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

Original Application No. 341/2024

Pawan Kumar Banta.

.....Applicant

Versus

State of Himachal Pradesh & Ors.

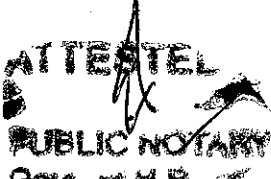
..... Respondents.

**REPLY TO THE ORIGINAL APPLICATION
ON BEHALF OF RESPONDENT No. 4, i.e.
MUNICIPAL CORPORATION SHIMLA**

MAY IT PLEASE YOUR LORDSHIPS:-

PRELIMINARY SUBMISSIONS:-

1. That the petitioner be estopped from filing the present writ petition for his own act, conduct, deeds and submissions for the reason that the project in question was approved by respondent No. 3, in terms of

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appendix 7 (5) of the Himachal Pradesh Town and Country Planning Rules, 2014. Infact, the perusal of sanctioned plan dated 1.3.2017 clearly stipulates that the Hotel Block was also approved under the Commercial area by respondent No. 3. Hence, the present Original Application deserves to be dismissed against the replying respondent.

2.

That the petitioner has got no locus standi to file and maintain the present original application against the replying respondent for the reason that in compliance to order dated 08.10.2021 passed in case No. 411/AP/2019 titled as Dr. Pawan Kumar Banta Versus M/s Nirwana Woods and Hotel Pvt. Ltd. the respondent No. 7 submitted a revised-cum-completion plan of the Project in question to the Architect Planner of the respondent Corporation. Accordingly, the case of the respondent No. 7 was processed in accordance with the provisions of Himachal Pradesh Municipal Corporation

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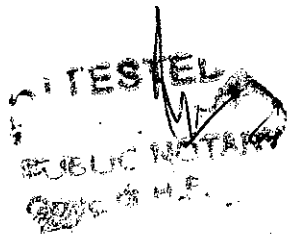
Act, 1994 and Building Bye-laws 1998 of MC Shimla. Further, on the basis of initial approval accorded to the respondent No. 7 by the respondent No. 3, the case of the respondent No. 7 was placed in the House Approval Planning Committee (HPAC) of MC Shimla. The said Committee after visiting the site verified the facts and drawings of the project in question and only after being fully satisfied placed the case of the project in question, before the 83rd meeting of House Approval Planning Committee (HPAC) on 7.10.2022, accordingly, the case of respondent No. 7 was approved by the aforesaid Committee, subject to the condition that **“the permissible height of the building in question i.e. Block 9 of the project which has been raised beyond the permissible limit of 25.00 meters by 0.90 meters may be got relaxed from the Government of H.P. in terms of appendix 7 (5) of H.P. Town and Country Planning Rules, 2014”**.

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Accordingly, the aforesaid relaxation was accorded in favour of the respondent No. 7 by respondent No. 3 vide letter dated 13.10.2022.

3. That the present writ petition is also not maintainable before this Hon'ble Tribunal as the issue in question is not res integra and is already pending for adjudication in CWP No. 7993 of 2022 titled as Pawan Kumar Banta Versus M/s Nirwana Woods and others, CWP No. 1239 of 2023 titled as Kiyari Gramin Kalyan Sabha Versus State of H.P. and others and CWP No. 3841 of 2024 titled as Sunil Kumar Versus State of H.P. and others before the Hon'ble High court of H.P. which has also been admitted by the petitioner in the present original application. Therefore, in view of the settled proposition of law the continuation of proceedings by the Hon'ble National Green Tribunal during the pendency of Writ Petitions before the Hon'ble High court are not in conformity with the principles of judiciary propriety as



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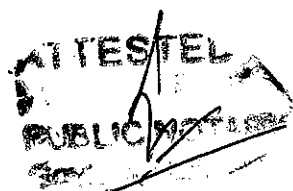
has also been observed by Hon'ble Apex Court in para 109 of its judgment dated 11.1.2024 passed in Civil Appeal No. 5348-5349 of 2019 titled as State of H.P. and others Versus Yogender Mohan Sen Gupta that the High Court of H.P, insofar as its territorial jurisdiction, has supervisory jurisdiction over the NGT. Hence, the present Original Application deserves to be dismissed on this ground alone.

- 4 That the present original application is also bad for non-joinder of necessary parties hence, liable to be dismissed on this ground.

REPLY ON MERITS:

- 1&2 That the contents of these paras of the Original Application are not disputed, being matter of record.

- 3 That in reply the contents of this para of the original application, it is submitted that the replying respondent has not committed any flagrant violations of the cannon of law by any of its acts of omissions and commissions which has violated any of the orders passed



by this Hon'ble Tribunal^{6.} and has made the petitioner entitled to file and maintain the present original application before this Hon'ble Tribunal for the reasons that the project in question was approved by respondent No. 3, in terms of appendix 7 (5) of the Himachal Pradesh Town and Country Planning Rules, 2014. Infact, the perusal of sanctioned plan dated 1.3.2017 clearly stipulates that the Hotel Block was also approved under the Commercial area by respondent No. 3.

Moreover, in compliance to order dated 8.10.2021 passed in case No. 411/AP/2019 titled as Dr. Pawan Kumar Banta Versus M/s Nirwana Woods and Hotel Pvt. Ltd. the respondent No. 7 submitted a revised-cum-completion plan of the Project in question to the Architect Planner of the respondent Corporation. Accordingly, the case of the respondent No. 7 was processed in accordance with the provisions of Himachal Pradesh Municipal Corporation Act, 1994

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and Building Bye-laws 1998 of M C Shimla. Further, on the basis of initial approval accorded to the respondent No. 7 by the respondent No. 3, the case of the respondent No. 7 was placed in the House Approval Planning Committee (HPAC) of M C Shimla. The said Committee after visiting the site verified the facts and drawings of the project in question and only after being fully satisfied placed the case of the project in question, before the 83rd meeting of House Approval Planning Committee (HPAC) on 7.10.2022, accordingly, the case of respondent No. 7 was approved by the aforesaid Committee, subject to the condition that “ the permissible height of the building in question i.e. Block 9 of the project which has been raised beyond the permissible limit of 25.00 meters by 0.90 meters may be got relaxed from the Government of H.P. in terms of appendix 7 (5) of H.P. Town and Country Planning Rules, 2014”. Accordingly, the aforesaid

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relaxation was accorded in favour of the respondent No. 7 by respondent No. 3 vide letter dated 13.10.2022.

Reply to facts in brief

1 to 19 That the contents of these paras of the Original Application qua Annexure 1 to Annexure -18 are not disputed, being matter of record. However, the remaining contents of these paras of the original application are required to be answered by the other respondents of this original application as it pertains to them and not to the replying respondent.

20 & 21 That the contents of these para of the original application qua Annexure - 19 are not disputed, being matter of record. However, it is submitted that subsequent to Annexure -19, the replying respondent issued a notice under section 254(6) read with section 253, 242 of H.P. M C Act, 1994 dated 25.03.2019 to the Project Manager of respondent No. 7. Both the above notices were dealt in order dated

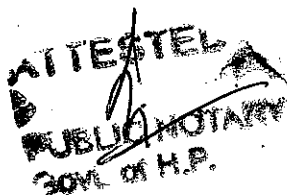
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8.10.2021 passed by the Commissioner, M C Shimla (Annexure -50 of the Original Application). Wherein, the respondent No. 7 was directed to resubmit a revised-cum-completion plan of the project in question to the Architect Planner of the respondent Corporation, who was supposed to work out the exact deviation in its entirety from the approved drawings and shall proceed further in accordance with the law.

Accordingly, the respondent No. 7 submitted a revised-cum-completion plan of the Project in question to the Architect Planner of the respondent Corporation. The case of the respondent No. 7 was processed in accordance with the provisions of Himachal Pradesh Municipal Corporation Act, 1994 and Building Bye-laws 1998 of M C Shimla. Further, on the basis of initial approval accorded to the respondent No. 7 by the respondent No. 3, the case of the respondent No. 7 was placed in the House Approval Planning Committee (HPAC) of



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M C Shimla. The said Committee after visiting the site verified the facts and drawings of the project in question and only after being fully satisfied placed the case of the project in question, before the 83rd meeting of House Approval Planning Committee (HPAC) on 7.10.2022, accordingly, the case of respondent No. 7 was approved by the aforesaid Committee, subject to the condition that "the permissible height of the building in question i.e. Block 9 of the project which has been raised beyond the permissible limit of 25.00 meters by 0.90 meters may be got relaxed from the Government of H.P. in terms of appendix 7 (5) of H.P. Town and Country Planning Rules, 2014". Accordingly, the aforesaid relaxation was accorded in favour of the respondent No. 7 by respondent No. 3 vide letter dated 13.10.2022.

However, with regard to order dated 16.11.2017 passed by the National Green

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Tribunal in OA No 121 of 2014 is concerned the same has been set aside by the Hon'ble Apex Court in Civil Appeal No. 5348-5349 of 2019 titled as State of H.P. and others Versus Yogender Mohan Sen Gupta.

22 to 25 That the contents of these paras of the Original Application qua Annexure 21 to - 24 are not disputed, being matter of record. However, the remaining contents of these paras of the original application are required to be answered by Respondents No. 2 and 7 of this original application as it pertains to them and not to the replying respondent.

26. That the contents of this para of the original application qua Annexure-25 are not disputed, being matter of record.

✓ 27 & 28 That the contents of these paras of the Original Application qua Annexure 26 and 27 are not disputed, being matter of record. However, the remaining contents of these paras of the original application are

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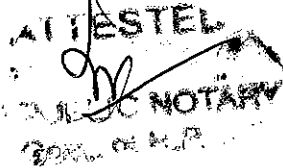
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required to be answered by Respondents No. 2,6 and 7 as it pertains to them and not to the replying respondent.

29 That the contents of this para of the original application qua Annexure-29 are not disputed, being matter of record.


30 & 31 That the contents of these paras of the Original Application qua Annexure 30 and 31 are not disputed, being matter of record. However, the remaining contents of these paras of the original application are required to be answered by Respondents No. 6 as it pertains to them and not to the replying respondent.

32 That the contents of this para of the original application qua Annexure-32 are not disputed, being matter of record. However, it is submitted that in compliance to order dated 12.05.2020 as already submitted by the petitioner in para 29 of the original application, that the replying respondent vide letter dated 20.03.2020 directed S.H.O Thana Boileauganj, Shimla to remove such


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person and all his assistance and workers who are found on the site in question carrying with the construction work. In lieu of letter dated 20.03.2020 the Superintendent of Police Shimla vide his letter dated 12.05.2020 informed that the S.H.O, Thana Boileauganj, Shimla who was assigned with the duty to inspect the site in question has informed through his report that during his site visited though the construction work was being carried out yet the same was immediately stopped by the labours after seeing the Police on the spot. The Project Manager was found on the site who was apprised regarding the orders given by MC Shimla vide letter dated 20.03.2020, by S.H.O Thana Boileauganj, Shimla. The Project Manger showed his non- acquaintance regarding the letter dated 20.03.2020 to S.H.O, however, gave his assurance to stop the construction work immediately on the site in question. Thereafter, the site in question was also


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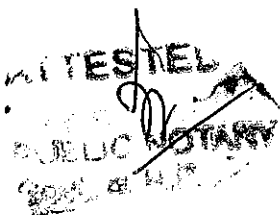
visited by the concerned Junior Engineer of the Municipal Corporation Shimla on 28.05.2020 who observed that neither any construction activity was going on the site in question nor any labour was found there.

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That the contents of this para of the original application qua Annexure-33 are not disputed, being matter of record. However, the same is required to be answered by respondent No. 2 as it pertains to them.

34

That the contents of this para of the original application is required to be answered by Shimla Jal Prabhadhan Nigam Limited (SJPNL) who has not been arrayed as necessary party in the matter by the petitioner. As, the entire record related to the management, lifting, distribution of Water Supply, Sewerage Circle and Sewerage treatment plant have been handed over to the above mentioned company by the Municipal Corporation Shimla vide notification dated 31.08.2018 alongwith all the assets and liabilities, including record.



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etc.

35 That the contents of this para of the original application qua Annexure-35 and 36(colly) are not disputed, being matter of record.

36 & 37 That the contents of these paras of the original application qua Annexure-37 and 38 are required to be answered by respondent No. 2 as it pertains to them.

38 That the contents of this para of the original application qua Annexure-39 are not disputed, being matter of record. However, it is submitted that the aforesaid notice was issued by the concerned Junior Engineer when he visited the site in question for inspection and was stopped by the Security Guard, who refuse to open the gate of the site in question.

39 & 40 That the contents of these paras of the original application are required to be answered by SJPNL and Divisional Forest Officer (Shimla Forest Division) respectively qua Annexure-40 and 41 as it pertains to them.


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41 to 48 That the contents of these paras of the Original Application qua Annexure 42 to 49 are not disputed, being matter of record. However, the remaining contents of these paras of the original application are required to be answered by the others respondents of this original application alongwith SJPNL (who has not been arrayed as necessary party in the matter) as it pertains to them and not to the replying respondent.

49 That the contents of this para of the original application qua Annexure-50 are not disputed, being matter of record. The orders dated 08.10.2021 has been passed on merit by the than Commissioner, MC Shimla wherein, respondent No. 7 was directed to submit a revised-cum-completion plan of the project in question to the Architect Planner of MC Shimla.

Accordingly, the case of the respondent No. 7 was processed in accordance with the provisions of Himachal



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Pradesh Municipal Corporation Act, 1994 and Building Bye-laws 1998 of MC Shimla. Further, on the basis of initial approval accorded to the respondent No. 7 by the respondent No. 3, the case of the respondent No. 7 was placed in the House Approval Planning Committee (HPAC) of MC Shimla. The said Committee after visiting the site verified the facts and drawings of the project in question and only after being fully satisfied placed the case of the project in question, before the 83rd meeting of House Approval Planning Committee (HPAC) on 7.10.2022, accordingly, the case of the respondent No. 7 which was approved by the aforesaid Committee subject to the condition that **“the permissible height of the building in question i.e. Block 9 of the project which has been raised beyond the permissible limit of 25.00 meters by 0.90 meters may be got relaxed from the Government of H.P. in terms of appendix 7 (5) of H.P.**

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Town and Country Planning Rules, 2014". Accordingly, the aforesaid relaxation was accorded in favour of the respondent No. 7 by respondent No. 3 vide letter dated 13.10.2022.

50 That the contents of this para of the original application qua Annexure-51 is required to be answered by respondent No. 3 as it pertains to them.

51 & 52 That the contents of these para of the original application qua Annexure-52 and 53 are not disputed, being matter of record. The orders dated 05.08.2022 has been rightly passed by Principal Secretary (UD) on merit upholding the orders dated 08.10.2021 passed by Commissioner, MC Shimla.

53 & 54 That the contents of these paras of the original application qua Annexure- 54 to 58 are not disputed, being matter of record.

55 That in reply to the contents of this para of the original application it is submitted that in compliance to order dated 08.10.2021

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passed in case No. 411/ AP/2019 titled as Dr. Pawan Kumar Banta Versus M/s Nirwana Woods and Hotel Pvt. Ltd. the respondent No. 7 submitted a revised-cum-completion plan of the Project in question to the Architect Planner of the respondent Corporation. Accordingly, the case of the respondent No. 7 was processed in accordance with the provisions of Himachal Pradesh Municipal Corporation Act, 1994 and Building Bye-laws 1998 of MC Shimla. Further, on the basis of initial approval accorded to the respondent No. 7 by the respondent No. 3, the case of the respondent No. 7 was placed in the House Approval Planning Committee (HPAC) of MC Shimla. The said Committee after visiting the site verified the facts and drawings of the project in question and only after being fully satisfied placed the case of the project in question, before the 83rd meeting of House Approval Planning Committee (HPAC) on 7.10.2022,

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Accordingly, the case of respondent No. 7 was approved by the aforesaid Committee subject to the condition that "the permissible height of the building in question i.e. Block 9 of the project which has been raised beyond the permissible limit of 25.00 meters by 0.90 meters may be got relaxed from the Government of H.P. in terms of appendix 7 (5) of H.P. Town and Country Planning Rules, 2014". Accordingly, the aforesaid relaxation was accorded in favour of the respondent No. 7 by respondent No. 3 vide letter dated 13.10.2022.

Grounds:-

A to X That in reply to the contents of these para of the original application, it is submitted that the averments made in the preceding paras may be read as part and parcel of these sub paras, as the same are not being repeated, in order to avoid repetition and for the sake of brevity of this Hon'ble Tribunal.

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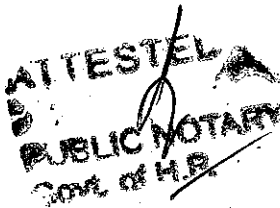
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It is, therefore, most humbly prayed that in view of the submissions made hereinabove the present original application may kindly be dismissed, being devoid of having any merits with exemplary costs, in the interest of justice and fair play.



Municipal Corporation, Shimla
Through its Commissioner,



Place: Shimla

Dated: 24.08.2024

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

Original Application No. 341/2024

Pawan Kumar Banta.

.....Applicant


Versus

State of Himachal Pradesh & Ors.

..... Respondents.

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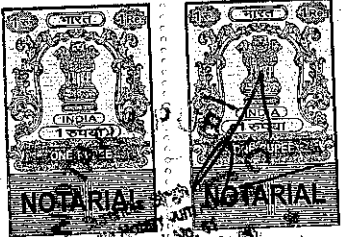
I, Bhupender Kumar Attri, S/o Sh. R. L. Sharma, Aged 50 years, Commissioner, Municipal Corporation, Shimla do hereby solemnly affirm and declare as under:-

- 
1. That the accompanying reply to the original application has been drafted under my instructions and at my instance and the contents thereof have been read over by me.

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2. That the contents of para 1 to 4 of preliminary Submissions and paras 1 to 55 reply on merits are true to the best of my information as derived from official record.

3. That I the above named deponent do hereby solemnly affirm and declare that the contents of para 1 & 2 of my affidavit are true and correct. No part of it is false and nothing material has been concealed therefrom.



Regd. No. 10
Sub Division Shimla (A)
Date of Expiry
27.8.2028
GOVT. OF H.P.

Verified at Shimla on this the 24th day of August, 2024.

Deponer
Sh. Atthi

Sh. Atthi
DEPONENT

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Sh. Atthi
24/8/2024
Sunder Kumar Atthi
Sh. Atthi
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Shimla, H.P.
24.8.2024