(2007) 05 SC CK 0071

Supreme Court of India

Case No: Civil Appeal No. 2525 of 2007 (Arising out S.L.P. (Civil) No. 3292 of 2006)

Commissioner of Municipal Corporation, Shimla		APPELLANT
	Vs	
Prem Lata Sood and Others		RESPONDENT

Date of Decision: May 15, 2007

Acts Referred:

- Himachal Pradesh Municipal Corporation Act, 1994 - Section 222, 223, 243, 244, 245
- Himachal Pradesh Town and Country Planning Act, 1977 - Section 10, 10(3), 14, 17, 17(4)

Citation: (2007) 7 JT 336 : (2007) 7 SCALE 737 : (2007) 11 SCC 40 : (2007) 6 SCR 898

Hon'ble Judges: S. B. Sinha, J; Markandey Katju, J

Bench: Division Bench

Advocate: Anil Nag, for the Appellant; A.K. Ganguly K.V. Vishwanath, Barnali Barsak and Rajesh Srivastava, for the Respondent

Final Decision: Disposed Of

Judgement

S.B. Sinha, J.
Leave granted.

2. This appeal is directed against the judgment and order dated 16.08.2005 passed by a Division Bench of the High Court of Himachal Pradesh at Shimla, whereby and whereunder the writ petition filed by Respondent Nos. 1 to 5 herein, praying, inter alia,:

i) That the respondents may be directed to accord necessary planning permission to the petitioners for construction of hotel pursuant to Annexures - PA, PB, PC & PG in a time bound schedule;

ii) That the impugned Annexures - PD, PE, PF & PH, dated 24.3.1998, 1.9.1999, 6.6.2000 & 8.2.2002 respectively may be quashed and set aside;

was allowed.

3. The State of Himachal Pradesh enacted ''The Himachal Pradesh Town and Country Planning Act, 1977'' (for short, ''the 1977 Act'') to make provisions for planning and development as well as use of land; to make better provision for the preparation of development plans and sectoral plans with a view to ensuring that town planning schemes are made in a proper manner and their execution is made effective to constitute the Town and Country Development Authority for proper implementation of town and country development plan, to provide for the development and administration of special areas through the Special Area Development Authority to make provisions for the compulsory acquisition of land required for the purpose of the development plans and for purposes connected with the matter aforesaid.

4. ''Development'' has been defined in Section 2(g) of the 1977 Act to mean:

development" with its grammatical variations means the carrying out of a building, engineering, mining or other operations in, on, over or under land, or the making of any material change in any building or land, or in the use of either, and includes sub-division of any land;

''Planning area'' has been defined in Section 2(o) of the 1977 Act to mean:

planning area" means any area declared to be planning area under this Act;

5. Section 3 of the 1977 Act provides for appointment of a Director or other officers for the purpose of carrying out the functions under the provisions of the said Act. Section 10 of the said Act provides for restriction on use of land or development thereof, Sub-section (3) whereof reads as under:

(3) If any work is carried out in contravention of the provisions of this section, the Municipal Corporation or Municipal Committee within its such local area, and the Collector in area outside such local areas may cause such work to be removed or demolished at the cost of the defaulter, which shall be recovered from him in the same manner as an arrear of land revenue.

6. Section 14 of the 1977 Act provides for preparation of development plans by the Director. Section 17 provides for interim development plans, pursuant to or in furtherance whereof the interim development for the planning area has been made to which reference shall be made at an appropriate place.

7. In terms of the said provisions, an interim development plan is to be made after consultation with the local authority concerned. Sub-section (5) of Section 17 mandates the State Government to publish the interim development plan in the official gazette.

8. Chapter VI of the 1977 Act provides for control of development and use of land. Section 25 thereof reads as under:

25. The overall control of development and the use of land in the planning area shall, as from the date of publication in the official Gazette of a notification by the State Government, vest in the Director.

9. Section 30 of the 1977 Act provides for an application for permission for development by a person other than Union Government, State Government, a local authority or a special authority constituted thereunder. An application therefore is required to be filed in the office of the Director. Section 31 provides for the mode and manner in which such application shall be governed, inter alia, stating:

(5) If the Director does not communicate his decision whether to grant or refuse permission to the applicant within two months from the date of receipt of his application, such permission shall be deemed to have been granted to the applicant on the date immediately following the date of expiry of two months.

10. Chapter IX provides for control. Section 76 of the 1977 Act provides for a non-obstante clause in terms whereof the Government is empowered to review plans etc. for ensuring conformity, in the following terms:

76. Notwithstanding anything contained in any other enactment for the time being in force, the State Government may, with a view to ascertaining that no repugnancy exists or arises with the provisions of this Act or the rules made thereunder, review the town improvement schemes, building plans or any permission for construction sanctioned or given by any authority under development plans, sanctioned under any enactment for the time being in force and may revoke, vary, or modify any scheme, plan, permission or sanction in conformity with the provisions of this Act:

Provided that no order under this section shall be made without giving a reasonable opportunity of being heard to the persons affected thereby.

11. The said Act, thus, provides for an overall policy to be taken by the authority as well the State Government.

12. The State of Himachal Pradesh also enacted the ''Himachal Pradesh Municipal Corporation Act, 1994'' (for short, ''the 1994 Act''). A municipal corporation constituted under the said provisions is a local authority within the meaning of the provisions of the 1977 Act.

13. Section 243 of the 1994 Act provides that every person who intends to erect a building shall apply for sanction by giving notice in writing of his intention to the Commissioner in such form and containing such information as may be prescribed by the bye-laws made in that behalf. Despite the fact that the 1977 Act provides for filing of an application for a development plan, when an interim development plan has been made, the 1994 Act also provides for sanction of a building plan, if a person intends to execute any of the works specified u/s 244 of the 1994 Act. The said provision lays down that every person who intends to execute any of the works specified therein shall apply for sanction by giving notice in writing of his intention

to the Commissioner in such form and containing such information as may be prescribed by the bye-laws made in that behalf. Section 245 of the 1994 Act provides for issuance of a notice wherein the purpose for which it was intended to use the building is required to be specified in the following terms:

245.(1) A person giving the notice required by Section 243 shall specify the purpose for which it is intended to use the building to which such notice relates and a person giving the notice required by Section 244 shall specify whether the purpose for which the building is being used is proposed or likely to be changed by the execution of the proposed work.

(2) No notice shall be valid until the information required under Sub-section (1) and any further information and plans which may be required by bye-laws made in this behalf have been furnished to the satisfaction of the Commissioner along with the notice.

14. Section 246 which provides for the power of the Commissioner to grant or refuse to grant such sanction, which is relevant for our purpose, reads as under:

246(1).- The Commissioner shall sanction the erection of a building or the execution of a work unless such building or work would contravene any of the provisions of Sub-section (2) of this section or the provisions of section 250.

(2) The grounds on which the sanction of a building or work may be refused shall be the following, namely:

(a) that the building or work, or the use of the site for the building or work or any of the particulars comprised in the site plan, ground plan, elevation, section or specification would contravene the provisions of any bye-law made in this behalf or of any other law or rule, bye-law or order made under such other law;

(b) that notice for sanction does not contain the particulars or is not prepared in the manner required under the bye-laws made thereunder has or have not been duly furnished;

(c) that any information or documents required by the Commissioner under this Act or any bye-laws made thereunder has or have not been duly furnished;

(d) that in cases falling u/s 222 lay out plans have not been sanctioned in accordance with Section 223;

(e) that the building or work would be an encroachment on Government land or land vested in the Corporation;

(f) that the site of the building or work does not abut on a street or projected street and that there is no access to such building or work from any such street by a passage or pathway appertaining to such site;

(g) that the building or work would be in contravention of any scheme sanctioned u/s 260; and

(h) that a building for habitation, does not provide for a flush or a water seal latrine.

(3) The Commissioner shall communicate the sanction to the person who has given the notice; and where he refuses sanction on any of the grounds specified in Sub-section (2) of this section or u/s 250 he shall record a brief statement of his reasons for such refusal and communicate the refusal alongwith the reasons therefore to the person who has given the notice.

(4) The sanction or refusal as aforesaid shall be communicated in such manner as may be specified in the bye-laws made in this behalf.

15. Section 247 of the 1994 Act provides for a deeming provision in the following terms:

247.(1) Where within a period of sixty days after the receipt of any notice u/s 243 or Section 244 or of the further information, if any, required u/s 245 the Commissioner does not refuse to sanction the building or work or upon refusal does not communicate the refusal to the person who has given the notice, the Commissioner shall be deemed to have accorded sanction to the building or work and person by whom the notice has been given shall be free to commence and proceed with the building or work in accordance with his intention as expressed in the notice and the documents and plans accompanying the same:

Provided that if it appears to the Commissioner that the site of the proposed building or work is likely to be affected by any scheme of acquisition of land for any public purpose or by any proposed regular line of a public street or extension, improvement, widening or alteration of any street, the Commissioner may withheld sanction of the building or work for such period not exceeding sixty days as he deems fit and the period of sixty says shall be deemed to commence from the date of the expiry of the period for which the sanction has been withheld.

(2) Where a building or work is sanctioned or deemed to have been sanctioned by the Commissioner under Sub-section (1), the person who has given the notice shall be bound to erect the building or execute the work in accordance with such sanction but not so as to contravene any of the provisions of this Act or any other law or of any bye-law made thereunder.

(3) If the person or any one lawfully claiming under him does not commence the erection of the building or the execution of the work within one year of the date on which the building or work is sanctioned or is deemed to have been sanctioned, he shall have to give notice u/s 244, or, as the case, may be, u/s 243 for fresh sanction of the building or the work and the provisions of this section shall apply in relation to such notice as they apply in relation to the original notice.

(4) Before commencing the erection of a building or execution of a work within the period specified in Sub-section (3), the person concerned shall give notice to the Commissioner of the proposed date of the commencement of the erection of the building or the execution of the work.

Provided that if the commencement does not take place within seven days of the date so notified, the notice shall be deemed not to have been given and a fresh notice shall be necessary in this behalf.

(5) Where the building plan is sanctioned or deemed to have been sanctioned, the person, at whose instance building operations are to be carried on, shall, after the excavation of the foundation and before starting construction thereon, intimate the Corporation about the excavation of the foundation.

(6) For the purpose of ascertaining, whether the strata of the land, over which a building is to be erected is geologically fit, and the building operation thereon can be carried out in accordance with the sanctioned plan, the Corporation may, within seven days from the intimation under Sub-section (5), cause inspection of excavated foundation to be made by such persons as it may direct, and in such manner as may be prescribed:

Provided that the person at whose instance the building operations are carried out shall be associated in the inspection.

(7) The persons making the inspection under Sub-section (6), may communicate to the person, from whom intimation under Sub-section (5) has been received, its views in regard to the result of such inspection and may after ascertaining the opinion of the said person, recommend to that person the action to be taken as a result of such inspection and also report to the Commissioner the action, if any, which is proposed to be taken for the purposes of implementation of any such recommendation.

(8) On the receipt of the report under Sub-section (7), the Corporation may, within seven days from the date of intimation under Sub-section (5), give such direction to the person concerned, as it may deem fit.

16. We may, however, notice that a similar Act which was then prevailing, namely, Himachal Pradesh Municipal Corporation Act, 1979 was repealed.

17. Respondent No. 1 to 5 herein (hereinafter referred to as ''the respondents) intended to construct a hotel on the Mall Road in the town of Shimla. They filed an application for grant of planning permission to the Town and Country Planning Department on 27.06.1994. Such permission was approved by the Government of Himachal Pradesh by an order dated 16.01.1998.

18. The Executive Engineer of Respondent No. 6 herein granted permission under Sub-section (1) of Section 31 of the 1977 Act subject inter alia, to the condition that building permission should be obtained from the local authority concerned before

commencement of the development.

19. An application for sanction of the building plan in terms of the provisions of the 1994 Act and building bye-laws framed thereunder was submitted by Respondent No. 1 on 07.07.1999. The Municipal Corporation, however, returned the said plans asking for certain clarifications. Such clarifications evidently had been asked for by the appellant herein in terms of Section 246 of the 1994 Act.

20. Respondents resubmitted the plans upon purported compliance of the objections raised in the said letter dated 01.09.1999 only on 10.04.2000. However, immediately thereafter a purported temporary freeze on construction activities in some areas appertaining to Shimla Planning Area was issued by the Government of Himachal Pradesh, stating:

I am directed to say that it has been decided by the Government that all development activities in banned area of Shimla planning area are to be temporarily frozen till the finalization of new guidelines to be framed by the government for these area.

In view of the above decision of the government on planning permission cases are to be approved or sent to this department till further orders.

21. Respondents were informed thereabout by the appellant in terms of its letter dated 06.06.2000, stating:

Application for construction of house submitted on 10.4.2000 by you. On receipt of report from various departments, the case has been considered in which proposed hotel on Khasra Nos. 315, 316, 317, 318, 321, 322, 320, 310, 311, 313, 312, 319 at Talpat Cottage, Shimla Sanction has been asked for.

Hence the map with the following observations has not been considered for sanction:

1. Pucca burjirs have not been fixed at site.

2. The proposal shown with the cutting of earth more than 3.00 M in both the blocks cannot be allowed as per M.C. bye-laws.

3. The proposal for machine room structure is not as per M.C. bye-law.

4. Report from ME has not been received.

5. Ground floor plan for upper Block should be shown separately with the boundary lines.

6. The proposal falls in banned area. As per the notification received from Govt. of H.P. vide their letter No. PBW (B&R)(B) 24(1)91-1 dated 17.4.2000, the development activities in banned area of Shimla planning area have been temporarily frozen. As such the proposal cannot be considered at this stage.

Hence the plan is rejected and returned herewith.

22. However, a question arose as to whether the temporary freeze of development activities in the banned area of Shimla planning area was to apply in relation to the cases where the building plans had already been approved by the Government before the said date, wherefore permission had been issued to the Commissioner, Municipal Corporation, in the following terms:

The temporary ban on development activities in the Shimla Planning Area was imposed by the Government on dated 17.04.2000. The building plans approved by the Government before this date need not be detained. Therefore, the building plan cases already cleared by the Government/Cabinet may be processed further in accordance with the Rules and Regulations.

23. Before, however, the Corporation could consider the Respondents'' application for grant of sanction of the said development plan in terms of the 1994 Act and/or building bye-laws framed thereunder, a notification was issued by the State of Himachal Pradesh purported to be in terms of Sub-sections (4) and 5 of Section 17 of the 1977 Act, making further amendments in the interim development plans which was published in the gazette on 31.03.1979 and is to the following effect:

(a) All Private as well as Government construction are totally banned within the core area of Shimla Planning Area. Only construction on old lines shall be permitted in this area with the prior approval of the State Government. The ''core area'' shall comprise of the following:

Central Shimla bounded by the circular road starting from Victory Tunnel and ending at Victory Tunnel via Chotta Shimla & Sanjauli and the area bounded by Mall Road starting from Railway Board Building to Ambedkar Chowk, covering Museum Hill by a road starting from Ambedkar Chowk on the north side, joining the chowk of the Indian Institute of Advance Studies and following the road joining Summer Hill post office and via upper road to Boileauganj Chowk and then joining the cart Road, along Cart Road to Victory Tunnel.

(b) No development, unless specifically permitted by the State Government shall take place in the restricted area which shall comprise of the following:

. . .

24. Yet again a notification was issued by the State of Himachal Pradesh on or about 22.08.2000 whereby and whereunder, for the existing Regulation 10.4.2(x)(a), the following was substituted:

10.4.2 (x)(a), CORE AREA : (i) New construction in core area shall be allowed in respect of residential buildings upto maximum two storeys and ancillary used thereto with the prior permission of the State Government.

Provided that in case of reconstruction of old structured or building shall be permitted by the State Government subject to the condition that the plinth area and number of storeys on old lines shall remain the same as were existing earlier.

25. Regulation 10.7 provided for a ''Heritage Zone'', relevant clauses whereof read as under:

10.7 HERITAZE ZONE:

(A) No development for reconstruction unless specifically recommended by the Heritage Advisory Committee and permitted by the State Government shall take place in the Heritage Zone, which shall be comprised of the following areas, namely:

(i) Viceregal lodge complex Complete;

(ii) One building depth on either side of the road surrounding Viceregal lodge complex;

(iii) One building depth on either side of the Mall road starting from the gate of Indian Institute of Advance Studies upto Chhota Shimla Chowk via State Bank of India, Scandal Point, Shimla Club and Oak Over.

26. In view of the aforementioned amendments in the regulation declaring ''core area'' and ''heritage zone'' within which only the respondents had filed their application for grant of sanction of the building plans, no order could be passed by the appellant.

27. In view of the aforementioned notification, the application for sanction of the building plans was ultimately rejected by the Corporation.

28. In the aforementioned premise Respondents filed a writ petition before the High Court of Himachal Pradesh at Shimla, praying for the reliefs which have been noticed hereinbefore. By reason of the impugned judgment, a Division Bench of the said Court held that the purported declaration in relation to the core area and heritage zone would not apply in the case of the writ-petitioners in view of the fact that the building plan submitted by them before the Director in terms of the provisions of the 1977 Act had already been allowed, and, thus, the same had conferred a vested right in them. It was hence directed:

(a) The respondent No. 3 shall process the resubmitted building plans furnished by the petitioners uninfluenced by the notification of the Government dated 22.8.2002. Annexure R1/A and on the basis of the building bye-laws as were prevalent at that time, i.e. on 17.4.2000 and shall pass the order within four weeks from today.

(b) Needless to say, if any deficiency is found in the resubmitted plans, on the basis of the bye-laws prevalent on 17.4.2000, the petitioner shall remove such deficiency within a week of being pointed out by the Municipal Corporation and the Commissioner in turn shall pass his orders within two weeks thereafter.

(c) In case the respondent No. 3 does not comply with the aforesaid directions within the time frame noticed above, the petitioners shall be at liberty to carry out the construction as per their resubmitted plans on 4.12.2000 in accordance with the bye-laws as in force on 17.4.2000 after giving intimation to the Commissioner, Municipal Corporation-respondent No. 3

29. Appellant is, thus, before us challenging the aforesaid judgment.

30. Mr. Anil Nag, the learned Counsel appearing on behalf of the appellant, submitted that having regard to the aforementioned notifications dated 11.08.2000 and 22.08.2000, the impugned judgment could not have been passed by the High Court.

31. Mr. A.K. Ganguli, the learned Senior Counsel appearing on behalf of the respondents, on the other hand, raised the following contentions:

i) Having regard to the purport and object of the 1977 Act, once a building plan is sanctioned in terms thereof, the Municipal Corporation is required to only supervise the construction thereof in exercise of its functions under the 1994 Act.

ii) Being a local authority, a building plan by the State sanctioned in terms of the 1977 Act would be binding on the appellant and, thus, the same could not have rejected; the functions of the appellants confined only to oversee construction of the building;

iii) In view of the clarificatory circular issued by the State of Himachal Pradesh on 25.07.2000, the building plan submitted by the respondents having already been approved, the Municipal Corporation was bound to act thereupon irrespective of the effect of notification dated 10.04.2000.

iv) In any event, as the application for building plans was submitted on 07.07.1999, in terms of the provisions contained in Section 247 of the 1994 Act, having regard to the fact that the said application had neither been rejected nor accepted within a period of sixty days therefrom, the sanction of the plan would be deemed to have been granted.

v) In any view of the matter as during pendency of the writ petition, the Municipal Corporation granted sanction in favour of other applicants who were similarly situated, there is absolutely no reason as to why the respondents should have been discriminated against.

vi) Appellant being a local authority was bound to act fairly, which would mean that they should have exercised their jurisdiction within a reasonable time and having not done so, it does not now lie in their mouth to rely upon the subsequent notifications issued by the State u/s 17 of the 1977 Act.

vii) Unnecessary delay was caused by the appellant-Corporation in dealing with the respondents'' application for grant of sanction for the building plans. Hence the

original sanctioned plan was only valid for a period of three years, the same should be held to have been extended.

32. In our opinion, the 1977 Act and the 1994 Act operate in different fields and they are complementary and supplementary to each other. The provisions of both the Acts can be worked out. There is no conflict between the two Acts. The 1977 Act deals with laying down the broad policy. It provides for preparation of development plans including the internal development plans. Indisputably, such development plans when made would be binding upon the local authority. It may, however, be not correct to contend that despite the fact that the operation of the Acts cover two different fields, namely, the 1977 Act deals with laying down the overall policy matter and the 1994 Act deals with the grant of building plans in terms of the provisions thereof by the Commissioner of the Municipal Corporation; only because sanction for development in the Mall area of the town of Shimla was granted by the State in terms of the 1977 Act, the same would mean that the same was binding upon the Municipal Corporation or that the provisions of the 1994 Act or the building bye-laws were not required to be complied with at all.

33. We have noticed hereinbefore that even in the order of sanction passed in favour of the respondents by the State, a condition was imposed that before undertaking the development activities by way of erection of the building, the respondents would take the requisite sanction from the Municipal Corporation. Even if such a condition had not been imposed, the provisions of the Municipal Corporation Act, as noticed hereinbefore, would operate.

34. Section 243 of the 1994 Act clearly mandates that erection of a building must precede grant of express sanction of a building plan. How and in what manner the same is required to be dealt with is provided in Sections 244 and 245 of the 1994 Act. Clause (a) of Sub-section (2) of Section 246 in no uncertain terms restrict the power of the Appellant-Corporation to grant sanction for erection, inter alia, for development of an area by way of erection of a building or otherwise, not only if the same is not in conformity with the building bye-laws, but also if it contravenes any other law or rules operating in the field.

35. The 1977 Act is one of such Act. As noticed hereinbefore, the provisions thereof are binding upon the local authority. Once the provisions thereof are held to be binding, the law made by the State by way of subordinate legislation in the form of the regulations and/or notifications issued under Sub-sections (4) and (5) of Section 17 of the 1977 Act would also be binding. Indisputably, the Municipal Corporation would not have any authority to grant any sanction in violation thereof.

36. Section 247 no doubt provides for a legal fiction specifying a period of sixty days, within which the application for grant of sanction of a building plan should be granted, but the said period evidently has been considered to be providing for a reasonable period during which such application should be disposed of. However,

only because the period of sixty days has elapsed from the date of filing of application, the same by itself would not attract the legal fiction contained in Section 247 of the 1994 Act. When such an application is attended to and the defects in the said building plans are pointed out, there cannot be any doubt whatsoever that the applicant must satisfactorily answer the queries and/or remedy the defects in the building plans pointed out by the competent authority.

37. The building plans for which sanction was prayed for by the respondents, as noticed hereinbefore, had been attended to. The purported defects were removed, as noticed hereinbefore only on 10.04.2000. Even according to the appellant-Corporation all the defects were not removed which had been pointed out by the appellant-Corporation in terms of its letter dated 06.06.2000. In any event, as noticed hereinbefore, the State of Himachal Pradesh imposed a temporary freeze on the development activities in the Mall area by an order dated 17.04.2000. The said order was also binding upon the appellant-Corporation and no permission could have been granted in favour of the respondents in violation thereof. It is true, as has been contended by Mr. Ganguli, that the said purported temporary freeze on the construction activities imposed in terms of the notification dated 17.04.2000 came to be clarified by the State on or about 25.07.2000. But by reason thereof, the State could not have directed the Municipal Corporation to grant sanction, as a statutory authority must be permitted to perform its statutory functions in respect whereof even any higher authority cannot issue any direction. [See 303259 and 276026] and 302879 .

38. In any event, as in the meanwhile, the period for which the building plan was sanctioned by the State had expired, the question as to whether in the aforementioned fact situation obtaining, the respondents acquired any vested right despite the amendments in the regulation by defining ''core area'' and providing for the heritage zone is the issue, in our opinion, is misconceived.

39. It is now well-settled that where a statute provides for a right, but enforcement thereof is in several stages, unless and until the conditions precedent laid down therein are satisfied, no right can be said to have been vested in the person concerned. The law operating in this behalf, in our opinion is no longer res integra.

40. In Director of Public Works v. Ho Po Sang 1961 AC 901 : (1961) 2 All ER 721, the Privy Council considered the said question having regard to the repealing provisions of the Landlord and Tenant Ordinance, 1947 as amended on 9-4-1957. It was held that having regard to the repeal of Sections 3-A to 3-E, when applications remained pending, no accrued or vested right was derived. It was observed therein:

In summary, the application of the second appellant for a rebuilding certificate conferred no right on him which was preserved after the repeal of Sections 3-A to 3-E, but merely conferred hope or expectation that the Governor- in-Council would exercise his executive or ministerial discretion in his favour and the first appellant

would thereafter issue a certificate. Similarly, the issue by the first appellant of notice of intention to grant a rebuilding certificate conferred no right on the second appellant which was preserved after the repeal, but merely instituted a procedure whereby the matter could be referred to the Governor-in-Council. The repeal disentitled the first appellant from thereafter issuing any rebuilding certificate where the matter had been referred by petition to the Governor-in-Council but had not been determined by the Governor.

[See also Lakshmi Amma v. Devassy 1970 KLT 204

41. The question again came up for consideration in 264609 , wherein this Court categorically held:

...The context in which the respondent Company claims a vested right for sanction and which has been accepted by the Division Bench of the High Court, is not a right in relation to ownership or possession of any property for which the expression vest is generally used. What we can understand from the claim of a vested right set up by the respondent Company is that on the basis of the Building Rules, as applicable to their case on the date of making an application for sanction and the fixed period allotted by the Court for its consideration, it had a legitimate or settled expectation to obtain the sanction. In our considered opinion, such settled expectation, if any, did not create any vested right to obtain sanction. True it is, that the respondent Company which can have no control over the manner of processing of application for sanction by the Corporation cannot be blamed for delay but during pendency of its application for sanction, if the State Government, in exercise of its rule-making power, amended the Building Rules and imposed restrictions on the heights of buildings on G.T. Road and other wards, such settled expectation has been rendered impossible of fulfilment due to change in law. The claim based on the alleged vested right or settled expectation cannot be set up against statutory provisions which were brought into force by the State Government by amending the Building Rules and not by the Corporation against whom such vested right or settled expectation is being sought to be enforced. The vested right or settled expectation has been nullified not only by the Corporation but also by the State by amending the Building Rules. Besides this, such a settled expectation or the so-called vested right cannot be countenanced against public interest and convenience which are sought to be served by amendment of the Building Rules and the resolution of the Corporation issued thereupon.

42. In 293003 , yet again this Court emphasized:

...The application has to be decided in accordance with the law applicable on the date on which the authority granting the registration is called upon to apply its mind to the prayer for registration.

43. In 264576 , this Court repelled a contention that the authorities cannot take advantage of their own wrong viz. delay in issuing the advance licence, stating:

We have mentioned hereinbefore that issuance of these licences is not a formality nor a mere ministerial function but that it requires due verification and formation of satisfaction as to compliance with all the relevant provisions.

[See also 302844

44. Mr. Ganguli, however, submitted that whereas in the case of 287846 , the amended statute itself provided for rejection of all pending applications, no such provision has been laid down in the notification and, thus, the said decision is distinguishable.

45. Ganges Rope Co. Ltd. (supra) was also sought to be distinguished by Mr. Ganguli, submitting (i) in the Howrah Municipal Corporation Act, 1980 there was no deeming provision; (ii) the said law had been amended; and (iii) therein the statute used the word ''ordinarily''.

46. It is difficult to agree with the aforementioned contention of the learned Senior Counsel.

47. There cannot be any doubt whatsoever that an owner of a property is entitled to enjoy his property and all the rights pertaining thereto. The provisions contained in a statute like the 1994 Act and the building bye-laws framed thereunder, however, provide for regulation in relation to the exercise and use of such right of an owner of a property. Such a regulatory statute must be held to be reasonable as the same is enacted in public interest. Although a deeming provision has been provided in Sub-section (1) of Section 247 of the 1994 Act, the same will have restricted operation. In terms of the said provision, the period of sixty days cannot be counted from the date of the original application, when the building plans had been returned to the applicant necessary clarification and/or compliance of the objections raised therein. If no sanction can be granted, when the building plan is not in conformity with the building bye-laws or has been made in contravention of the provisions of the Act or the laws, in our opinion, the restriction would not apply despite the deeming provision.

48. A legal fiction, as is well-known, must be construed having regard to the purport and object of the Act for which the same was enacted. [See 269919 - Para 36].

49. It is in the light of the aforementioned principle that the question as to whether the respondents had acquired any vested right or not must be considered. Strong reliance, in this behalf, has been placed by Mr. Ganguli on a decision of the Division Bench of this Court in 292971 . The said decision was rendered on its own facts. In that case a building plan had been granted; construction had been started in terms of the building plan as also the rules which were applicable at the relevant point of time. The question which arose for consideration therein was as to whether a subsequent amendment to the rules, in respect of additional FSI shall have any effect on the sanctioned building plan, it was contended that keeping in view the

environmental question, the same will have not.

50. The said decision having been rendered in the fact situation obtaining therein, which has no similarity to the facts of the present case, which in our opinion, cannot be said to have any application whatsoever. The submission of Mr. Ganguli that despite expiry of the period of sanction of the development plan by the State under the 1977 Act, the same should be held to be extended, in our opinion, cannot be accepted. Reliance has been placed by Mr. Ganguli on 264394 . Therein, it was held:

2. No construction of any type shall be permitted, now onwards, in the areas outside the green belt (as shown in Ex. A and Ex. B) up to one km radius of the Badkhal lake and Surajkund (one km to be measured from the respective lakes). This direction shall, however, not apply to the plots already sold/allotted prior to 10-5- 1996 in the developed areas. If any unallotted plots in the said areas are still available, those may be sold with the prior approval of the Authority. Any person owning land in the area may construct a residential house for his personal use and benefit. The construction of the said plots, however, can only be permitted up to two and a half storeys (ground, first floor and second half floor) subject to the Building Bye-laws/Rules operating in the area. The residents of the villages, if any, within this area may extend/reconstruct their houses for personal use but the said construction shall not be permitted beyond two and a half storeys subject to Building Bye-laws/Rules. Any building/house/commercial premises already under construction on the basis of the sanctioned plan, prior to 10-5-1996 shall not be affected by this direction

51. The restriction therein was imposed by the court, which was a judge- made law and not a statute law. Relaxation, therefore, was granted keeping in view the rights of the parties in terms of the order passed by the court. However, in this case, we are bound by the provisions contained in a statute.

52. In 303134 , although exercise of jurisdiction by a statutory authority within a reasonable time has been emphasized, but there again the applicability of existing law has been emphasized referring to Ganges Rope Co. Ltd. (supra) and Ho Po Sang (supra). The said decision was rendered having regard to the fact that only a proposal of amendment was made, and no amendment as such had come into effect. A right of a citizen under a statute, therefore, could not have been taken away only because a proposal was in the offing. In that case, the State had not given its final approval having regard to the development of the plan. The said decision, therefore, cannot be said to have any application in the instant case.

53. Furthermore, since special regulations have been framed in the town of Shimla, the core area as provided for in the regulation is required to be protected. The area in question has been declared to be a heritage zone, and hence no permission to raise any construction can be issued, which would violate the ecology. Such regulations have been framed in public interest. Public interest, as is well-known,

must override the private interest. [See 265690].

54. For the reasons aforementioned, the impugned judgment cannot be sustained, which is set aside accordingly. The appeal is allowed. In the facts and circumstances of the case, however, there shall be no order as to costs.