

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

**Original Application No. 274 of 2017  
(Earlier O.A. No. 506/2015)**

**IN THE MATTER OF:**

**Society for Preservation of Kasauli and its Environs (SPOKE)**

**.....Applicant**

*Versus*

**Barog Heights Hotel**  
Kalka Shimla Highway Barog,  
Distt. Solan (H.P)

**.....Respondent**

**COUNSEL FOR APPLICANT:**

Mr. Archit Upadhyay, Advocate

**COUNSEL FOR RESPONDENTS:**

Mr. Rajesh K. Singh, Advocate for Ministry of Environment and Forest & Climate Change and Mr. Rovins Verma, Advocate  
Mr. Aditya Dhawan, Advocate and Ms. Kiran Dhawan, Advocate for Himachal Pradesh State Electricity Board  
Mr. D.K. Thakur, AAG, Mrs. Seema Sharma, DAG for State of Himachal Pradesh

**AMICUS**

Mr. A.R. Takkar with Ms. Vineet Kumar, Advocates

**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: 12<sup>th</sup> October, 2017**  
**Pronounced on: 7<sup>th</sup> December, 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 RAGHUVENDRA S. RATHORE, (JUDICIAL MEMBER)**

**Factual Matrix**

1. The applicant, Society for Preservation of Kasauli and its Environs, had initially filed an Original Application No. 506/2015 for the protection of the environs of Kasauli from the construction activity which was being carried out by Himachal Pradesh Tourism Development Corporation and was said to be adversely affecting the public. The applicant had primarily raised the grievance that as per the Kasauli Planning Area Development Plan, there is, *per se*, no need to carry out any further construction of hotels in Kasauli and that is something which has to be discouraged. Further, it was stated that Kasauli is a cantonment and a sensitive area from security point of view. It was also stated by the applicant therein that due to fragile ecology of Kasauli area huge commercial activity should not be permitted.
2. During the course of hearing of the said application it was revealed that in the neighbourhood of the project of Himachal Pradesh Tourism Development Corporation at the old site of Ros Common, Annexe there are other private buildings existing which are having more than 3 or 4 storeys and are running hotel business. On a specific query to the respondent, we were informed that eleven such hotels/ guest houses are being run.

Thereafter, on 24.02.2016 the Tribunal had ordered for constitution of an expert body with regard to, *inter alia*, construction of various hotels which were running unauthorisedly or having more room than registered. The conclusion of the committee was as under:

*“17. The various hotels pointed out in chapter 9 are running unauthorisedly. Many have registered for lower number of rooms with the Tourism Department than actually being operated. In all such cases, there could be huge evasion of luxury/VAT tax and spot inspection rather than confining assessment to the number of rooms registered with the Tourism Department”.*

3. After considering the case of the applicant (506/2015) the Tribunal observed as under:

*“57. From the records before the Tribunal and the contentions raised at the bar it was evident that besides these hotels which had raised construction much in excess and violation to the sanction plan and operating without consent of the Board, there were large number of other residential and hotel/guest house constructions raised in the area of Kasauli. These structures have been raised in violation of law and were having adverse impact on environment and ecology of that area. Besides the problems of water and sewage, the issue in relation to dealing with municipal solid waste being generated in the area was also a matter of serious concern. The cantonment board failed to grant permission in accordance with the relevant laws in force, as well as indiscriminate and*

*arbitrary exercise of its power. The Cantonment Act has an inbuilt element of precautionary principle which this authority has failed to observe and apply. The cumulative effect of these violations and indiscriminate construction activity in the area of Kasauli would compel the Tribunal to have proper assessment of all factors and considerations to prevent degradation of environment and ecology in that region. The Kasauli hills are part of the Himalayan range which is considered to be geologically weak, eco-sensitive and fragile. Thus their protection has to be given priority in terms of the Environment (Protection) Act 1986, and in light of this it would be necessary to direct proper data based study to be carried out for Kasauli.”*

Such an all-round construction in the town of Kasauli would adversely affect the environment, ecology and other eco-systems. Therefore, the Tribunal proposed to take up the matter against the afore stated hotels separately.

**4.** In such circumstances the Tribunal thought proper to issue notices to the owners of the hotels namely:

1. Birds' View Resort;
2. Chelsea Resorts;
3. Hotel Pine View;
4. Narayani Guest House;
5. Nilgiri Hotel;
6. Hotel Divshikha;
7. Rudra Resorts;
8. Hotel Wook Creek;
9. Hotel Nature Inn;
10. Shivalik Guest House and
11. M/s Anuj Garg

The State of Himachal Pradesh was directed to serve the notices on the owners of the aforesaid hotels, who after service had appeared before the Tribunal.

5. While considering the cases of the said hoteliers on **03.05.2017**, it was brought to the notice of the Tribunal that Hotel Barog Heights is also one of the violators. Therefore, **notices** were issued to **Hotel Barog Heights** which were to be served through HPPCB and Town and Country Planning Department, Himachal Pradesh was to submit the entire record before the Tribunal.

Thereafter, on 04.05.2017 the Learned Counsel for noticee, Barog Heights hotel had appeared before the Tribunal and prayed for time to file reply in relation to construction/pollution load of STP and how the municipal waste is being treated. It was also to reply as to whether any trees were cut when the hotel was constructed prior to 1996; subsequent rooms were added from 12 to 30 and 18 to 30 as of now. The Noticee was granted time of two weeks to file reply.

#### **Case of HPPCB**

6. The Himachal Pradesh Pollution Control Board (HPPCB) has come with a case against the respondent hotel that it had carried out of its activities of construction and operation without obtaining Consent from the Board in accordance with the relevant laws. According to the respondent Board, the respondent hotel, which came into existence in the year 1991, did not have Consent

continuously till date. The hotel had obtained Consent at different times. During this period it was established and operated without having any Consent. According to the Pollution Control Board the respondent hotel carried on the construction without having renewal of Consent to establish from 30.07.1992 to 05.01.1996. Thereafter, respondent hotel operated without renewal of Consent to operate from 01.04.1999 to 29.09.2002. Similarly, the hotel operated without having the renewal of Consent to operate from 01.04.2003 to 30.04.2004. Thereafter it operated without Consent during the year 2006-07. The respondent hotel again continued to operate without having Consent to Operate renewed since 01.04.2012, up to today. During this period, according to Pollution Control Board the respondent hotel had continued to operate.

- 7.** According to the noticee, land Khasra No. 241 measuring 4 Bighas in district Solan, Himachal Pradesh was purchased by them in the year 1991 on which the property of Barog Heights came into existence. The Member secretary Pollution Control Board vide his letter dated 31.07.1991 issued to the Director of industries, had given permission to construct hotel on the said land with certain conditions mentioned therein. It was stated in the letter that No Objection Certificate (NOC) is provisional and a final one was to be issued after the unit comply with all anti-pollution measures. On 03.08.1991 a

certificate was issued by General Manager DIC Solan that Barog Heights Hotel has been registered as a hotel industry and had allotted registration number US (DEV) RECN-C3-91-49.

8. Later on 17.08.1991, in reply to notice dated 26.07.1991 it was informed to the hotel that after inspection Consent has been given to construct since the hotel is proposed to be built at a distance of half kilometres from Highway No. 22. The noticee had submitted an application for registration of hotel on 19.12.1994, in the name of Barog Heights Hotel. Thereafter, the construction was raised and 30 rooms were built out of which 10 were functional and subsequently they were increased to 18 rooms. As 12 rooms were lying unoccupied, the noticee is said to have sought permission in 2012 for running of all 30 rooms.
9. The hotel which was constructed in the year of 1995 had started functioning from August 1996. The *Gram Panchayat Barog* had given certificate that they have no objection for the construction of hotel for the reason that it will increase tourism and benefit to the local community. Another certificate was issued by the *Gram Panchayat* declaring that there was no tree in the area of where the hotel has been constructed nor anyone has made a complaint. It is stated by the noticee hotel that there were no trees on the site in question because it was a rocky area. Similarly, certificate was also issued on 06.11.1995 by the Department of Forest Farming and

Conservation, H.P. It was certified that no case under Indian Forest Act is pending against the noticee and no tree has been felled in the area where the building has been constructed. The Superintendent of Police District Solan had also certified, on 18.10.1995 that no case in violation of Forest Act is pending against the noticee.

- 10.** The Member Secretary Himachal Pradesh Pollution Control Board had referred, regarding the safety of construction of the hotel, to the department of Earth Sciences University of Roorkee seeking their expert opinion. The Professor and Head of the Department gave a positive opinion regarding environmental hazard, degradation of environment and soil erosion, vide his letter dated 18.12.1995.
- 11.** Further it has been submitted by the noticee hotel in reply that by application dated 11.09.1995 it had sought a No Objection Certificate from the Town & Country Planning Department, Himachal Pradesh for the construction made. On 06.01.1996, the Executive Engineer, Development Control Division, Town & Country Planning had sent a reply informing the noticee hotel that the area in which the hotel has been constructed, does not fall within the purview of the Town & Country Planning Act.
- 12.** Before commencing the operation of the hotel the noticee had sought permission for its registration under Himachal Pradesh Tourism Trade Act 1988. The said

letter along with the application form, an affidavit under Section 12 of Himachal Pradesh Registration of Trade Act, revenue papers, completion certificate and NOC from Pollution Control Board were sent. A copy of the sale deed was also attached along with registration fee, for approval from local authorities. By the Application form dated 02.05.1996 permission was sought for operating/running 25 rooms, 6 suits, reception lounge and a dining hall.

**13.** Permission to operate 18 rooms was granted for one year. It was also mentioned in the letter issued by the Pollution Control Board to Director Tourism that the permission was granted to operate hotel from 01.04.1996 to 31.03.1997. According to the notice, the permissions were renewed from time to time.

**14.** It has also been mentioned in the reply filed by the noticee hotel that it was using rain water harvesting for flushing tanks, getting spring water for drinking from nearby spring by their own tankers, waste water from bathrooms and toilets was being carried through pipes to the septic tanks (5 tanks) with the capacity of 40x12x12, in 3 parts and two additional tanks of the size of 8x8x8 each. The effluent from the septic tank is to be treated and reused for gardening. Regarding kitchen waste management as also procedure was informed and so also regarding storm drainage. The noticee hotel is churning kitchen waste and disposing it of in the septic tank. As regards the solid waste, the same is being converted into

manure through composting for use in gardening. Permission was sought for 30 rooms, starting with 10 rooms only.

- 15.** On 31.10.1996, Gram Panchayat Barog issued a certificate stating that they had inspected the hotel and the same along with the Bar was being run satisfactorily. On 29.11.1996, the consent for 10 rooms was increased to 18 rooms. The Consent for Operating the hotel was renewed and extended to 31.03.2012 as the strength of the room had increased. The noticee had applied for installing a bore well. Permission was granted, as is clear from the letter dated 23.09.2011 (Annexure N-16).
- 16.** The noticee had requested on 17.09.2014 to extend the Consent to Operate for another 10 years. Certificate of registration of restaurant and bar from the Department of Tourism was granted for 30 rooms. No reply to the said letter has been received till date and there is no rejection of extension also. The noticee had also installed a sewage treatment plant.
- 17.** On 16.07.2016 Himachal Pradesh State Pollution Control Board had asked to ensure submitting of a revised project report for STP. A reply was sent on 06.09.2016 informing the board that no new rooms have been built and at the time of the first construction, all 30 rooms had been constructed. It is only 10 rooms which were operational from the initial stage and subsequently increased to 18 rooms. Therefore, no new project report was required as

30 rooms were constructed and completion certificate was duly issued.

The letter dated 07.11.2016 from the Special area Development Authority Barog clearly reveals that 30 rooms were built at the time of starting of the construction, before enforcement of Himachal Pradesh Town & Country Planning Act. It has also been stated in the reply filed by the noticee that he had applied for consent and although no consent had been expressly given but the earlier consent rejecting the claim of extension of consent ultimately NGT had sent a notice for appearance before it.

**Case of the Noticee**

- 18.** The case of the noticee is that he had purchased the land in question pursuant to the permission granted by Government of Himachal Pradesh, in terms of Section 118 of the Himachal Pradesh Tenancy and Land Reform Act 1972 and under promotion of Tourism Policy of Himachal Pradesh. The Consent for construction had been duly obtained. Further, the case of the noticee is that the Consent to Operate was granted first in the year 1996 and then extended from time to time, up to 2012. The Consent was sought to be extended but no reply was received. At the time of initial Consent in 1996 and whenever the Consent was extended, the site was inspected and due procedure providing for grant of consent was followed.

**19.** Further the case of the noticee is that necessary NOCs from various departments including Himachal Pradesh PWD, HPSEB, HPPCB, Forest Department, *Gram Panchayat* etc. had been duly obtained. The building plans had been up to date and duly sanctioned by the concerning authorities. At the time when the building was constructed, it did not come within the purview of Town & Country Planning, as the same did not exist. The Consent to Operate under the Water (Prevention and Control of Pollution) Act had been obtained. The experts from the Roorkee University had certified that the noticee has complied with all the terms and conditions set up by the Pollution Control Board, Irrigation Department, Electricity Department and the Gram Panchayat. It is submitted on behalf of the noticee that the hotel has created sustainable eco-system with its endeavour for afforestation along the periphery of the hotel and no trees were felled when the hotel was constructed. It has also been submitted that the waste water from bathrooms and toilets is carried out through pipes to septic tank (5 in number) which are sufficient for running of 30 rooms. The effluents from the septic tank are treated and reused for gardening as regards kitchen waste some of it is churned and disposed of along with septic tank. The solid waste is converted into manure through composting for use in gardening, lawn etc. The storm drain water is

collected and stored from the built up areas and the same is collected by a 12x12 drainage channel.

- 20.** As regards ambient noise levels, it has been submitted that as per traffic sensor being maintained by National Highway Authority the peak passenger car unit is between 9,000-10,000 whereas the average passenger car units of this hotel is hardly 10 and that also only on weekends. Therefore, the contribution to ambient noise level is not even 0.01 per cent, which is negligible. The steep operation of the approach road passed through high gully cutting, acts as a noise barrier. The report from Roorkee University clearly reveals that all the precautions are followed by the noticee.

It has also been submitted that 30 rooms had been constructed at the inception and it is only later that 18 rooms were made operational. The noticee had been granted consent for a dining hall / restaurant and a bar.

- 21.** The Learned Counsel for the noticee also submitted that the sale deed by which the noticee purchased the property on which Barog Heights has been constructed, clearly reveals that there was already 20 feet wide road leading to the plot, on which, Barog Heights has been constructed. The said sale deed envisages that “the vendor Roshanlal has also allowed as part of the sale transaction, absolute passage right on 20 feet wide road leading through Khasra No. 260, 237, 238 and 241/1 situated in Mauja Barog.” Further, it is stated in the sale

deed that “the vendee is also allowed to repair, construct or otherwise change the road in any way vendee likes”. Therefore, it has been submitted by the Learned Counsel for noticee that the approach road to the hotel was already in existence at the time of purchase of the building on which Barog Heights has been constructed.

**22.** It has also been submitted by the Counsel for the noticee that there was no tree on the land on which the hotel was built and this plot did not come under forest area/department and as such no permission was necessary. Further, he has submitted that the Department of Forest Farming & Conservation, Dharampur Forest Range had issued a letter on 06.11.1995 certifying that no case under Indian Forest Act is pending against Barog Heights and they had also certified that no tree was felled at the site where the building was constructed.

**23.** In the Public Interest Litigation (PIL) filed by Ms. Trisha Sharma before Hon’ble High Court of Himachal Pradesh, the noticee was made as one of the respondents. The Hon’ble High Court had specially appointed a committee to inspect Hotel Barog Heights. The committee had categorically observed, in the inspection note, that “the hotel is taking adequate environmental safeguards and no adverse environmental impact is likely due to construction/operation of the hotel.” The Hon’ble High Court had also appointed a committee of expert engineers

from Roorkee University to give report about safety of the hotel as well as environmental hazards caused by it. The report of the experts, as mentioned above was positive and in favour of the noticee. The Hon'ble High Court had also constituted a four member team from NEERI to conduct detailed investigation. After considering the report, Hon'ble High Court had permitted the operation of the hotel Barog Heights. In para no. 7 of the judgment of the Hon'ble High Court it has been mentioned that the area where the hotel has been constructed is not a municipal area and falls within *Gram Panchayat* and is guided by Panchayat Rules. Further, in para no. 35 it has been observed by the Hon'ble High Court that on the basis of the aforesaid reports as well as suggestions made by NEERI which have been carried out by the hotel and the hotel was allowed to operate.

**Contention of HPPCB**

- 24.** On the contrary, the case of Himachal Pradesh Pollution Control Board is that there are 35 double bed rooms, in all. Though, the Pollution Control Board does not have a record with regard to application for Consent to Establish but it has been submitted that the Consent to Establish was issued on 31.07.1991, for a period of one year. According to the Pollution Control Board no renewal of Consent to Establish was issued from 30.07.1992 to 05.01.1996. Therefore, during this period the noticee was constructing the hotel without Consent. No application for

renewal of Consent to Establish for the year 1995-1996 is available on the record of the Pollution Control Board. The renewal of Consent to Establish was then issued on 05.01.1996 and was valid up to 31.03.1996. The application for renewal of Consent to Establish for the year 1996-97 is not available on the record of the Board. However, Consent to Establish is said to have been issued on 02.07.1996 and the same was valid up to 31.03.1997.

**25.** The application for Consent to Operate is not available on record of the Pollution Control Board, but the same is said to have been granted on 25.04.1997 and was valid up to 31.03.1998. Similarly, the application for renewal of Consent to Operate for the year 1998-99 is not available on record of the Pollution Control Board, but the renewal of Consent to Operate was issued on 31.03.1998 and was valid up to 31.03.1999. The noticee is said to have applied for renewal of Consent to Operate for the year 1999-2000 on 16.04.1999. However, according to the Pollution Control Board, the renewal of Consent to Operate was not granted.

**26.** Thereafter, the noticee had applied on 14.08.2000 for renewal of Consent to Operate for the year 2000-01. But the renewal of Consent to Operate was not issued. Thereafter, the noticee applied for renewal of Consent to Operate on 19.06.2001, for the year 2001-02. Again the renewal of Consent to Operate was not issued. In other

words the noticee operated the hotel without renewal of Consent to Operate from 01.04.1999 to 29.09.2002.

**27.** Subsequently, the noticee applied for renewal of Consent to Operate on 20.09.2002 for the year 2002-2003, which was granted on 30.09.2002 and was valid up to 31.03.2003. The noticee had then applied for renewal of Consent to Operate on 07.07.2003 for the year 2003-04. However, the renewal of Consent was not issued. The application for renewal of Consent to Operate was submitted on 29.03.2004 for the year 2004-05. The renewal of Consent to Operate was granted on 01.05.2004 and the same was valid up to 31.03.2005. Application for renewal of Consent to Operate was submitted on 07.02.2005 for the year 2005-06 and the same was issued on 24.08.2005 and was valid up to 31.03.2006. Thereafter, the noticee did not apply for renewal of Consent to Operate for the year 2006-07, and therefore, it was not issued to him. In other words, the noticee operated without Consent to Operate in the year 2006-07.

**28.** Later on, the noticee submitted an application on 09.04.2007 to renew Consent to Operate, for 18 rooms, for the year 2007-08 to 2011-12. The renewal of Consent was issued on 03.01.2008 and was valid up to 31.03.2012. Another application for renewal of Consent to Operate was filed on 08.09.2014, for further period. But renewal of Consent to Operate was not issued.

Therefore, the noticee operated without Consent to Operate from 01.04.2012 till date.

**29.** It has also been the case of Pollution Control Board, that they had issued notices, from time to time to the noticee. As for instance a notice was issued on 26.03.2014 to apply for renewal of Consent to Operate. Further, notice was given on 09.05.2014 to the noticee to apply for renewal of Consent to Operate. A notice was also given on 19.11.2014 to the noticee to provide an STP. Subsequently, in July 2016 the noticee was given a notice to submit TCP completion certification and Tourism Registration Copy. Again on 20.10.2016 and 22.11.2016 the noticee was asked to submit TCP completion certificate and Tourism Registration Certificate.

**30.** In the aforesaid facts and circumstances, it has been submitted by the Learned Counsel for the Pollution Control Board that the noticee had not got Consent to Establish for the complete period and there had been discontinuation of Consent to Establish in the intervening period. Likewise, it has been submitted by the Counsel for the Pollution Control Board that in the present case the hotel had continued to run but without Consent to Operate, during different period of time as mentioned above. Therefore, the Counsel for the Pollution Control Board has submitted that the noticee had been a chronic defaulter in obtaining valid Consent to Establish as well as the Consent to Operate.

**Case of Town & Country Planning Deptt.**

- 31.** The Learned Counsel for Town & Country Planning Department submitted that the provisions of Himachal Pradesh Town & Country Planning Act, 1977 came into force in Barog Special Area, w.e.f. 11.08.2000. Thereafter, the existing land use survey was conducted in December 2000. Consequently, the details of entries in existing land use register, in the name of Shri Darshan Kapoor (owner of Hotel Barog Heights) were as under:

<b>Sr. No. / Bldg. No.</b>	<b>Name of owner</b>	<b>Building detail</b>
308	Sh. Darshan Kapoor	Five storeyed hotel building
309	Sh. Darshan Kapoor	Security room
310	Sh. Darshan Kapoor	Three storeyed residential building
311	Sh. Darshan Kapoor	Double storeyed residential building
312	Sh. Darshan Kapoor	Single storeyed frame structure
313	Sh. Darshan Kapoor	Single storeyed residential building
314	Sh. Darshan Kapoor	Single storeyed residential building
315	Sh. Darshan Kapoor	Four storeyed residential building
317	Sh. Darshan Kapoor	Ground floor water tank and first floor facility and services

- 32.** On 20.10.2001 a letter was issued by Town & Country Planning Department to the proprietor of Hotel Barog Heights for carrying out unauthorised construction in a form of additional work to the existing building at Barog. He was advised to stop construction work and submit a case for planning permission. Subsequently, notice under section 39 and 39 A(1) of Himachal Pradesh Town and Country Planning Department Act, 1977 were issued

on 17.11.2001 for carrying out unauthorised construction of two storeyed from time to time in rear side of the main hotel building without prior approval of the authority. The said construction work was being added to the existing hotel building.

**33.** On 22.11.2001 the said notice was replied by the proprietor of Barog Heights. The Town & Country Planning Department had again advised, vide letter dated 13.12.2001, to submit the compliance for approval of the additions being made in the existing building. Ultimately, on 13.02.2002 a case in the name of Shri D.K. Kapoor was received and diarized (498) for the approval of additions made to the existing hotel building in Khasra no. 745/241, Mauja Tehsil and District Solan. The observations of the Town & Country Planning Department were conveyed on 08.03.2002.

**34.** A notice under section 39-B of the Himachal Pradesh Town and Country Planning Act, 1977 was served on the proprietor of Hotel Barog Heights whereby orders were given for sealing the unauthorised development. They were given a show cause notice for a period of 15 days in which a representation was to be given as to why the building should not be sealed, under section 39-B. The reply of the observations of the Town & Country Planning Department was received from the proprietor of Hotel Barog Heights on 19.02.2003. According to the Counsel, the Town & Country Planning Department had advised

the owner of the hotel on 13.03.2003 to submit a complete case with latest revenue documents, in accordance with the observations conveyed on 08.03.2002. They were also informed that till further action is taken by the Town & Country Planning Department the structure shall be treated as illegal.

- 35.** The Chairman SADA-Barog served office order to Tehsildar Solan, Member Secretary SADA-Barog and proprietor Hotel Barog Heights that the said construction has been raised unauthorisedly and hence, the authority hereby directs that the structure to be sealed under provisions of section 39-B of the Himachal Pradesh Town and Country Planning Act, 1977. Later, on 22.07.2003 the site inspection report was submitted by Tehsildar and Member Secretary SADA Barog. Further, a letter was issued to the proprietor Hotel Barog Heights on 13.08.2003 to vacate the room so that the structure could be sealed. Thereafter, a letter was received from the proprietor of the Hotel on 23.08.2003, in reference to the letter dated 13.08.2003 that he should be given an opportunity of hearing before taking any action against him. The owner also replied to the observations on 23.08.2003. The Town & Country Planning Department had on 09.09.2003 intimated the owner to abide by the observation pointed out on 08.03.2002 and was also advised to carry out demarcations from the revenue

authority, in the presence of the officials of the Town & Country Planning Department.

**Court Discussion**

**36.** The primary question for consideration in this case is as to whether the noticee had established, operated the hotel after complying with the relevant laws and the construction was raised after due approval from the competent authorities under the relevant laws. Undisputedly, the noticee had started construction of the hotel in the year 1991. Initially, the noticee had taken Consent to Establish from Himachal Pradesh Pollution Control Board on 31.07.1991, for a period of one year. The noticee had raised the construction of 30 rooms. The said construction was raised between the year 1992 to 1996 without getting Consent to Establish renewed during the subsequent period.

**37.** As regards seeking of permission from Municipal Corporation or any other authority for construction, no such approval had been taken by the noticee. The submissions made by the Counsel for the noticee that they were not required to take approval from the municipality cannot be sustained. In support of the said submission a reliance has been placed on para 7 of the judgment of the Hon'ble High Court of Himachal Pradesh dated 11.12.1996 wherein it has been mentioned that the land on which the hotel has been constructed is not a municipal area and it falls within the Gram Panchayat. A

perusal of the said part of the judgment of the Hon'ble High Court go to show that the said facts are in reference to paragraph 52 of Writ Petition and the allegations made by the Petitioner therein. Apart from it the notice has not been able to place before us any material by which it can be said/inferred that the land in question now, at the time of second construction, does not fall within the Municipal area. Moreover, the noticee has failed to establish that the area was not in Gram Panchayat at the time of first construction. Under the provisions of Section 14 of the Himachal Pradesh Gram Panchayat Act, 1994 a person who wishes to raise construction or development in an area falling under the provisions of the Gram Panchayat is required to take prior permission of the Gram Panchayat. In the present case, neither the applicant applied in the proper form or by submission of plans to the Gram Panchayat nor Gram Panchayat as a statutory body granted any permission/NOC. A certificate or document signed by the Sarpanch has been placed on record by the applicant claiming it to be NOC of the Gram Panchayat. This document ex-facie does not inspire confidence. Firstly, the certificate has to be issued by the Gram Panchayat, and not by the Sarpanch as per law. Secondly, it refers to no plans which are being approved or in relation to which NOC is being granted. Furthermore, no minutes book of the Gram Panchayat was produced before the Tribunal despite

directions to show that the certificate was ever a subject matter of deliberation before the Gram Panchayat.

**38.** Similarly, the noticee has unable to show the authority of the Tourism Department to give permission for raising construction of the rooms so as to add accommodation to the hotel. Seeking approval of the scheme from the Department of Tourism does not amount to grant of permission to raise construction of the hotel. The letter issued by the Collector Solan is only under Himachal Pradesh Road Side Land Control Act. It has rather been clarified in the said letter that as the hotel building is beyond 300 meters from the edge of Kalka-Shimla road no permissions required to be given. Even if the noticee has obtained permission or no objection certificate under any Rule / Circular / Orders of any authorities, it would not tantamount to permission or deem permission for raising construction, Consent to Establish, etc from a competent authority such as Municipal Board or Pollution Control Board.

**39.** The Counsel for the noticee has emphasized upon the reports received by the Hon'ble High court in the Public Interest Litigation where views have been expressed that the noticee has not done anything contrary which disturbed the environment. Suffices it to note here that statutory pre-requisites for starting construction and business of a hotel or obtaining Consent to Establish and Consent to Operate from the Pollution Control Board,

sanction/NOC of the development plans from the Town Planning Authorities and registration from the Tourist Department amongst other compliances which applicant must comply with. It is apparently clear from the records placed before the Tribunal that applicant fail to comply with all these statutory requirements at the relevant time. It violated the laws in force and even operated without valid Consent for a substantially long and intervenient period. Moreover, the facts placed before us were not placed before the High Court by any of the parties, including the respondent department/authorities.

- 40.** Furthermore, after issuance of the notification dated 11.08.2000, Barog Special Area had come under Himachal Pradesh Town & Country Planning Act, 1977. The owner of the hotel ought to have sought permission under said Act before raising any construction, and the survey of the land was conducted in December, 2000. The details of the existing land use as mentioned in the register, was revealed and as mentioned herein above, constructions and several buildings were raised by Shri Darshan Kapoor, the owner of the hotel in building number 308-317. But no permission was taken under the Town & Country Planning Act, 1977. Not only that, the construction was not stopped and it was continued even thereafter. The Department of Town & Country Planning had issued notices from time to time including under Section 39 (A) on 17.11.2001. Subsequently, with

regard to unauthorised construction a notice under Section 39 (B) of the Act of 1977, was also issued on 02.12.2002 for sealing the structure. However, despite of several efforts made by the Town & Country Planning Department, the construction was not stopped by the owner of the hotel and several buildings were raised, as mentioned herein above in para no. 31.

**41.** Besides, after establishing the hotel the noticee had been running his business since the year 1996-97. During the initial period the noticee had obtained Consent to Operate only from April 1997 to March 1999, i.e. for 2 years. Thereafter, the noticee continued to operate the hotel and do his business without renewal of Consent to Operate. Thus, the noticee continued to do his business without complying with the relevant law for years together that is to say up to the year 2002. Subsequently, he got his Consent to Operate renewed up-to March 2006. But no renewal was got done in the year 2006-2007. In January 2008 the noticee got the Consent to Operate renewed for 18 rooms up to year 2011-2012.

**42.** It is significant to note that since April 2012 till date, the noticee did not get the Consent to Operate renewed and he continued to do his business without compliance of the said mandatory provision of law. It would not be out of place to mention here that renewal of Consent to Operate is made periodical and before doing so the authorities concerned inspect the site to verify as to

whether the compliance of relevant laws of environment have been carried out or not. It may also be mentioned that Himachal Pradesh Pollution Control Board had, from time to time, issued notices to apply for renewal of Consent to Operate, establishing of STP, to submit TCP completion certificate, Tourism Registration copy etc. but the noticee had failed to take the required steps to comply with the mandatory provisions of law.

- 43.** To have a glimpse of non-compliance by the noticee in respect of the provisions of law for Consent to Establish and Consent to Operate, a table is being given here under:

<b>Carried out construction without valid renewal of Consent to Establish from 30.07.1992 to 05.01.1996</b>
<b>Operated without renewal of Consent to Operate from 01.04.1999 to 29.09.2002</b>
<b>Operated without renewal of Consent to Operate from 01.04.2003 to 30.04.2004</b>
<b>Operated without renewal of Consent to Operate for year 2006-2007</b>
<b>Operated without renewal of Consent to Operate from period 01.04.2012 to till date.</b>

- 44.** As mentioned in the earlier part of the judgment notices were issued to many owners of the hotels who had raised constructions and were running their business illegally and unauthorisedly. Notices were issued to them and proceedings had commenced before the Tribunal. A bunch of applications relating to owners of hotels, Divshikha (74/2017), AAA Guest House, (193 /17) came

to be decided on 30.05.2017. Similarly, applications relating to different hotels namely, Birds' View Resort (69/2017), Chelsea Resorts (70/2017), Hotel Pine View (71/2017), Narayani Guest House (72/2017) and Nilgiri Hotel (73/2017) also came to be decided on 30.05.2017. In the case of Birds' View Resort (supra) after taking into consideration the facts and circumstances of the case in its entirety, the Tribunal had observed in para no. 26 as under :

*“26. The above narration of facts and principles of law enunciated by the Court and the Tribunal show that the cases at hand are not cases of default simpliciter or violations but they are the cases which have tremendous adverse impacts on ecology, environment and natural resources. They will be a source of regular pollution in the realm of municipal solid waste (MSW), discharge of trade effluents and sewage etc. We have already noticed that there exist no appropriate anti-pollution devices for prevention and control of such pollution. The record before the Tribunal clearly demonstrates the callous and irresponsible attitude adopted by the public authorities including the Pollution Control Board. This has helped the Noticee to violate the law with impunity. The Great Himalayan Ranges are fragile and eco-sensitive and therefore require more protection. It cannot be subjected to indiscriminate haphazard, illegal and unauthorised constructions. The result of such activity will be disastrous in various environmental aspects. Section 20 of the Act of 2010 requires the Tribunal*

*to apply the Principle of Sustainable Development, the Precautionary Principle and the Polluter Pays Principle which are in any case the 146 fundamentals of environmental jurisprudence across the globe. In present cases, all three principles are attracted and can safely be applied. We need to pass directions which will require authorities to take precautions and preventive steps, to ensure that there is no further degradation of environment and ecology. Certain coercive directions would be necessary to bring these cases within the framework of Sustainable Development and then to be followed by the Precautionary Principle. Unless and until, these structures are brought within the scope of planned development as contemplated under the Act of 1977 and Rules of 2014 and satisfy the requirements of Sustainable Development, the features of planned development are to be strictly adhered to, to ensure Sustainable Development. These standards are to be applied with all their rigour, otherwise imbalance in ecology, environment and natural resources would be the inevitable result. This area is a seismically active zone and tremors of earthquake have shown their drastic results in various parts of the country. We need to be very cautious and not expose such eco-sensitive areas of the country to indiscriminate, illegal and unauthorised construction. It requires strict adherence to planned development. There is definite evidence on record to show that there is serious water scarcity, no sewage system, no common STP plant where sewage can be taken, and treated in accordance with concerned rules. Damage to the greenery and removal of 147 trees*

*in the area is rampant. In terms of Section 17(3) of the Act of 2010, there is the Principle of Strict Liability or No Fault Liability which is to be applied in cases of environmental degradation. It is for the person carrying on the activity, which is likely to cause pollution, to show that he has strictly adhered to the law and has taken all necessary permissions and precautions required. In default thereto, the liability automatically accrues upon such person. In terms of the Act of 2010, Polluter Pays Principle mandates that a polluter must pay compensation for causing pollution as well as on account of restoration and restitution of the environment of the area in question such is the scheme of the Act of 2010. In the present case, the Noticees have not only failed to comply with the law, but have intentionally and knowingly violated the law in relation to planning, environment and regulatory regimes. They have further raised illegal and unauthorised constructions which have caused pollution and have placed undue and undesirable pressure on natural resources. Despite the fact that two of the Noticees faced landslides during construction, they did not stop the activity but on the contrary, extended scope of development by constructing additional storeys. Thus, their liability under the Polluter Pays Principle is incontrovertible.”*

From the records placed before the Tribunal, it is evident that the applicant has taken advantage of non-compliance of law. Structures built-up are partially unauthorized and illegal. The applicant has operated without obtaining the Consent of the Board at different

times and had admittedly operated without obtaining Consent of the Board from 1<sup>st</sup> April, 2012 till date. The Town & Country Planning Department had issued notices for demolition but for reasons best known to the said department, no steps had been taken for demolishing the unauthorized and illegal structures. Besides causing environmental degradation, the applicant is also guilty of environmental pollution. Nothing has been placed on record of the Tribunal which could be relied upon by the Tribunal to state that the applicant is not an environment offender. There is no evidence on record to show as to how such a big hotel is dealing with its Municipal Solid Waste and is treating the sewage generated. The STP is not of the requisite capacity as the applicant has been adding blocks and blocks of construction with the passage of time without enhancing the capacity of the STP. The Pollution Control Board has never analysed the quality of the sewage either at the inlet or even the outlet of the STP. These are some of the patent environmental concerns which apparently show that the applicant for his personal financial benefits has caused environmental degradation. It also needs to be noticed that the hotel is stated to be 500m to 1 km from the main road. This road was apparently constructed by the applicant through the forest area or area like forest. This certainly damaged the trees, environment and ecology of that area as admitted. The hotel is on the top of a densely forested hill in Barog.

**45.** Despite of the fact that the owners of the Barog Heights were issued notices since the year 2001 and even the notice under Section 39 (B) was issued in the year 2003 but the unauthorised constructions were never removed. Such constructions needs to be demolished to prevent further degradation of environment and ecology in the area and also to ensure that undue pressure is not put on the natural resources causing scarcity of resources like water etc.

**46.** In light of the above narrated facts, environmental degradation and pollution caused by the Noticee i.e. non-applicant, we pass the following order/directions:

- i. The noticee Hotel Barog Heights shall demolish the structure which is unauthorised and in exercise to the provisions of Himachal Pradesh Town & Country Planning Act, 1977, within four weeks from the pronouncement of this judgement, failing which the Town & Country Planning Department, along with State Administration shall demolish the structures and recover the cost incurred there upon as arrears of land revenue, in terms of section 30 & 39 (6) (B) of the Act, 1977. The department shall also take action as directed by the Tribunal by its judgment in the case of *Society Preservation Kasauli and its Environs Vs. Birds View Resort* (O.A. No. 69/2017)
- ii. We also hold and direct that the noticee shall pay environmental compensation in terms of Section 15

and 17 of the National Green Tribunal Act, 2010 for causing irretrievable damage to the ecology, for polluting the environment, raising unauthorised and illegal construction resulting in pressure on natural resources. We determine the environmental compensation to be paid by the noticee as Rs. 10,00,000/- (Rupees Ten lakhs) which shall be paid within two weeks from the date of pronouncement of this order.

The environmental compensation shall be payable to Himachal Pradesh Pollution Control Board, who shall utilise the same for protection, restoration and restitution of the ecology and environment in the area.

- iii. As a part of the Solid Waste Management, the Noticee (M/s Barog Heights) should segregate and process all the kitchen and food waste from the hotel and restaurant within the hotel premises for production of biogas. Only the recyclable and other non-biodegradable waste should be handed over to the recyclers and municipal waste facilities to which a hotel is otherwise attached for handling municipal solid waste.
- iv. The noticee should install rain water harvesting structures in order to capture, store and reuse all the rain water through appropriately designed rain water harvesting systems.

- v. We direct that the Noticee should install rooftop solar panels for production of solar energy for the purpose of water heating and other uses.
- vi. All the sewage water from the sewage treatment plant should be recycled/reused in gardening and/or other non-potable uses.
- vii. We direct the Joint Inspection Team consisting of a Senior Scientist from MoEF&CC, a Professor from Punjab Engineering College, Chandigarh, in the same specialty to be nominated by the Director/Principal, Senior representative of the Town & Country Planning Department (not from District Solan), Senior Environmental Scientist from Himachal Pradesh Pollution Control Board to conduct inspection of the entire premises of the Noticee and submit a detailed and comprehensive report in relation to:
- a) Whether the directions issued under this judgement had been complied with.
  - b) The functioning and effectiveness of the STP along with its capacity, keeping in view the sewage discharge from the Hotel and how the treated water is being used.
  - c) The management and disposal of Municipal Solid Waste from the hotel.
  - d) Collection, treatment and disposal of the sewage and treatment plan.

e) The extent of plantation that the Noticee is required to carry out for the purposes of protection and restoration in that area.

iv). If all or any of the above directions are not complied with by the Noticee/applicant within time stipulated, the Hotel of the Noticee shall be liable to be closed and water and electricity supply shall be disconnected. The Pollution Control Board and the Town & Country Planning Department shall be responsible for compliance of the orders contained in this judgment.

**47.** With the above directions, this Original Application No. 274/2017 is **disposed of**, with no order as to costs.

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**JUSTICE SWATANTER KUMAR**  
**CHAIRPERSON**

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**JUSTICE RAGHUVENDRA S. RATHORE**  
**JUDICIAL MEMBER**

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**BIKRAM SINGH SAJWAN**  
**EXPERT MEMBER**

.....  
**DR.NAGIN NANDA**  
**EXPERT MEMBER**

7<sup>th</sup> December, 2017  
New Delhi