the water supply of the city dwellers and ecology.

“Forest also have both short term and medium term impacts on climate. Temperature regulation happens in forests when the canopy shades the ground and when dark coloured foliage absorbs heat. Forests can in certain circumstances also influence precipitation – in cloud forest, for example, trees and epiphytes intercept and condense water directly from the air, and that water runs down trunks to plants and soil below. On a longer timescale, forest play a role in carbon cycling and sequestration; when forest plants, bacteria, and algae respire, they take CO₂ out of the atmosphere. Plants, soils, and the animals that eat them in forests, grasslands, and other terrestrial ecosystems store 2000 billion tons of carbon worldwide, about half the amount of carbon stored in the ocean and nearly three times that stored in the atmosphere. However, if these ecosystems are burned or destroyed, as happens when timber is harvested, the carbon they are sequestering is released to the atmosphere. Although most organic compounds do return to the atmosphere as CO₂ when living organisms die and decompose, in a functioning forest ecosystem some is buried and sequestered. About 25 % of the human caused increase in CO₂ concentration in the atmosphere during the past 20 years resulted from land use change primarily deforestation. Over past decades, national policies of conservation and sustainable management have transformed the country’s forests into a net sink of CO₂. From 1995 to 2005, carbon stocks stored in forests are

estimated to have increased from 6245 million tonnes to 6622 tonnes, thereby registering an annual increment of 37.68 million tonnes of carbon or 138.15 million tonnes of CO₂ equivalent (Kishwan et al., 2009). Recently, FSI (ISFR, 2011) has also estimated the carbon stock in forest land, remaining forest land including land converted to forest land in 2004 at 6663 million tonnes corresponding to annual incremental carbon accumulation by country's forests to 59.2 million tonnes i.e., annual removal of 217.07 million tonnes of CO₂ equivalent. Putting a conservative value of US \$ 5 per tonne (1 US \$ = Rs 55.00), the economic value of this function is estimated at Rs. 5969.42 crore (Us \$ 4085.35) million annually.

Forests in a watershed, on the hillslopes that drain into a river, influence the water quality in that river. In part this is because higher intensity uses, such as agriculture input pollutants like nutrients and pesticides into a system while forests do not. Forests themselves also reduce sediment and nutrient runoff. Clearing trees can have an impact as soon as the next rainy season on sediment and nutrient loads in streams, as demonstrated in the classic Hubbard Brook experiment. In some cases, water users have invested in forests to keep their water supplies clean. New York City invested US\$ 250 million to acquire and protect land in the Catskills watershed that supplies water to the city. By working with landowners to reduce pesticide and fertilizer application and to plant buffer strips along water ways, New York City reduced potential contamination of its drinking water. In conjunction with related conservation investments amounting to US\$ 1.5 billion, the city thereby obviated the need to build a filtration plant projected to cost between US\$ 6 and US\$ 8 billion.

Upstream forest reduce fluctuations in stream flow by reducing runoff in wet periods through canopy interception, leaf litter absorption, and soil and groundwater storage. Increased infiltration provides base flow in dry periods through groundwater recharge. Though water flow regulation is a function of vegetation, soil type, and slope, which occur in a heterogeneous mix through the watershed, forests and even shrubs with all types of soils and slopes consistently provide better water regulation than grasses, orchards, and crop agricultural fields. This study estimated the value of electricity produced by the hydro facility due to water regulation by the forest at over US\$ 600000 per year (in the early

2000s), or about 2.2 times the income derived from forest product services in this area (Ecosystem Services : K A Brauman and G.C. Daily in Ecosystem Ecology : 2009)

The presence of forest near agriculture fields improves productivity due to nutrient cycling i.e., by releasing nutrients for plant growth. In Northeast India, farmers practice jhum cultivation where productivity is directly related to the length of jhum cycle.

Pollination of plants by birds, bees and insects has enormous economic value (allen-wardell et al., 1998). Cultivars of approximately two-thirds of the world's crop species require pollination by bees or other animals (Roubik, 1995). Proper assessment of economic value of pollination services is very difficult but they are likely worth billions of dollars per year globally (Southwick and Southwick, 1992; Nabhan and Buchmann, 1997)”

109. The advantages of such dense forests are lost by deforestation, particularly, when it is not followed by afforestation. Planned conservation of forests is essential for preventing environmental degradation. In the case of *Rajiv Savara V. Darrameks Hotels & Developers Pvt. Ltd. and Ors.*, 2016 NGTR (1) PB 621 the bench of the Tribunal in cases relating to unauthorised construction in Uttarakhand held that once the plant cover is removed or disturbed and levelling of the land is undertaken, the chances of soil erosion due to rainfall increase significantly. Being in the close proximity of the river, chances of the eroded soil to enter into the river itself are quite high and this activity is responsible for raising the level of the river bed which has several other serious geological consequences. In the case of *Court on its own Motion V. State of Himachal Pradesh & Ors.*, O.A. No. 488 of 2014 decided by the Tribunal on 1st August, 2017, the Tribunal dealt with the impacts of tree felling on

environment at length; while noticing the concern thereof held as under:

“Trees play a very important role in maintaining the ecological balance in the biosphere. Since the beginning, trees have furnished us with two of life's essentials, food and oxygen. On an average, one tree produces nearly 260 pounds of oxygen and absorbs up to 48 lbs of carbon dioxide a year. With the evolution of human civilization contribution of trees in making our life comfortable increased several fold, i.e., they provide us necessities such as clothing, shelter, medicine, and tools. Today, their value continues to increase and more benefits of trees are being discovered as their role expands to satisfy the needs created by our modern lifestyles.

Trees contribute to our environment by providing oxygen, improving air quality, climate amelioration, conserving water, preserving soil, and supporting wildlife. During the process of photosynthesis, trees take in carbon dioxide and produce oxygen we breathe. They provide us with fresh air to breathe, shade in summers, food, and other benefits without which we cannot even think of living. Trees control climate by moderating the effects of the sun, rain and wind. Leaves absorb and filter the sun's radiant energy, keeping things cool in summer. Trees also preserve warmth by providing a screen from harsh wind. In addition to influencing wind speed and direction, they shield us from the downfall of rain, sleet and hail.

Trees lower the air temperature and reduce the heat intensity of the greenhouse effect by maintaining low levels of carbon dioxide. Both above and below ground, trees are essential to the eco-systems in which they occur. Far reaching roots hold soil in place and fight erosion. Trees absorb and store rainwater which reduce runoff and sediment deposit after storms. This helps the ground water supply recharge, prevents the transport of chemicals into streams and prevents flooding. Fallen leaves make excellent compost that enriches soil. In the present day scenario trees in Urban Environments help in muffling the urban noise. In Suburban Environments they help in providing shade canopy and noise buffers and also congenial habitat for suburban wildlife, while in the rural environment they protect the crops from wind, control erosion and create diverse plant and animal habitats.

Despite knowing the importance of trees, human beings are still cutting down the trees and forests have started depleting from this beautiful earth. Deforestation has the following dangers:

* Destruction of carbon sinks: Carbon sinks are huge stores of carbon. Large quantities of carbon are trapped by plants in general and trees in particular in the body biomass thereby helping in balancing the carbon dioxide content in the biosphere. Mature trees hold large quantities of carbon. Each acre of the forest has been taking roughly 0.75 metric ton of carbon out of the atmosphere annually, doing its humble part to counteract greenhouse warming [The Case of Missing Carbon: National Geographic]. A mature tree can absorb up to 48 lbs of carbon dioxide a year (McAloney 1993). In fact, large trees at maturity can store approximately 1000 times more carbon dioxide than saplings (Nowak 2001). This difference highlights the importance of maintaining large tracts of healthy, mature forest, which will be much more useful in establishing carbon sinks than planting saplings [Ravin, A & Ranie, T: Best Practices for Including Carbon Sinks in Greenhouse Gas Inventories].

When a tree is felled and burnt the carbon present in its body gets converted back into carbon dioxide and is released into the atmosphere. Timber extraction may only represent a comparatively small return of carbon to the atmosphere: wood does not release CO₂ until it decomposes or is burnt. The oxidation of leaf litter and surface soil biomass in felled areas will add to net emissions in the short term. Where re-growth or restocking does not take place, there is a potential net loss of 50 t C/ha [Environmental impacts of land management; Natural England Research Report NERR030; pp 131 - 142].

* Soil Erosion: Deforestation makes soil prone to erosion by agents such as wind and water. The roots of trees hold the particles of soil together, thus preventing the fertile top soil from being carried away. Soil erosion leads to loss of productivity of the land due to loss of mineral nutrients and soil microorganisms

* Destruction of animal habitats: Apart from domesticated animals and marine and fresh water animals, all other animals need forests as their habitats. These forests do not only provide a place for the animals to roam around but also provide their food and act as a source of protection from predators through camouflage. Actually each plant/tree provides a unique microhabitat of a great array of

macro and microscopic animals and when it is felled these organisms are significantly affected. Destruction of the animals' habitats literally kills the animals.

* Source for medicine: Many plants/trees are a source of important medicines used for the treatment of diseases in case of human beings as well as domesticated animals. Destruction of such trees leads to destruction of such medicines.

* Greenhouse effect and global warming: Nature balances the flow of energy and nutrients. Trees and forests play a very vital role in the flow of energy and cycling of nutrients like carbon, nitrogen, phosphorus, etc., in the biosphere. Destruction of trees/forests results in the disturbance in the natural balance in the cycling process of various nutrients. For example, recent calculations suggest that carbon dioxide emissions from deforestation and forest degradation (excluding peat land emissions) contribute about 12% of total anthropogenic carbon dioxide emissions with a range from 6 to 17% [van der Werf, et al. (2009). CO₂ emissions from forest loss". *Nature Geoscience* 2 (11): 737-738]. Deforestation causes carbon dioxide to linger in the atmosphere. As carbon dioxide accrues, it produces a layer in the atmosphere that traps radiation from the sun. The radiation converts to heat which causes global warming, which is better known as the greenhouse effect. Destruction of forests also causes modification of climate of an area mostly leading to desertification and aridity.

* Trees and plants in general, affect the water cycle significantly in a number of ways

- The tree canopy intercepts precipitation, and a part of it is in the process evaporated back to the atmosphere;
- Tree litter, stems and trunks slow down surface runoff;
- Their roots create macropores - large conduits - in the soil that increase infiltration of water;
- They contribute to terrestrial evaporation and reduce soil moisture via transpiration;
- Their litter and other organic residue change soil properties that affect the capacity of soil to store water.
- Their leaves control the humidity of the atmosphere through the process of transpiration [Scherer et al (2013) *Soil, Water and Plant Characteristics Important to Irrigation*, North Dakota State University, Fargo, North Dakota].

Chopping down vast swathes of forest is known to have an effect on climate, but what is the impact of cutting down a handful of trees? A recent study by Zhang et al. (2014) shows that even small-scale land clearance - a few hectares or less - causes a noticeable change in local temperature. According to climate models, tropical deforestation causes warming, while loss of forest at high latitudes brings about cooling. The transition from warming to cooling occurs at latitude of around 35°. But most land-use change occurs at far smaller scales: To see whether the loss of only a few trees has any impact on the climate of an area Zhang et al (2014) studied 40 locations across North and South America and 12 locations in Eastern Asia [Zhang et al. (2014). Response of surface air temperature to small-scale land clearing across latitudes. *Environ. Res. Lett.* 9 (3): 7pp]. They observed that at tropical and subtropical latitudes (15°S to 20°N) local deforestation caused a warming effect of more than 0.5 °C on daily maximum temperature. In boreal latitudes (over 45°N and S) a cooling effect of nearly 1 °C on daily minimum temperature was reported. The team found that small-scale deforestation has the greatest localized warming effect in the tropics - between 10°N and 10°S. After that the impact decreases, switching to a cooling effect at latitude of around 35°.

Research also suggests probable increases in understorey native plant cover and richness after tree overstoreys are mostly or completely removed. As the pattern of the plant cover changes, it affects the composition of the faunal assemblages in the area as well [Abella, S. R. & Springer, J. D. (2014), Effects of tree cutting and fire on understory vegetation in mixed conifer Forests; *Forest Ecology and Management* (2014)19pp]. Generally, species favoring closed-canopy conditions with larger diameter trees are negatively affected when cutting results in grasslands or oak woodlands with small diameter trees and open canopies. Conversely, species favoring grasslands or very open woodland are positively affected.

Felling of individual trees tends to be most significant outside woodland because the individual trees themselves, particularly veteran trees, are critical to the interest, for example in orchards, hedges and parkland [Read, H. (2000), *The veteran tree management handbook* (Peterborough, English Nature, 2000)].”

110. The TCP Act and the Notification issued earlier completely protect the core area and forest/green areas. There was mandate to prohibit construction in this area. However, with the passage of time firstly, illegal and unauthorized structures were raised in these areas and secondly, the Government also protracted matters in that regard and exhibited inclination towards relaxation. This encouraged felling of trees, without any restoration process being adopted even in the areas like Jakhu, Chota Shimla, New Shimla, there was large scale felling of trees and these were converted into a concrete jungle. In Sanjauli, where there was some greenery, now, not even a single tree is visible. This clearly shows the failure on the part of both the Forest Department and the Corporation in effectively enforcing the regulatory regime. There was large scale hill cutting in this area more particularly in the Special Development Area or area falling under the Shimla Planning Authority. The hill cutting obviously meant felling of trees. The hills having gradient of more than 40° and having plantation on it were cut into plain pieces of land. Then the plans for buildings for raising construction were submitted which were sanctioned, however, the serious deviations were made and additional floor were constructed and in some cases excess construction was also raised for such areas without submission of an application for sanction of plans. This adversely affected the forest cover in Shimla and it is a matter of public knowledge that there is serious change in the atmospheric temperature of Shimla. Thus there has to be proper co-operation and concerted effort on the part of various departments like Forest Department, Town Planning Department, Revenue

Department, Science and Technology Department and even the authorities responsible for registration of Sale Deeds etc. to ensure protection and conservation of forests and that there are no impermissible deviations/divisions of land and illegal and unauthorized constructions in the Core and Forest area/Green area are totally prohibited.

111. On cumulative reading of the laws referred, it is evident that the framers of the law clearly intended to protect natural resources and environment. The purpose is to effectively implement and enforce the laws and regulation relating to development and protection of environment. Then alone the twin objects- adherence to law and protection of environment and ecology could be achieved. Protection of environment and natural resources is absolutely essential for human existence. At the cost of repetition, we must notice that the concept of regularization of deviation from sanctioned plan cannot be brought in such an insidious manner. This is a limited and restricted power. The concept of compounding cannot be permitted to be used and diminish or even destroy the natural resources, environment and ecology. Irreparable damage to these would more often lead to disasters causing serious damage to person, property and environment. Another contention raised before the Tribunal by the applicants is that they have a right to construct over the lands of which they are the owners, even though the lands are located in Core area, Forest/Green areas. This contention is misconceived in law as well as in the facts of the present case. On the one hand, the State and its

instrumentalities have failed to discharge their Constitutional obligations in terms of Article 48A of the Constitution and the citizens have failed to discharge their Constitutional duties in terms of Article 51A(g) for protection and improvement of environment and forest etc. The right to construct on one's own land, particularly, in relation to prohibited area/restricted area have to be examined in light of the constitutional mandate. Article 19(f) was omitted by the 44th amendment of the Constitution and Article 300A was added. Article 300A even permitted a person to be deprived of his property by authority of law. The right to construction is, however, regulated by the Town and Country Planning Department and the Municipal laws in force in a State. In other words, it is not an absolute right by any stretch of imagination but is restricted and regulated right. Such statutory right can only be exercised, subject to the limitation and restrictions imposed and by complying with the prescribed procedure. Such restrictions are neither unknown nor unforeseeable. There are statutorily notified eco-sensitive areas or sanctuaries or national parks where construction of any kind is prohibited. This is a reasonable restriction and is primarily imposed in the interest of environment ecology and bio-diversity. We have already noticed that the laws in force in the State of HP read with the constitutional provisions and Environment (Protection) Act, 1986, tilt the balance completely in favour of protection of environment and sustainable development. Restrictions in that behalf have to be imposed and enforced in accordance with law. Desired directions, whether prohibitory or regulatory in nature, restrictions and mandates of

compliance should be passed when called for. We entertain no doubt in the facts and circumstances to pass appropriate declarations, guidelines and directions in this case that are required to be passed to not only to protect environment, ecology and natural resources but even life of public at large and their property.

112. Thus, we pass the following directions and order:

- I. We hold and declare that the facts and circumstances of the present case, as afore-recorded, clearly demonstrate failure on the part of the State Government, its instrumentalities and local authorities to discharge their constitutional obligations under Article 48A, statutory duties under the Environment (Protection) Act, 1986, under the TCP Act and Municipal byelaws. It is this failure that has exposed the Shimla Planning Area to such vulnerability to natural and man-made disasters. In the event, if such unplanned and indiscriminate development is permitted there will be irreparable loss and damage to the environment, ecology and natural resources on the one hand and inevitable disaster on the other.

- II. We hereby prohibit new construction of any kind, i.e. residential, institutional and commercial to be permitted henceforth in any part of the Core and Green/Forest area as defined under the various Notifications issued under the Interim Development Plan as well, by the State Government.

III. Beyond the Core, Green/Forest area and the areas falling under the authorities of the Shimla Planning Area, the construction may be permitted strictly in accordance with the provisions of the TCP Act, Development Plan and the Municipal laws in force. Even in these areas, construction will not be permitted beyond two storeys plus attic floor. However, restricted to these areas, if any construction, particularly public utilities (the buildings like hospitals, schools and offices of essential services but would definitely not include commercial, private builders and any such allied buildings) are proposed to be constructed beyond two storeys plus attic floor then the plans for approval or obtaining NOC shall be submitted to the concerned authorities having jurisdiction over the area in question. It would be sanctioned only after the same have been approved and adequate precautionary and preventive measures have been provided by the special committee constituted under this judgement along with the Supervisory Committee.

IV. Wherever the old residential structures exist in the Core area or the Green/Forest area which are found to be unfit for human habitation and are in a seriously dilapidated condition, the Implementation Committee constituted under this judgement may permit construction/reconstruction of the building but strictly within the legally permissible structural limits of the old building and for the same/permissible legal use. The Competent Authority shall sanction the plans and/or approve the same only

to that extent and no more; under any circumstances such plans must not be beyond two storeys and an attic floor and only for residential purpose.

- V. There shall be no regularization of unauthorised constructions within the Core area and Green/Forest areas which have been raised without obtaining any prior permission/sanction of plans in entirety. It shall also include constructions in complete violation of the sanctioned plan or where additional floors have been constructed in contradiction to the concept of deviation or variation, to constructed areas for which the plans were sanctioned. In such cases, the authorities shall take action in accordance with law and direct demolition of such property.
- VI. The State of HP, its departments and authorities are hereby restrained from permitting cutting of hills/forests without prior submission of application for sanctioning of plans for construction. If any person is found to be damaging Forest/Green area and/or cutting of hills, without grant of permission of the concerned authorities and without construction plan being sanctioned, he/she would be liable to pay environmental compensation as may be determined by the concerned department but not less than Rs. 5 Lakhs for each violation. The compensation, if not paid, shall be recovered as land revenue by the State and will be utilized by the State for restorative purposes and/or for afforestation of the Shimla Planning Area.

VII. Wherever unauthorised structures, for which no plans were submitted for approval or NOC for development and such areas falls beyond the Core and Green/Forest area the same shall not be regularised or compounded. However, where plans have been submitted and the construction work with deviation has been completed prior to this judgement and the authorities consider it appropriate to regularise such structure beyond the sanctioned plan, in that event the same shall not be compounded or regularised without payment of environmental compensation at the rate of Rs. 5,000/- per sq. ft. in case of exclusive self-occupied residential construction and Rs. 10,000/- per sq. ft. in commercial or residential-cum-commercial buildings. The amount so received should be utilised for sustainable development and for providing of facilities in the city of Shimla, as directed under this judgement.

VIII. We direct the State Government and/or its instrumentalities and more, particularly, the Town and Country Planning Department to finalize the Development Plan within three months from the date of pronouncement of this judgement without default. The Development Plan so finalized shall be notified in accordance with law. While finalizing the development plan, the directions and precautions stated in this judgement shall be duly considered by the concerned departments and the State of Himachal Pradesh.

IX. The Registrar or any other authority vested with the responsibility of registering documents of transfer or division of land shall not do so except with the prior NOC from the Town and Country Planning Department, in accordance with the provisions of the law afore-referred. The Department of Science and Technology, Town and Country Planning, Municipal Corporation, Urban Development, Forest, Revenue and Registrar for documents shall depute their senior officers within a period of three weeks from today, who shall prepare Memorandum of Practice which shall be followed by all the departments in regard to cutting of hills, any activity in the forest areas, division and transfer of land, development activity providing of infrastructure and other facilities in the Shimla Planning Area. This memorandum shall provide due coordination and cooperation between the various wings of the State to ensure sustainable development of the entire Shimla Planning Area. This Memorandum will be approved by the Supervisory Committee appointed under this judgement.

X. The State of Himachal Pradesh, its instrumentalities, departments and local authorities shall prepare an Action Plan for providing appropriate infrastructure, water and sewerage facilities, roads, greenery, other public amenities and retrofitting of existing structures (especially public utilities) particularly with the earthquake resistance structures in the areas which have been indiscriminately developed and lacks such facilities like

Sanjauli and other congested areas of Shimla including Lower Bazar etc. The Action Plan shall be prepared within a period of three months from the date of pronouncement of this judgement providing retrofitting to public or private buildings against earthquake effect and be implemented in accordance with the State Policy.

- XI. No construction of any kind, i.e. residential, commercial, institutional or otherwise would be permitted within three meters from the end of the road/national highways in the entire State of HP, particularly, in Shimla Planning Area. We direct that all the concerned authorities shall duly enforce the valley view regulation and direct the same.
- XII. Within the existing Zoning policy, additional layers of slope, geology, soil type and load bearing capacity of soil should be superimposed on different zones to regulate any construction or development works. The height of constructions should be regulated by such safe bearing load capacity of the underlying rock formations rather than uniformly following 18 mtr. of height requirement. The Interim Development Plan permits 18 mtr. of height requirement, which again has no rational and is not backed by any study. Thus the same will not be implemented till compliance with the other directions.
- XIII. Presently slope of 45° for construction is uniformly applicable in all zones and areas irrespective of soil and geology. This can

create vulnerability during seismic events and soil saturation/soil liquefaction. Slope in soft rocky areas with overburden soil should be reduced to 35° while retaining 45° for areas with hard sub surface stratum. The concerned department shall ensure that no construction activity takes place where the slope is more than 45°/35° in any case, which should be prior to cutting of the hills.

- XIV. Rain water harvesting should be a mandatory requirement for all the building plans. Even the old buildings where such RWH structures are not present must be provided with RWH systems within three months. This direction must be complied with particularly in relation to public buildings, schools, colleges, universities, hotels, hostels, etc.
- XV. All the storm water available as surface run off in all the concretised areas like roads, lanes, platforms and market places should be diverted in such a manner to ensure that such run off does not go in to overburden or flow along hills and depressions, thereby creating over saturation and affecting soil and slope stability. Options be evaluated for storage and use of such water after proper treatment/disinfection.
- XVI. There should be no institutional construction in the Core area and the institutions located in the Core area which requires a further demand for space or facilities should be shifted to other district or to the areas falling under the jurisdiction of SADA.

XVII. We appoint the following Committee to be termed as 'High Powered Expert Committee', which shall be responsible for carrying out the specific directions under this judgement and provide NOC or other necessary permissions to the stakeholders, whether State or private parties. This Committee shall also ensure that there is no further degradation of environment, ecology and natural resources of the Shimla Planning Area. If anything comes to the notice of this Committee, they would be at liberty to move to the Tribunal for appropriate directions. The High Powered Expert Committee shall consist of two components. First would be the Supervisory Committee while the later would be Implementation Committee. The Members of these committees shall be as follows:

I. SUPERVISORY COMMITTEE:

- i) Secretary, Urban Development, State of Himachal Pradesh.
- ii) Director, Wadia Institute of Himalayan Geology, Dehradun.
- iii) Director, Town and Country Planning, Govt. of H.P. shall be the Member Secretary of the Committee
- iv) Professor from relevant field nominated by the Director, Punjab Engineering College, Chandigarh.
- v) Nominated officer from NDMA not below the rank or equivalent to the Joint Secretary or above.
- vi) Member Secretary, H.P. Pollution Control Board.

II. IMPLEMENTATION COMMITTEE:

Chairman: Director, Deptt. Town and Country Planning, Govt. of H.P.

MEMBERS:

- i) State Town Planner, Govt. of H.P.
- ii) Director, Department of Urban Development, Govt. of H.P.
- iii) Municipal Commissioner, Shimla. -

- iv) Nominated officer from Wadia Institute of Himalayan Geology, Dehradun not below the rank or equivalent to Director in Govt. of India.
- v) Nominated officer from NDMA not below the rank or equivalent to Director in Govt. Of India.
- vi) State Geologist, Department of Industries, Govt. of H.P.
- vii) Director, Department of Environment, Science & Technology, H.P.
- viii) Architect in-Chief, H.P. PWD.
- ix) Member Secretary, H.P. Pollution Control Board.

The Supervisory Committee shall meet atleast once in three months, while the Implementation Committee shall meet every month in the first week to perform the functions and duties assigned to them under this judgement, without default.

XVIII. This High Powered Expert Committee shall carry out a survey of lifeline structures and identify those structures that are vulnerable to damage due to seismic events and other natural hazards. Also it will identify and delineate passages for providing emergency services, for medical assistance and relief works, so that enough openings are created for ingress and egress of fire tenders and emergency medical vehicles/ ambulances.

XIX. This Committee shall also advise the State of HP for regulating traffic on all roads, declaring prohibited zones for vehicular traffic, preventing and controlling pollution and for management of Municipal Solid Waste in the Shimla Planning Area. The recommendation of this Committee should be carried out by the State Government and all its departments as well as local authorities, without default and delay.

- XX. The Committee shall also deal with the recommendations in relation to zoning policy and would keep in mind the factor of vulnerability risk assessment. The Committee may also make recommendations for permitting construction of buildings of exceptional nature like hospital, fire-brigade or public utility services but strictly in consonance with the laws in force.
- XXI. There should be a complete ban on felling of trees in Catchment Forest and Sub-Catchment of water streams and water sources. In such areas, even change of land use to horticulture and agriculture should not be permitted as that can add pesticides and inorganic chemicals to soil which will eventually drain in to water sources.
- XXII. The State Government shall ensure that the Municipal Solid Waste generated in the Shimla Planning Area is managed strictly in consonance with the Solid Waste Management Rules, 2016. The Waste to Energy Plant located at Bhariyal should positively be made operational as directed by the Tribunal in the other connected matters by 15th November, 2017.
- XXIII. The ban on use of plastic bags and plastic packaging in the Shimla Planning Area is again reaffirmed and reiterated. The State of HP, it's Departments, Himachal State Pollution Control Board and the Municipal Corporation of Shimla shall ensure that no plastic bags or plastic packing or goods are used, stored,

sold and/or given with any product, by the shopkeepers in the Shimla Planning Area.

XXIV. The State Government, concerned departments and the local authorities are hereby directed to prepare a complete action plan for collection and disposal of sewage in the Shimla Planning Area expeditiously. The plan should deal with laying of pipeline, putting up of STP and reutilisation of the treated sewage and/or its discharge at the appropriate places wherever there is a discharge in the water body. It shall be ensured that the release of the treated sewage should not be at a point prior to any drain or pipe discharging untreated sewage into the river/water bodies directly, which must be stopped. The Action Plan should be placed before the Tribunal within a period of three months from today.

XXV. It is directed that wherever the concerned authorities extract water from the river or water bodies it should do so according to law and positively prior to a point where discharge from any drain, nalla, etc. meets the river/water body. Though, every effort should be made that no untreated sewage or other polluted water enters the river at all.

XXVI. Wherever there are trees in the compound or land of an owner or a house adjacent to a forest or green area, it shall be the responsibility of such owner/owners to ensure that the trees are

properly protected and maintained and no damage is caused or permitted to be caused to their growth.

- XXVII. All the directions issued by the Tribunal in relation to collection and disposal of sewage, passed in the case of *Abhimanyu Rathor v. State and Ors.* (supra) should be strictly complied with.
- XXVIII. The concerned departments and the local authorities of the State Government should also prepare a complete and effective Action Plan with regard to disaster management. The Disaster Management Plan should deal with both precautionary and preventive measures that should be taken up presently to ensure that in the event of any untoward incident or natural calamity there is least damage to the natural resources, person and property of the public at large. The action plan should also deal with the preparedness of the concerned wings of the State for the purpose of relief and rehabilitation as a result of disaster.
- XXIX. Original Application No. 505 (THc) of 2015 also stands disposed of in terms of this judgement. The Applicant has already submitted the plans for reconstruction of the house on the existing lines on the ground that the same is in dilapidated conditions and is unfit for human habitation. In this judgement, the Tribunal has placed restrictions in consonance with the Notifications issued by the State on the nature and the extent of construction that can be raised in such areas. All these matters are required to be considered by the Supervisory Committee.

Therefore, we direct the concerned authorities to consider the application of the applicant afresh, in light of the directions contained in this judgement and pass orders expeditiously in any case not later than four weeks from today. The orders dated 1st August, 2005 and 13th October, 2010 already passed by the authorities would not be given effect to and they will be subject to fresh orders that may be passed by the competent authority.

113. The Miscellaneous Application No. 192 of 2017 was also heard along with the main case. After the case was reserved for judgement and before pronouncement, the learned Counsel appearing for the State of Himachal Pradesh and its various departments mentioned the matter and informed the Tribunal that in principle a decision had been taken to permit the applicant to install lift as per amending drawings. Some relaxation in relation to setback is under consideration of the authorities and the same shall be decided objectively and very expeditiously not later than two weeks from the date of pronouncement of this judgement. In view of this judgement, no further orders are called for in Miscellaneous Application No. 192 of 2017. Liberty to mention in the event of default granted.

114. The Miscellaneous Application No. 525 of 2014, has been filed on behalf of the H.P. Public Service Commission, praying that there has been shortage of office accommodation and to provide better facilities like ultra modern library, facilitation centre for the candidates, strengthening and furnishing of strong room and interview rooms in the existing building besides providing parking space for official

vehicles of Commission and other vehicles of the Government; additional accommodation needs to be constructed. As per proposed plans construction is to be carried out for parking, office block, Chairman's room with retiring room, secretary's room with retiring room, digital library and other ancillary constructions thereto. According to the applicant, these areas fall in Green/Forest area of Shimla Planning Area. Even the photographs of the existing structure have been filed on record. The building is surrounded by trees and has some open space at two different levels in front of it. We are of the considered view that for the reasons recorded in this judgement which should be read as an integral part of this order, this construction should not be permitted in the interest of ecology, environment and safety.

In this judgement, the Tribunal has placed restrictions in consonance with the Notifications issued by the State on the nature and the extent of construction that can be raised in such areas. All these matters are required to be considered by the Supervisory Committee. Apparently, the area is green/forest area in Shimla Planning Area and it will be impermissible to raise any fresh construction, particularly, to the extent and of the size as has been prayed by the applicants. The reports on record have clearly stated that there should be greater emphasis on shifting of public offices from core, green or forest areas to the outer area of Shimla and if necessary even to the adjoining districts. Keeping in view the seismic status of Shimla it would not be appropriate to permit such

construction, especially when reasonable alternatives are available with the applicants. There is no reason as to why the building should not be shifted to another appropriate area either in the non-green/forest areas of SPA or even the areas available in the adjoining districts. The distances have lost their meaning in view of the highways network being improved to the extent of providing four lane dual carriage and two lane dual carriage. Thus to protect the green area as well as to avoid additional construction burden on the hills, it is not proper to permit such huge construction on the small area which is open in front of the existing building which itself is a huge construction. The hills need not be converted into concrete mountains and thereby cause adverse impacts on the environment, ecology and the stability of the structures.

We grant liberty to the applicant to approach the Supervisory Committee, which shall be assisted by the Implementation Committee by filing appropriate applications for raising the proposed construction with complete plans, environmental impacts consideration in relation to the seismic status of the hill, its carrying capacity and all other necessary documentation relatable to different environmental aspects. If such an application is filed the Supervisory Committee shall examine the same in accordance with the provisions of the TCP Act, and the directions issued in this judgement. It would make recommendations in favour of applicant or otherwise in relation to the construction as prayed and with such precautions and preventive measures as may be necessary. If such recommendation is

made, the same shall be placed before the Tribunal for issuance of appropriate directions in accordance with law. With the above directions, Miscellaneous Application No. 525 of 2014 is disposed of, without any order as to costs.

115. The Miscellaneous Application No. 785 of 2015, has been filed on behalf of the Town and Country Planning Department, for construction of proposed Convention Centre at UP Mohal Raj Bhawan at Peterhoff, Shimla. There is already an existing structure and a running hotel. The applicant prays for allowing construction, expansion of the existing Peterhoff building. As per the drawings placed on record, the new construction besides the existing structure would be that of basement, ground floor, first floor, second floor and third floor. The constructed area of the basement would be 1182 sq. mtr, ground floor would be 865.89 sq. mtr, first floor would be 855.12 sq. mtr., second floor would be 855.12 sq. mtr. and third floor would be 824.52 sq. mtr. The building is located in green/forest area of the SPA. In this judgement, the Tribunal has placed restrictions in consonance with the Notifications issued by the State on the nature and the extent of construction that can be raised in such areas. All these matters are required to be considered by the Supervisory Committee. It is evident and in fact, the applicant has placed nothing on record that any appropriate study was carried out in relation to various environmental aspects including its vulnerability to earthquake, treatment of sewerage, management of MSW and the impact of the trees which are going to be felt on the environment.

Because of the reasons stated, we are unable to allow the application at this stage. We direct the applicant to approach the Supervisory Committee, which shall be assisted by the Implementation Committee, with the application and all necessary documents. If such application is filed, the Supervisory Committee shall make its recommendation, whether such construction should or should not be permitted, while taking into consideration the Act, the Development Plan and the directions contained in this judgement. If recommendation is favourable to the applicant, the same shall be implemented only subject to the final orders of this Tribunal. With these directions this Miscellaneous Application has been disposed of without any order as to costs.

116. The Miscellaneous Application No. 1495 of 2016 has been filed on behalf of the Chief Engineer, Deepak Project Mintoo Court, Shimla, stating that the building, where its headquarter was located was gutted in a fire in November, 2014 and they want to reconstruct the same plinth location of the old building. Presently they are working in a temporary accommodation. The plans have been submitted to the Municipal Corporation, Shimla. The area is located in green/forest area and the applicant prays that they be allowed to raise construction. This application does not give any details about the construction, i.e., proposed to be raised in terms of dimensions, area, material to be used, nature of construction that is proposed to be raised. The application relates to raising new constructions in place of old site, thus in terms of the judgement it requires to be

considered by the Supervisory Committee in accordance with the provisions of the TCP Act, Environment Protection Act and the directions of the Tribunal.

Therefore, we direct the applicant to approach the Supervisory Committee, which shall be assisted by the Implementation Committee with complete reports, documentation and proposed plans by filing appropriate application. If such application is filed the same should be dealt with expeditiously. Only if the recommendations are in favour of the applicant, then they should be implemented subject to orders of the Tribunal. With these directions, Miscellaneous Application No. 1495 of 2016 is disposed of, without any order as to costs.

117. The Miscellaneous Application No's. 747 of 2017 and 626 of 2017 have been filed by different departments of the State of HP. The former application has been filed by the Forest Department, praying that the permission for raising construction in the Green/Forest area of Shimla Planning Area which has been declined by the Corporation *vide* its letter dated 17th January, 2017. They pray for quashing the said order and be permitted to raise construction. The later application has been filed by the Public Works Department of the State of HP in relation to raising construction. They had applied for the approval of the building plan which has been declined by the Corporation *vide* its Survey Report dated 1st August, 2015 and has also declined the approval to raise the construction. Public Works Department is praying for setting aside the said report and for

permission to raise construction in the Core/Green area. We have already noticed the detailed facts of these applications in paragraphs 18 and 19 of this judgement. We have held that in terms of the Notification issued by the State, construction in these areas is either prohibited or highly restricted. Furthermore, if any construction is to be raised, it has to be subject to the conditions that may be imposed and directed under the judgement. Therefore, while declining the permission to construction at this stage, we direct the applicant to approach the Supervisory Committee, which shall be assisted by the Implementation Committee by placing before them proper documentation, building plans, reports etc. If such an application is filed, the same shall be considered by the Supervisory Committee with utmost expeditiousness. If the recommendations of the Supervisory Committee, which shall be assisted by the Implementation Committee, are favourable to the applicant then they shall be implemented subject to the orders of this Tribunal, failing which there shall be no construction carried out by the applicant. With the above directions, both these applications stand disposed of, with no order as to costs

118. The facts of Miscellaneous Application No. 947 of 2017 have been noticed in detail in para 20 of this judgement. The applicant wishes to raise five storeyed building in the core green/forest area. This construction is in violation of the order of the Hon'ble Supreme Court dated 12th December, 1996, order of the Tribunal dated 30th May, 2014 and patently violates the Notification dated 7th December,

2000. The construction is also violating the steep slopes being in excess of 40°. The first building plans that were sanctioned, were never acted upon for years together and therefore under the provisions of the Town and Country Planning Development and Corporation, the buildings plans lapsed. They were never revived. After lapse of years, amended plans were filed without reference to the previous plans. They were stated to have been approved. However, the record produced by the Corporation does not reflect proper state of affairs. This construction is completely unauthorized and is being raised in flagrant violation of all known principles and does not comply with any of the Precautionary Principles in relation to seismic zone IV & V, susceptibility to landslides due to its terrain, soil conditions and steep slopes. For these reasons and after hearing the parties, we had injuncted the owner/builder/applicant from raising any further construction, *vide* order dated 22nd September, 2017. Tribunal confirmed that order of injunction. However, the applicant would be entitled to file a fresh application for raising construction, in accordance with the provisions of the Act, final Development Plan, the Notifications and the restrictions contained in this judgement. If the applicant files an appropriate application with proposed plans, reports and all other necessary documents then the same shall be dealt with and disposed of by the Supervisory Committee expeditiously. If the recommendations are favourable to the applicant the same shall be implemented subject to the order of the Tribunal, failing which the applicant would not be able to raise any construction on the land in question.

119. With the above orders/directions, the Original Application No. 121 of 2014 and Original Application No. 505(T_{HC}) of 2015 including the Miscellaneous Applications No. 356 of 2014, 525 of 2014, 785 of 2015, 1495 of 2016, 192 of 2017, 474 of 2017, 626 of 2017, 947 of 2017 and 396 of 2016 stand disposed of, with no order as to costs.

**SWATANTER KUMAR
CHAIRPERSON**

**RAGHUVENDRA S. RATHORE
JUDICIAL MEMBER**

**B.S. SAJWAN
EXPERT MEMBER**

**NAGIN NANDA
EXPERT MEMBER**

New Delhi
16th November, 2017