

**BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

ORIGINAL APPLICATION NO. 297 OF 2022

**IN THE MATTER OF:**

Yogendra Mohan Sengupta ..... Petitioner

Versus

Union of India & Ors. ... Respondents

**N.D.O.H – 22-07-2022**

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Place: New Delhi

Dated: 19.07.2022

**BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH AT NEW DELHI**

**ORIGINAL APPLICATION NO. 297 OF 2022**

**IN THE MATTER OF:**

Yogendra Mohan Sengupta ..... Applicant

Vs.

Union of India & others ..... Respondent

**COUNTER AFFIDAVIT ON BEHALF OF THE  
RESPONDENT NO.2 TO 5.**

I, Devesh Kumar, S/o Shri B.D. Gupta, aged about 46 years, presently posted as Principal Secretary (Town & Country Planning) to the Government of, Himachal Pradesh do hereby solemnly affirm and say as under:

1. That I am the Contesting Respondent in the instant Original Application, fully conversant with the facts and circumstances of the case and as such competent to swear this affidavit on behalf of the answering respondents.
2. That the Deponent has read the contents of the Original Application and Deponent is in a position to give para-wise reply to the same. However, before giving para-wise reply, the Replying

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Respondent/ Deponent would make Preliminary Submissions as under: -

(A.) That it is submitted that the present Application is completely devoid of merits and the Applicant has failed to make out any grounds for interference by this Hon'ble Tribunal in its statutory power under the provisions of the National Green Tribunal Act, 2010 read with Rules thereof.

(B.) That so far as the preparation of Development Plan for Shimla Planning area is concerned, the Hon'ble High Court of Himachal Pradesh vide its judgment dated 21.09.2021 in CWP no. 4595 of 2011 titled as "Rajeev Verma vs. State of Himachal Pradesh &ors." has observed as under:-

*"The latest status details regarding development plan for Shimla planning area has been filed on behalf of the Director, Town & Country Planning. It also includes a table with regard to dates on which necessary steps will be taken by the respondents. The same is taken on record.*

2. Since, the entire grievance of the petitioners stands answered by the said affidavit, they do not intend to prosecute these matters further. However, they are at liberty to revive the same in case the same is not given effect to within the reasonable time." The copy of judgment dated 21.09.2021 is hereby annexed as **Annexure R-1** for kind perusal of this Hon'ble Tribunal.

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It becomes pertinent to mention herein that the Hon'ble Apex Court vide its recent judgment 01.06.2022 in Civil Appeal no. (Diary) no. 16486 of 2022 titled as "State of Andhra Pradesh v. Raghu Ramakrishna Raju Kanumuru (M.P) has categorically observed as under:-

*"11. In any case, no law is necessary to state that in so far as the Tribunals are concerned, they would be subordinate to the High Court in so far as the territorial jurisdiction of the High Court is concerned. A reference in this respect was also made to the judgment of Constitution Bench of this Court in the case of L. Chandra Kumar v. Union of India and Others.*

*12. We are, therefore, of the considered view that it was not appropriate on the part of the Learned NGT to have continued with the proceedings before it, specially, when it was pointed that the High Court was also in seisin of the matter and had passed an interim order permitting the construction. The conflicting orders passed by the learned NGT and the High Court would lead to an anomalous situation, where the authorities would be faced with a difficulty as to which order they are required to follow. There can be no manner of doubt that in such a situation, it is the order passed by the constitutional courts, which would be prevailing over the orders passed by the statutory tribunals.*

*13. In that view of the matter, we are of the considered view that the continuation of the*

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*proceedings before the learned NGT for the same cause of action, which is seized with the High Court, would not be in interest of justice."*

Likewise in the present matter, the Hon'ble High Court of H.P. has been seized of the matter regarding preparation of Development Plan since 2011 and has time to time directed the respondent State with necessary directions.

(C.) That the jurisdiction of Tribunals including this Hon'ble Tribunal has been para-material settled by the Hon'ble Apex Court wherein it has been held that that the Constitutional courts have jurisdiction over the Tribunals under Article 226,227 of the Indian constitution. Thereplying respondent State most humbly seeks to place reliance of the following judgments of the Hon'ble Apex Court as under:-

- Writ Petition (Civil) no. 433 of 2012 titled as Madhya Pradesh High Court Advocates Bar Association and Anr. Vs. Union of India &ors." dated 18.05.2022.
- Civil Appeal No. 197 of 2022 Titled as Union of India Versus Alapan Bandyopadhyay dated 06.01.2022
- Civil Appeal No. 3045 of 2020 Titled as TATA Consultancy Services Limited Versus Vishal

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Ghisulal Jain, resolution professional, SK Wheels Pvt Ltd. Dated 23.11.2021.

- Tamil Nadu Pollution Control Board vs. Sterlite Industries (I) Ltd. & others, 2019 (3) SCALE 721, [Judgment dated Feb 18, 2019 in Civil Appeal Nos. 4763-4764 of 2013],
- M/s. Embassy Property Developments Pvt. Ltd. vs. State of Karnataka & others, 2019 (17) SCALE 37 [Judgment dated Dec 3, 2019 in Civil Appeal No. 9170 of 2019]
- Rojer Mathew vs. South Indian Bank Ltd. & others, 2019 (15) SCALE 615 [Judgment dated Nov 13, 2019 in Civil Appeal No. 8588 of 2019],
- Madras Bar Association vs. Union of India & another, (2014) 10 SCC 1,
- Techi Taga Tara versus Rajendra Singh Bhandari & others versus , (2018) 11 SCC 734,
- L. Chandra Kumar vs. Union of India; (1997) 3 SCC 261,

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In view of the aforesaid settled preposition of law, the present Application filed before this Hon'ble Tribunal is non-est in eyes of law and deserves to be dismissed.

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(D.) A bare perusal of the Original Application under reply make it amply evident that the Applicant has miserably failed to set forth any case which

entitles him to any relief whatsoever from this Hon'ble Tribunal. The allegations are extremely vague and the Applicant has failed to substantiate any allegations levelled therein.

(E.) That preparation of Development Plan is a statutory right vested under the HP TCP Act, 1977. The State of Himachal Pradesh has the right to legislate and notify the development plan for any planning area. The state legislature is duly competent to notify the Development Plan. The presumption is in favour of the Act and the Hon'ble Supreme Court in Karnataka Bank Ltd. vs State Of A.P. & Ors [(2008) 2 SCC 254] in para 19 observed as under :-

*"19. The rules that guide the constitutional courts in discharging their solemn duty to declare laws passed by a legislature unconstitutional are well known. There is always a presumption in favour of constitutionality, and a law will not be declared unconstitutional unless the case is so clear as to be free from doubt; 'to doubt the constitutionality of a law is to resolve it in favour of its validity'. Where the validity of a statute is questioned and there are two interpretations, one of which would make the law valid and the other void, the former must be preferred and the validity of law upheld. In pronouncing on the constitutional validity of a statute, the court is not concerned with the wisdom or unwisdom, the justice or injustice of*

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*the law. If that which is passed into law is within the scope of the power conferred on a legislature and violates no restrictions on that power, the law must be upheld whatever a court may think of it."*

The Hon'ble Supreme Court of India in State of Madhya Pradesh vs. Rakesh Kohli and another (2012) 6 SCC 312, while following the law laid down in Govt. of AP vs P Laxmi Devi ( 2008 (4) SCC 720 has laid down the principles for declaring a statutory provision as ultra vires and the same are reproduced hereunder :

*"46. In our opinion, there is one and only one ground for declaring an Act of the legislature (or a provision in the Act) to be invalid, and that is if it clearly violates some provision of the Constitution in so evident a manner as to leave no manner of doubt. This violation can, of course, be in different ways e.g. if a State Legislature makes a law which only Parliament can make under Schedule VII List I, in which case it will violate Article 246(1) of the Constitution, or the law violates some specific provision of the Constitution (other than the directive principles). But before declaring the statute to be unconstitutional, the court must be absolutely sure that there can be no manner of doubt that it violates a provision of the Constitution. If two views are possible, one making the statute constitutional and the other making it unconstitutional, the former view must always be preferred. Also, the court must make every effort to uphold the constitutional validity of*

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a statute, even if that requires giving a strained construction or narrowing down its scope vide *Rt. Rev. Msgr. Mark Netto v. State of Kerala* [(1979) 1 SCC 23], SCC para 6 : AIR para 6. Also, it is none of the concern of the court whether the legislation in its opinion is wise or unwise."

"56. In our opinion adjudication must be done within the system of historically validated restraints and conscious minimisation of the Judges' personal preferences. The court must not invalidate a statute lightly, for, as observed above, invalidation of a statute made by the legislature elected by the people is a grave step. As observed by this Court in *State of Bihar v. Kameshwar Singh* [AIR 1952 SC 252] (AIR p. 274, para 52)

'52. ... The legislature is the best judge of what is good for the community, by whose suffrage it comes into existence....'

57. In our opinion, the court should, therefore, ordinarily defer to the wisdom of the legislature unless it enacts a law about which there can be no manner of doubt about its unconstitutionality."

- (F.) That the question whether the State can notify the Development Plan is related to the Legislative competence of the State to enact building bye laws in reference to Part 7(Concurrent List) of the Indian Constitution, which are statutory provisions existing in the Legislative domain. As per provisions of Section 20 of the H.P. General

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Clauses Act, 1968, whereby power to enact any Himachal Pradesh Act, a power to issue notifications or make orders, rules or by laws is conferred, then that power includes a power exercisable in the like manner and subject to like sanction and conditions, to add to, amend, vary or rescind any notifications, order, rules or bye-laws so issued or made. Thus, the State Government in exercise of power conferred by Section 19 & 20 of the HP TCP Act read with Section 20 of H.P. General Clauses Act, 1968 can amend any provisions of the Development Plan. The power of the Sovereign legislature to legislate within its field cannot be questioned.

**PARAGRAPH-WISE RESPONSE TO  
APPLICANT'S SYNOPSIS AND LIST OF DATES  
AND EVENTS.**

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That without prejudice to the foregoing and with reference to the synopsis and list of dates mentioned in the Original Application, the Deponent reserves his comments on the same to be made at the appropriate stage and time.

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**PARAWISE REPLY TO THE ORIGINAL  
APPLICATION:**

- I. That the contents of this para of the Application are admitted being a matter of record, hence calls for no reply.
- II. That the contents of this para of the Application are admitted being a matter of record, hence calls for no reply.
- III. That the contents of para III of the Application are wrong, contrary and hence denied. It is pertinent to mention here in before this Hon'ble Tribunal that preparation of Development Plan is a statutory right vested under the HP TCP Act, 1977. The State of Himachal Pradesh has the right to legislate and notify the development plan for any planning area. The foregoing provisions of Article 162 of the Constitution of India would tend to emphasize the "extent of the executive power of the State." It has been clearly provided under the aforesaid Article that, *"power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws."* The competency of the respondent State to enact a Development Plan is therefore a constitutional matter and cannot be taken away. So far as the contention of the Applicant that the respondent State is trying to overrule the judgment by way of introduction of Development Plan for Shimla

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Planning area is concerned, it is respectfully submitted that the power of the Sovereign legislature to legislate within its field cannot be questioned. This position has been settled in many judgments of Hon'ble Apex Court. The respondent State most respectfully seeks to place reliance of the following judicial pronouncements of the Hon'ble Supreme Court of India, where time and again it has been categorically provided that the absolute right to enact, notify and legislate can be done by a State giving due regards to the judicial rulings of a Court of Law.

In T. Vijayalakshmi v. Town Planning Member, (2006) 8 SCC 502, the Hon'ble Apex Court observed:

"13. Town Planning legislations are regulatory in nature. The right to property of a person would include a right to construct a building. Such a right, however, can be restricted by reason of legislation. In terms of the provisions of the Karnataka Town and Country Planning Act, a comprehensive development plan was prepared. It indisputably is still in force. Whether the amendments to the said comprehensive development plan as proposed by the Authority would ultimately be accepted by the State or not is uncertain. It is yet to apply its mind. Amendments to a development plan must conform to the provisions of the Act. As noticed hereinbefore, the State has called for objection

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from the citizens. Ecological balance no doubt is required to be maintained and the courts while interpreting a statute should bestow serious consideration in this behalf, but ecological aspects, it is trite, are ordinarily a part of the town planning legislation. If in the legislation itself or in the statute governing the field, ecological aspects have not been taken into consideration keeping in view the future need, the State and the Authority must take the blame there for. We must assume that these aspects of the matter were taken into consideration by the Authority and the State. But the rights of the parties cannot be intermeddled with so long as an appropriate amendment in the legislation is not brought into force.

\* \* \* 15. The law in this behalf is explicit. Right of a person to construct residential houses in the residential area is a valuable right. The said right can only be regulated in terms of a regulatory statute but unless there exists a clear provision the same cannot be taken away...."

**ARRAY OF PARTIES.**

1. That the contents of this para calls for no comments from the Replying Respondents/Deponent as the para relates to approaching of this Hon'ble Tribunal by the original applicant in the past.

2. That it is admitted fact that the respondent no.1 to 5 are the instrumentalities of the State entrusted with various duties and functions. However, it is most humbly submitted before this

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Hon'ble Tribunal that the respondent State is very well aware of its subjects. The Applicant has wrongly assumed that the respondent State is not, even capable of safeguarding the environment, ecology and is not aware about the governing principles of the concept of 'Sustainable Development.' The Hon'ble Apex Court vide its recent judgment dated 03.06.2022 passed in I.A. No.1000 of 2003(Recommendation of CEC dated 20.11.2003) in Writ Petition (Civil) No. 202 of 1995 has clearly indicated that development cannot be stalled solely on the ground of environment and ecology. Both Right to development & Right to healthy environment are part of sustainable development and go hand in hand. The Apex Court has been pleased to observe as under:-

"35.The approach of the Court in dealing with complaints of environmental degradation has been laid down by this very Bench in this Writ Petition itself in an order passed on 9<sup>th</sup> May 2022 in connection with another set of applications. In this Order, it has been observed and held:-

"15. Adherence to the principle of sustainable development is a constitutional requirement. While applying the principle of sustainable development one must bear in mind that development which meets the needs of the present without compromising the ability of the future generations to meet their own needs. Therefore, Courts are required to balance development needs with the protection of the environment and ecology. It is the duty of the

  
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State under our Constitution to devise and implement a coherent and coordinated programme to meet its obligation of sustainable development on intergeneration equity. While economic development should not be allowed to take place at the cost of ecology or by causing wide environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment."

The respondent State submits herein that the above quoted Hon'ble Apex Court verdict is clearly indicative of the fact that the concept of sustainable development has to be given due regards. The Development Plan for Shimla Planning area addresses the same principle as has been upheld by the Hon'ble Apex Court which is coupled with restrictive building regulations and protection of ecology and environment.

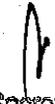
**RELEVANT FACTS LEADING TO THE PRESENT PETITION.**

3. That the contents of para 3 of the Original Application are wrong, contrary and hence denied. It is denied in specific that the respondent State has finalized the Draft Development Plan for Shimla Planning area, 2041 without adhering to precautionary principle and considering the

  
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ecological sensitivity of Shimla Planning area. It is completely wrong that the draft Development plan for Shimla Planning area is trying to overrule the judgment passed by this Hon'ble Tribunal by allowing constructions in prohibited areas and is permitting to increase the height of the structures in violation of the judgment and against the precautionary principle. It is most humbly submitted before this Hon'ble Court that issue concerning the environmental aspects in the Shimla Planning area along with the imperatives of the judgment dated 16.11.2017 form part and parcel of the Development Plan for Shimla Planning area, 2041. All the matters identical or incidental have been specifically included under Chapter 12 of the aforesaid Development Plan. It is further respectfully submitted before this Hon'ble Tribunal that the respondent Town and Country Planning Department, Himachal Pradesh under the AMRUT Sub-Scheme of Govt. of India has prepared the Shimla Development Plan (2041). The GIS based Development Plan is based upon the latest satellite imageries and base-map made available by NRSC (National Remote Sensing Centre), Hyderabad. The Development Plan has been prepared as per the directions and

  
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guidelines of Ministry of Urban Development; Government of India through consultant 'M/s MaRS Planning & Engineering Services Pvt. Ltd.' The Development Plan has been prepared after collection of primary and secondary data from various stakeholder Departments. The work on various field surveys like Household survey, Traffic surveys, Pedestrian survey, Parking survey, Tourist survey etc. including data analysis has been duly taken into considerations. The recommendations of the judgment dated 16.11.2017 have been given due consideration in the Development Plan.

4. That the contents of para 4 of the Application are admitted being a matter of record, hence calls for no reply.

5. That the contents of para 5 of the Application are admitted only to the extent that this Hon'ble Tribunal had constituted an Expert Committee to study the carrying capacity of the Shimla Planning area. It is further admitted that the aforesaid Committee had given its detailed report with certain recommendations, which was accepted by this Hon'ble Tribunal. However, it is humbly submitted before this Hon'ble Court that the expert Committee report which forms part and

  
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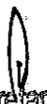
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parcel of the judgment dated 16.11.2017 passed by this Hon'ble Tribunal has been duly considered by the respondent State in the Development Plan, 2041 for Shimla Planning area. The recommendations made in the report submitted by the expert Committee have been duly considered while finalizing the Development Plan. The replying respondent State has re-studied the aspects of the carrying capacity as done by the expert Committee report in detail, which are detailed further in the body of the submissions made by the respondent State. It is submitted before this Hon'ble Tribunal that the recommendations of the expert Committee on different findings therein have been considered under the Development Plan for Shimla Planning area. It is further submitted herein that the Development Plan for Shimla Planning area has been monitored and reviewed by the Consultancy Evaluation and Review Committee (CERC) under the Chairmanship of the Director, TCP (as a requisite in RFP document). The other members of the CERC are State Town Planner Member, Commissioner, Municipal Corporation, Shimla Member, Town & Country Planner, Shimla Member, Chief Planner, TCPO/MoUD or his

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representative Member and Town & Country Planner (HQ). Subsequently, all comments and suggestions in the form of feedback, provided by CERC members have been incorporated in the Plan. Also Stakeholder Consultation has been conducted at all the stages as envisaged in RFP of tender document. At each and every stage, public participation was ensured through meetings wherein the agenda of the meeting was conveyed in advance and the activities being undertaken were discussed in detail during each meeting. The main purpose of the Stakeholder Consultation Meetings and Workshops was to get the brief understanding about the Shimla Planning area from the local people and prima facie understand the issues that the people of Shimla are facing and to get a holistic idea of socio-economic profile of the region. The other main objective of the public meetings were to make the representatives (including various departments and elective members) aware about the process of the preparation of the Development Plan and the timelines related to its implementation along with gathering their valuable suggestions.

  
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To further substantiate, it is respectfully submitted that the Development Plan so prepared

by the respondent Department gives due regard to the recommendations provided in the expert Committee report that forms part of the judgment dated 16.11.2017.

In addition to above, recommendations of Expert Committee report as provided under the judgment have also been addressed in Development Plan for Shimla. The detail is stated herein below:

**A. Recommendations on Disaster Risk Management:-**

The need to reduce the impact of disaster by means of systematic efforts in the State of Himachal Pradesh has been an area of concern & priority. The respondent State has constituted a State level Committee headed by the Hon'ble Chief Minister of the State of Himachal Pradesh for Disaster Risk reduction on 1st March' 2016, which comprises of multiple stakeholders and has prepared a State level Plan as per Sendai-Framework in which different Districts have participated. Accordingly the District Administration have prepared Shimla City's disaster response plan which is being regularly updated w.r.t resource inventory, communication plan, open spaces, access to emergency services etc. Since the community will be the first

  
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responder in case of a major disaster so extensive training, mock drills and IEC activities are being carried out as per calendar of activities issued by the HP State Disaster Management Authority. The Development Plan for Shimla Planning area mandates that all the constructions activities in Shimla Town will be supervised by the registered Private Professionals only so that there are no deviations from approved/sanctioned plans and to reduce the new vulnerabilities and risks."

**B. Revise the current building bye-laws to ensure their suitability for the hill environment:**

In the proposed Shimla Development Plan, only minimalistic construction activities and restrictive building regulations have been envisaged in the core and green area. This was done in consonance with the public grievances and aspirations, which were voiced during the stakeholder meetings. In the non-core area, where construction is envisaged to de-congest the core, the building regulations proposed in the Shimla Development Plan are still more stringent than the usual Building norms prescribed under the earlier Interim Development Plan for Shimla Planning

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area (As amended up to 2016) or even under the Appendix I of the Himachal Pradesh Town & Country Planning Rules, 2014, wherein the construction up to a height of 18.8 meters were permissible even in Core Area. The Draft Development Plan for Shimla Planning area prepared by the respondent Department of Town & Country Planning Department has restricted the aspects of the height for the construction of the buildings in this concern by specifying the maximum no. of storeys in both core and non-core areas of Shimla Planning area. The number of storeys has been reduced as compared to earlier provisions in order to have low density development in core area which will eventually push development to Non-core area and peri-urban areas thus decongesting the already congested city area more particularly the Municipal limits of Shimla.

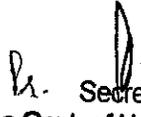
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**C.Undertake a seismic safety analysis and retrofitting of life-line buildings.**

It has been proposed under Shimla Smart City Proposal that various vulnerable sections of the city will be rebuilt through the process of Redevelopment. In the 1st phase the core area of the city covering Lower Bazar, Subzi Mandi, Gunj

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Bazar and Krishna Nagar comprising of dilapidated & poor quality building infrastructure will be rebuilt by introducing an Urban Renewal Scheme. This area will be rebuild according to a new master plan providing open spaces, new building stock, underground infrastructure, vertical motorized mobility and multiple Smart City interventions. In this area all the existing old buildings shall be pulled down and then reconstructed as new stock of earth-quake proof design of mix-use, green, modern buildings which shall allow all the tenants and landlords to retain their legal status in the new development. The new development shall be designed .respecting the city's mandated green/red sloping roof with architectural features to complement the historic fabric while ensuring sustainable open spaces & better vertical mobility options for all. In addition, engineering retrofitting of selected buildings between Lower Bazar and Mall Road is also proposed along with facade improvement in this entire area.

  
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#### **D.Upgrade the capacities of Shimla Fire**

**Services:** As per approved Shimla Smart City Proposal there is provision for construction of tanks at lower height to store runoff water which

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can be utilized for refilling of fire tenders. Secondly, there is provision for construction of modern fire station with direct accessibility to the circular road which will also cater for parking of fire tenders. Thirdly, there is provision for installation of fire sensors on heritage buildings & other important public buildings. The data from fire sensors will be monitored in a centralized control room for immediate action.

**E.City level disaster preparedness planning:**

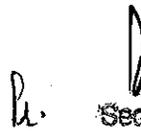
There is provision under Shimla Smart City project for development of safe shelters across the city which will provide safe and suitable living conditions to the community. in post-earthquake, landslide and urban fire scenario. Secondly, there is also provision for installation of centralized landslide sensors in identified landslide zones of the city and fire sensors on heritage buildings & other important public buildings. The data from these sensors will be monitored in a centralized control room for immediate action. Lastly, provision for setting up radio station for communication during any disaster is also proposed under Shimla Smart City Mission.

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**F.Recommendation on Mobility:** The following projects have been proposed in Shimla Smart City Proposal to improve mobility across the city:

- Road Widening and improvement of critical junctions, construction of foot over bridges, installation of LED traffic lights, high mast lights & signage's across the city to ensure better walking facilities and to make the streets universally accessible, safe, and comfortable.
- Development of bus stand at Dhalli and bus parking at New ISBT has been proposed.
- Provision of covered escalators/lifts has been included at various places along the circular road for ease of vertical mobility. The escalators/lifts will connect the circular road to the areas above and in certain cases accessible areas below the road.
- The proposal also includes enhancement of existing parking by installation of racks and construction of new parking's. In addition, large number of parking facilities will be created near transit bus stops which will encourage people coming to the

  
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City from outside to make use of the public transport system.

- Smart bus stops will be developed across the city having dedicated bus lay-bye, including ICT solutions such as real time bus arrival display, public Wi-Fi, PA system for information to visually impair and provision of rain shelter-cum-Kiosk to enable PPP. This will encourage use of public transport system within the city.
- The traffic management system will be supported by a network of CCTV cameras and sensor based barriers in restricted/sealed roads which will feed a central control room through a dedicated optical fibre along 31 kms. road length. Further a network of number plate reading cameras will provide the facility of automatic challaning.
- All forms of public transport such as buses, taxis & train will be integrated. Under this system the citizens will be provided option of common electronic card ticketing across buses, ropeway taxis and paid lifts/escalators.

  
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**G.Recommendation on Water Supply System:**

While developing strategy and identification of interventions so as to improve water supply system in Shimla Planning Area the key proposals provided in the Action Plan for water supply, submitted to this Hon'ble Tribunal have been taken into consideration. The proposed Development Plan for Shimla Planning area envisages augmentation of existing water supply demand from 44MLD to 85 MLD for projected population of approximately 6.25 Lakhs. Since 2018 onwards, lift water supply scheme Chaba to Gumma of 10 MLD has augmented the water supply of Shimla. Further the 67 MLD Sutlej Water supply scheme is being implemented by Shimla Jal Prabandhan Ltd. Through World Bank assistance.

H.Recommendation on Slope Stability Norms: The concept of Development Plan includes development on land having slope less than 45 degree and development in sinking/ sliding areas will be taken after detailed micro level study on soil bearing and structure stability. Further, existing water bodies will be rejuvenated and green buffer will be provided along the nallahs. Muck disposal will also be done as per prevailing rules. The centralized landslide sensors will be

  
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installed in identified landslide zones of the city and data from these sensors will be monitored in a centralized control room for immediate action.

I. In addition, while providing the basic strategies for Disaster Management, the key proposals provided in the Action Plan on Disaster Management, submitted to Hon'ble NGT has been taken into consideration. The highlights of the actions taken so far are as following:

- a. Emergency Operation Centre (1 at State Level and 12 at District Level) is already in place with 24X7 operation facility for effective disaster response and DRR Planning. State Government may facilitate it with internet, connectivity, satellite phones etc. for better communication.
- b. Disaster Management Cell will launce scheme on conduct of structural and safety audit of life lines buildings and hospital safety. After that, the District Disaster Management Authority, Shimla and Municipal Corporation, Shimla may conduct detailed structural audit of the building with the help of NIT Hamirpur.
- c. For Safe Construction Practice and earthquake risk reduction, report will be prepared by Urban Development department for modern building byelaws which will be adopt by all the ULB's

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individually. Apart from that, Training will be provided within the staff as well as practicing engineers and architects for safe planning and construction.

d. Himachal Pradesh State Disaster Management Plan and District Disaster Management Plans of 12 Districts has been prepared and approved in the year of 2017 as per 'Disaster Management Act, 2005.

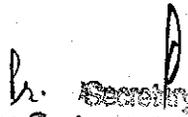
6. That the contents of para 6 of the Original Application are admitted to the extent that in the basis of the expert Committee report, this Hon'ble Tribunal was pleased to pass judgment dated 16.11.2017 in O.A. no. 121 of 2014 along with detailed directions to the respondent State. It is pertinent to mention herein that vide judgment dated 16.11.2017 passed by this Hon'ble Tribunal, it has been categorically provided under para 112 (VIII) as under:-

*"We direct the State Government and/or its instrumentalities and more, particularly, the Town and Country Planning Department to finalize the Development Plan within three months from the date of pronouncement of this judgement without default. **The Development Plan so finalized shall be notified in accordance with law.***

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*While finalizing the development plan, the directions and precautions stated in this judgement shall be duly considered by the concerned departments and the State of Himachal Pradesh.*" As submitted in preliminary submissions supra, the Development Plan for Shimla Planning area has also undergone the legal scrutiny of the Hon'ble High Court of Himachal Pradesh in CWP no. 4595 of 2011 apart from the express directions of this Hon'ble Tribunal. The Development Plan, 2014 is an outcome of the GIS based Development Plan for Shimla under Atal Mission for Rejuvenation and Urban Transformation (AMRUT) guidelines. The GIS based Development Plan is based upon the latest satellite imageries and base-map made available by NRSC (National Remote Sensing Centre), Hyderabad. The Development Plan has been prepared as per the directions and guidelines of Ministry of Urban Development; Government of India through consultant 'M/s MaRS Planning & Engineering Services Pvt. Ltd.' The Development Plan has been prepared after collection of primary and secondary data from various stakeholder Departments. The work on various field surveys like Household survey, Traffic surveys, Pedestrian

  
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survey, Parking survey, Tourist survey etc. including data analysis has been duly taken into considerations. The recommendations of the judgment dated 16.11.2017 have been given due consideration in the Development Plan. The Development Plan for Shimla covers following goals & objectives:

Goals	Objectives
Living environment through proper planning and design	<ul style="list-style-type: none"> <li>• Reduce Pressure on the Core City Area</li> <li>• The existing pattern of development of Shimla is insufficient to cater to the growing demand for residential, recreational, commercial and educational use for both residing and floating populations.</li> <li>• Effective Implementation of Building Bye Laws</li> <li>• Identification of newer areas for the future development</li> <li>• Roads &amp; Transportation- Strengthening the existing Road Network, Proposals of New Roads, Improvement in public Transportation system</li> </ul>
Maintain its Character & Image	<ul style="list-style-type: none"> <li>• Development of more footpaths</li> <li>• Conservation of heritage buildings</li> <li>• Introduction of Urban Design Guidelines</li> <li>• Development of Pedestrian Public spaces</li> <li>• Development of more open spaces- parks &amp; Garden</li> </ul>
Optimal Use of Resources	<ul style="list-style-type: none"> <li>• Protection of eco – sensitive areas</li> <li>• Development of Shimla as – tourism network Centre</li> <li>• Encouragement to eco-tourism</li> <li>• Diversify the New economy</li> </ul>

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The Development Plan for the Shimla Planning Area has evolved from a comprehensive understanding of the existing situation, land utilization pattern, land suitability & potential analysis, and population projections carried out for the area. The process so far has involved an exploration of several alternatives, for each of which, certain principles, laid down with a view to achieving the vision for the Shimla Planning Area, have been primary guiding factors. Establishing coherence between ecological balance, residential developments, urban infrastructure, economic activities and provision of amenities within the Shimla Planning Area would be the key factor in the process of its future development. With ecological sustainability being a major design criterion, the Development Plan emphasizes the need for good quality of spaces for housing, education and health among the residents of the Shimla planning area along with the provision of adequate infrastructure and civic amenities.

7. That the contents of para 7 of the Original Application are admitted being a matter of record, hence calls for no reply.

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8. That the contents of para 8 of the Original Application are completely wrong, contrary and hence denied. It is denied that the respondent State did not prepare the Development Plan in accordance with the directions passed by this Hon'ble Tribunal vide its judgment dated 16.11.2017. Rather it is most respectfully submitted before this Hon'ble Tribunal that the respondent State after careful examination of the directions passed by this Hon'ble National Green Tribunal in Original Application no. 121 of 2014 provided under Para 112 of the judgment dated 16.11.2017 has prepared the Development Plan for Shimla Planning area. It is submitted herein that while preparing the draft Development Plan, the directions passed by the Ld. Tribunal have been ipso facto considered and included in the draft Development Plan so prepared. The issues raised by this Ld. Tribunal in the Carrying Capacity Report of Shimla have mostly been addressed in the Development Plan, 2041. In addition, some of the aspects have also been considered while analysing the Carrying Capacity of Shimla Planning Area, such as population density, Open spaces, Health Facilities, Educational Facilities etc. The Action Plans and Memorandum of Practice

  
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prepared as per this Hon'ble Tribunal direction(s) have duly been considered while preparing the proposal for respective sectors, like mobility, disaster Management, water supply, SWM and Forests etc.

9. That the contents of para 9 of the Original Application are wrong, contrary, flimsy and hence denied. The contents of this para of the Application are repetitive in nature. It is incorrect to allege herein by the Applicant that the draft plan has raised similar objections to the judgment dated 16.11.2017 which is the subject matter of pending Civil Appeal of the respondent State before the Hon'ble Apex Court. It is rather most respectfully submitted before this Hon'ble Tribunal the Development plan prepared by the respondent State is well within the statutory framework of the Himachal Pradesh Town & Country Planning Act, 1977 read with Rules thereof and cannot be questioned through the present Original Application before this Hon'ble Tribunal. The statutory framework of development plan under HP TCP Act, 1977 is as under:-

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Sr. no.	Stage Report	Finalization of Development Plan
1.	Inception Report	Completed
2.	Spatial attribute collection and vetting of Base Maps	Completed
3.	Submission of Final Base map by NRSC, Hyderabad	Completed
4.	Data Analysis Report	Completed
5.	Projected Requirements, Issues & Potentials	Completed
6.	Preparation and publication of Draft Development Plan	Completed
7.	Inviting objections and & suggestions, in writing from general public as per Section 19 (1) of the Himachal Pradesh Town & Country Planning Act, 1977	Completed
8.	Consideration of objections & suggestions as per Section 19 (2) of the Himachal Pradesh Town & Country Planning Act, 1977	Completed
9.	Submission of Draft Development Plan to	Completed

  
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	the State Government after modifications as per Section 19 (2) of the Himachal Pradesh Town & Country Planning Act, 1977	
10.	Sanction of Development Plan by the State Government.	Stayed vide order dated 12.05.2022 by this Hon'ble Tribunal.

**DRAFT PLAN CONTRARY TO DIRECTION OF THIS HON'BLE TRIBUNAL.**

10. Without prejudice to the above and with reference to the so-called provisions of the Draft Plan contrary to the judgment of this Hon'ble Tribunal formulated on behalf of the Applicant, it is stated that there is absolutely no substance of whatsoever nature in the said issues. None of these issues sought to be raised in the Original Application are justified, correct and legally tenable in the eyes of Law.

It is submitted that the issues or questions of law raised by the Appellant are answered as under: -

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**(i.) Questioning the judgment and directions even when the Civil Appeal is pending and no stay granted.**

It is most respectfully submitted before this Hon'ble Tribunal that the respondent State has the highest regards for this Hon'ble Tribunal and has been complying with the directions passed by this Tribunal from time to time. However, as already stated in the preliminary submissions regarding the preparation of Development Plan for Shimla Planning area, the Hon'ble High Court of Himachal Pradesh vide its judgment dated 21.09.2021 in CWP no. 4595 of 2011 titled as "Rajeev Verma vs. State of Himachal Pradesh &ors." has categorically directed the respondent Department of Town & Country Planning to finalize the Development Plan, without any further default and delay and within a time bound manner. It becomes pertinent to mention herein that the Hon'ble Apex Court vide its recent judgment 01.06.2022 in Civil Appeal no. (Diary) no. 16486 of 2022 titled as "State of Andhra Pradesh v. Raghu Ramakrishna Raju Kanumuru (M.P) has observed as under:-

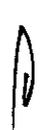
*"11. We are, therefore, of the considered view that it was not appropriate on the part of the Learned NGT to have continued with the proceedings*

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before it, specially, when it was pointed that the High Court was also in seisin of the matter and had passed an interim order permitting the construction. The conflicting orders passed by the learned NGT and the High Court would lead to an anomalous situation, where the authorities would be faced with a difficulty as to which order they are required to follow. There can be no manner of doubt that in such a situation, it is the order passed by the constitutional courts, which would be prevailing over the orders passed by the statutory tribunals."

Likewise in the present matter, the Hon'ble High Court of H.P. has been seized of the matter regarding preparation of Development Plan since 2011 and has time to time directed the respondent State with necessary directions. Also the Hon'ble High Court of Himachal Pradesh in CWPIIL no. 37 of 2022 is seized off with the issue of Development Plan for Shimla Planning area and has observed vide its order dated 23.05.2022, which is as follows, "Ld. Additional Advocate General prays for time to seek instructions to find out whether the Shimla Development Plan, which is under challenge in the present petition, is also being

  
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*challenged before the National Green Tribunal and what is the status of the case there."*

It is wrong on the part of the Applicant to say that the directions and judgment dated 16.11.2017 passed by this Hon'ble Tribunal have not been followed by the respondent State. Only minimalistic construction activities and restrictive building regulations have been envisaged in the core and green area. This was done in consonance with the public grievances and aspirations, which were voiced during the stakeholder meetings. In the non-core area, where instructions is envisaged to de-congest the core, the building regulations proposed in the Shimla Development Plan are more stringent than the usual Building norms prescribed under the earlier Interim Development Plan for Shimla Planning area (As amended up to 2016) or even under the Appendix I of the Himachal Pradesh Town & Country Planning Rules, 2014, wherein the construction up to a height of 21 meters were permissible. The Draft Development Plan for Shimla Planning area prepared by the respondent Department of Town & Country Planning Department has restricted the aspects of the height for the construction of the buildings in this concern by specifying the

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maximum no. of storeys, ground coverage in both core and non-core areas of Shimla Planning area.

In Core area the Development Plan proposes restrictive regulations for Residential, Commercial and other uses with maximum permissible height of 13.50 Mtrs height ( 2 storey + parking floor+ habitable attic). For larger plots above 500 Sq mts area the coverage restrictions too have been imposed to restrict the built up area intensity which will result in more open and green areas. Similarly for Non-Core Area the Development Plan proposes restrictive regulations for Residential use with maximum permissible height of 16.50 Mtrs height (3 storey + parking floor+ habitable attic) along with restriction of ground coverage for plots larger than 500 Sq. mtrs area

**(ii.) Opening up of Core area for the purpose of new construction in violation of direction of Hon'ble NGT.**

That it is most respectfully submitted before this Hon'ble Tribunal that only the need based construction activities up to two storeys and attic floor having a maximum height of 13.5 meters has been proposed to be allowed in the core area. It is further relevant to submit here that the primary Health Institutions of the State i.e. Indira Gandhi

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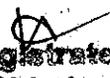
Medical College & Hospital, Deen Dayal Upadhyay Hospital, Kamla Nehru Hospital are all situated in the Core area and as and when expansion is required, it has to be carried out in the vicinity. In such circumstances any ban on construction in core area is severely affecting the public facilities and public at large which are required to be provided to the general public with regard to their health and well-being. The citizens of the State have fundamental rights to shelter and livelihood and are entitled to carry out construction in accordance with the existing laws and reasonable restrictions placed upon such rights by the Legislative and Executive. The Constitution makers bestowed right on every citizen of the Country to acquire, hold and dispose of property and also provided ample safeguards against deprivation of the property by Legislature by confining such deprivation for public purpose only and only on payment of compensation to the expropriated owner either by fixing the amount of compensation or by specifying the principles upon which it could be determined or fixed. Further it has been provided under Article 19 (1) (g) of Constitution of India the right to practice any profession or to carry out any occupation, trade or business to all

  
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is citizens. In order to cater to the housing demand and other livelihood demand of growing local population of Shimla, new construction is required in Shimla Planning area and core area. Various proposals that form part and parcel of the Shimla Smart City Project include retrofitting old area, decongesting Shimla, improving mobility, water supply, sanitation and solid waste management, ICT services, eco-friendly development, etc. These proposals are planned to provide adequate infrastructure to the local population. For these reconstructions/ retrofitting should be permissible on old lines and as per the existing Statutes, subject to permissible slope and soil conditions. The construction in core area shall be permitted strictly in accordance with the provisions of Shimla Development Plan. In order to regulate the construction activities in view of carrying capacity, physical thresholds, environmental, ecological and heritage imperatives, the regulations occupying the construction activities in both core and green areas are stringent and restrictive in nature. The Development Plan for Shimla Planning area regulates the construction activities in core area whereby it not only contemplates that what kind of

  
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construction activities are permissible in the core areas but only signifies that what sort of construction activities are restricted and are completely prohibited.

**(iii.) The Development Plan proposes height of the structure contrary to direction.**

The Development Plan for Shimla Planning area completely addresses the aspects relating to the urbanization of Shimla town/ city. Shimla has been playing multiple roles including administrative, educational, tourist centre and heritage city.

*Vertical Development* -The current urbanization rate of Shimla coupled with growing tourist foot fall over the years is creating immense pressure on the city administrators to provide for more land for accommodating ever increasing population and creating economic infrastructure to support various segments of tourism & hospitality sector. However, the city is primarily witnessing the following constraints.

Geographical constraints – Shimla is bounded by forests, valleys and other natural features. The development while penetrating these areas to accommodate urbanization is constrained by governing rules & regulations.

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Terrain - The hilly terrain with slopes, make the cost of laying the urban services viz water supply, sewerage & sanitation, etc comparatively higher to cover large geographical areas.

Transportation constraints - Limited possibilities to further develop transport infrastructure on hilly terrains do not support sub-urbanization and horizontal sprawl. Thus the issue to meet the urbanization challenge without compromising the larger ecological concerns of deforestation, reduced green cover and economic development challenges of accommodating ever increasing demand from tourism and hospitality sector calls for doing away with restrictions on vertical growth, liberalize land use rules, and provide incentives for redevelopment of underutilized lands. The high-density vertical development will avoid sprawling and depletion of green cover outside the city as well as within the city. Vertical development would also help in creating open spaces within the developed area.

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Keeping in view the new developments in technology will regard to construction, and to protect the green cover, the norm now is to go vertically whenever and wherever permissible. It is humbly submitted that the Department is of the

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view that whenever the strata permits, the construction should be carried out vertically and efforts should be made to retain the green cover by less ground coverage. Keeping in view this aspect only, the Department has made regulations to permit the storeys as per the floor area ratio subject to the maximum height of the building fixed for that particular area and use of that area. In case no cap on storeys is fixed subject to structural stability and geological feasibility then more and more area will be protected thus taking care of the environment.

(iv.) On the fourth finding, the contention of the Applicant that the Development Plan regulates construction activities beyond two storeys and attic floor, which is contrary to the directions passed by this Hon'ble Tribunal vide its judgment dated 16.11.2017, it is respectfully submitted before this Hon'ble Tribunal that the issues raised in Carrying capacity report of the expert Committee constituted by this Hon'ble Tribunal, which also form part and parcel of the judgment dated 16.11.2017 focused mainly on the Core area/ municipal area of Shimla, where situation is more critical and the resources have nearly been exhausted. However, considering the aforesaid carrying capacity report, the

  
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restrictions on construction has been imposed on the whole Shimla Planning Area, which includes not only Shimla Municipal Area, but also, Shoghi Special Planning Area, Ghanahatti Special Planning Area, Kufri Special Planning Area and Additional Planning Area. While the area incorporated under the ban is huge, the carrying capacity of these surrounding areas was never taken into aspect while finalizing the expert Committee report. The Development Plan for Shimla Planning area covers this very aspect. As per analysis from the Demographic profile and spatial distribution of settlements, these peri-urban areas have very low density and intensity of development. These areas beyond the Municipal Corporation limits have more potential to accommodate the future population than the Municipal Corporation Core area of Shimla City.

**(v.) Draft Plan allows construction in green belt forest area contrary to direction of this Hon'ble Tribunal.**

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It is most humbly submitted before this Hon'ble Tribunal that vide judgment dated 16.11.2017 and as per the expert Committee report under its own recommendation 8 has observed that regarding Construction in Green Areas, the committee observed during the field visit that a few private

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vacant plots without any green cover or trees are sandwiched between already constructed buildings. Prima facie it appears unfair that these landowners are not able to construct houses on land that was bought for this purpose before the green area notification came into place." Therefore, the right to construct on one's own land, particularly, in relation to prohibited area/restricted area has been examined as per Article 300A of the Indian Constitution. The right to construction is, however, regulated by the Town and Country Planning Department and the Municipal laws in force in a State. In other words, it is not an absolute right by any stretch of imagination but is restricted and regulated right. Such statutory right can only be exercised, subject to the limitation and restrictions imposed and by complying with the prescribed procedure. The Development Plan for Shimla Planning area caters to this aspect of regulated construction in green areas only for residential use at a minimalistic scale. The respondent State is well aware that there is a need to preserve the rich biodiversity, in and around Shimla Town; the Green Belts already notified must remain intact. Moreover, in order to conserve the forest in Shimla Planning area, there is need to protect remaining forest land

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in Shimla Planning area, which is approximately 26 times more than 17 green belt area. At present, as per NRSC base-map land-use, 10,662 hectares land is under forests, tree clad area and plantation areas, which includes government as well as private land. Therefore, in terms of ecological and environmental perspective, minimum and limited construction can be allowed on vacant and sandwiched plots within the 26 hectares of private open land. If low density construction with limited storeys and FAR is allowed in the green areas, the overall population pressure on the area is likely to be minimal.

(vi.) On the sixth issue as contended by the Original Applicant regarding opening of green areas for construction is concerned, the respondent Department humbly submits that there are hundreds of dwellings on different green belts in Shimla which have been constructed or reconstructed as per the bylaws of Municipal Corporation on Private land. Thus, to say that all these green belts are forests is a misnomer. Just because at some place some notification has mentioned these green belts as 'forests areas' will not make that area as a forest. It will be appropriate to reproduce Section 2 of the Forests Conservation Act 1948 for ready reference:

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"Restriction on the de-reservation of forests or use of forest land for non-forest purpose: Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing-

That any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

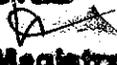
That any forest land or any portion thereof may be used for any non-forest purpose:

It is clear from the bare reading of the Section that it is applicable to only those lands which are entered as 'Forest' and it does not apply to any private land, which is not classified as Forest Land. As such, it is humbly submitted that the contention of the Applicant that green areas are all forests is based upon misapplication of the legal provisions and on the basis of information which is not supported by any material

  
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The respondent Department further submits that so far as the forest lands are concerned, no construction upon that is permissible unless there is a clearance from the Central Government as per the provisions of Forest Conservation Act. To clarify the things further,

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it is submitted that no construction is permissible on the forest land until or unless proposal is cleared by the Competent Authority i.e. Central Government, It is further submitted that Himachal Pradesh is not a non-compliant State. It has been taking care of environment and has also been taking care of Town Planning. The Town Planning Act came into force in the year 1977 and different plans for different planning areas were formulated and these plans have been formulated after taking all possible care with regard to Town Planning and the factors relevant to Town Planning. For example for Shimla Planning Area, the respondent State has done Zoning of areas. Some areas are in the Heritage Zone where carrying out construction is very difficult, for the reason that the rules and regulations are very stringent and different Committees are involved in getting clearances including getting clearance from Heritage Advisory Committee. Certain areas fall within core areas where only limited construction is permitted. It is the constitutional obligation casted upon the respondent State to protect and safeguard the rights of the persons who have been deprived of the right to enjoy their property situated in the Green areas. Reliance is placed on the judgment of the Hon'ble Supreme Court in the case of 'Rajiv S. Jethmalani & others Vs. State of

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Maharashtra & others in civil appeals no. 8274-75 of 2003, where it is stated that the Government cannot deprive a person from using his land vide order dated 5th May, 2005. It is further submitted that the Development Plan gives a fair right to the persons having plots in these areas demand for the construction for at least residential purposes.

**(vii.) Draft plan allows construction in sinking zone of Shimla Planning area.**

It is humbly submitted herein that as per the statutory provisions of Section 31-A of the Himachal Pradesh Town & Country Planning Act, 1977, the Structural Stability Certificate of the building before putting the same into use including soil investigation report and structural design basis report as per provisions for safety against natural hazard is pre-requisite mandate for according the planning permission. Therefore, the same sets of regulations are included in the Development plan for Shimla Planning Area. Moreover, the aforesaid regulation of the Development Plan has exception that in case the Soil Investigation Report is negative, construction shall not be allowed. This Hon'ble Tribunal vide its judgment dated 16.11.2017 has in fact appreciated the regulations provided for sinking and sliding zone, which is reflected under para 88 of the judgment ibid providing that, "**With regard**

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**to buildable slopes, identification and zonation of green belts, heritage area, heritage buildings, sinking and sliding areas, etc. there has been a positive trend, which maintains and conserves the hill environment and ecology."**

It is further submitted before this Hon'ble Tribunal that for the development permission in sinking and sliding zones, it is mandatory that the Soil Investigation Report is submitted by the applicant before construction/reconstruction of building(s) for the areas falling in sinking and sliding zones as defined in Shimla Planning Area, or for any reclaimed piece of land. Based on the different criteria of environmental land suitability, a composite land suitability map has been prepared under the Development Plan to identify land most suitable for development, by giving weightage and rating to each of the parameters outlined above and then overlapping all the individual suitability maps. Adequate land for providing key public infrastructure facilities like roads, public transportation system, transport terminals, water supply system, SWM system, waste water treatment, power supply system, etc. and various other social and recreation facilities have also been identified keeping in the mind the above analysis. The composite GIS base-map enabled the identification of the land, which is most suitable for

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development and have potential for future growth, to be developed as new growth centres.

**(viii.) No scientific study done to allow changes in the Draft Development Plan.**

In this concern, it is respectfully submitted that the contentions raised by the Applicant that no scientific study has been done by the respondent State while allowing changes in the Draft Development Plan is completely wrong, misleading and hence denied in totality. It becomes pertinent to mention herein that the Development Plan so prepared is an outcome of detailed scientific study through various survey including HH Survey, Traffic volume count, road network inventory etc. coupled with detailed description of tables, maps and charts. The methodology for the preparation of the base map of entire Shimla Planning area under Shimla Development Plan has been done in accordance with the guidelines of National Remote Sensing Centre and under the guidance of Town & Country Planning Organization, Union of India. The different stages involved in the preparation of the Base Map have been described below:

**STEP 1: Boundary Identification with census maps**

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The updated census maps were collected for the year 2011 for all the town and villages covered under project area and their village boundary was generated from these census maps. The overall project boundary was also identified using census maps.

### **STEP 2: Procurement of land use data from NRSC Hyderabad**

The satellite map/ land use sheets of the project area was collected from NRSC Hyderabad and the same was processed according to the requirement.

### **STEP 3: Existing land-use survey**

Spatial attribute collection and vetting of Base Map was done in form of field surveys and data entry in Excel Performa. In Shimla Planning Area, there were A0 size 1136 sheets/grids with approximately 40,000 building units.

### **STEP 4: Primary Ground Verification / Truthing by the TCP Department.**

First level ground verification/truthing was done by the TCP Department to verify the land-use map prepared from the existing land use survey above.

### **STEP 5: Preparation of preliminary base-map**

After ground truthing and vetting the data sheets were sent back to NRSC for preparation of final base map containing all layers as per AMRUT Scheme Design and Guidelines.

  
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## STEP 6: Creation of updated base-map

The preliminary base map was updated by NRSC following the ground truthing process and existing land-use maps and proposed land-use maps were generated from these updated base-map.

The respondent State while preparing and finalizing the Development Plan had also carried out Land Suitability analysis of the entire Shimla Planning area on different set of factors such as slope, drainage, vegetation and water bodies. Variations were observed in the characteristics of these factors based on the specific study areas. These environmental determinants were studied for the entire Shimla Planning Area for the purpose of identifying highly / moderately environmentally sensitive portions of land and thus ascertain the suitability / non suitability of these areas for development. Land suitability/potential analysis for the Shimla Planning Area has been carried out on the basis of the following parameters.

1. No Development Zones (NDZ) – Identifying the areas strictly not to be disturbed and no other uses to be allowed in these zones except those permitted under the relevant legislation
2. Slope of Land - Areas with very steep slopes are not suitable for development, while areas with low slopes are highly suitable for development. As per NGT

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directives, land with a slope greater than 45 degrees cannot be considered suitable for development.

3. Forests & vegetation - 44% of the total planning area is covered by forests and 22% is used for Agriculture. Thus, in order to maintain the ecological balance, the land area under forests shall be reserved and protected.
4. Sunlight - Southern facing aspects are the most desirable aspect for development in Shimla.
5. Water Bodies & Streams - Identifying the water bodies & limiting development in the immediate vicinity in the areas surrounding these water bodies since the conservation of water bodies is very much important to maintain the environmental stability within the Shimla Planning Area. The topography of Shimla being a hilly city is rugged and undulating. There are a number of nallahs in its vicinity and keeping the natural drain of the area, their natural hydrology needs to be preserved.

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The Important features adopted in Development Plan in comparison with the existing developments can be summarized as under:

- I. Residential land use has been changed from 5.51% out of total planning area to 12.15% in order to accommodate the future population increase. Out of

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developed area, the residential area has been increased from 56.44% to 63.25%

- II. The commercial development is prime factor to cater the robust urban development and hence the area under commercial use has been increased from 0.41% as can be seen in ELU to 0.53% in PLU. In addition, commercial land-use has been provided in form of mix land use, along with the main roads, which has been increased from 3.99% to 9.36%.
- III. The area under public & semi-public use has been increased from 1.15% to 1.39% based upon the identification of government land available.
- IV. The area proposed under transportation and communication which is 4.81% as per ELU has been increased to 6.27% in PLU through creation of extensive interwoven road network.

**(ix.) The Development Plan is proposing the changes in Shimla Planning area without carrying capacity study.**

The contents of this para of the petition are completely wrong, contrary and devoid of merits, hence denied.

The Development Plan for the Shimla Planning area has duly considered the concept of carrying capacity of

Shimla as a city and issues emphasized in the carrying capacity report have been studied in detail in order to understand the severity of the situation.

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It is most humbly submitted before this Hon'ble Tribunal that the carrying capacity report missed some other important parameters which are crucial while analysing the carrying capacity of any area. Carrying Capacity report of Shimla has duly raised the right key concerns but it misses out detail about the population density and it has not examined that how much of population, per unit of land the complete Shimla Planning Area is capable of carrying and accommodating in future. Population Density is the most important aspect related to Urban Planning.

Population Density is defined as the number of persons living in a unit area. It is one of the most important parameters to evaluate factors such as physical and social infrastructure projections, living conditions, housing typology, floor area etc. in Shimla, being a hilly town and ecologically sensitive area, density plays a major role in determining the carrying capacity of an area in the sense, that how much of population per unit of an area in Shimla can carry. Population Density of different areas within Shimla Planning area is given below:-

#### **Population Density of Shimla Planning Area 2011**

Settlement	Population Density (ppha, as per 2011 Census)
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M.C. Shimla	77
S.A Ghanahatti	7
S.A Kufri	4
SA Shoghi	5
Jutogh Cantonment Area	15
Additional Shimla Planning Area	3
Average Density of SPA	11

**While comparing these densities with the URDPFI Guidelines (where desirable densities in the hilly areas ranges between 60 PPH to 90 PPH), population densities in 8 out of 25 wards (Ward No.9,11,12,13,16,19,22 and 23) have exceeded the target density of 100 pph. Whereas, in 17 out of 25 wards the population density is less than 90 pph. Some of the wards like Jakhu, Benmore & Boileauganj which fall in Core Area of Shimla Planning Area have population density lesser than 90 pph. Rest of the wards lie in Non-Core area and enjoy direct connectivity and accessibility with the Core Area and the peri-urban areas.**

11. That the contents of para 11 of the Original Application are admitted to the extent that the Applicant had represented dated 11.03.2022 to the respondent Department informing that the Draft Plan of Shimla Planning area is in violative of the judgment passed by this Hon'ble NGT. It is most humbly submitted before this Hon'ble Tribunal that the respondent department had duly considered the objections and suggestions

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including the representation of the Applicant while preparing and finalizing of Draft Development Plan in view of express provisions of Section 19 & 20 the Himachal Pradesh Town & Country Planning Act, 1977.

12. That the contents of para 12 of the Original Application are wrong, contrary and hence denied. It is specifically denied that the plan is not based on any scientific study and is an attempt to further allow construction contrary to the carrying capacity of the city. The contents of para supra may kindly be read as part and parcel to the contents of this para of the Application.

13. That the contents of para A to M of the grounds of the Original Application are wrong, unjustified, arbitrary and hence denied. The grounds mentioned in para inter-alia holds no legality.

**THE PARA WISE REPLY TO THE GROUNDS OF THE ORIGINAL APPLICATION IS AS UNDER:-**

A. That the contents of the corresponding Ground A are wrong and denied being flimsy and misconceived. This Hon'ble Tribunal Vide its judgment dated 16.11.2017 has been categorically pleased to direct the respondent State, more particularly the Town and Country Planning Department to finalize the Development Plan within three months from the date of pronouncement of this judgement without default. ***The Development Plan so finalized shall be notified in accordance with law. "***

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Therefore, the Development Plan has been finalized in accordance with the statutory provisions of the Himachal Pradesh Town & Country Planning Act, 1977, which is the Law occupying the present field. As submitted in preliminary submissions supra, the Development Plan for Shimla Planning area has also undergone the legal scrutiny of the Hon'ble High Court of Himachal Pradesh in CWP no. 4595 of 2011 vide its judgment dated 21.09.2021. Furthermore, the Development Plan, 2014 is an outcome of the GIS based Development Plan for Shimla under Atal Mission for Rejuvenation and Urban Transformation (AMRUT) guidelines. The GIS based Development Plan is based upon the latest satellite imageries and base-map made available .by NRSC (National Remote Sensing Centre), Hyderabad. The Development Plan has been prepared as per the directions and guidelines of Ministry of Urban Development; Government of India through consultant 'M/s MaRS Planning & Engineering Services Pvt. Ltd.' The Development Plan has been prepared after collection of primary and secondary data from various stakeholder Departments. The work on various field surveys like Household survey, Traffic surveys, Pedestrian survey, Parking survey, Tourist survey etc. including data analysis has been duly taken into consideration. The development Plan Area of the project will be catering the

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estimated population by the year 2041. For the increasing population as well as the floating population this development plan focuses on the creation of required infrastructure.

The judgment dated 16.11.2017 sought and directed the respondent State to finalize the Development Plan for Shimla within three months from the date of pronouncement of the Judgment. The preparation of Development Plan for any Planning and Interim Development in any Planning Area is regulated by provisions of Chapter-IV of the Himachal Town and Country Planning Act, 1977. The present Development Plan for Shimla is a GIS based Development Plan for Shimla under Atal Mission for Rejuvenation and Urban Transformation (AMRUT) guidelines. The GIS based Development Plan is based upon the latest satellite imageries and base-map to be made available by NRSC (National Remote Sensing Centre), Hyderabad. The Development Plan has been prepared as per the directions and guidelines of Ministry of Urban Development, Government of India. The recommendations of the judgment have been duly considered in the Development Plan. In view of the position explained, it is submitted that the finalization of Development Plan for Shimla Planning area by the

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Department is within the statutory framework of the HP TCP Act, 1977.

B. That the contents of the corresponding Ground B are wrong and denied being false and misconceived. As already stated in para 10 (v) & (VI) that the Development Plan for Shimla Planning area allows only minimalistic construction for residential use. A bare perusal of the regulations envisaged in the Development Plan 2041 tantamount to show that the regulations for construction of even residential one storey & attic structure are very stringent and accords no relaxations of any sort. In 17 Green Belt Area, the following Regulations shall be applicable:—

- i. Limited construction with one parking floor + one floor + habitable Attic shall be permitted for residential use only and maximum permissible height shall be 10 m.
- ii. The maximum permissible FAR shall be 1.0.
- iii. Setbacks norms prescribed for R1 Use in Core Area shall be applicable.
- iv. Re-constructions on old lines shall be permissible with same plinth area and no. of storeys.
- v. Cutting and felling of trees shall be prohibited.
- vi. Change of Land Use (CLU) and building use shall be prohibited.

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Apart from the aforesaid regulations, the Development Plan 2041 also provides for the recommendations and

strategies that has been adopted for conservation of Environment and ecology, the details of which is reproduced herein as under:-

1. Forests Preservation Strategies:

- To increase the forest cover it is proposed that the forest Department shall plant pine trees in the vacant govt. land patches and steep slopes under ambitious tree planting programs combined with natural expansion of forests. The Massive plantation and landscaping is required to be ensured in the entire Shimla Planning Area. Species of trees, plants need to be identified for specific areas so that the plants survive in these conditions.
- In 17 green belt areas and remaining forests, cutting of trees are strictly banned.
- Development in green belt areas on private land has been allowed only at 1 FAR, 2 floors of restriction and 50% of ground coverage.
- Moreover, in a phased manner, more forest land are required to be added in green areas, based on revenue and ownership details, as Shimla planning area has 43% of land area which falls under, forests, tree clad area and plantation areas.

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2. Promoting eco- tourism and forest based adventure tourism: The eco-tourism development approach, based on natural preservation imperatives has been promoted in Shimla Development Plan 2041 proposals. Through the recognition of interface between tourism, heritage and environment, various forest and adventure based activities such as natural walks, zip linings, camping, night trails, nature games and trekking should be envisaged for the Shimla.
3. Storm water Drains Conservation: As already mentioned, Shimla has 13 major nallahs and number of minor nallahs, which are natural drains for rain water. In order to preserve the hydrology around these water streams, no construction would be permitted within the periphery of 5 m buffer along Nallahs and 10 m of buffer along Khads.
4. Introduction of Ground Coverage in Building bye-laws: Permissible ground coverage plays a major role in environmental sustainability. Buildings with higher footprint require more cutting of slopes and trees, which disturb the natural drainage pattern subsequently. Due to less percolation of rainwater into ground, higher runoff in Shimla may lead to soil erosion and destabilize slopes. Hence, for bigger size of plots, other than side margins, components of restrictive

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ground coverage has also been provided in building bye-laws

5. Consideration of Slope and land suitability for new areas for development: While introducing new parcels of land for development, land suitability analysis has been done with the help of GIS base-map. Hence, identification of new land has been proposed on ground of suitable land, which has not been proposed over the forests areas and areas having slope more than 45 degree.

6. Measurements for earthquake disaster vulnerability: For construction of stable buildings, the submission of Structural stability certificate is mandatory.

7. Rain water harvesting: Rain water harvesting system is mandatory per TCP law. However, in coming future, dual plumbing system can be introduced.

C. That the contents of the corresponding Ground C are wrong, contrary and denied. It is rather most respectfully submitted before this Hon'ble Court that.

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The Development Plan prepared by the respondent State is based on analyses of various secondary data and Primary surveys and Guidelines. The Plan comprises of detailed description and analysis of sectoral issues, potentials along with projections of population, housing & slum, physical infrastructure, social infrastructure, Recreational, Tourism, Traffic &

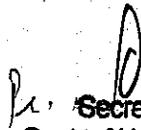
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transportation, Existing / Proposed Land use distribution and Building Byelaws. No drastic and large scale changes in the construction regime are being made or have been proposed in the Development Plan for Shimla Planning area. Only minimal construction for residential purposes in green areas has been proposed. No change of land use/ Building use will be permitted here. No tree cutting will be allowed. Similarly, in the core areas also, limited number of storeys as compared to usual/ standard norms has been proposed. Further to enable decongestion in real terms, the construction in non-core area (outside Municipal Corporation Limits and not under stress) is being proposed at par with the norms/ regulations for other areas in general.

D. That the contents of the corresponding Ground D are wrong and denied being false and misconceived. It is respectfully submitted before this Hon'ble Tribunal that regarding issue of regularizing of unauthorized construction is concerned; ***the Development Plan for Shimla Planning area does not circumvent upon to regularize any unauthorized constructions at all.***

E. That the contents of the corresponding Ground E are wrong and denied, being false and misconceived. The Original Applicant has presented the Draft Development Plan as a complete failure and visionless document,

  
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which is completely incorrect, misleading and is devoid of merits. The Applicant in fact has pin pointed the Development Plan contrary to the judgment dated 16.11.2017, without applying his mind and wisdom. It is most respectfully submitted before this Hon'ble Tribunal that the Development Plan addresses the issues raised in the carrying capacity report & vide judgment dated 16.11.2017 in all aspects, the details of which is as under:-

1. The issues raised in Carrying Capacity Report are focused mainly on Shimla Municipal Corporation Area. But, the ban on construction has been imposed in the whole Shimla Planning Area. Settlements in peri-urban areas of Special Area Shoghi, Kufri and Ghanahatti & Additional Planning Area are very thinly populated and hence these areas have potential to accommodate more population supported with adequate provision of support infrastructure. Thus, the restriction on construction in areas of relatively suitable slopes especially the Shoghi and Ghanahatti Area and the Additional Planning Area can be withdrawn, as these areas will serve as the most suitable for redirecting the further urban growth. The relatively low density, suitable slopes less than 30 degree, less forest cover and easy accessibility

  
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from city make these areas potential candidate for planned development. Moreover, for making a planned initiative in terms of Counter Magnet or Satellite Townships, economically and socially viable and successful, such restrictions need to be lifted at once.

2. The issues raised by this Hon'ble Tribunal in the Carrying Capacity Report of Shimla have mostly been addressed in this Development Plan, 2041. In addition, some of the aspects should also be considered while analyzing the Carrying Capacity of Shimla Planning Area, such as population density, Open spaces, Health Facilities, Educational Facilities etc. Another essential parameter is to see, how much of vacant land available in Shimla Planning Area, which is suitable for new development.

3. The Action Plans and Memorandum of Practice prepared as per this Hon'ble Tribunal's direction have duly been considered while preparing the proposal for respective sectors, like mobility, disaster Management, water supply, SWM and Forests etc.

4. Conservation of forests/green areas in such ecologically sensitive area is very important. 17 Green Belts were identified in SMC Area, which

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covers an area of 414.46 hectares. In existing Green Belts area, 24.17% (100.14) area is under the Private ownership of which only 6.28% (26 ha) is open and developable land. The owners of these parcels have been facing issues as no development can be done on these land chunks, and they cannot sell their land to anyone. Relaxations should be given for carrying out very limited development activity in vacant and sandwiched plots for residential purposes at least.

5. When Carrying Capacity Report was prepared, there was a water scarcity in Shimla region. But after May 2018 water crises, there is a considerable improvement and augmentation in the Water Supply System. The Current Water Supply fulfils the existing water demand with daily basis water supply. Augmentation of new schemes such as one at Gumma has added the daily water supply in Shimla by 10 MLD. Moreover, the World Bank aided 67 MLD project of lifting water from Satluj River has already been initiated, which will meet all the water demand of projected population by 2040. The proposed Development Plan for Shimla Planning area envisages augmentation of existing water supply demand from 44MLD to 85 MLD for projected population of approximately 6.25 Lakhs. The water

  
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supply is being augmented through World Bank funded projects being undertaken by the Shimla Jal Prabandhan Nigam Ltd.

6. As per the directions in judgment dated 16.11.2017 passed by this Hon'ble Tribunal, only 2+Attic floors are allowed to be constructed in Shimla Planning Area. It is most humbly submitted that these restrictions are unlikely to hamper the prevailing growth and urbanization trend. Any ban or development through implementation of restricted building height will not stop the population growth, both residents as well as floating population. One can only redirect the growth to more suitable areas through relaxation of FAR, number of floors and building height in some areas and with more restrictions in the other areas. In fact, with the restriction of 2 floor + attic building height in the whole Shimla Planning Area, more land area will be required in order to accommodate the future population which will result in more horizontal development creating more building footprint along with carbon footprint in the region.

  
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7. Keeping the ecological sensitivity of the whole region and increased population densities and the limited carrying capacity in some parts of the

Shimla Core area, building regulations have been made more restrictive and minimalistic by reducing the number of storeys and overall building height from 18.80 Mtrs to 13.50 Mtrs for all Uses in Core Area and from 21.0 Mtrs to 16.50 Mtrs maximum for Residential use in Non-Core area. Moreover, provision of ground coverage and common plot (with respect to the size of plot) and abutting road width have been introduced in building by-laws, which now ensures a lesser ecological footprint, especially in case of bigger size of plots. Observing the existing parking and road encroachment issue in entire Shimla, provision of parking space has been made mandatory in bye-laws in residential, commercial and public/semi-public land-uses.

8. In the Non-Core area, which comprises 98.5% of total area under Shimla Planning Area, there are large stretches of privately owned land having high potential and scope for planned development. Therefore, in order to shift the urbanization pressure from the Core Area, i.e. congested MC Area planned development with higher building height and FAR is to be considered in outer areas.

9. Further, the focus on decongesting the Core Area as emphasized by this Hon'ble Tribunal as detailed

  
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in judgment dated 16.11.2017 is sought to be addressed by giving slightly higher FAR and no. of storeys in the non core area where population density is lesser.

10. Based on the spatial analysis of location and terrain of various large-scale projects, especially Govt. projects, Institutional, Tourism and Real Estate projects, which have come up in last 5-7 years and are under implementation stage, it is evident that the objective of decongestion of the Core Area is being implemented vigorously and has been achieved to a great extent. Most of the new investment in Tourism sector is moving to the fringes and peri-urban areas i.e. SADA and Additional Planning Area and even outside the planning area in some cases. Same trend is also evident in case of Planned Real Estate projects as well.

11. Land being a valuable yet scarce resource, its optimum and effective utilization to accommodate the future urbanization pressure needs to be done, especially in outer fringe areas, which are more suitable for development.

  
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12. Further in the Core Area, MC Shimla has greatly benefited from the flagship programmes like AMRUT Scheme and Smart City Mission wherein

focus has been on improvement of basic city infrastructure and services as well as redevelopment of dilapidated market areas, which gives the city its image and values. The specific directions issued by Hon'ble NGT are addressed under the smart city projects which include appropriate Infrastructure, Water & Sewerage Facilities, Roads, Other Public Amenities, Retrofitting of existing structures, Solid waste management etc.

F. That the contents of the corresponding Grounds F are admitted being a part of judicial pronouncement passed by this Hon'ble Tribunal hence calls for no reply. It is further submitted that the proposed Development Plan is not against the principle of Sustainable Development as elaborated in para supra, wherein population density enhanced water availability and restrictive construction regulations have been discussed. Both, right to development and environment, are fundamental rights. Sustainable development is to be treated as an integral part of "life" under Article 21.

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G. That the contents of the corresponding Ground G are admitted being a judicial pronouncement passed by the Hon'ble Apex Court, hence calls for

no reply. The replying respondent State however most respectfully seeks to place reliance the judicial pronouncement of Hon'ble Apex Court in Padma v. Hiralal Motilal Desarda and others, (2002) 7 SCC 564, the Apex Court (two-Judge Bench) emphasized that laws dealing with "development planning are indispensable to sanitation and healthy urbanization", which, comprehensively takes care of statutory, manual, administrative and land-use laws hand in hand with architectural creativity. Further, "In the words of a well-known architect, development planning is the DNA of urbanization - the genetic code that determines what will get built. A development plan is essential to aesthetics of urban society. American Jurisprudence 2d (Volume 82, at page 388) states:

"Planning', as that term is used in connection with community development, is a generic term, rather than a word of art, and has no fixed meaning. Broadly speaking, however, the term connotes the systematic development of a community or an area with particular reference to the location, character, and extent of streets, squares, and parks, and to kindred mapping and charting. Planning has in view the physical development of

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the community and its environs in relation to its social and economic well-being for the fulfilment of the rightful common destiny, according to a "master plan" based on careful and comprehensive surveys and studies of present conditions and the prospects of future growth of the municipality, and embodying scientific teaching and creative experience.

32. The significance of a development planning cannot therefore be denied. Planned development is the crucial zone that strikes a balance between the needs or large-scale urbanization and individual building. It is the science and aesthetics of urbanization as it saves the development from chaos and uglification. A departure from planning may result in disfiguration of the beauty of an upcoming city and may pose a threat for the ecological balance and environmental safeguards."

(Emphasis supplied)

H. That the contents of the corresponding Ground H are admitted being a matter of record, hence calls for no reply.

I. That the contents of the corresponding Ground I are admitted that no stay has been granted by the Hon'ble Apex Court in Civil Appeal no. 5348 of 2019 filed by the respondent State against the

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judgment dated 16.11.2017 passed by this Hon'ble Tribunal. The rest of the contents of this para of the ground are wrong and denied being false and misconceived. The averments as detailed in the preliminary submissions may be read as reply to this para and it is again submitted at the cost of repetition that the Development Plan for Shimla Planning area is in consonance with the statutory framework of the HP Town & Country Planning Act, 1977. The Hon'ble Apex court in Manohar Joshi vs. State of Maharashtra (2012) 3 SCC 619 (two-Judge Bench), emphasized the need of planned development in the following term:

"199. As stated above, we adopted the model of democratic planning which involves the participation of the citizens, planners, administrators, Municipal bodies and the Government as is also seen throughout the MRTP Act. Thus when it comes to the Development Plan for a city, at the initial stage itself there is the consideration of the present and future requirements of the city. Suggestions and objections of the citizens are invited with respect to the proposed plan, and then the planners apply their mind to arrive at the plan which is prepared after a scientific study, and which will be implemented."

In the matter of Chairman, Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemical Ltd. and others (2007) 8 SCC 705, the Apex Court (two-Judge Bench) held that:

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"53. The right of property is now considered to be not only a constitutional right but also a human right."

**J, K & L.** That the contents of the corresponding Grounds J, K & L are admitted being a judicial pronouncement hence calls for no reply. However, the perusal of the judgments referred in the preceding paragraphs in the aforesaid grounds of the Application tends to show that the judgment in ground J refers to release of goods by the Customs, while judgment in paragraph K of the grounds is related to issue of tenancy rights and judgment under paragraph L is related to the issue of electricity charges between a private Company and the Electricity Board. All the judgments referred by the Original Applicant are judgment in persona and are not judgment in rem and henceforth, are non-applicable to the present set of facts and circumstances of this case, i.e. Preparation of Development Plan for Shimla Planning area. All the aforesaid judicial pronouncements relied upon by the Applicant in the present Application are non-applicable because the question in the present matter is compliance to the order of Constitutional Court, i.e. Hon'ble High Court of Himachal Pradesh in Civil Writ Petition no. 4595 of 2011 & under the exercise of

  
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legislative competency of the respondent State to pass the Development Plan.

M. That the contents of the ground of Para M of the Original Application are wrong, contrary and hence denied. In the proposed Shimla Development Plan, only minimalistic construction activities and restrictive building regulations have been envisaged in the core and green area. This was done in consonance with the public grievances and aspirations, which were voiced during the stakeholder meetings. In the Non-core area, where it is envisaged to de-congest the core, the building regulations proposed in the Shimla Development Plan are still more stringent than the usual Building norms prescribed under the earlier Interim Development Plan for Shimla Planning area (As amended up to 2016) or even under the Appendix I of the Himachal Pradesh Town & Country Planning Rules, 2014, wherein the construction up to a height of 18.8 meters were permissible even in Core Area. The Draft Development Plan for Shimla Planning area prepared by the respondent Department of Town & Country Planning Department has restricted the aspects of the height for the construction of the buildings in this concern by specifying the maximum no. of storeys in both core and non-core areas of

  
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Shimla Planning area with utmost regard to this Hon'ble Tribunal's direction vide its judgment dated 16.11.2017. The number of storeys has been reduced, as compared to earlier provisions in order to have low density development in core area which will eventually push development to Non-core area and peri-urban areas thus decongesting the already congested city area more particularly the Municipal limits of Shimla.

The proposed Development Plan for Shimla Planning area envisages augmentation of existing water supply demand from 44MLD to 85 MLD for projected population of approximately 6.25 Lakhs. Since 2018 onwards, lift water supply scheme Chaba to Gumma of 10 MLD has augmented the water supply of Shimla. Further the 67 MLD Sutlej Water supply scheme is being implemented by Shimla Jal Prabandhan Ltd. through World Bank assistance, which will be adequate to meet the requirement of residents of Shimla in future.

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Only minimalistic construction activities and restrictive building regulations have been envisaged in the core and green area. This was done in consonance with the public grievances and aspirations, which were voiced during the stakeholder meetings. In the non-core area, where instructions is

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envisaged to de-congest the core, the building regulations proposed in the Shimla Development Plan are more stringent than the usual Building norms prescribed under the earlier Interim Development Plan for Shimla Planning area (As amended up to 2016) or even under the Appendix I of the Himachal Pradesh Town & Country Planning Rules, 2014, wherein the construction up to a height of 21 meters were permissible. The Draft Development Plan for Shimla Planning area prepared by the respondent Department of Town & Country Planning Department has restricted the aspects of the height for the construction of the buildings in this concern by specifying the maximum no. of storeys, ground coverage in both core and non-core areas of Shimla Planning area. In Core area the Development Plan proposes restrictive regulations for Residential, Commercial and other uses with maximum permissible height of 13.50 Mtrs height(2 storey + parking floor+ habitable attic). For larger plots above 500 Sq mtrs area the coverage too have been imposed to restrict the built up area intensity which will result in more open and green areas. Similarly for Non-Core Area the Development Plan proposes restrictive regulations for Residential use with maximum permissible height of 16.50 Mtrs height (3

  
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storey + parking floor+ habitable attic) along with restriction of ground coverage for plots larger than 500 Sq mtrs area.

The Development Plan for Shimla Planning area caters to this aspect of regulated construction in green areas only for residential use at a minimalistic scale. The respondent State is well aware that there is a need to preserve the rich bio-diversity, in and around Shimla Town; the Green Belts already notified must remain intact. Moreover, in order to conserve the forest in Shimla Planning area, there is need to protect remaining forest land in Shimla Planning area, which is approximately 26 times more than 17 green belt area. At present, as per NRSC base-map land-use, 10,662 hectares land is under forests, tree clad area and plantation areas, which includes government as well as private land. Therefore, in terms of ecological and environmental perspective, minimum and limited construction can be allowed on vacant and sandwiched plots within the 26 hectares of private open land. If low density construction with limited storeys and FAR is allowed in the green areas, the overall population pressure on the area is likely to be minimal.

It is most humbly submitted before this Hon'ble Tribunal that the carrying capacity report missed

  
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some other important parameters which are crucial while analysing the carrying capacity of any area. Carrying Capacity report of Shimla has duly raised the right key concerns but it misses out detail about the population density and it has not examined that how much of population, per unit of land the complete Shimla Planning Area is capable of carrying and accommodating in future.

**REPLY TO LIMITATION CLAUSE: -**

That referring to Paragraph regarding the Limitation clause of the Original Application, the Replying Respondents/Deponent respectfully submits that limitation of the present Application is not disputed, but the present application is non-maintainable in its present form and is liable to be dismissed

**REPLY TO MAIN PRAYER CLAUSE: -**

That referring to Prayer/Relief sought by Applicant, the Replying Respondents/Deponent respectfully submits as follows:

The present Original Application being devoid of merit is liable to be dismissed with heavy costs in the interest of justice and equity and special costs may be awarded in the favour of the answering Respondent and the legality of the Draft Development Plan for Shimla Planning area prepared by the

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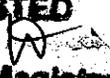
Department of Town & Country Planning/ respondent  
State may kindly be upheld and allowed to be notified  
in terms of provisions of the Himachal Pradesh Town  
& Country Planning Act, 1977.

  
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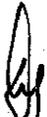
VERIFICATION:

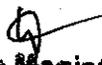
I, above named deponent do hereby state on  
solemn affirmation that the contents of the foregoing  
paras are true and correct to my knowledge as derived  
from the official record and I believe the same to be  
true and that nothing material has been concealed  
there from.

Verified at Shimla on this day of June' 2022

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Executive Magistrate  
H.P. Sectt., Shimla

1105/2022  
Declared before me on 24th of July  
2022 on oath (Solemnly affirmation)  
by Shri Dewendra Kumar  
who is personally known to me or who  
has been identified by Sh. As. Secy (TCP)  
who is Personally known to me.  
H.P.

  
Secretary (TCP)  
to the Govt. of H.P.,  
Shimla - 171002  
DEPONENT

  
Executive Magistrate  
H.P. Sectt. Shimla



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

ON THE 21<sup>st</sup> DAY OF SEPTEMBER 2021

BEFORE

HON'BLE MR. JUSTICE RAVI MALIMATH,

ACTING CHIEF JUSTICE

&

HON'BLE MS. JUSTICE JYOTSNA REWAL DUA

CIVIL WRIT PETITION No.4595 of 2011

Between:-

1. RAJEEV VERMA ARCHITECT  
S/O SH INDAR JIT VERMA,  
R/O RESIDENCY, SHIMLA VIEW ESTATE  
SHIMLA H.P.
2. SUSHIL SHARMA ARCHITECT  
S/O SH RAMANAND SHARMA,  
R/O NEELAM BHAVAN, SANJAULI,  
SHIMLA H P
3. RAJESH MEHTA RETIRED DIRECTOR,  
TOWN PLANNING S/O SH GURU DUTT MEHTA,  
R/O COMBEREMERE COMPLEX THE MALL,  
SHIMLA H P
4. INDAR JIT VERMA, ARCHITECT  
S/O LATE SH. BAHADUR CHAND,  
R/O RESIDENCY, SHIMLA VIEW ESTATE  
SHIMLA H P
5. RAJIV SHARMA ARCHITECT  
S/O SH. A N SHARMA,  
R/O SHIMLA TEHSIL AND DISTRICT SHIMLA H P
6. ARUN BHANWRA ARCHITECT  
S/O SH B N BHANWARA,  
R/O 31, THE MALL, SHIMLA H P.
7. RAKESH MEHTA ARCHITECT  
S/O SH S D MEHTA,

R/O AKAR, SHANKALI  
TEHSIL AND DISTRICT SHIMLA H P  
8. SACHIN MISHRA ARCHITECT.  
S/O LATE SH P C MISHRA,  
B-6 PARAS DAS GARDEN BEMLOE,  
SHIMLA.

.....PETITIONERS

(NONE FOR THE PETITIONERS)

AND

1. STATE OF HIMACHAL PRADESH  
THROUGH PRINCIPAL SECRETARY,  
TOWN AND COUNTRY PLANNING TO THE  
GOVERNMENT OF HIMACHAL PRADESH  
AT SHIMLA.
2. MUNICIPAL CORPORATION SHIMLA,  
THROUGH ITS COMMISSIONER,  
THE MALL SHIMLA 1.
3. THE SECRETARY (URBAN DEVELOPMENT)  
TO THE GOVT. OF H.P.
4. THE CHIEF SECRETARY TO THE GOVT. OF H.P.

.....RESPONDENTS

(SH. ASHOK SHARMA, ADVOCATE GENERAL  
WITH MS. RITTA GOSWAMI, ADDITIONAL  
ADVOCATE GENERAL, FOR R-1, 3 AND 4  
SH. N.K. GUPTA, ADVOCATE, FOR R-3)

CIVIL WRIT PETITION No.2020 of 2011

Between:-

1. SMT. ALKA SOOD  
WIFE OF SHRI V.K. SOOD,  
RESIDENT OF RAJDEEP APARTMENTS  
DARSHAN VILLAS, SHIMLA-2,  
HIMACHAL PRADESH.

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2. LT. GEN. T.J.S. GILL,  
SON OF SHRI SARDAR N.S. GILL,  
RESIDENT OF RAJDEEP APARTMENTS  
DARSHAN VILLAS, SHIMLA-2,  
HIMACHAL PRADESH.
3. SMT. SANTOSH KELRA  
WIFE OF SHRI V.K. KALRA,  
RESIDENT OF RAJDEEP APARTMENTS  
DARSHAN VILLAS, SHIMLA-2,  
HIMACHAL PRADESH.

.....PETITIONERS

(BY. SH. B.C. NEGI, SENIOR ADVOCATE WITH  
MR. UDIT SHAURYA KAUSHIK, ADVOCATE)

AND

1. STATE OF HIMACHAL PRADESH  
THROUGH ITS PRINCIPAL SECRETARY,  
TOWN & COUNTRY PLANNING TO THE  
GOVERNMENT OF HIMACHAL PRADESH
2. DIRECTOR TOWN & COUNTRY PLANNING  
DEPARTMENT, HIMACHAL PRADESH  
SHIMLA-171009, H.P.
3. MUNICIPAL COMMISSIONER, SHIMLA,  
HIMACHAL PRADESH
4. UMBRELLA COMMITTEE,  
THROUGH COMMISSIONER,  
MUNICIPAL CORPORATION SHIMLA,  
HIMACHAL PRADESH.
5. THE SECRETARY (URBAN DEVELOPMENT)  
TO THE GOVT. OF H.P.

.....RESPONDENTS

(SH. ASHOK SHARMA, ADVOCATE GENERAL  
WITH MS.RITTA GOSWAMI, ADDITIONAL  
ADVOCATE GENERAL, FOR R-1, 2 AND 5  
SH. N.K. GUPTA, ADVOCATE, FOR R-3 and 4)

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*These petitions coming on for orders this day, Hon'ble*

**Mr. Justice Ravi Malimath, passed the following:**

**ORDER**

The latest status details regarding development plan for Shimla planning area has been filed on behalf of the Director, Town & Country Planning. It also includes a table with regard to dates on which necessary steps will be taken by the respondents. The same is taken on record.

2. Since, the entire grievance of the petitioners stands answered by the said affidavit, they do not intend to prosecute these matters further. However, they are at liberty to revive the same in case the same is not given effect to within the reasonable time.

3. The pending miscellaneous applications are disposed off accordingly.

**( Ravi Malimath )  
Acting Chief Justice**

**( Jyotsna Rewal Dua )  
Judge**

September 21, 2021  
(vt)

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**Counter Affidavit in O.A. No. 297 of 2022 Yogendra Mohan Sengupta Vs. U.O.I. & Ors.**

1 message

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jainendra kumar <jainendrakumar1987@gmail.com>  
To: litigation.life@gmail.com  
Cc: Abhinav Mukerji <abhinavmukerji@gmail.com>

Tue, Jul 19, 2022 at 2:59 PM

Dear Sir

Please find enclosed pdf Counter Affidavit in O.A. No. 297 of 2022 Yogendra Mohan Sengupta Vs. U.O.I. &amp; Ors.

Reagres  
Jainendra Kumar  
Clerk of Mr, Abhinav Mukerji  
D-85 (Lower Ground Floor)  
Panchsheel Enclave  
New Delhi - 110017  
Ph: (011) 40509856  
Mob: 9582898859

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 Yogendera Mohan Vs. U.O.I..pdf  
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