

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

C.W.P. No.411 of 2000.

Judgment Reserved on: 17.8.2006.

Date of decision: 31.8.2006.

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Ravinder Kumar Arora	..Petitioner
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-Versus-

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State of H.P. and others	..Respondents
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Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

Whether approved for reporting?

For the Petitioner: Mr.Y.P. Sood, Advocate.

For Respondents: Mr.M.S.Chandel, A.G. with  
Mr.Ashutosh Burathoki, Addl.A.G.

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**Deepak Gupta, J.**

The petitioner who is non-agriculturist and non-Himachalli applied to the State of Himachal Pradesh for permission to purchase 456.04 sq.mts. of land in Elysium Lodge Estate for construction of a hotel. Alongwith the application for grant of permission he also filed no objection certificate issued by the H.P. State Pollution Control Board (Annexure P-1), essentiality certificate (Annexure P-2) issued by the Director of Tourism and essentiality certificate (Annexure P-3) issued by the Forest Department. The application of the petitioner was considered and allowed by the State of Himachal Pradesh vide letter Annexure P-4 dated 28.11.1997 and the petitioner was

permitted to purchase khasra Nos.23/2/1, 23/2/2 and 25/1 measuring 456-04 sq.mts. situated in Station Ward, Barra Shimla from Sh.Bhuvnesh Banga. Pursuant to the grant of this permission the petitioner purchased the land from the original owner Sh.Bhuvnesh Banga for a total consideration of Rs.12,60,000/-.

Thereafter, the petitioner applied to the Town and Country Planning Department for permission of change of land use from residential to hotel and sought permission to construct a hotel on the land. This permission was rejected by the Town and Country Planner vide his letter dated 1.7.1999 Annexure P-7 for the following reasons:

- “1.The proposed site is on steep slope.
- 2.The proposal will increase the traffic congestion on the cart road.
- 3.An Educational Institution (i.e. R.K.M.V.) is existing in front of the proposed site where commercial activities can't be allowed.”

Aggrieved by the said order the petitioner filed an appeal.

This appeal was disposed of by the Appellate Authority by passing the following order:

“Appellant present with counsel and Divisional Town Planner present from the Directorate of TCP. Both parties have been heard and the record examined. The land use of the area in which Appellant's plot is located is of residential use and the appellant wants to change it to commercial. This cannot be allowed as the area already supports heavy traffic and a college is located just across

the road. The report of the Town and Country Planning Deptt. also indicates that the plot is situated on a steep slope with a gradient of 45 degrees to 60 degrees. Construction on such a steep gradient is bound to disturb the ecology of the area especially as the plot falls in the banned area of the town where construction should only be allowed in an exceptional case. The fact that the appellant was given permission to purchase land under the Tenancy & Land Reforms Act in no way exempts him from the required approvals under the TCP Act and Municipal bye-laws, nor does permission under the Tenancy & Land Reforms Act imply a commitment to give similar permission under other Acts. In view of this the appeal has no force and is dismissed.”

Aggrieved against the refusal of permission to construct a hotel the petitioner has filed the present writ petition.

I have heard Sh.Y.P. Sood, learned counsel appearing on behalf of the petitioner and have also heard Sh.M.S.Chandel, learned Advocate General for the State.

Mr.Sood submits that in fact no permission for change of use of land was required since hotels can be constructed in the restricted areas under the Interim Development Plan. It has been urged on behalf of the petitioner that once the various Departments of the State i.e. the Tourism Department, Pollution Control Board and the Forest Department had given their no objections/essentiality certificates for the purchase of the land, which purchase was sought only for the purpose of construction of hotel, the respondents after allowing such permission could

not turn around and say that a hotel cannot be constructed on the spot. Mr.Sood urges that in case a hotel could not be constructed on the land the State at the initial stage itself could have rejected the application. He further submits that the petitioner has been discriminated against inasmuch as other hotels have been permitted around the area near the land of the petitioner. He lastly submits that the plans were submitted by the petitioner on 27.6.1998 and were rejected on 1.7.1999 and therefore it is a case of deemed sanction under Section 31 of the Town and Country Planning Act.

On the other hand Sh.M.S.Chandel, learned Advocate General appearing on behalf of the State has urged that the authorities under the Town and Country Planning Act have considered the case in its proper perspective and keeping in view the location of the plot which is just opposite to the Government College for Girls and near a sharp curve the Department did not deem it fit and proper to allow commercial activity in the area.

As far as first submission of Mr.Sood that no change in land use was required since the hotels are permitted in the restricted areas, reference may be made to Clause 10.4.1.4 of the Interim Development Plan. Admittedly the area in question is a residential zone and meant mainly for construction of residential premises and other premises incidental to residential house. No doubt the Director, Town and Country Planning under sub clause (b) of the aforesaid clause can permit for special reasons the

construction of a hotel in the area. However, this does not mean that a hotel can be constructed as of right without seeking permission of the Director. The Director has to give special reasons as to why he has permitted a hotel to be constructed in the residential area. In the present case the Town and Country Planning authorities have given three reasons enumerated above for rejecting the claim of the petitioner. It cannot be said that these reasons are baseless. Two of the reasons i.e. traffic congestion and the fact that a college is situated just opposite side where the hotel is proposed to be constructed are reasons in the public interest. Obviously if a hotel is permitted to be constructed there shall be increase in the traffic, parking problems and keeping in view the fact that already the area and road is facing traffic congestion no fault can be found with the reasoning given by the Town and Country Planning authority.

The next ground raised by the petitioner is that some other hotels have been permitted to be constructed in the area. Reference in this behalf was made specifically to hotel Jass Radisson and hotel Royal Oaks which are on the land adjoining to the petitioner. The State has filed a reply in this regard. Hotel Jass Radisson is not situated on the main cart road/circular road. It is situated on the Bharari road. Though the distance as the crow flies may be only 200 meters but the situational aspect of hotel Jass Radisson is totally different and cannot be compared with that of the petitioner. There is no educational institution

opposite hotel Jass Radisson nor is the said hotel situate on the main circular road.

As far as hotel Royal Oak is concerned the State Government in its counter affidavit has clearly stated that the hotel is running in the existing building which was an old residential building and has been permitted to be used as a guest house on the condition that the owner will not raise any new construction and, therefore, the structure would not come up above the cart road. The other hotels referred to are in existence since much earlier.

Another submission made by the petitioner is that once the Government granted him permission to purchase the land for construction of the hotel it could not have rejected his application for grant of permission to build the hotel. This objection is without any merit whatsoever. The mere fact that a person is permitted to purchase land does not mean that he does not have to comply with the necessary building bye-laws. He obviously has to seek permission of all the authorities before he can construct a building. Any person who seeks permission to purchase land must satisfy himself what are his rights under the law and cannot claim that merely because he has been granted permission to purchase land he is also entitled to raise construction thereupon. However, I must add that it would be more appropriate if the Government before dealing with the applications under Section 118 of the H.P. Tenancy and Land

Reforms Act also looks into the question whether the ground on the basis of which permission is sought can be fulfilled or not.

The stand of the State also is that in view of the further developments i.e. the amendments carried out to the Interim Development Plan vide notifications dated 11.8.2000, 22.8.2002 and 7.12.2000 no permission to raise construction can be granted in any event. According to the notification dated 7.12.2000 the land of the petitioner falls within the green belt area. According to the notification dated 11.8.2000 no development unless specifically permitted by the State Government can take place in the restricted area. Admittedly the land in question would fall within the restricted area. Notification dated 11.8.2000 was amended vide notification dated 22.8.2002 and in restricted areas for the purposes of hotel the minimum area required is 1000 sq.mts. Obviously the hotel as per the norms now notified cannot be constructed since the plot area is less than 1000 sq.mts.

With regard to green belt Sh.Sood has relied upon a judgment of the Division Bench of this Court in **Smt.Prem Lata Sood and others vs. State of H.P. and others**, Latest HLJ 2005 (HP) (DB) 1261 in which the Court held that the said notification dated 7.12.2000 is not retrospective in application. According to learned Advocate General the said judgment is under challenge in the Apex Court. An important factor which must be noticed is that in Prem Lata's case (supra) the Town and Country Planning Department had on 16.1.1998 prior to the notification dated

7.12.2000 granted permission for construction of four storeyed hotel subject to the government relaxing the ban on construction. The town and Country Planning Department had also in March, 1998 granted permission under Section 31(1) to raise the building subject to obtaining building permission from the Municipal authorities. The facts of the present case are totally different and in the present case at the initial stage itself the building permission was rejected. Therefore, in my opinion the said judgment does not apply to the facts and circumstances of this case.

The last submission of Sh.Sood is that the sanction should be deemed to have been granted in view of the provisions of Section 31(5) of the TCP Act. He submits that the case for grant of sanction has been submitted to the authorities under the TCP Act on 27.6.1998. According to him under Section 31(5) of the Act in case the Director does not communicate his decision within six months from the date of the receipt of the application such permission shall be deemed to have been granted. This contention can also not be accepted in view of the fact that though the initial permission was sought on 27.6.1998 the same was submitted not to the Director but to the Town and Country Planner. It is further the case of the respondents that the permission was not for development but for change of land use and such permission cannot be deemed to be granted. It is submitted on behalf of the respondents that there were

shortcomings in the drawings submitted by the petitioner. The respondent No.4 conveyed these shortcomings to the petitioner's Architect on 13.10.1998 who collected the drawings and thereafter re-submitted the same in the office of respondent No.4 on 8.12.1998 and on 29.12.1998 the case was sent from the office of respondent No.4 to the Director, Town and Country Planning Department.

I am also of the view that there can be no deemed sanction for something which is per se not permissible and for which special permission is required. Deemed sanction can only be in regard to such construction which is permissible under law and for which no special permission is required. For example if in a particular area only two storeys are permissible and a plan is submitted for construction of four storeys, the mere fact that the plan is not rejected within time will not mean that sanction is for all four storeys. The deemed sanction, if at all, can only be for two storeys which are permissible under law. If special permission is required for any construction beyond two storeys the same cannot be deemed to have been made.

Therefore, in my considered opinion there is no merit in the petition which is accordingly dismissed with no order as to costs.

However, before parting with the case I do feel that keeping in view the fact that the petitioner has spent a large sum of money, that too after taking permission from the State

Government, in case the petitioner applies for grant of permission for construction of residential premises on the land in question the same shall be considered by the authorities in accordance with law. The fact that the petitioner had purchased the land on the ground that he wants to raise a hotel on the land shall not come in his way of raising residential premises if otherwise permissible under law.

August 31, 2006.  
PV

**( Deepak Gupta ),**  
**Judge**