

**SUPREME COURT OF INDIA**

Municipal Corpn., Shimla

Vs.

Gopal Mohan Aggarwal & Ors.

C.A.No.2243-44 of 2008

(S.B.Sinha and Lokeshwar Singh Panta,JJ.)

28.03.2008

**ORDER**

1. Leave granted.
2. These appeals are directed against the judgment and order dated 4.8.2005 passed by a Division Bench of the High Court of Himachal Pradesh at Shimla directing as under:

" Part 'D' of Section 395 concerns the bye-laws relating to buildings. Part 'D' has 23 clauses. We have very carefully gone through the aforesaid 23 clauses of Part 'D' of Section 395 and find that in none of these clauses is it anywhere provided that a bye-law can be made with respect to serving any fresh notice of any duration after the deemed sanction has come into being in terms of Section 247(1) of 1994 Act. Actually the legislative intent has clearly been manifested in Section 247(1), it being that once the deemed sanction comes into being the beneficiary of such deemed sanction has a right to raise construction subject only to the prohibitions and restrictions contained in sub-section(3) and (4) thereof. In the fact of this right having accrued in favour of a beneficiary, it cannot be diluted or taken away unless the plenary enactment itself provides for any such further limitation. In the absence of any enabling provisions thereof in Section 395, bye-law 9.1 cannot be said to be in conformity with Section 395 or any other provisions of 1994 Act. That being the situation therefore we have no manner of doubt that there was no requirement in law, over and above those contained in sub-sections (1),(3) and (4) Section 247 of 1994 Act for the petitioners to have served any other, further or additional notice upon the Commissioner. Actually we go as far as to hold that Bye- law 9.1. is ultra vires Section 395 of 1994 Act. Mr.M.S.Chandel, learned Advocate General submits that since the building falls in the heritage zone as per notification dated 5.6.2003 the petitioners were required to submit their plans strictly in accordance with the regulations applicable and therefore the petitioners were not entitled to raise constructions beyond two storeys, unless specifically permitted. This

argument also is devoid of any merit because Section 247 in so far as the benefit of deemed sanction is concerned does not draw any distinction between a heritage zone or any other zone. Similar is the case with Section 31 of 1977 Act. This legal aspect apart, the parties are strongly at variance about the fact whether the area in question falls in the heritage zone or not. There is dispute between the parties about this factual aspect whereas the respondents aver that the area in question falls in the heritage zone, the petitioners contention is that it is in the restricted zone."

3. One of the questions which arise for consideration is as to whether 'deemed sanction' of building plans as contemplated under Section 247 of Himachal Pradesh Municipal Corporation Act would be applicable in respect of the constructions within the heritage zone. This question has been gone into by this Court in *Commissioner of Municipal Corporation, Shimla Vs. Prem Lata Sood and Ors.*<sup>1</sup> -

4. We are, therefore, of the opinion that the interest of justice would be subserved if the impugned order is set aside and the High Court is requested to take up the hearing of the writ petition itself as expeditiously as possible.

5. Before us a counter affidavit has been filed on behalf of respondent Nos. 1 and 2 affirmed by Shri Gopal Mohan Aggarwal stating that the High Court has deleted the names of respondent Nos.1 and 2 and in their place names of Vijay Kumar Aggarwal and Vinod Kumar Aggarwal have been substituted.

6. An application has also been filed by the appellant herein to the said effect. Keeping in view the limited order that we are passing, we are of the opinion that as the aforementioned Vijay Kumar Aggarwal and Vinod Kumar Aggarwal being also party before the High Court, they would indisputably be entitled to raise all contentions before the High Court.

7. The appeals are allowed to the aforementioned extent. March 28, 2008.