



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPIL No.16 of 2025
Reserved on: 09.09.2026
Pronounced on: 30.09.2026
Uploaded on: 30.09.2026

Upper Bakrota Residents AssociationPetitioner.

Versus

The State of Himachal Pradesh and OthersRespondents.

Coram:

The Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice.
The Hon'ble Mr. Justice Bipin Chander Negi, Judge.
Whether approved for reporting? Yes.

For the petitioner: Mr. Deven Khanna, Advocate.

For the respondents: Mr. Rakesh Dhaulta, Additional Advocate General, for respondent Nos.1, 2 and 4-State.

Mr. Vivek Sharma, Advocate, for respondent No.3.

Mr. Shrawan Dogra, Senior Advocate with Mr. Tejasvi Dogra and Ms. Ridhima Karol, Advocates, for respondent No.5.

G.S. Sandhawalia, Chief Justice.

By way of the present Public Interest Litigation (PIL), the Upper Bakrota Residents Association, through its President, challenges the order dated 03.01.2020 (**Annexure P-6**), passed by respondent No.1. In the said impugned order, the Appellate

Authority, while dealing with an appeal filed by private respondent No.5-Mr. Prit Pal Singh, had allowed the change of land use from residential to commercial for the purpose of operating a Hotel and Guest house. This change was permitted on the grounds that commercial activities such as existing hotels, guest houses, and home-stays (Tourism Units) were already operating in the vicinity of private respondent No.5's plot. Furthermore, the Appellate Authority had noted that he was an original inhabitant who had purchased the land prior to the enforcement of the Himachal Pradesh Town and Country Planning Act, 1977 (hereinafter referred to as the 'TCP Act, 1977').

2. Reference was made to sub-regulation (vi) of General Regulation 18.1.2 of the Development Plan for the Dalhousie Planning Area (hereinafter referred to as the 'DPA'), which was notified on 27.12.2004 (**Annexure P-1**), to grant the necessary permission for a change of land use. It was noticed that the site fell within the restricted area limits of the Dalhousie Planning Area. Additionally, the subsequent development and construction permission issued by the Department of Town and Country Planning (TCP) under Section 31(b) of the 'TCP Act, 1977', for khasra No.2134 in revenue Mohalla Uprala Bakrota dated 02.02.2024 (**Annexure P-11**) is also a subject matter of challenge.

3. Resultantly, a prayer is made to ensure strict compliance with the 'DPA', particularly the restrictions relating to the restricted area in Bakrota Up-Mohal, so as not to permit any change of land use that is *dehors* the Development Plan.

Arguments of the counsel for the petitioner:-

4. Mr. Deven Khanna, learned counsel for the petitioner, vehemently argued that the Development Plan notified by the Government was sacrosanct and could not be ignored. He submitted that the action permitting the change of land use was manifestly arbitrary, and that the impugned order was non-speaking and devoid of valid reasoning or having any element of public interest. Furthermore, he contended that the carrying capacity of the area was not taken into consideration, and questioned the basis on which the Appellate Authority concluded that the respondent was an original inhabitant, given that the land was purchased in the year 1993 by the respondent's own admission. He also argued that Article 14 of the Constitution of India does not apply in the negative to justify a wrong being done in the vicinity, and therefore, the lush green area falling within the restricted zone could not be converted for commercial use under sub-regulation (vi) of General Regulation 18.1.2 of the 'DPA' due to the absence of public interest. Additionally, it was pointed out that on an earlier occasion, an

intervention application had been allowed, and the order dated 03.01.2020 (**Annexure P-6**) had been set aside on 15.06.2021 (**Annexure P-9**) and held *non est* in the eyes of law by the same authority in a Review Petition filed under Section 33 of the 'TCP Act, 1977'.

5. Counsel for the petitioner has submitted that although the subsequent order dated 15.06.2021 (**Annexure P-9**) was set aside in a writ petition on the technical ground that the power of review does not extend to judicial or quasi-judicial orders at hands of respondent No.5, the present writ petition remains maintainable because the current petitioner was not a party to that first round of litigation in **CWP No.4672 of 2022**, titled as **Prit Pal Singh Vs. State of H.P. & Others**, which was decided on 30.05.2023 (**Annexure P-10**) by a Coordinate Bench of this Court.

Arguments of counsel for respondent No.5:-

6. Mr. Shrawan Dogra, learned Senior Counsel for respondent No.5, vehemently submitted that the Appellate Authority had exercised its powers of appeal to grant this permission. Resultantly, he argued that the present Public Interest Litigation (PIL) is not maintainable, especially since the order dated 15.06.2021 (**Annexure P-9**) has already been set aside by a Coordinate Bench of this Court. It was further submitted that,

admittedly, the society was projecting itself as a neighbour of respondent No.5 merely to harass him and prevent him from developing his land in accordance with the provisions of the 'TCP Act, 1977'.

7. Additionally, learned Senior Counsel for respondent No.5 has further submitted that the Change of Land Use (CLU) had been granted on 04.08.2022, and the building plans were subsequently approved by the Municipal Council on 18.07.2024. Therefore, once the Change of Land Use (CLU) and building plans were legally permitted, there was no lawful impediment to restrict him from constructing on the property for commercial purpose. Resultantly, he prayed for the dismissal of the writ petition and the vacation of the stay order granted on 27.03.2025.

Background of the case:-

8. A perusal of the paper-book would go on to show that respondent No.5 had purchased 5594 square meters of land in the year 1993. This land falls in khasra No.2134, khata No.240, khatauni No.342, situated in village Mohal Bakrota, District Chamba, Himachal Pradesh. Pursuant to the Development Plan Area (DPA) Regulations dated 27.12.2004 (**Annexure P-1**), the respondent had applied for a residential building permission from the Town and Country Planning Department. The application was submitted in

Form-3 of the Municipal Council Dalhousie. The proposal outlined the construction of six blocks with a total coverage area of 486 square meters, designed to accommodate approximately 24 inhabitants across 12 bathrooms. The blocks were designed to stand six floors high, comprising a basement, ground floor, mezzanine, first floor, second floor, and third floor. The necessary permission was granted to private respondent No.5 under Section 31 of the 'TCP Act, 1977' on 23.09.2017 **(Annexure R-I)**. Subsequently, the Municipal Council passed a resolution on 06.10.2017, approving the building plans. Resultantly, development permission for the 486 square meters was officially granted vide order dated 06.03.2018 by the Municipal Council, Dalhousie.

9. On 22.10.2018 **(Annexure P-4)**, respondent No.5 had applied to the Deputy Commissioner, Chamba, Himachal Pradesh, for a Change of Land Use (CLU) from residential to a Hotel/Guest House. The application invoked sub-regulation (vi) of General Regulation 18.1.2 of the 'DPA' to permit the Change of Land Use (CLU). However, this permission was rejected on 09.09.2019 **(Annexure R-2)**, based on the recommendation of the Planning Permission Committee under clause (c) of sub-section (1) of Section 31 of the 'TCP Act, 1977'. This was apparently done because a Joint Site Inspection Report **(Annexure P-17)** had been done on

27.07.2019 regarding Khasra No.2134. The report revealed that 75 green trees were standing on the site and the land fell within Mohal Bakrota, which is a restricted area under the Development Plan Area (DPA). Under General Regulation 18.1.2 of the 'DPA', the permissible use for this restricted area was strictly residential, and the applicant's case had previously been approved for that specific purpose.

10. The matter was taken in appeal to the Principal Secretary (Town and Country Planning) by respondent No.1 and vide order dated 03.01.2020 (**Annexure P-6**) as noticed, he had exercised the power and allowed the Change of Land Use (CLU).

11. Apparently, a Review Petition titled as ***Deputy Commissioner-cum-Chairman, Planning Permission, Dalhousie Planning Area, District Chamba, Himachal Pradesh Vs. Shri Prit Pal Singh and another*** was filed by the Deputy Commissioner, Chamba, Himachal Pradesh, under Section 33 of the 'TCP Act, 1977', which governs revisional powers of the State. In these proceedings, the present petitioner had also filed an application for intervention dated 28.02.2021 (**Annexure P-7**). This application was allowed on 16.03.2021 (**Annexure P-8**), granting the petitioner liberty to submit their views and attend a personal hearing scheduled

for 23.03.2021 at 3:30 pm in the office chamber of the Principal Secretary (TCP) to the Government of Himachal Pradesh.

12. Eventually, the Principal Secretary (Town and Country Planning) set aside the order dated 03.01.2020 (**Annexure P-6**) on 15.06.2021 (**Annexure P-9**). This decision was based on the ground that the 'DPA' was a sacrosanct document and that the order dated 03.01.2020 (**Annexure P-6**), passed by the predecessor, violated its inherent spirit. Furthermore, the previous order was likely to open a Pandora's box of haphazard and rampant construction of a high-intensity commercial nature, which would have an adverse and irreversible impact on the fragile greenery, environment, and character of the Restricted Area as envisaged in the Development Plan. Thus, the application for Planning Permission for a Change of Land Use (CLU) was rejected. Resultantly, the previous order passed by the Deputy Commissioner, as the Chairman of the Planning Permission Committee Dalhousie, rejecting the case would continue to operate.

13. Respondent No.5 had filed **CWP No. 4672 of 2022**, titled as **Prit Pal Singh Vs. State of Himachal Pradesh & Others**, which was allowed on 30.05.2023 (**Annexure P-10**) on the ground that a quasi-judicial authority cannot review its own order in the absence of a specific review provision under the provisions of the

Himachal Pradesh Town and Country Planning, Act, 1977. It was in such circumstances that the present petition was filed on 19.03.2025.

14. In the meantime, the Department of Town and Country Planning, on 05.08.2023 (**Annexure-R/3/E**), granted the necessary permission for Change of Land Use (CLU), in view of the order passed by the Coordinate Bench of this Court in Prit Pal Singh's case. The Municipal Council had also passed Resolution No.72/14 and granted the necessary permission for the layout plans, the formal order was subsequently passed on 20.12.2023 (**Annexure R/3/4**), granting permission for the development of the said area in the form of two blocks, which was now to be 822 square meters. The revised plans were then submitted, and the necessary order was passed on 06.08.2024 in pursuance of another resolution passed on 18.07.2024 (**Annexure R/3/I**) by the Municipal Council.

Issue in question:-

15. It is in such circumstances that we have been called upon to adjudicate whether the permission for a Change of Land Use (CLU), granted by the Appellate Authority while exercising powers under sub-regulation (vi) of General Regulation 18.1.2 of the TCP Act, 1977, was permissible.

Legal Restrictions for Commercial use:-

16. A perusal of the notification dated 27.12.2024, issued under sub-section (3) of Section 20 of the 'TCP Act, 1977', reveals the approval of the Development Plan for the Dalhousie Planning Area, District Chamba, Himachal Pradesh. This plan had been prepared by the Director of the Town and Country Planning Department, Himachal Pradesh, under Section 19(2) of the Act and was duly published under sub-section (4) of Section 20.

17. The Development Plan noticed that Dalhousie is situated on a pine-covered spur at the western end of the Dhauladhar mountain range. Established in 1858 A.D. by the British Governor-General, Lord Dalhousie, the town was named after him. Standing at an altitude of 2,378 meters above mean sea level, the area was developed as a sanatorium after British rulers acquired five hills from the ruler of the Chamba State. Today, Dalhousie is the second most important town in the Chamba District after Chamba town. Located amidst stately pine and oak forests, it remains a popular tourist destination in Himachal Pradesh. Furthermore, the presence of reputed institutions like Sacred Heart High School, Dalhousie Public School, Hill Top Public School, and the Central School for Tibetans has transformed the town into a prominent educational hub.

18. The Government of Himachal Pradesh under Himachal Pradesh Town and Country Planning Act, 1977, vide notification dated 30.07.1986, had notified two revenue settlements including MC Dalhousie Hadbast No.422 (new Hadbast No. 346) and Banikhet Hadbast No. 98, as the Dalhousie Planning Area. Subsequently, on 08.06.1994, the Town and Country Planning (TCP) Act, 1977, was enforced, and the existing land use of this Planning Area was frozen on 29.07.1997, under Section 15-A of the Act. Notably, the third Mall Road is located at Upper Bakrota. This three-kilometer-long road loops around Bakrota Hill, offering onlookers extensive views of the low hills and plains to the south, and the snowy mountain ranges to the north.

19. Dalhousie's oldest school, Sacred Heart, is located on Potreyn Hill, Dalhousie Public High School, Central School for Tibetans are situated on Middle Bakrota, while the Dalhousie Hilltop School sits on Upper Bakrota Hill, and the Guru Nanak School is located on Church Baloon Road. All the above schools are of National and International fame. According to clause 3.5 of Chapter-3 "**Planning Area**", the altitude of the town increases considerably towards the east and north-west, reaching its maximum at the Bakrota Hills.

20. As per Clause 15.2.4, “**Proposed Landuse**”, the proposed land use of Bakrota Up-Mohal is designated as a 'Restricted Area.' Because lush green forests exist here, the area requires special attention and beautiful, large bungalows that blend with hill architecture sit within large landholdings scattered across the dense forests. Resultantly, it was held that restrictions on all types of commercial construction are required; only need-based residential development and related infrastructure should be allowed. Furthermore, there is a need to formulate a conservation plan for Dalhousie that provides need-based facilities. The relevant clause reads as under:-

“15.2.4 PROPOSED LANDUSE:- *It is envisaged that entire Planning Area of Dalhousie shall be urbanized by the year 2021 except forest land and under water bodies. The status of existing agriculture area in and around Lohali and Kathlag villages which have rural character at present, although falls in M.C. boundary is proposed to be maintained as a agriculture in future. Nearly, 70% land is forest land in the town. The status of forest shall be maintained as forest and no non-forest activity shall be allowed on the forest land. This shall also act as green buffer zone around the developable area. The remaining area other than forest area and designated as “Restricted Area” in Bakrota Up-Mohal where lush green forests are existing, require a special attention. Beautiful, stylish big bungalows blended with Hill Architecture with large land holdings are existing in the lap of dense forests in scattered manner. This area requires restricted development. Therefore, restriction on all type of commercial constructions is required and only need based residential with related infrastructure should be allowed in this area. The remaining area other than forest, agriculture and ‘Bakrota restricted area’ in Dalhousie planning area shall be developed on the*

predominant land use basis, because the existing land use of Dalhousie is of mixed nature and there is very less land left for development of various social and tourist related infrastructure. Approximately 8709 hectare of the total land is left for development that too in form of scattered isolated patches. Therefore it is not logical to divide the planning area on the concept of sectoral pattern. So there is need to make a conservation plan for Dalhousie by providing need based facilities like development of parking areas, expansion and strengthening of existing bus stand, widening of various roads and road side tourist's infrastructure and development of tourist attraction spots in and around Dalhousie etc. As projected population for the year 2021 is 8976 persons, so from this hardly any significant urbanization can be expected to occur in future only such activities which are incidental conforming and compatible with each other shall be permitted provided these are non-hazardous, eco friendly and safe. The planning area has been divided into following categories:-

- i. Forest area
- ii. Agriculture area
- iii. Urbanisable area
 - (a) Restricted area
 - (b) Other area.

21. Resultantly, the Urbanisable Area was identified, and the land was categorized into two portions, the Restricted Area and Other Area, as per clause 15.2.4 (iii) (a) & (b) of Chapter-15, "Development Strategy" which reads as follows:-

"(iii) Urbanisable Area:- The remaining area of Dalhousie planning area other than forest agriculture and area under Nallah and water bodies shall form the part of urbanisable area. For the purpose of bye-laws and zoning regulations, the entire urbanisable area has been divided into two distinct areas.

- (a) Restricted area.
- (b) Other area.

- (a) **Restricted area:-** Starting from the meeting point of planning area boundary and Khajjar road in Bakrota, then following Nagar Parishad boundary upto Ajit Singhs Samadhi in Panjpulla, thereafter following a line 30 meters on the valley side parallel to the Satdhara road from Ajit Singhs Samadhi to Gandhi Chowk (G.P.O. Chowk). From G.P.O. Chowk again following a 30 meters line on valley side parallel to road upto Nehru Park (Dhopghari) and further upto planning area boundary at Bakrota Khajjar road.
- (b) **Other Area:-** The area of Dalhausie planning area not included in the Forest, Agriculture and Restricted area above shall form the 'Other area'."

22. As per clause 18.1.2 of the **General Regulations**, which apply to all development activities in the Dalhousie Planning Area, no building or structure may be erected, re-erected, or materially altered without the permission of the Director. This clause further outlines the planning framework for buildings within setbacks. Under sub-clause (vi), permission for a Change of Land Use (CLU) on specific grounds may be granted only in the public interest, for the interest of the town design, or due to other material considerations, as determined by the Committee constituted under the chairmanship of the Deputy Commissioner, Chamba. The relevant part reads as under:-

"18.1.2 General Instructions:- The following regulations shall be applied to all development activities in the Dalhousie Planning Area:-

(i) No building or structure shall be erected, re-erected or materially altered without the permission of the Director.

(ii) General land use in the Development Plan has been contemplated for specific uses. However, mixed land use shall not be prohibited unless otherwise a particular land use is hazardous, contiguous in nature to the predominant use and fulfills the regulations fixed for the same at the time of coming into force of these regulations.

(iii) No yard of plot existing at the time of coming into force of these regulations shall be reduced in dimension of area below the minimum requirement set forth therein. The yard of plots created after the effective date of these requirements shall meet at latest minimum requirements established by these regulations. All the plots registered prior to coming into regulations shall be treated as plots irrespective of their size to the condition that 3.00 meter wide path is available at site and at site and if it is lesser in width then the owner should surrender the remaining area from his plot to make the path 3.00 meter wide.

(iv) Area under public/Semi-Public use and parks and open spaces shall not be built upon in any way or use etc. for any purpose other parks, playgrounds and recreations. These may, however, with the prior permission of the Director be permitted temporarily for a period not exceeding 30 days to be used for public entertainment purpose and shall be removed at the end of the period and shall in no case be permanently erected.

(v) The height limitations of these regulations shall not apply to all kind of religious buildings e.g. Temples, Mosque, Guruduwara and Churches etc. provided it is so designed and approved by the Director. The chimneys, elevators, poles, tanks and other projections not used for human occupancy may extend above the prescribed height limit. The cornices and window sills may be also project into any required yard.

(vi) In the public interest and in the interest of the town design or any other material consideration the Committee constituted under the Chairmanship of

Deputy Commissioner Chamba, may permit change of landuse on specific ground(s) and may relax minimum size/area of the plot, plot coverage, setbacks, number of storeys and floor area ratio (F.A.R.) etc. in Restricted as well as other area. The decision of the said Committee shall be final.

(vii) Natural Nallah which passes through the land involving division shall be developed and maintained according to the discharge of water.

(viii) Where it is essential to develop a plot by cutting it shall be responsibility of the plot owner to provide according to the engineering specifications, retaining the breast walls so that such cutting of natural profile of land may not harm the adjoining uphill side properties. However, cutting of natural profile shall not exceed more than one storey (3.50) meters in any case having a provision of diaphragm wall for step housing.

(ix) Development proposal for a part of land or khasra number shall be not considered and proposal for complete land holding shall be submitted even if planning permission is required for a part of the land holding. For rest of the land, if not proposed to be acquired by any authority for any development purpose, the owner have to submit an undertaking in this behalf that the rest of the land shall not be sub divided and shall not be developed upto the plan period of the development plan.

(x) No wall fence and hedge along any yard or plot shall exceed 1.50 meter in height.

(xi) On corner plot bounded by vehicular road in any landuse zone, nothing shall be erected, placed, planted or allowed to grow in such a manner so as to materially impede vision to avoid accidents and for smooth running of vehicular traffic.

(xii) No planning permission for development shall be granted unless the road/path on which land/plot abut its properly demarked and developed.

(xiii) In case of existing area the front and rear setbacks need not to be left and existing building line

can be maintained, provided further that the existing building are approved by the local body.

(xiv) In case of plot or land abutting existing road/path width of the same shall be increased to make requirements of the development plan by getting additional stripes of land surrendered by the land owner(s) on either side of the road/path equitably or in accordance with topography of land and feasibility. Right of ownership or use of land which is earmarked for path/road shall be surrendered or transferred to the Development Authority or local body by owner(s) of plot(s) without any compensation for maintenance purpose. The registering authority shall have binding with this provision to effect all registrations as per approved lay-outs from the Director, Town and Country Planning or through authorized officers. Registering authority shall effect transfer of mutations of surrounded lands for public roads, path and facilities in favour of Development Authority or local body.

(xv) The construction conforming to the traditional hill architecture with conical roof should be encouraged."

Reasons for setting aside the permission:-

23. It is thus apparent that respondent No.5 had initially applied for permission to construct and develop his plot of land, which fell within the 'Restricted Area,' solely for residential use as permitted under the Development Plan. Subsequently, he apparently had a change of heart and wanted to develop the land commercially, he then applied to build a Hotel and Guest Houses. A Joint Site Inspection conducted on 27.06.2019, noted a green cover of 65 trees on the plot in question, leading the Committee to reject the Change of Land Use (CLU) application.

24. In the appeal, the order dated 03.01.2020 (**Annexure P-6**) was apparently set aside by the Appellate Authority under Section 32 of the 'TCP Act, 1977'. We are of the considered opinion that the said order cannot be classified as a speaking order. The statutory provisions mandate that the Appellate Authority, while deciding an appeal, must apply its mind before exercising its discretionary power to allow a Change of Land Use (CLU) that was *dehors* the Dalhousie Development Plan. The relevant part of the said order dated 03.01.2020 (**Annexure P-6**), and the cursory manner in which the Secretary had exercised his powers, demonstrate that the order cannot be treated as a speaking order, as it reflects a total non-application of mind.

25. Counsel for the petitioner is well-justified in contending that no public interest was involved. Furthermore, no examples were provided to show that commercial activity was going on in the vicinity of the plot, even if it were, the order failed to address whether such activity was permissible, its distance from the plot, and the nature of the construction and whether any such permission had been granted to the examples quoted.

26. The law stands settled regarding the concept of equality enshrined in Article 14 of the Constitution of India: it is a positive concept and cannot be invoked for perpetuating irregularities or

illegalities. No person can claim that because someone else was wrongly allowed to operate or build, they have a right to seek equal treatment on the basis of being similarly situated. Courts cannot issue a mandate directing authorities to commit illegalities or pass wrong orders based on such principles. Reliance can be placed upon the judgment passed by the Apex Court in ***Shanti Sports Club & Another Vs. Union of India and Others* (2009) 15 SCC 705** regarding these principles.

27. Resultantly, the argument that other individuals were using premises for commercial purposes in the Restricted Area would not, as such, grant any right to the appellant, especially keeping in view the fact that his application itself before the concerned authorities was for exercising powers under sub-regulation (vi) of General Regulation 18.1.2 of the 'DPA'.

28. Thus, the widespread exercise of discretionary power in this manner would cause rampant environmental damage if such an order was allowed to stand. It would lead to further consequential damage to the Bakrota area, which, as noted, is a pristine green belt at the top of the Dalhousie peaks, offering a bird's-eye view of the plains below and remaining densely forested heights.

The relevant portion of the impugned order reads as under:-

"6. The appellant has further mentioned that his site falls in the jurisdiction within the

Restricted Area of the Dalhousie Planning Area. The appellant has also submitted some documentary evidence w.r.t. the ongoing commercial activities, especially, Hotels and Guest Houses in vicinity of his project site and falling within the Restricted Area of the Dalhousie Planning Area.

7. The ATP, Chamba has informed that the site/are in question falls under the Restricted Area in which only residential activities are allowed and change of landuse is permissible for residential use only.

After hearing the appellant and the supporting documents supplied to him w.r.t. the existing hotels and guest houses and Home Stay etc., i.e. commercial activity (Tourism Units) going on in the vicinity of his plot and considering the reply submitted by ATP, Chamba and also as per Development Plan Dalhousie Planning Area, sub-regulation (vi) of General Regulation 18.1.2, Chairman, Planning Permission committee can exercise his discretionary powers to allow change of landuse especially for original inhabitants who owned the land prior to the enforcement of Act, considering the fact that Bakrota area has enormous for Tourism Activities.

As per the foregoing discussion, the Chairman Planning Permission Committee-cum-Deputy Commissioner, Chamba is hereby directed to allow the change of landuse from residential to commercial i.e. Hotel and Guest House purpose in favour Shri Prit Pal Singh as the appellant is original inhabitant and has purchased the land prior to the enforcement of the H.P. TCP Act, 1977.

The copy of the order may be circulated to all the concerned."

29. Time and again, it has been held by the Apex Court that even administrative orders must carry reasons. The manner in which

the Secretary had exercised his powers, demonstrates that it was done in a cursory manner and without considering the environmental impact. Resultantly, the appeal was allowed, which would have wide-ranging ramifications on the area that apparently falls within the restricted portions, where no such permission is granted.

30. It is a settled principle that orders have to be speaking and reasoned, and non-speaking orders would not be sustainable. The recording of reasons is meant to serve the wider principle of justice that justice must not only be done, but must also appear to be done in the decision-making process, thereby facilitating the process of judicial review by superior Courts. Reference can be made to the judgment of the Apex Court in ***Kranti Associates Private Limited and Another Vs. Masood Ahmed Khan and Others, (2010) 9 SCC***

496 in this regard, where the principles are laid down as under:

“47. Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wide principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions of these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in *Defence of Judicial Candor*³²).

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See *Ruiz Torija v. Spain*³³ EHRR, at 562 para 29 and *Anya v. University of Oxford*³⁴, wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions."

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

31. In the present case, as has been noticed, the power was exercised under sub-regulation (vi) of General Regulation 18.1.2, which provides that such power can only be exercised where public interest is involved, alongwith the interests of the town designer or any other material consideration. This Court could then determine whether the permission for the Change of Land Use (CLU) was justified. However, in the absence of any such justifiable reasons, and merely on the ground that the supporting documents showed existing Hotels, Guest Houses, and Home-Stays operating in the vicinity of the plot, this extraordinary power was exercised to violate the 'DPA' issued by the State Government. The Secretary to the Government, who itself is the guardian of the green cover, thus violated the mandate of the notification intended to provide

protection to Upper Bakrota and preserve it as a green area.

Therefore, the order cannot stand judicial scrutiny.

32. The report of the Joint Site Inspection Committee, conducted on 27.06.2019 (**Annexure P-17**) would go on to show that the Planning Permission Committee did not recommend the case for approval. The said report reads as under:-

“Joint Site Inspection Report

Sub:- Joint Site Inspection Report in respect of Case Ref.No.02201900957 of Sh. Prit Pal Singh S/o Sh. Daya Pal Singh R/o Mohal Bakrota Dalhousie Distt. Chamba (H.P.).

A joint site inspection held under the Chairmanship of S.D.O(C) Dalhousie on 27.06.2019 in respect of case of above referred applicant for the construction of commercial building as Block 'A' and Block 'B' involving (Change of Landuse) on the land bearing Khasra No.2134 measuring an area of 5594m. The site in question falls in mohal Bakrota which comes under the 'Restricted Area' of Dalhousie Planning Area.

Physical Inspection on spot/Site.

The case file of the applicant placed before the planning permission committee in the presence of the applicant and their private professional and on perusal of the documents and site conditions, it have been observed that the area in question falls in mohalla bakrota which falls under the restricted area as per the development plan of Dalhousie. It has been apprised that as per the regulations under para 18.2.1 for the restricted area, the use permissible is for residential use only. It has also been apprised that earlier the case of the applicant approved for the residential vide ref.no.02201701222. The planning permission

committee observed that no proper demarcation of land was made by the applicant during the site inspection. The site in question is vacant and approx. 65 no. of green trees are standing over the site. The plot is abutting through MC road/path. No electric line is passing over the plot. Otherwise all the basic facilities are available at site.

The planning permission case of the applicant discussed in view of clause 18.2.1 and sub-clause (vi) of para no.18.1.2 of DP Dalhousie i.e. 'In public interest and in the interest of town design or any other material consideration the committee constituted under the Chairmanship of Deputy Commissioner, Chamba may permit Change of Landuse on specific ground(s) and may relax minimum site/area of plot, plot coverage, setback, number of storey and Floor Area Ratio (FAR) etc., in Restricted Area as well as Other Areas. The decision of the above said Committee shall be final.

However, after the detailed discussion regarding implications the planning permission committee does not recommend the case for approval."

33. In such circumstances, we are of the considered opinion that the sacrosanctity of the notification dated 27.12.2004 (**Annexure P-1**) has been blatantly violated. The specified land use could not have been allowed to be altered in the manner in which the Appellate Authority had exercised its powers, especially without providing valid, justifiable reasons. As noticed, the property was previously being constructed only for residential purposes. The covered area has now doubled on account of the fact that it is being used for commercial purposes, and that too, in a restricted area. The

town has been divided into two portions: one which can be urbanized, and another which is not permitted to be urbanized.

34. If such action is permitted, it would amount to violating the observations and orders of the Apex Court passed in ***Special Leave to Appeal (C) No. 19426/2025***, titled as ***M/s Pristine Hotels and Resorts Pvt. Ltd. Vs. State of Himachal Pradesh and another***, decided on 02.07.2025. In the said case, the Apex Court, while noting the blatant growth of construction activities being conducted in Himachal Pradesh, concluded that the situation in the State has gone from bad to worse. This development has led to serious natural calamities over a period of years on account of deforestation and the raising of multi-storeyed buildings. The danger to natural richness is growing as a result of human greed and apathy. Development-related projects are resulting in tree felling and habitat fragmentation. It cannot be denied that a loss of forest will occur, as as many as 67 green trees would necessarily face the axe. Although Mr. Shrawan Dogra, learned Senior Counsel for respondent No. 5, justified the action by arguing that the green belt would be maintained, we cannot accept this contention.

35. The tourism pressure in the restricted area would destroy it; therefore, allowing such development is impermissible. No public interest justified the Change of Land Use (CLU) granted by

the Principal Secretary (Town and Country Planning) through his discretionary powers. Such powers must be exercised judiciously, rather than granted simply upon request for commercial development. Furthermore, the Principal Secretary (Town and Country Planning) could not overlook the regional planning guidelines once the State Government had formally notified the proposed land use, which included designated green belts. There was no evidence of consideration for the town designer's intent or any other material factors. Ultimately, the Committee explicitly concluded that the Change of Land Use (CLU) was impermissible, a decision that remains entirely justified.

Maintainability of the Public Interest Litigation:-

36. The argument that the Public Interest Litigation (PIL) is not maintainable, is entirely without basis. It is a settled principle that it is the bounden duty of this Court to protect the flora and fauna of the State in view of the provisions of Article 51 A (g) under Part IV A of the Constitution of India pertaining to Fundamental Duties. Once it is brought to the Court's notice that a forested/restricted area is under exploitation due to commercial development, especially an area that is totally green and deeply forested, it would be a travesty of justice if this Court were to dismiss the writ petition on the ground of maintainability.

37. Reference can be made to the judgment passed by the Apex Court in ***Guruvayoor Devaswom Managing Committee and Another Vs. C.K. Rajan and Others, (2003) 7 SCC 546***, wherein the issue concerned the management of a temple governed by a statutory enactment while falling back on the judgment in ***Balco Employees' Union (Registered) Vs. Union of India and Others, (2002) 2 SCC 333***, wherein it was established that judicial intervention is necessary to protect the sanctity of democratic institutions when administrative decisions regarding development harm the environment or jeopardize people's rights to natural resources such as air and water. While upholding the High Court's order to acknowledge the extensive task it undertook, which led to the discovery of numerous irregularities in temple management, the Apex Court held that the judiciary must exercise self-restraint subject to just exceptions. Resultantly, while holding that the doors of the Courts have to be kept open, the Caveat was imposed that the Court cannot shut its eyes to ground realities when entertaining a Public Interest Litigation (PIL).

38. In ***Ashok Kumar Pandey Vs. State of West Bengal (2004) 3 SCC 349***, the Apex Court laid down the principles regarding the maintainability as such and the caveat regarding the Personal

Interest Litigation *vis-a-vis* Public Interest Litigation and the fact that the process should not be abused for oblique considerations.

39. In *Bombay Dyeing & Mfg. Co. Limited v. Bombay Environmental Action Group and Others* (2006) 3 SCC 434, the issue concerned the closure of cotton textile mills and its impact on ecological balance. The Apex Court took into consideration the non-viability of these mills along with the environmental interests of common citizens. It held that the Public Interest Litigation (PIL) was maintainable because the petition raised vital questions regarding the right to clean water and air under Article 21 of the Constitution of India, in conjunction with the doctrine of sustainable development. Resultantly, the High Court could not be faulted for entertaining the writ petition as a Public Interest Litigation (PIL).

40. It is an admitted fact, as confirmed in the written statement filed by respondent No.5, that the petitioner has filed this petition specifically for the benefit of the residents of Bakrota, Dalhousie, Himachal Pradesh. Furthermore, respondent No.5 admits that the President, who is a non-Himachali, took a neighbouring property on a 99-year long-term lease from the owner, spanning from 29.06.2006 to 28.06.2105. The allegation is made that he was keen to purchase the property in question, even though he is a resident of Mumbai and Goa. It is thus admitted that the owners of

the adjoining properties would be directly affected by the illegal Change of Land Use (CLU) permission granted by respondent No. 5. This permission cannot be allowed as it violates the Development Plan, which carries statutory force. Permitting this, would open the floodgates to the commercialization of Bakrota, on the ground that permission has already been granted in one case to construct a commercial building in the form of Hotels and Guest Houses which instance has also not been given.

41. In such circumstances, the order dated 03.01.2020 (**Annexure P-6**), passed by the Secretary (Town and Country Planning) at the behest of respondent No.5, suffers from patent illegality and arbitrariness. Resultantly, this Court cannot overlook the exercise of such blatant discretion, which was never within the ambit of the Secretary's powers and devoid of any public interest.

42. The whole case revolves around the private interest of respondent No.5, who seeks to develop the property on a commercial basis. Merely because he owns the land and purchased it way-back in the year 1993 does not grant him a license to utilize the property for purposes other than those permitted under the notification dated 27.12.2004 (**Annexure P-1**).

43. In such circumstances, we are of the considered opinion that the present writ petition is liable to be allowed, and accordingly,

the order dated 03.01.2020 (**Annexure P-6**) is set aside and also all necessary permission granted thereafter including 02.02.2024 (**Annexure P-11**).

44. Needless to say, the permission for residential purposes had already been granted on an earlier occasion on 23.09.2017 and 06.03.2018, and the necessary sanctions for the residential plans were approved. Accordingly, we clarify that the property can be used for residential purposes, which is not a subject matter of challenge.

45. Pending miscellaneous application(s), if any, shall stand disposed of.

(G.S. Sandhawalia)
Chief Justice

(Bipin Chander Negi)
Judge

30th September, 2026
(Munish Thakur)