



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA



ON THE 11th DAY OF NOVEMBER, 2022.

BEFORE

HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN

&

HON'BLE MR. JUSTICE VIRENDER SINGH

CIVIL WRIT PETITION No.3064 OF 2019.

Between:-

BISHNU KUMAR AGGARWAL, S/O SHRI
RAM KISHAN, RESIDENT OF MOHAL
MECLEODGANJ, MAUZA AND TEHSIL
DHARAMSHALA, DISTRICT KANGRA, H.P.

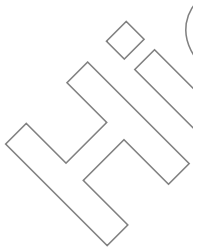
.....PETITIONER.

(BY SH. AJAY SHARMA, SENIOR
ADVOCATE WITH SH. AJAY K. THAKUR,
ADVOCATE)

AND

1. STATE OF HIMACHAL PRADESH
THROUGH SECRETARY (URBAN
DEVELOPMENT) TO GOVERNMENT OF
HIMACHAL PRADESH, SHIMLA-2.
2. THE SECRETARY (TCP) TO THE
GOVERNMENT OF HIMACHAL PRADESH,
SHIMLA-2.
3. THE COMMISSIONER, MUNICIPAL
CORPORATION, DHARAMSHALA,
DISTRICT KANGRA, H.P.

.....RESPONDENTS.



(BY SH. VINOD THAKUR, ADDITIONAL
ADVOCATE GENERAL WITH
SH.BHUPINDER THAKUR, DEPUTY
ADVOCATE GENERAL, FOR
RESPONDENTS-1 AND 2)



(BY SH. AMIT SINGH CHANDEL,
ADVOCATE, FOR RESPONDENT-3)

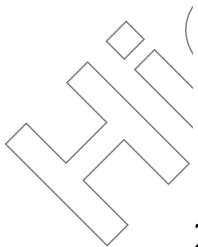
Reserved on : 03.11.2022.

*This petition coming on for hearing this day,
Hon'ble Mr. Justice Tarlok Singh Chauhan, passed the
following:*

ORDER

The instant petition has been filed for grant of
the following substantive relief:-

"That the respondents may very kindly be directed
to act as per provisions of Section 31(5) of the Act
and immediately and forthwith issue letter granting
approval/sanction of site plan of 4-storey building as
submitted as per deemed approval clause in favour
of the petitioner."



2. It is not in dispute that on 07.08.2018 the
petitioner submitted a site plan of four-storeyed building of
land measuring 00-02-47 hect. In Khata No. 263, Khatauni
No.425, Khasra No.2009/1928, situated in Up Mohal
Mecleodganj, Tehsil Dharamshala, District Kangra, H.P.
Thereafter, when the Corporation did not respond, the

petitioner filed an application under diary No. 11278 dated 06.03.2019 thereby invoking the provisions of Section 31(5) of the Town and Country Planning Act, 1977 (for short 'Act') requesting the Commissioner, Municipal Corporation, Dharamshala, to return the file of the petitioner granting permission as envisaged under the provisions. However, despite this, the respondent-Corporation again did not respond constraining the petitioner to serve a legal notice dated 28.03.2019 upon the Corporation and yet when nothing was done, the petitioner ultimately filed the instant petition.

3. The respondent-Corporation contested the petition by filing the reply wherein all these facts have not been denied. However, it was stated that the case file was thoroughly examined in the Office of the Corporation and the request of the petitioner for approval of commercial building of guest house was rejected on the ground that the condition of minimum plot area of 250 square meters required as per regulations of Development Plan Dharamshala, regulations at Sr. No.14.2.2(4) under tourism unit was not fulfilled. It is averred that the petitioner is the owner in possession of 247 square meters area only in land

bearing Khasra No. 2009/1928 in Mohal Mecleodganj, Tehsil Dharamshala, District Kangra, as against the requirement of 250 square meters. ◇

4. It is further averred that the plan submitted by the petitioner was re-examined after the petitioner again applied for approval after attending the observations made on 19.02.2020 and the same was again rejected on the ground that the condition of minimum area for the construction of guest house was not fulfilled by the petitioner.

5. The petitioner has filed rejoinder wherein it has been averred that even if the plot area of the petitioner is 247 square meters as against the requirement of 250 square meters, even then there is provisions of deviation upto 10% of the plot area and thus deviation is permissible being only three square meters. Apart from the above, it has been emphatically stated that the objections as raised by the respondents are not tenable in law in view of the provisions contained as the plan submitted is deemed to be sanctioned as per Section 31(5) of the Act.

6. We have heard the learned counsel for the parties and have gone through the material placed on record. ◇

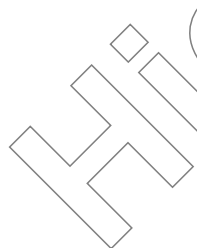
7. In order to appreciate the controversy, it is necessary to reproduce Sections 31 (1) and (5) of the Act which read as under:-


“31(1) On receipt of an application under Section 30** or 30-A the Director may, subject to the provisions of this Act by order in writing-

- (a) grant the permission unconditionally;
- (b) grant the permission, subject to such conditions as may be deemed necessary under the circumstances; and
- (c) refuse the permission.

(5) If the Director does not communicate his decision whether to grant or refuse permission to the applicant within **two months from the date of receipt of his application, such permission shall be deemed to have been granted to the applicant on the date immediately following the date of expiry of **two months:

Provided that in computing the period of **two months the period in between the date of requisitioning any further information or documents from the applicant and date of receipt of such information or documents from the applicant shall be excluded.”



8. Indubitably, third respondent in this case has not communicated his decision whether to grant or refuse  permission to the petitioner within two months from the receipt of his application dated 07.08.2018. What to talk of two months, the respondent-Corporation did not even act for over a year and, therefore, the permission is deemed to have been granted to the petitioner as it is a case of deemed sanction. However, that does not mean that the petitioner is at liberty to raise construction in a manner which he likes.

9. Even after a plan is deemed to have been sanctioned, the authorities are not without power to require the owner of the land to comply with the provisions of the (Act and Rules and raise construction in accordance therewith. (See: ***Uma Shyam Parivar Trust, Quila House and another vs. State of Bihar and another, AIR 1990 Patna 174 (D.B.)***.)

10. Apart from the above, a deemed permission is not a licence to a vagrant and malignant construction. Deemed permission would enable construction only in accordance with the extant building regulations. (See: ***3 ACES, Hyderabad vs. Municipal Corporation of***

Hyderabad, AIR 1995 Andhra Pradesh 17 (Full Bench).



11. The Hon'ble Supreme Court while dealing with a case regarding deemed sanction under the H.P. Municipal Corporation Act, 1994, in **Commissioner of Municipal Corporation, Shimla vs. Prem Lata Sood and others (2007) 11 SCC 40** held that no right can be said to have been vested in a person concerned merely on submission of the application. "Legitimate" or "settled expectation", if any, does not create any vested right to obtain the sanction.

12. A learned Single Judge of this Court in **Ram Lal vs. Municipal Corporation and others Latest HLJ 2011 (HP) 1280**, while dealing with a case of deemed sanction, after placing reliance on the judgment of the Hon'ble Supreme Court in **Prem Lata Sood's case** (supra) held that once objections are raised in the plan, then even if there is deemed sanction, the builder must answer the objections raised. It is apt to reproduce the relevant observations which read as under:-

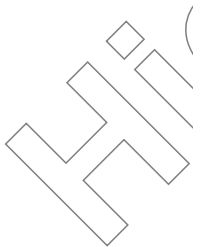
"19. Shri G.C Gupta, learned Senior Counsel, has relied upon the observations of the Apex Court in

[Live Oak Resort \(P\) Ltd. v. Panchgani Hill Station Municipal Council](#) (2001) 8 SCC 329. In my view the observations made by the Apex Court in para 22 are obiter in nature because the Apex Court itself has clearly stated that it is not inclined to go into the issue in detail. No doubt, the Apex Court has stated that after expiry of 60 days the sanction is deemed to be given and subsequent rejection cannot affect any work of construction being declared as unauthorized but these observations have been made in the facts of that case alone. ◇

20. The Apex Court in a later judgment in [Commissioner of Municipal Corporation, Shimla v. Prem Lata Sood](#) (2007) 11 SCC 40 dealt with the specific provisions of the H.P Municipal Corporation Act, 1994 and held as follows:-

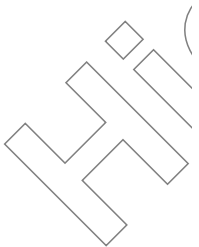
“31. Section 243 of the 1994 Act clearly mandates that erection of a building must precede grant of express sanction of a building plan. How and in what manner the same is required to be dealt with is provided in Sections 244 and 245 of the 1994 Act. Clause (a) of sub-section (2) of Section 246 in no uncertain terms restricts the power of the appellant Corporation to grant sanction for erection, inter alia, for development of an area by way of erection of a building or otherwise, not only if the same is not in conformity with the building bye-laws, but also if it contravenes any other law or rules operating in the filed.

32. The 1977 Act is one of such Acts. As noticed hereinbefore, the provisions thereof are binding upon the local authority. Once the provisions thereof are held to be binding, the law made by the State by way of subordinate legislation in the form of the regulations and/or notifications



issued under sub-sections(4) and (5) of Section 17 of the 1977 Act would also be binding. Indisputably, the Municipal Corporation would not have any authority to grant any sanction in violation thereof. ◇

33. Section 247 no doubt provides for a legal fiction specifying a period of sixty days, within which the application for grant of sanction of a building plan should be granted, but the said period evidently has been considered to be providing for a reasonable period during which such application should be disposed of. However, only because the period of sixty days has elapsed from the date of filing of application, the same by itself would not attract the legal fiction contained in Section 247 of the 1994 Act. When such an application is attended to and the defects in the said building plans are pointed out, there cannot be any doubt whatsoever that the applicant must satisfactorily answer the queries and/or remedy the defects in the building plans pointed out by the competent authority."

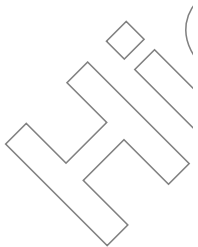


21. Once objections are raised to the plan then even if there was deemed sanction, the builder must answer the objections raised. In the present case, the petitioner withheld one material fact from his Court that he had submitted a revised plan on 13 November, 1990 which was rejected on 28 January, 1991. This is apparent from the affidavit filed by the Commissioner pursuant to the orders of this Court dated 4.8.1999. Therefore, he was aware of the objections raised by the Municipal Corporation. He could not have filed a fresh plan without answering those objections. A person whose plan has been

rejected or on whose plan objections have been raised cannot file a fresh plan without making reference to the earlier plan and the objections raised therein. There can be no deemed sanction of such a plan.

22. Even otherwise, as is apparent that the second plan was rejected on 16 August, 1991 though after a period of 90 days. Once the plan was rejected, the petitioner should have either challenged the order of rejection but could not have assumed that such rejection was invalid. As far as the completion certificate is concerned, since there was no deemed sanction of the original plan, there cannot be any deemed sanction of the completion.

23. It would not be out of place to deal with the wider ramifications of deemed sanction. In my view there can be no deemed sanction of a plan which is inherently against law. Let us assume that the plan is submitted for construction of four storeys in an area where only two storeys are permitted. There can be no deemed sanction of such a plan which is violative of the provisions of law. Similarly, if the plan does not reflect the appropriate set backs or in any manner violates the bye laws or any other rules or laws, there can be no deemed sanction of a plan. Deemed sanction can only be of a plan which is strictly in accordance with the Municipal bye-laws and the other laws governing the construction of buildings. Any construction which is against the law, even if made on the basis of sanction granted or on the basis of deemed sanction, remains illegal construction and can



be demolished at any time after following the procedure laid down in the law.”

13. We see no reasons to take a different view. We are otherwise of the considered view that it is neither safe nor prudent for the Court to encourage cases of so-called deemed sanction if it is contrary to the law only because of the inaction and lethargy of the official/officer, which in addition to the routine work could be for extraneous consideration. This Court otherwise cannot permit haphazard construction in Himachal Pradesh, more particularly, in Dharamshala which falls in seismic zone No.5 and is thus prone to severe earthquakes.

14. That apart, even the officials/officers, who are entrusted with the work and paid out of the corpus of the Municipal Corporation and have been in a state of slumber, deserve to be punished and cannot be permitted to go scot-free.

15. It needs to be noticed that initially the period as prescribed under the Act was six months as against two months and the same was reduced to two months to bring about more accountability and responsibility.

16. It needs to be reiterated that public offices, both big and small, are sacred trusts. Such offices are meant for use and not abuse and in case repositories of such offices surpass the rule, then the law is not that powerless. ◇

17. Respondent No.3, being a creation of statute, is admittedly a State within the meaning of Article 12 of the Constitution of India and cannot, therefore, act like a private individual, who is free to act in a manner whatsoever he likes, unless it is interdicted or prohibited by law.

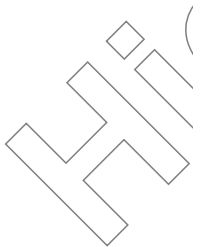
18. It is settled that the State and its instrumentalities have to act strictly within the four corners of law and all its activities are governed by rules, regulations and instructions. Equally settled is the proposition that (whenever a statutory authority is required to do a thing in a particular manner, then the same must be done in that manner and not at all.


19. In ***Secretary, Jaipur Development Authority, Jaipur vs. Daulat Mal Jain & ors, (1997) Vol 1 SCC 35***, the Hon'ble Supreme Court observed as under:

“13. All purposes or actions for which moral responsibility can be attached are actions performed

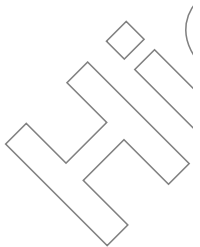
by individual persons composing the Department. All Government actions, therefore, means actions performed by individual person to further the objectives set down in the Constitution, the laws and the administrative policies to develop democratic traditions. Social and economic democracy are set down in the Preamble, Part III of H.P. 9 and Part IV of the Constitution. The intention behind the Government actions and purposes is to further the public welfare and the national interest. Public good is synonymous to protection of the interests of the citizens as a territorial unit or nation as a whole. It also aims to further the public policies. The limitations of the policies are kept along with the public interest to prevent the exploitation or misuse or abuse of the office or the executive actions for personal gain or for illegal gratification.

14. The so-called public policy cannot be a camouflage for abuse of the power and trust entrusted with a public authority or public servant for the performance of public duties. Misuse implies doing of something improper. The essence of impropriety is replacement of a public motive for a private one. When satisfaction sought in the performance of duties is for mutual personal gain, the misuse is usually termed as corruption. The holder of a public office is said to have misused his position when in pursuit of a private satisfaction, as distinguished from public interest, he has done something which he ought not to have done. The most elementary qualification demanded of a



Minister is honesty and incorruptibility. He should not only possess these qualifications but should also appear to possess the same. 


15. In the Encyclopedia of Democracy by Seymour Martin Lipset, Vol. 1, page 310, in the Chapter "Corruption", it is stated that corruption is an abuse of public resources for private gain. The occasions for political corruption increases when control On the activity of public administrators are fragile and the division of power between political actors and the public bureaucrats, as well as between the Government and the middle man, is Unclear, It is difficult to discover and punish cases of corruption. Research has shown that political corruption tends to be more widespread in authoritarian or totalitarian regimes and when public opinion and the press are unable to denounce corruption. Corruption develops because of con-fusion about the borders between State and society and between traditional and modern values. It can be expected to grow during phases of transition. Corruption should disappear in modern stable democratic societies. Instead, it is growing. Since State intervention in economic and social life has increased the occasions for political corruption, new technologies have increased the cost of electoral campaigns and the professionalisation of political careers has increased the number of those who have to make a living from politics rather than living for politics. Corruption has not disappeared. Corruption has dangerous consequences for politics. Al-though political corruption is more widespread in



non-democratic regimes, it is particularly dangerous for democracy because' it undermines two of the major principles on which democracies are based; the equality of citizens' rights and the transparency of the political decision-making process; Bribes open the way for access to the State for those who are willing to pay and can afford the price. The situation may leave non-corrupt citizens with the belief that one "counts" only if one has the right personal contacts with those who hold power. Because of its illegal nature, corruption increases the range of public decision that are made in secrecy: It was suggested that internal controls on public bureaucracies through administrative controls and accounting procedures as well as ombudsman systems for public complaints, are remedies to control political corruption. The rules of Code of Conduct for political executives, public servants and private entrepreneurs, emphasising merit and regulated system of appointment in state bureaucracy and Stimulating pride in public service, would generate remedies for political corruption."




20. The officers/officials of respondent No.3, being Government servants, were expected to discharge their duties with complete integrity which would take in its sweep probity, openness, sincerity, immaculacy, rectitude, uprightness, truthfulness, righteousness, goodness, cleanness, innocence, blamelessness, virtuousness,

decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence etc. In  short, they should have depicted sterling character with firm adherence to a code of moral values. (Refer : ***Union of India and others vs. P. Gunasekaran (2015) 2 SCC 610***).

21. From the aforesaid discussion, it is manifest that the officers/officials of respondent No.3 have been grossly negligent in not adhering and following to the mandatory procedure as prescribed. Such inaction on the part of officers/officials of respondent No.3 is fraught with danger of being activated by extraneous considerations.

22. Accordingly, the Commissioner, Municipal Corporation, Dharamshala, is directed to personally conduct an inquiry and fix responsibility of those of the officials/officers, whether serving or retired, who were responsible for not dealing with the application submitted by the petitioner for over a year as against period of two months.

23. Now as regards the merits of the case, there will be a deemed approval to the plan submitted by the

petitioner. However, the petitioner will have to comply with the provisions of the H.P. Town and Country Planning Act  and Rules and other applicable statutes occupying the field and thereafter raise construction strictly in accordance with the same i.e. the deemed permission would enable the petitioner to raise construction only in accordance with the extant building regulations. The petitioner still needs to address the objections raised on the plan submitted by him.

24. As regards the inquiry, the Commissioner, Municipal Corporation, Dharamshala, is directed to complete the same as expeditiously as possible and in no event later than **15.03.2023** when the matter be listed for (this purpose before this Court.

25. The writ petition is disposed of in the aforesaid terms, so also the pending application(s), if any.

(Tarlok Singh Chauhan)
Judge

(Virender Singh)
Judge

11th November, 2022.
(krt)