

Court on its own motion Vs. State of HP & others

CWPIL No. 2 of 2022

14.7.2022 Present: Mr. B.C. Negi, Senior Advocate as Amicus Curiae with Mr. Nitin Thakur, Advocate, for the petitioner.

Petitioner No. 2 through video conferencing.

Mr. Ashok Sharma, A.G. with Mr. Yudhvir Singh Thakur, Dy. A.G., for the respondents-State.

Mr. Ajay Sharma, Senior Advocate with Mr. Atharv Sharma, Advocate, for respondent No. 4.

CMP No. 9133 of 2022

Since the Himachal Pradesh Tourism Development Board, through its Ex. Officio Member Secretary (Director Tourism, Government of Himachal Pradesh, Shimla is a necessary party, therefore, it is impleaded as party respondent No. 5. The Registry is directed to carry out necessary corrections in the memo of parties. The application stands disposed of.

CMP No. 9362 of 2022

2. The applicant/respondent No. 4 has filed this application for restraining the respondent No. 5 from carrying out any construction above first floor on the parking as the same will be not only dangerous but fatal to paragliders.

3. Upon notice, the respondent-State has placed on record instructions dated 13.7.2022, which reads as under:

“1. That, the Bir Billing, District Kangra is being developed under the flagship program of the State Government i.e. Nai Raahein Nai Manzilein Scheme.

2. That, on the demand of public a multistory parking was desired to be constructed at Bir Billing for the purpose of parking of vehicles and creation of an open space for sitting area for the participants and dignitaries during the award ceremonies of the events which are organized at Bir Billing.

3. That, initially the proposal was received from the Forest Department for the construction of multistory parking near landing site of paragliding at Bir Billing, District Kangra. After thorough deliberations, it was decided that the Himachal Pradesh Tourism Development Corporation Ltd. Will carry out the construction work of the above parking.

4. That, accordingly the Himachal Pradesh Tourism Development Corporation Ltd had submitted the detailed proposal alongwith drawings wherein it was mentioned that a creation of restaurant, toilets alongwith underground parking near landing site will be constructed near landing paragliding site at Bir Billing, Distt. Kangra.

5. That the SADA Baijnath pointed out that the above mentioned construction is in the way of the approach site of the landing site and it will be a grave threat to the security of the riders if the height of under construction structure is raised above the road level and it was requested that the first floors should be removed from the plan to keep the site as safe and secure.

6. That after the consideration of the request of the SADA Baijnath, the basement has been constructed for parking and half of the ground floor will

be constructed for multipurpose i.e. an area of 125.70 sq. Mts, will be used for kitchen, cafe and toilet and rest of the area i.e. 350 Sq. Mts. Will be open space activities like stage for prize distributions, sitting of participants & dignitaries during such ceremonies/events.

7. That, the SADA Baijnath has been requested to accord requisite permission for the construction of the Parking after attending the queries raised by the SADA Baijnath. In the meantime, the construction work of parking has been started which has now been completed and it is below the road level. However, on the laying of slab, on approximately half roof of the parking which is on the other side of land, is underway. Now, the SADA Baijnath has been requested for regularization of construction of parking work.”

4. It is evidently clear from the aforesaid instructions that even though respondent No. 5 had submitted a detailed proposal alongwith drawings, wherein it has proposed to construct the restaurant, toilets alongwith underground parking near landing site, but the SADA Baijnath had clearly pointed out that since the construction is in the way of approach site of the landing site, it will be a grave threat to the security of the riders if the height of under construction structure is raised above the road level. It in fact suggested (requested) that the first floor

should be removed from the plan to keep the site safe and secure.

5. It is after the suggestion and request made by the SADA, Baijnath that respondent No. 5 has decided to construct the parking in basement and proposed to construct half of the ground floor for multipurpose activities like kitchen, cafe and toilet etc.

6. However, the fact of the matter is that the queries and objections raised by the SADA, if attended, have not been removed. Therefore, in such circumstances, the respondents cannot be permitted to violate the law that too impugntiy by going ahead with the construction above the basement level. After all the laws enacted by the state government are equally applicable not only to the State government itself but its agencies including respondent No. 5.

7. Accordingly, in the interim we direct that no construction work beyond the basement shall be carried out by respondent No. 5, till further orders.

(Tarlok Singh Chauhan)
Judge

(Chander Bhusan Barowalia)
Judge

July 14, 2022
(kalpana)