



**CWPIL No. 269 of 2017**  
**a/w CWP No. 153 of 2018**

05.01.2019 Present: **CWPIL No. 269 of 2017**  
Ms. Jyotsna Rewal Dua, Senior Advocate, as Amicus Curiae, with Ms. Charu Bhatnagar, Advocate.

Mr. Ashok Sharma, Advocate General, with M/s. Ritta Goswami, Adarsh Sharma and Nand Lal Thakur, Additional Advocate Generals, for respondents No. 1 to 4, 9 and 11, 13, 15.

Mr. Tara Singh Chauhan, Advocate, for respondent No. 5.

Mr. Rahul Mahajan, Advocate, for respondent No. 7.

Mr. Vikrant Thakur, Advocate, for respondent No. 8.

Ms. Kamlesh Kumari, Advocate, vice Mr. Sanjeev Kuthiala, Advocate, for respondent No. 10.

Mr. Devender K. Sharma, Advocate, vice Mr. C.N. Singh, Advocate, for respondent No. 12.

Mr. Naresh K. Gupta, Advocate, for respondent No. 17.

Mr. K.B. Khajuria, Advocate, for respondent No. 19.

**CWP No. 153 of 2018**  
None for the petitioner.

Mr. Ashok Sharma, Advocate General, with M/s. Ritta Goswami, Adarsh Sharma and Nand Lal Thakur, Additional Advocate Generals, for respondents No. 1 to 4, 7 and 10.

Mr. Adarsh K. Vashisth, Advocate, for respondent No. 5.

Mr. Tara Singh Chauhan, Advocate, for respondent No. 8.

Mr. Ajay Chandel, Advocate, for respondent No. 9.



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In purported compliance of the order dated 28<sup>th</sup> November, 2018, a fresh status report has been filed on behalf of Principal Secretary (UD) to the Government of Himachal Pradesh, dated 4<sup>th</sup> January, 2019, which is taken on record.

2. We must express our anguish at the outset that except Baddi where the developer has been selected and the Project work has been awarded on 19<sup>th</sup> November, 2018, no effective steps have been taken by the State Government to develop the Dumping Sites in other Clusters.

3. It is revealed that for Mandi Cluster, no bid was received till the last date which has now been further extended to 15<sup>th</sup> January, 2019. The lukewarm response ought to have been taken as a cause of concern to revisit the terms and conditions and to see that is there any condition which has made the Project unviable. Since the extended date is yet to expire, we direct that in case no bid is received, the Authorities will re-examine the terms and conditions and issue a fresh Tender Notice.

4. With regard to Chamba and Ghumarwin



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Clusters, it is claimed that No Objection Certificates (hereinafter referred to as 'NOC') have not been granted by the Forest Rights Committees (hereinafter referred to as 'FRC').

5. On a query, we are informed that the Dumping Sites though falls in the Forest Area but it will not involve any felling of trees. It thus appears to be a case of lack of persuasion by the District Administration as members of FRCs must be made to understand that the residents of those areas too are responsible for the waste which is to be dumped/treated at the identified sites.

6. We have not been shown any provision whereunder the permission of the FRCs is required. In the event of further reluctance shown by the Pradhans of these FRCs, it shall be the responsibility of the Deputy Commissioner concerned to bring these Pradhans in Court on the next date of hearing.

7. As regard to Kullu Cluster, Deputy Commissioner, Kullu has filed a separate status report dated 3<sup>rd</sup> January, 2019. He has appended an order of National Green Tribunal (hereinafter referred to as 'NGT')



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dated 19<sup>th</sup> June, 2017 (Annexure R-I) whereby NGT had directed that no garbage be dumped at Pridi adjoining Johar Village particularly on the river bank. The Tribunal had further directed that “within two weeks from today a site will be identified by the Deputy Commissioner where the municipal solid waste should be dumped for its proper management and handling and in fact it should be strictly in accordance with Solid Municipal Waste Management Rule, 2016” (hereinafter referred to as '2016 Rules'). The aforesaid order of the Tribunal has been eventually upheld by the Hon'ble Supreme Court on 13<sup>th</sup> December, 2018.

8. It may be seen that the Deputy Commissioner, Kullu is under a command and obligation to identify another site in conformity with the 2016 Rules. Though the affidavit claims that some other sites were identified and best efforts have been made to persuade the Gram Panchayats to hand over those sites but the Gram Panchayats have refused to give NOCs for diversion of these sites. On perusal of these averments, we find that the same are totally vague and evasive.



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9. It goes without saying that where the Gram Panchayats are reluctant to give the land, the State Government must invoke its power of eminent domain and acquire the land on payment of compensation. The non-availability of requisite funds cannot be a valid or justified ground for not developing the Solid Waste Dumping Site.

10. The Deputy Commissioner, Kullu is directed either to persuade the Gram Panchayats to hand over the land and/or refer the case to the State Government for acquisition of land within two weeks. He shall submit a fresh status report in this regard. The Deputy Commissioner, Kullu shall also explain in his status report as to whether the objections being raised by the Pradhans of the Gram Panchayats or Pradhans of the FRCs have any justifiable basis or these are actuated with certain considerations. In the event of latter case, we will be constrained to take action against the said Pradhans.

11. So far as Kangra at Dharamshala Cluster is concerned, it appears that the site has been finalized for setting up SWM facility and MoU has been signed with a private agency for bio-mining of the old dump lying at



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Kangra Dump Site.

12. As regard to Rampur Cluster, it is reported that the Assistant Geologist, Shimla visited the site only on 1<sup>st</sup> January, 2019 and his report is still awaited. It shall be explained in the next report as to why the Assistant Geologist took so much time in visiting the site and if the fault lies on that Officer, his name be disclosed so that exemplary costs to be personally recoverable from him, can be imposed.

13. Similarly, regarding Rohroo Cluster, it is claimed that NOCs from the FRCs as well as non-availability certificate from Deputy Commissioner Shimla are awaited.

14. As explained above, unless it is mandatorily required under the Law, the NOCs from the FRCs shall be deemed to have been exempted. Likewise, if it is found that the Pradhans of the FRCs are not granting NOCs for extraneous reasons, their names and full description be disclosed so that they can be removed from the Office by issuing appropriate Show Cause Notices.

15. As regard to the responsibility of Deputy



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Commissioner, Shimla, he will do the needful within one week and send a compliance report to the Principal Secretary (UD) to the Government of Himachal Pradesh, which shall be appended with the next status report.

16. Para 5 of the status report of the Principal Secretary (UD) to the Government of Himachal Pradesh shows the helplessness of the State Government in the matter of identifying sites for want of NOCs from FRCs constituted under the Forest Rights Act, 2006. Let the State Government re-visit the whole issue in this regard, for each such Committee has to be explained that the residents of their areas too are responsible for accumulation of solid waste which is required to be dumped in a scientific manner and in accordance with 2016 Rules. If the reluctance shown by them is ignorance of the proper facts, the Authorities will carry out the necessary counselling. However, if such refusal, as observed above, is based upon reasons other than merits, let the matter be reported to this Court for taking suitable action against the defaulters.



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17. Post the matter for hearing on **26<sup>th</sup> March,**  
**2019.**

**(Surya Kant)**  
**Chief Justice**

**(Ajay Mohan Goel)**  
**Judge**

**January 05, 2019**  
*(rajni)*