

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA
ON THE 14th DAY OF MARCH, 2022
BEFORE
HON'BLE MS. JUSTICE SABINA
&
HON'BLE MR. JUSTICE SATYEN VAIDYA
CIVIL WRIT PETITION Nos. 7105 of 2021 & 295 of 2022

1. CIVIL WRIT PETITION NO. 5105 OF 2021

Between:-

**STATE OF HIMACHAL PRADESH
THROUGH ITS SECRETARY (GENERAL/
SECRETARIAT ADMINISTRATION
DEPARTMENT) TO THE GOVERNMENT
OF HIMACHAL PRADESH, SHIMLA.**

....PETITIONER

**(BY SH. VINAY KUTHIALA SR. ADVICATE WITH MS.
VANDANA KUTHIALA, ADVOCATE)**

AND

- 1. SH. YOGENDRA MOHAN SENGUPTA,
C/O RANA BASU, NARAYAN BUILDING,
MIDDLE SANGTI, SUMMER HILL,
SHIMLA-171007, HIMACHAL
PRADESH.**
- 2. UNION OF INDIA THROUGH ITS
SECRETARY, MINISTRY OF
ENVIRONMENT AND FOREST
PARYAVARAN BHAWAN, CGO
COMPLEX, LODHI ROAD,
NEW DELHI-110003.**
- 3. PRINCIPAL SECRETARY
(URBAN DEVELOPMENT/
TOWN & COUNTRY PLANNING)
TO THE GOVERNMENT OF
HIMACHAL PRADESH, SHIMLA
171002, H.P.**

4. **SECRETARY (HEALTH) TO THE
GOVERNMENT OF HIMACHAL PRADESH,
SHIMLA-171002, H.P.**
5. **MUNICIPAL CORPORATION,
THROUGH COMMISSIONER,
MUNICIPAL CORPORATION
BUILDING MALL ROAD, THE MALL
SHIMLA-171001.**

....RESPONDENTS

(SH. ABHIMANU RATHORE, ADVOCATE, FOR R-1)

(SH. BAL RAM SHARMA, ASGI, FOR R-2)

**(SH. ASHOK SHARMA ADVOCATE GENERAL WITH SH.
AJAY VAIDYA, SR. ADDITIONAL ADVOCATE GENERAL,
FOR R-3 & 4)**

(SH. NARESH K. GUPTA, ADVOCATE, FOR R-5).

2. CIVIL WRIT PETITION NO. 295 OF 2022

Between:-

**STATE OF HIMACHAL PRADESH
THROUGH ITS SECRETARY (GENERAL/
SECRETARIAT ADMINISTRATION
DEPARTMENT) TO THE GOVERNMENT
OF HIMACHAL PRADESH, SHIMLA.**

....PETITIONER

**(BY SH. VINAY KUTHIALA SR. ADVICATE WITH MS.
VANDANA KUTHIALA, ADVOCATE)**

AND

1. **SH. YOGENDRA MOHAN SENGUPTA,
C/O RANA BASU, NARAYAN BUILDING,
MIDDLE SANGTI, SUMMER HILL,
SHIMLA-171007, HIMACHAL
PRADESH.**
2. **UNION OF INDIA THROUGH ITS
SECRETARY, MINISTRY OF
ENVIRONMENT AND FOREST
PARYAVARAN BHAWAN, CGO**

**COMPLEX, LODHI ROAD,
NEW DELHI-110003.**

- 3. THE SUPERVISORY COMMITTEE
THROUGH ITS CHAIRMAN
PRINCIPAL SECRETARY
(URBAN DEVELOPMENT/
TOWN & COUNTRY PLANNING)
TO THE GOVERNMENT OF
HIMACHAL PRADESH, SHIMLA
171002, H.P.**

....RESPONDENTS

(SH. ABHIMANU RATHORE, ADVOCATE, FOR R-1)

(SH. BAL RAM SHARMA, ASGI, FOR R-2)

**(SH. ASHOK SHARMA ADVOCATE GENERAL WITH SH.
AJAY VAIDYA, SR. ADDITIONAL ADVOCATE GENERAL,
FOR R-3)**

This petition coming on for orders this day, ***Hon'ble***

Ms. Justice Sabina passed the following:

ORDER

Vide this common order, both the above mentioned petitions would be disposed of, as the controversy involved in both these petitions is the same.

2. The State has filed the present writ petitions, challenging the orders passed by the National Green Tribunal, Principal Bench at New Delhi (hereinafter referred as the Tribunal), whereby the miscellaneous applications moved by the petitioner-State were dismissed.

3. So far as CWP No. 7105 of 2021 is concerned, the challenge has been made to the order dated 13.9.2021 (Annexure P-8), whereby the applications bearing MA No. 59 of 2021 and MA No. 60 of 2021 were dismissed. So far as MA No. 59 of 2021 is concerned, the construction alleged to be involved was with regard to installation of lift in existing structure of the building along with remodeling of roof and so far as MA No. 60 of 2021 is concerned, it involves construction with regard to lift and ramp for physically challenged persons in Ellerslie Main Building at H.P. Secretariat, Shimla-2; visitors' waiting hall for Chief Minister Office; extension of car parking at Armsdale Building at H.P. Secretariat, Shimla and multi-storey parking and office accommodation at Armsdale Phase-III, H.P. Secretariat Shimla-2.

4. So far as CWP No. 295 of 2022 is concerned, the petitioner-State has challenged the order dated 31.8.2021, passed in MA Nos. 56, 57 and 58 of 2021, whereby the applications filed by the State for a direction to permit the project of multi-level parking and other commercial activities, including hotel on the railway land (Railway Godown below

Winter Field) at Shimla and for permission to file additional documents, were dismissed.

5. Learned Senior Counsel for the petitioner-State has submitted that the orders passed by the Tribunal are contradictory to its earlier order. The National Green Tribunal has no power to delegate its power to the committees. The Tribunal in some matters had allowed the miscellaneous applications filed by the State and private parties but in the present cases, the miscellaneous applications filed by the State for permission to raise constructions have been rejected by the Tribunal. The orders passed by the Tribunal deserve to be set aside as the Supervisory and High Powered Committee, constituted by the Tribunal had recommended the case of the petitioner-State. Learned Senior Counsel has further submitted that the cause of actions in the present cases are different and the writ petitions before this Court are maintainable.

6. The learned counsel for respondent No.1 has opposed the petitions and has submitted that the writ petitions are not maintainable before this Court in view of Section 22 of the National Green Tribunal Act, 2010.

7. Respondent No.1 Yogendra Mohan Sengupta had approached the Tribunal by filing Original Application No. 121 of 2014. The said application was disposed of by the Tribunal vide order dated 16.9.2017 (Annexure P-1). Admittedly, aggrieved against the said order, petitioner-State has filed an appeal before the Hon'ble Supreme Court under Section 22 of the National Green Tribunal Act, 2010. Thereafter, the petitioner-State moved some miscellaneous applications, seeking permission to raise constructions or other commercial activities. The said applications have been rejected by the Tribunal vide impugned orders dated 13.8.2021 and 13.9.2021. The orders under challenge in the present petitions have arisen out of miscellaneous applications filed in O.A. No. 121 of 2014. Since the appeal against order dated 16.11.2017, passed by the Tribunal in O.A. No. 121 of 2014 is pending consideration before the Hon'ble Supreme Court, we are of the considered opinion that the orders passed by the Tribunal, arising out of miscellaneous applications filed in O.A. No. 121 of 2014 are liable to be challenged before the Hon'ble Supreme Court, so that they can be considered and decided alongwith the appeal, pending before the Hon'ble Supreme Court. It is not

understandable as to why these petitions have been filed before this Court, when the matter is already *sub-judice* before the Hon'ble Supreme Court *vis-à-vis* order dated 16.11.2017, passed in the Original Application. The miscellaneous applications can be said to be an off-shoot of the main case.

8. Hence, without going into the merits of the submissions raised by the learned counsel for the petitioner-State, we deem it appropriate to dismiss both the writ petitions, as being not maintainable.

9. Accordingly, both the petitions are dismissed being not maintainable before this Court.

Pending applications, if any, also stand disposed of.

**(Sabina)
Judge**

14th March, 2022
(kck)

**(Satyen Vaidya)
Judge**