IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.511 of 2004
Reserved on:19.09.2026
Date of Decision: 16.10.2026
Date of uploading: 16.10.2026

Uma Devi & Ors.

.....Petitioners

Versus

State of Himachal Pradesh & Ors. ... Respondents

Coram:
Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting? [1] Yes.

For the Petitioner: Ms. Devyani Sharma, Senior Advocate with Mr. Shivam Sharma, Advocate.

For the Respondents: Mr. Rajan Kahol, Mr. Vishal Panwar, Additional Advocates General with Mr. Ravi Chauhan & Mr. Anish Banshtu, Deputy Advocates General, for the respondent-State.

Mr. Mukul Sood, Advocate, for respondent No.3.

Mr. Parmod Singh Thakur, Advocate, for the proposed respondents.

Sandeep Sharma, Judge:

Claiming themselves to be owners of land comprised in Khasra No. 367 in Station Ward, Chhota Shimla, H.P., petitioners submitted drawings/building plans for construction of a three-storied hotel building with one parking floor, but since necessary permission

[1] *Whether the reporters of the local papers may be allowed to see the judgment?*

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was not accorded by the respondents, they filed CWP No. 577 of 1996, which was disposed of vide judgment dated 18.04.1996 with a direction to respondents No. 1 and 2 to consider and decide the matter and inform the petitioners within two months and thereafter, respondent No. 3-Municipal Corporation, Shimla, was directed to pass appropriate orders.

2. It is pertinent to mention at this stage that land in question was in a banned area and without there being permission granted by the State Government, no construction was permissible. State Government alone was the competent authority to grant sanction and was vested with powers to grant planning permission and sanction the building plans.

3. After joint site inspection, plan was sanctioned by Town and Country Planning on 24.02.1997 and respondent No. 2 accorded approval on 02.09.1997 under sub-section (91) of Section 31 of the Town and Country Planning Act, 1977. However, respondent No. 3 refused to accord permission vide letter dated 02.06.1998 under Section 245 of the Municipal Corporation Act, 1994, on the ground that petitioners did not have clear title.

4. Petitioners filed CMPMO No. 333 of 1998, laying therein challenge to order dated 02.06.1998 passed by respondent No. 3, and vide order dated 06.08.1998 (Annexure P-C), this Court directed

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respondent No. 3 to consider the case of the petitioners for approval/sanction of construction after hearing them. In the meanwhile, co-sharer of Khasra No. 367, Station Ward, Chhota Shimla, filed Civil Suit No. 137/1 of 1998 in the Court of learned Sub-Judge-II, Shimla, where an ex-parte stay was granted, but the same was subsequently vacated on 09.11.1998 by learned District Judge, Shimla.

5. Petitioners made various representations to the Commissioner, Municipal Corporation, i.e. on 17.12.1998 (Annexure P-E), 09.08.2002 (Annexure P-F), and 18.08.2003 (Annexure P-G), but since no heed was paid to them, petitioners filed Contempt Petition No. 46 of 2003, wherein respondent No. 3 set up a case that it had informed the State of H.P. vide letter dated 06.01.2004 (Annexure P-H) that permission was granted to the petitioners in 1997 for the construction of a hotel consisting of three storeys plus parking in the then banned area by the State Government/TCP, but the sanction could not be finally conveyed to the petitioners as there was a change in land use of the area and it had been declared as green area as well as core area vide notifications dated 07.12.2000 and 11.08.2000.

6. This Court vide order dated 19.12.2003 directed respondent No. 3/Municipal Corporation to comply with the directions

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issued in CMPMO No.333 of 1998, but fact remains that needful was not done by respondent No. 3 and the aforesaid authority, vide order dated 31.03.2004 (Annexure P-I), ordered that case of the petitioners for sanction could not be considered for approval in the absence of necessary permission from the Government, in view of the fact that the land falls in core area/green belt.

7. Respondent No. 2 also informed respondent No. 1 on 07.05.2004 that Town and Country Planning Department was not applying Notification dated 07.12.2000 retrospectively and it would have prospective effect. It is observed in the said communication that no extension was sought by the petitioners and the area in question was now green belt (Annexure P-J).

8. On 08.07.2004, respondent No. 3 passed a detailed order (Annexure P-K), thereby directing the petitioners to clarify "*whether the sanction still had legal sanctity or not?"* and further directed the petitioners to get clarification from the competent authority as to what was the status of the sanction granted in their favour by TCP, i.e. respondent No. 2 and till then, it was not possible for respondent No. 3-Municipal Corporation to deal with the case of the petitioners in view of order dated 07.05.2004. In the afore background, petitioners approached this Court in the instant proceedings, praying therein for the following reliefs:

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"a. That the impugned Annexure-PH, dated 6.1.2004, Annexure-PI, dated 31.3.2004, Annexure-PJ, dated 7.5.2004 and Annexure-PK, dated 8.7.2004 may be quashed and set aside;

b. That the respondents may be directed to accord necessary permissions to the petitioners for raising construction on Khasra No. 367, Station Ward, Chhota Shimla pursuant to Annexure-PB, dated 2.9.1997."

9. Pursuant to notices issued in the instant proceedings, respondents No. 1 and 2 filed reply to the writ petition taking preliminary objections of maintainability and suppression of facts, stating that petitioners had filed an application under Order 1 Rule 10 CPC for impleading respondent No. 2 as a party in Contempt Petition No. 46 of 2003, that petitioners were putting all kinds of pressure tactics for revalidation of planning permission granted in 1997, which was no longer valid after expiry of three years from the date of sanction. It is averred by respondents No. 1 and 2 that as per condition No. 9 of the sanction order, petitioners were required to convey commencement of development of construction. It is further averred by the aforesaid respondents that petitioners did not convey the direction passed by this Court in the writ petition or CMPMO No. 333 of 1998 and the litigation between co-sharers and as such, sanction stood lapsed. It has been averred in the reply that sanction could not be revalidated as the area in question falls within the

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purview of green belt vide Notifications dated 07.12.2000 and 22.08.2002.

10. Respondent No. 3 also filed reply, wherein it made a preliminary submission that it had not rejected the case of the petitioners, but had called upon them to clarify "whether sanction still legally exists or not?"

11. During pendency of the writ petition, CMP No. 1507 of 2004 under Order 1 Rule 10 CPC came to be filed by Smt. Vimla Devi and Sunil Kuthiala, claiming that Khasra No. 367 was originally owned by Sh. Kaudu Ram and after his death, shares were held by his successors, including them, who hold one-third (Uma Devi) and one-sixth (Sunil Kuthiala), claiming that they were necessary parties for just adjudication of the matter. The application was contested by the petitioners, stating that applicants were not necessary parties and no prejudice was going to be caused to them because no relief had been claimed against them by the petitioners.

12. It is stated in the reply that applicants had suppressed material fact that they had filed a civil suit for permanent prohibitory injunction in which an application for stay was filed, but the same was dismissed. It is stated by the petitioners that partition deed dated 31.03.1950, registered on 31.07.1950, was executed and parties were put in separate possession of their shares. It is averred that an

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addendum dated 11.03.1971 was executed, wherein predecessor-in-interest of the petitioners and applicant No. 2 agreed for certain mutual exchange of their property already partitioned by virtue of partition deed dated 31.03.1950 and agreed that parties would be owners-in-possession of vacant land according to their shares by metes and bounds adjacent to built-up properties. Petitioners also averred in the reply to the application that they became owners in individual possession of the property previously held by their predecessor. Petitioners also claimed that they were owners of the land involved in the drawings/building plans.

13. Rejoinder was filed by the proposed respondents to the reply, stating that rights of the applicants were going to be seriously prejudiced in case they were not allowed to join the proceedings. It is stated that partition deed dated 31.03.1950 between Kaudoo Ram and his sons pertained to built-up property only and properties not mentioned in the deed remained with Kaudoo Ram, which also included Albergeldie and Bonnie Moon, the subject matter of the writ petition. So far addendum dated 11.03.1971 is concerned, it is averred that same also pertained to exchange of built-up portion only, which was allotted to them in partition deed dated 31.03.1950. Applicants stated in their rejoinder that they were joint owners of Khasra No. 367 (new Khasra No. 887), on which petitioners were

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seeking to raise construction after passing of plan by respondent No. 3 and since applicants were joint owners of the property, they were going to be adversely affected in case they were not added as respondents. It is averred that Kaudoo Ram, predecessor-in-interest of petitioners and applicants, executed a Will dated 03.11.1965 and gave his entire property to his wife Saraswati Devi and then to his three sons: Jagat Ram (husband of applicant Uma Kuthiala), Ram Kishan (predecessor-in-interest of petitioners), and Harnam Dass (father of applicant No. 2). It is averred that petitioners inherited one-third undivided share of their predecessor-in-interest, late Ram Kishan and the entire property remained joint in the hands of the petitioners and the applicants. Applicants have submitted that petitioners failed to show their exclusive possession over the land in question and they have not got the land partitioned.

14. Thereafter, CMP No. 507 of 2006 was filed by the applicants for dismissing their application for impleadment, stating that they did not want to pursue the application, i.e. CMP No. 1507 of 2004 and the same may be dismissed.

15. It is also relevant to take note of orders dated 29.11.2007, 28.03.2008 and 13.08.2008 passed by this Court during pendency of the present petition. Order dated 29.11.2007 reveals that this Court was informed by Director, TCP that after granting

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permission in 1997, the powers of Director, TCP had vested with Commissioner, Municipal Corporation, Shimla, and were being exercised by him. In the afore background, this Court directed learned counsel for the State and MC Shimla to have instructions from the Commissioner as to why extension was not granted to the petitioners despite communications dated 17.12.1998 (Annexure P-E) and 09.08.2002 (Annexure P-F).

16. Vide order dated 28.03.2008, this Court directed learned counsels for the respective parties to sit together along with Director, TCP and Commissioner, Municipal Corporation, Shimla, to ascertain the factual position. The meeting was ordered to be held in the office of learned Additional Advocate General.

17. In compliance to afore order as well as order dated 13.08.2008, Mr. P.K. Sharma submitted his report (available at page No. 164 of the paper book), wherein it came to be concluded that since MC Shimla had not rejected the case of the petitioner, sanction granted by respondent No. 2 on 24.09.1997 would be deemed to continue because after 1997, the powers of the TCP Department were being exercised by Commissioner, MC Shimla. The permission granted by the State Government never lapses and since the plans were complete in all respects as on 15.09.1998, therefore, the MC Shimla should be directed to sanction the same, as there was no

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objection from any authority whatsoever with respect to these plans. In the aforesaid background, question, which needs to be determined in the case at hand, is *"whether permission granted under Section 31 of the H.P. TCP Act, 1977 lapses with the efflux of time?"* Admittedly, there is no provision in the Act which provides for lapsing of the permission.

18. Section 251 of the H.P. Municipal Corporation Act stood deleted by way of the H.P. Municipal Corporation Amendment Act, 2007 and Section 34 of the TCP Act has been amended by the H.P. TCP Amendment Act, 2022, and same now provides that every permission granted under Sections 31, 32 or 33 shall remain in force in perpetuity from the date of grant.

19. At this stage, it would be apt to take note of the judgment passed by this Court in ***Ghanshyam Mishra versus Municipal Corporation, Shimla*****, 2024 (1) SimLC 203 / 2024 (1) Latest HLJ (HP) 191, wherein it came to be ruled that by virtue of these amendments, statutory provisions have to be construed to be as such from the very inception of these Acts, meaning thereby, it has to be assumed that Section 251 was never there in the H.P. Municipal Corporation Act, 1994 and Section 34, as it stood amended, was always there from the very inception of the H.P. TCP Act, 1977. Relevant para of the aforesaid judgment is extracted hereinbelow:-

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> *"11. Once the Legislature in its wisdom, by virtue of the amendments carried out in the year 2007 and 2022, respectively, deleted [Section 251] of the Municipal Corporation Act, 1994 and amended [Section 34] of the Himachal Pradesh Town and Country Planning Act, 1977, the statutory provisions have to be construed to be as such from the very inception of the Act. Meaning thereby that it has to be assumed that [Section 251] was never there in the Himachal Pradesh Municipal Corporation Act, 1994 and [Section 34], as it stood amended, was always there from the very inception of the Himachal Pradesh Town and Country Planning Act, 1977 in the said form."*

20. True it is that as per Town and Country Planning Amendment Act, 2022, every permission granted under Sections 31, 32, or 33 of the Town and Country Planning Act shall remain in force in perpetuity from the date of grant, but careful perusal of order dated 02.09.1997 (Annexure PB), whereby application for permission for development on Khasra Nos. 367, 367/1, and 367/3 came to be allowed by Town and Country Planning Department, clearly reveals that permission was subject to certain conditions. One of the conditions imposed in the aforesaid order is that "Building permission shall be obtained from the local authority concerned before the commencement of development, and thereafter building operation shall be carried out strictly in accordance with approved building plan." Admittedly, in terms of the aforesaid order, building permission

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was required to be granted by respondent No.3-Municipal Corporation, Shimla. Respondent No. 3-Municipal Corporation, Shimla, never granted such permission. Vide letter dated 02.06.1998, respondent No. 3 refused to accord permission under Section 245 of the Municipal Corporation Act, 1994 on the ground that petitioners did not have clear title. It is admitted case *inter se* parties that land comprised in Khasra Nos. 367, 367/1, and 367/3 is still joint among various co-owners and partition proceedings are pending in the competent court of law.

21. Though it came to be vehemently argued at the behest of the petitioners that they are in exclusive possession of Khasra No. 367 and the same is adjacent to their house, which also stands constructed on joint land pursuant to a family partition arrived *inter se* parties, but sanction granted by Town and Country Planning Department vide order dated 02.09.1997 under sub-section (1) of Section 31 of the HP Town and Country Planning Act pertains to land comprised in Khasra Nos. 367, 367/1, and 367/3. Even if this Court agrees with the submission made by the petitioners that question of title of the land is not involved in the case at hand and factum of pendency of partition proceedings in the competent court is of no consequence, this Court is persuaded to agree with learned Additional Advocate General representing the respondent-State that

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till the time building permission is not obtained by the petitioners from the local authority, i.e. respondent No. 3, sanction, if any, granted by Town and Country Planning Department vide order dated 02.09.1997 may not be of much relevance. As per sanction order dated 02.09.1997 issued by the Town and Country Planning Department, building permission was necessarily required to be granted by respondent No. 3, which in the case at hand has not been granted.

22. True it is that vide order dated 19.12.2003, directions came to be issued to respondent No. 3 to comply with directions issued in CMPMO No. 333 of 1998, but needful was not done by respondent No. 3, rather aforesaid authority vide order dated 31.03.2004 ordered that the case of the petitioners could not be considered for approval in the absence of necessary permission from the Government in view of the fact that land falls in the core area/green belt.

23. At this juncture, it is apt to take note of the fact that vide Notifications dated 07.12.2000 and 11.08.2000, certain areas of Shimla came to be declared as green belt/core area. Pursuant to the aforesaid notifications, land of the petitioners, which was earlier in the banned area, also came to be included in the green belt/core area. Though it came to be vehemently argued at the behest of the petitioners that Notifications dated 07.12.2000 and 11.08.2000 may

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not have much bearing on the case of the petitioners, for the reason that sanction to raise construction in the banned area stood granted by Town and Country Planning Department pursuant to approval from the Government of Himachal Pradesh vide order dated 02.09.1997, but this Court is not impressed with the aforesaid submission raised at the behest of the petitioners for the reason that sanction granted vide order dated 02.09.1997 was subject to certain conditions. After grant of aforesaid sanction, building permission was to be granted by the local authority i.e. respondent No. 3, before commencement of development. Since aforesaid permission never came to be accorded by respondent No. 3, petitioners cannot be permitted to claim that with the grant of permission/sanction vide order dated 02.09.1997, right had accrued in their favour.

24. True it is that before according sanction to construct in the banned area, joint inspection of the site was done by Secretary, TCP, who after having found that no tree was coming in the proposed site of construction, recommended the case for sanction of plan and thereafter Government of Himachal Pradesh proceeded to approve the case of the petitioners, but since, pursuant to the aforesaid sanction, no construction at the site could be carried out by the petitioners on account of non-grant of building permission by respondent No. 3, which was otherwise mandatory in terms of order

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dated 02.09.1997 and in the meantime, area, where construction was proposed, came to be declared as green belt/core area in terms of Notifications dated 07.12.2000 and 11.08.2000, petitioners cannot be permitted to take advantage, if any, of order dated 02.09.1997, which otherwise has lost its relevance, for the reason that permission to raise building on the land in question was never granted by the Municipal Corporation.

25. No doubt, Section 34 of Himachal Pradesh Town and Country Planning (Amendment) Act, 2022 provides that every permission granted under Sections 31, 32 or 33 shall remain in force in perpetuity from the date of its grant. However, the proviso to the said Section specifically empowers the Director to revalidate or revise such permission on an application made for that purpose. Thus, the provision regarding the continuation of permission in perpetuity has to be read along with the proviso thereto, which contemplates revalidation or revision of the permission, wherever required, in accordance with law. In the present case, no such permission for revalidation or revision of permission was made by the petitioners after subsequent amendments of Section 34. Relevant para of aforesaid provision of law reads as under:

> *"34. Lapse of permission.--Every permission granted under section 31 or section 32 or section 33 shall remain in force for perpetuity from the date of such grant:*

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Provided that the Director may, on an application, revalidate or revise the permission issued under this Act."

26. In the order of sanction dated 02.09.1997 passed in favour of the petitioners by the State, specific condition was imposed that before undertaking development activities by way of erection of a building, petitioners would take requisite sanction from the Municipal Corporation. Himachal Pradesh Town and Country Planning Act, 1977 and the Himachal Pradesh Municipal Corporation Act, 1994, though operate in different fields, but yet are complementary and supplementary to each other. Even if the Government had not imposed any condition regarding the grant of building permission by the Municipal Corporation while issuing communication dated 02.09.1997, the provisions of the Municipal Corporation Act would nevertheless apply, as the land on which construction is proposed falls within the limits of the Municipal Corporation, Shimla.

27. Ms. Devyani Sharma, learned Senior Counsel representing the petitioners, vehemently argued that with the passing of order dated 02.09.1997 issued by Town and Country Planning Department, right accrued in favour of the petitioners which cannot be taken away on account of promulgation of Notifications dated 07.12.2000 and 11.08.2000, but this Court is not persuaded to agree with the aforesaid submission of the learned Senior Counsel. Since

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enforcement of the aforesaid order dated 02.09.1997 was subject to certain conditions mentioned in the sanction order, no right can be said to have been vested in the persons concerned. If the State Government, in the exercise of its rule-making power, amends the relevant provisions and imposes restrictions, such vested right or settled expectation becomes nullified.

28. Though this Court is of the view that since conditions as contained in sanction letter dated 02.09.1997 never came to be fulfilled, especially with regard to permission, if any, by the Municipal Corporation, no vested right otherwise can be said to have vested in the petitioners on account of sanction granted in their favour by Town and Country Planning vide order dated 02.09.1997, but even otherwise, once area in question has been declared to be green belt/core area, coupled with the fact that no permission has been granted to the petitioners to raise construction in the green belt/core area, sanction, if any, granted by Town and Country Planning Department vide order dated 02.09.1997 to raise construction in the banned area that too subject to further building permission granted by the Municipal Corporation, may not be a ground for the petitioners to permit them to raise construction in the green area pursuant to order dated 02.09.1997 issued by TCP. Aforesaid Notifications dated 07.12.2000 and 11.08.2000 can be said to have been issued in the

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public interest, and by now, it is well-settled that public interest must override private interest.

29. In similar facts and circumstances, the Hon'ble Apex Court in the case titled ***Commissioner of Municipal Corporation Shimla v. Prem Lata Sood and others***, (2007) 11 Supreme Court Cases 40, held that a settled expectation or so-called vested right cannot be countenanced against public interest and convenience which are sought to be served by amendment. In the aforesaid judgment, respondents No. 1 to 5 were granted planning permission by the Government of Himachal Pradesh vide order dated 16.01.1998 for their intended construction of a hotel on Mall Road, Shimla, but such permission was subject to the condition that building permission would be obtained from the local authority concerned before commencement of the development plan. An application for sanction of the building plan in terms of the provisions of the Himachal Pradesh Municipal Corporation Act, 1994 and building bye-laws framed thereunder was submitted by the respondent, but Municipal Corporation returned the said plans asking for certain clarifications in terms of Section 246 of the 1994 Act. The respondents resubmitted the plans upon purported compliance with objections raised at the behest of the Municipal Corporation. However, immediately thereafter, a purported temporary freeze on construction activities in some areas

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appertaining to Shimla planning area was issued by the Government of Himachal Pradesh. Before the Municipal Corporation could consider the respondents' application for grant of sanction of the said development plan, a notification was issued by the State of Himachal Pradesh purported to be in terms of sub-sections (4) and (5) of Section 17 of the 1977 Act making further amendments in the interim development plans, which was published in the Gazette on 31.03.1997. Another notification was issued by the State of Himachal Pradesh making amendments in regulations relating to the core area. In view of the aforesaid amendments in the regulation relating to core area and heritage zone within which the respondents had filed their application for grant of sanction of building plans, no order could be passed by the Municipal Corporation, as a result thereof, application for sanction of the building plan was ultimately rejected by the Corporation. Hon’ble Division Bench of this Court held that purported declaration in relation to the core area and heritage zone would not apply in the case of the writ petitioner in view of the fact that building plans submitted by them before the enactment in terms of the provisions of the 1977 Act had already been allowed and the same had conferred a vested right in them. However, Hon'ble Apex Court did not agree with the aforesaid finding returned by the Hon’ble Division Bench and held as under:

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“13. Section 243 of the 1994 Act provides that every person who intends to erect a building shall apply for sanction by giving notice in writing of his intention to the Commissioner in such form and containing such information as may be prescribed by the bye-laws made in that behalf. Despite the fact that the 1977 Act provides for filing of an application for a development plan, when an interim development plan has been made, the 1994 Act also provides for sanction of a building plan, if a person intends to execute any of the works specified under Section 244 of the 1994 Act. The said provision lays down that every person who intends to execute any of the works specified therein shall apply for sanction by giving notice in writing of his intention to the Commissioner in such form and containing such information as may be prescribed by the bye-laws made in that behalf. Section 245 of the 1994 Act provides for issuance of a notice wherein the purpose for which it was intended to use the building is required to be specified in the following terms:

> *"245.(1) A person giving the notice required by section 243 shall specify the purpose for which it is intended to use the building to which such notice relates and a person giving the notice required by section 244 shall specify whether the purpose for which the building is being used is proposed or likely to be changed by the execution of the proposed work.*
>
> *(2) No notice shall be valid until the information required under sub-section (1) and any further information and plans which may be required by bye-laws made in this behalf have been furnished to the satisfaction of the Commissioner along with the notice."*

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14. Section 246 which provides for the power of the Commissioner to grant or refuse to grant such sanction, which is relevant for our purpose, reads as under:

"246(1).- The Commissioner shall sanction the erection of a building or the execution of a work unless such building or work would contravene any of the provisions of sub-section (2) of this section or the provisions of section 250.

(2) The grounds on which the sanction of a building or work may be refused shall be the following, namely :-

(a) that the building or work, or the use of the site for the building or work or any of the particulars comprised in the site plan, ground plan, elevation, section or specification would contravene the provisions of any bye-law made in this behalf or of any other law or rule, bye-law or order made under such other law;

(b) that notice for sanction does not contain the particulars or is not prepared in the manner required under the bye-laws made thereunder has or have not been duly furnished;

(c) that any information or documents required by the Commissioner under this Act or any bye-laws made thereunder has or have not been duly furnished;

(d) that in cases falling under section 222 lay out plans have not been sanctioned in accordance with section 223;

(e) that the building or work would be an encroachment on Government land or land vested in the Corporation;

(f) that the site of the building or work does not abut on a street or projected street and that there is no access to such building or work from any such street by a passage or pathway appertaining to such site;

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(g) that the building or work would be in contravention of any scheme sanctioned under section 260; and

(h) that a building for habitation, does not provide for a flush or a water seal latrine.

(3) The Commissioner shall communicate the sanction to the person who has given the notice; and where he refuses sanction on any of the grounds specified in sub-section (2) of this section or under section 250 he shall record a brief statement of his reasons for such refusal and communicate the refusal alongwith the reasons therefor to the person who has given the notice.

(4) The sanction or refusal as aforesaid shall be communicated in such manner as may be specified in the bye-laws made in this behalf."

29. In our opinion, the 1977 Act and the 1994 Act operate in different fields and they are complementary and supplementary to each other. The provisions of both the Acts can be worked out. There is no conflict between the two Acts. The 1977 Act deals with laying down the broad policy. It provides for preparation of development plans including the internal development plans. Indisputably, such development plans when made would be binding upon the local authority. It may, however, be not correct to contend that despite the fact that the operation of the Acts cover two different fields, namely, the 1977 Act deals with laying down the overall policy matter and the 1994 Act deals with the grant of building plans in terms of the provisions thereof by the Commissioner of the Municipal Corporation; only because sanction for development in the Mall area of the town of Shimla was granted by the State in terms of the 1977 Act, the same would mean that the same was binding upon the Municipal Corporation or that the

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provisions of the 1994 Act or the building bye-laws were not required to be complied with at all.

30. We have noticed hereinbefore that even in the order of sanction passed in favour of the respondents by the State, a condition was imposed that before undertaking the development activities by way of erection of the building, the respondents would take the requisite sanction from the Municipal Corporation. Even if such a condition had not been imposed, the provisions of the [Municipal Corporation Act], as noticed hereinbefore, would operate.

34. The building plans for which sanction was prayed for by the respondents, as noticed hereinbefore, had been attended to. The purported defects were removed, as noticed hereinbefore only on 10.04.2000. Even according to the appellant-Corporation all the defects were not removed which had been pointed out by the appellant-Corporation in terms of its letter dated 06.06.2000. In any event, as noticed hereinbefore, the State of Himachal Pradesh imposed a temporary freeze on the development activities in the Mall area by an order dated 17.04.2000. The said order was also binding upon the appellant-Corporation and no permission could have been granted in favour of the respondents in violation thereof. It is true, as has been contended by Mr. Ganguli, that the said purported temporary freeze on the construction activities imposed in terms of the notification dated 17.04.2000 came to be clarified by the State on or about 25.07.2000. But by reason thereof, the State could not have directed the Municipal Corporation to grant sanction, as a statutory authority must be permitted to perform its statutory functions in respect whereof even any higher authority cannot issue any direction. [See [Commissioner of Police, Bombay v. Gordhandas Bhanji] [AIR 1952 SC 16] and [Mohinder Singh

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Gill and Another v. The Chief Election Commissioner, New Delhi and Others] [AIR 1978 SC 851] and R.S. Garg v. State of Uttar Pradesh and Others [(2006) 6 SCC 430].

49. In [T. Vijayalakshmi and Others v. Town Planning Member and Another] (2006) 8 SCC 502], although exercise of jurisdiction by a statutory authority within a reasonable time has been emphasized, but there again the applicability of existing law has been emphasized referring to [Ganges Rope Co. Ltd.] (supra) and Ho Po Sang (supra). The said decision was rendered having regard to the fact that only a proposal of amendment was made, and no amendment as such had come into effect. A right of a citizen under a statute, therefore, could not have been taken away only because a proposal was in the offing. In that case, the State had not given its final approval having regard to the development of the plan. The said decision, therefore, cannot be said to have any application in the instant case."

30. In the aforesaid case, Hon'ble Apex Court held that though in the order of sanction passed in favour of the respondent by the State, a condition was imposed that before undertaking development activities by way of erection of the building, respondent would take requisite sanction from the Municipal Corporation, but even if such condition had not been imposed, provisions of the Municipal Corporation Act would operate.

31. Reliance is also placed upon judgment passed by Hon'ble Apex Court in ***Howrah Municipal Corporation and others***

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Vs. Ganges Rope Co. Ltd. and others, (2004) 1 Supreme Court Cases 663. Relevant paras of the afore judgment are extracted hereinbelow:-

> *"**37.** The argument advanced on the basis of so-called creation of vested right for obtaining sanction on the basis of the Building Rules (unamended) as they were on the date of submission of the application and the order of the High Court fixing a period for decision of the same, is misconceived. The word "vest" is normally used where an immediate fixed right in present or future enjoyment in respect of a property is created. With the long usage the said word "vest" has also acquired a meaning as "an absolute or indefeasible right" [see K.J. Aiyer's Judicial Dictionary (A Complete Law Lexicon), 13th Edn.]. The context in which the respondent Company claims a vested right for sanction and which has been accepted by the Division Bench of the High Court, is not a right in relation to "ownership or possession of any property" for which the expression "vest" is generally used. What we can understand from the claim of a "vested right" set up by the respondent Company is that on the basis of the Building Rules, as applicable to their case on the date of making an application for sanction and the fixed period allotted by the Court for its consideration, it had a "legitimate" or "settled expectation" to obtain the sanction. In our considered opinion, such "settled expectation", if any, did not create any vested right to obtain sanction. True it is, that the respondent Company which can have no control over the manner of processing of application for sanction by the Corporation cannot be blamed for delay but during pendency of its application for sanction, if the State Government, in exercise of its rule-making power, amended*

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the Building Rules and imposed restrictions on the heights of buildings on G.T. Road and other wards, such "settled expectation" has been rendered impossible of fulfilment due to change in law. The claim based on the alleged "vested right" or "settled expectation" cannot be set up against statutory provisions which were brought into force by the State Government by amending the Building Rules and not by the Corporation against whom such "vested right" or "settled expectation" is being sought to be enforced. The "vested right" or "settled expectation" has been nullified not only by the Corporation but also by the State by amending the Building Rules. Besides this, such a "settled expectation" or the so-called "vested right" cannot be countenanced against public interest and convenience which are sought to be served by amendment of the Building Rules and the resolution of the Corporation issued thereupon.

38. *In the matter of sanction of buildings for construction and restricting their height, the paramount consideration is public interest and convenience and not the interest of a particular person or a party. The sanction now directed to be granted by the High Court for construction of additional floors in favour of the respondent is clearly in violation of the amended Building Rules and the resolution of the Corporation which restrict heights of buildings on G.T. Road. This Court in its discretionary jurisdiction under Article 136 of the Constitution cannot support the impugned order of the High Court of making an exception in favour of the respondent Company by issuing directions for grant of sanction for construction of building with height in violation of the amended Building Rules and the resolution of the Corporation passed consequent thereupon.*

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32. In the aforesaid case, Hon'ble Apex Court held the applicant may have a legitimate or settled expectation that the application would be considered under the existing Rules. However, such expectation cannot prevail against a subsequent amendment of the statutory Building Rules. If the Rules are amended while the application is pending, the applicant is bound by the amended Rules.

33. Similarly, in the case at hand, though sanction granted vide order dated 02.09.1997 by Town and Country Planning Department was subject to further permission by the Municipal Corporation, which never came to be granted, but even otherwise, area, within which construction is proposed by the petitioners, came to be declared as green belt/core area vide Notifications dated 07.12.2000 and 11.08.2000. Since prior to issuance of notifications detailed hereinabove, no building permission, if any, in terms of the condition contained in order dated 02.09.1997 stood granted by the Municipal Corporation, permission granted vide order dated 02.09.1997 by TCP (Annexure PB) can be said to have lost its relevance, rather in the changed circumstances, petitioners herein are required to make a fresh application, if permissible, to raise construction in the green/core area to the competent authority.

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34. Consequently, in view of the above, this Court finds no merit in the present petition and accordingly, the same is dismissed being devoid of merit.

Petition stands disposed of in the aforesaid terms along with pending application(s), if any.

(Sandeep Sharma),
Judge

October 16, 2026
(Sunil)

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