



No. of
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of
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Order with Signature

Office Note as to
action (if any)
taken on Order

8. 28.4.08

Present: Mr. Jorgay Namka, Petitioner in person.

Mr. J.B. Pradhan and Mr. Karma Thinlay, Government Advocates for the State-Respondents.

Mr. M.Z. Ahmed, Sr. Advocate with Ms. B. Dutta and Mr. Sudesh Joshi, Advocates for Respondent No. 4.

...

This writ petition is filed by a single writ petitioner by way of Public Interest Litigation challenging basically a provision in a Notification dated 15.10.2001. The said provision is to be found at page No. 55 of the annexures to the writ petition being the inserted sub-Regulation (vi).

To understand the said regulation, it is best to set out in full the second clause of the said notification dated 15.10.2001 and it is so set out below: -

“2. In the Sikkim Building Construction Regulation, 1991; (hereinafter referred to as the said regulations), in regulation 17, -

(a) for sub-regulation (i), the following shall be substituted namely: -



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		<p>“(i) The maximum height of buildings constructed in allotted sites or private holdings within a notified area shall be in accordance with the suitability and profile of the locations based on the stability map of the area as prepared by the Mines and Geology Department from time to time which shall be as follows: -</p> <table><tr><th><u>Stability zone</u></th><th><u>Admissible number of floors</u></th></tr><tr><td>1.</td><td>5 ½ storeys</td></tr><tr><td>2.</td><td>4 ½ storeys</td></tr><tr><td>3.</td><td>3 ½ storeys</td></tr><tr><td>4.</td><td>2 ½ storeys</td></tr><tr><td>5.</td><td>1 ½ storeys</td></tr><tr><td>6.</td><td>No construction is allowed.</td></tr></table> <p>Provided that the height of buildings shall further be regulated in accordance with the size of the plot allotted or possessed and structural design of the foundation of the proposed building;</p> <p>(b) after sub-regulation (V) the following sub-regulation shall be added, namely: -</p> <p>“(vi) Any structure beyond the permissible number of floors or allotted area or approved Blue Print Plan completed or under construction on or before the date of notification of these regulations, shall be regularized after payment of regularization fee to be prescribed by Notification by the Government”. ”</p>	<u>Stability zone</u>	<u>Admissible number of floors</u>	1.	5 ½ storeys	2.	4 ½ storeys	3.	3 ½ storeys	4.	2 ½ storeys	5.	1 ½ storeys	6.	No construction is allowed.	
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		<p>It will be seen that by the said amending notification a certain basic scheme was formulated for the purpose of building safety for the preservation of the interest of the general public. The building zones were created with varying degrees of ground strength allowing, in general the buildings to have storeys only upto a prescribed number.</p> <p>It should be understood that this provision is in addition to the general provision, existing almost everywhere in urban India, that no building is to be constructed without the previous sanction of the concerned Municipal Authority and that if such sanctioned approval or plan is not adhered to, the Authority normally retains the power to demolish the wrongly built portion and bring the building in accordance with the provisions and the sanctioned plan.</p> <p>The submission of the writ petitioner is that the sixth regulation permitting, in particular cases, buildings to go beyond the prescribed number of storeys is wholly illegal and should be struck out.</p>	



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The fourth respondent is impleaded as a case in point where a relaxation was allowed for construction. The regularization was that he was allowed to construct a building of 6 ½ storeys height in stability Zone No. 1 where the admissible number of storeys, in any event, is 5 ½ storeys.

It is quite clear that the power of regularization cannot be exercised unless there is something to regularize i.e. no power of regularization can be exercised if the respondent No. 4 wished to build only up to 5 ½ storeys in Zone No. 1.

The said respondent was permitted to raise the extra storey on payment of Rs.1,79,000/-, which payment was made on or about 27.11.2003 and the construction in question was also completed in that year.

The construction has remained in tact since.

Instead of showing that regularization has illegally, wrongly or to the detriment of the public, the example shows that the regularization process has worked out normally.



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Sub The fourth respondent is happy. The Government has been able to utilize the extra revenue for governmental purposes. No neighbour has complained and no untoward incident has ~~been~~ taken place.

It is well known that although certain provisions might be branded as irrelaxable in municipal regulations and rules, yet in all of the few cases known to this Court, there are always provisions for regularization of relaxable deviations, on condition inter alia of application of mind by the concerned authority to all the relevant facts and circumstances of each deviating instance.

The instant regularization is no different from this general category containing powers of regularization.

We are quite clear in our minds that the litigation of the instant nature cannot be filed by a single citizen just because he decides one day to take up the Court's time by going through the process of filing a writ petition and pursuing it



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thereafter. Only an interested neighbour who can show hurt and harm might, we say might, be able to come, but none of them is before us. This writ petition is dismissed without any order as to costs.

(A.N. Ray, CJ)

(A.P. Subba, J)