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PLEASANT STAY HOTEL AND ANR.

v.

PALANI HILLS CONSERVATION COUNCIL AND ORS.

SEPTEMBER 13, 1995

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[B.P. JEEVAN REDDY AND M.K. MUKHERJEE, JJ.]

*Tamil Nadu District Municipalities Act, 1920 :*

*Sections 217-C, 217-K and 217-Q(As amended by Act 52 of 1994).*

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*Tamil Nadu District Municipalities (Hill Station) Building Rules, 1993:  
Rule 26.*

*Building Plan—Exemption from Rules—Hotel—Construction at hill station—Sanction of Plan for two storeys—Revised plan for additional construction—Rejection by Municipal Committee—Construction notwithstanding rejection of revised plan—Minister and Chief Minister granting exemption—Exemption orders—Quashing of by High Court—Findings of High Court based on material on record—Interference with by Supreme Court held not justified—Matter remitted to High Court for clarification of its order regarding demolition—Observations against Minister and Chief Minister—Held factually correct and necessary for disposal of cases.*

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The Kodaikanal Township Committee sanctioned a plan submitted by the appellant for construction of a hotel building comprising of two floors at Kodaikanal. A revised plan submitted for additional construction on the ground of structural necessity was rejected by the Committee because the proposal to construct more than two floors was against clause 8.6.1 of the Master Plan Rules. Aggrieved by the said rejection the hotel preferred appeal to the Government of Tamil Nadu. However, notwithstanding such rejection additional floors of hotel building were constructed in violation of the sanctioned plan and provisions of the Tamil Nadu District Municipalities Act, 1920. Palani Hills Conservation Council, respondent herein, a society formed with the object of preserving and protecting hills in and around Kodaikanal, filed a writ petition in the High Court seeking directions of the State Government and the Municipal Committee to ensure that no illegal construction was put up by the hotel and the illegal construction already made be demolished. The High Court

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passed an interim order restraining the respondents from making construction in violation of the sanctioned plan with liberty to move the competent authority for appropriate permission. Meanwhile pursuant to the amendments introduced in the 1920 Act the appeal preferred by the Hotel against the order of Committee rejecting revised plan was considered by the Architectural and Aesthetic Aspects Committee which recommended to the Government that the application for revised plan shall be rejected in view of large scale violation of Building Rules. Consequently the file was sent to Minister for Local Administration with endorsement of Secretary made thereon to reject the plan for construction of extra floors. While the file was awaiting disposal by the Minister the High Court, on an application moved by the Respondent-Council, held the appellant guilty of contempt for disobeying the High Court's order by proceeding with construction in violation of the sanctioned plan. However, overruling the recommendation of the Architectural and Aesthetic Aspects Committee and that of the Secretary, the Minister for Local Administration passed an order stating that the request of the Hotel may be considered and necessary exemption from the violated rules may be granted subject to certain conditions. On the same day the Chief Minister endorsed the note of the Minister and consequently Government Order No. 126 dated May 13, 1994 was issued in accordance with the recommendations of the Minister. The Palani Council filed a second writ petition for quashing the order and for issuing of directions for demolition of the structures put up by the Hotel beyond ground and first floors. The State Government contested this petition contending that it was not bound by the recommendations of Architectural and Aesthetic Aspects Committee and that being Licensing Authority it was entitled to arrive at its own conclusions.

During the pendency of this writ petition, Tamil Nadu District Municipalities (Second Amendment and Validation) Act, 1994 was passed whereunder Government was empowered to grant exemption to private buildings; orders issued earlier by the State Government exempting such buildings from the provisions of the 1920 Act were validated. Accordingly, Government order No. 317 dated December 6, 1994 was issued exempting the building in question from the provisions of the Development Control Rules. Further this order was given retrospective effect from may 13, 1994. Immediately thereafter the Council filed a third writ petition for quashing this order. Keeping in view the attending facts and circumstances as appearing on the records and the relevant provisions of the Act and the

A Rules the High Court allowed the writ petition and quashed both the impugned Government orders. The reasons which, inter alia, weighed with the High Court were : (i) when a High level Expert Committee had rejected the revised plan the Minister and the State Government were not that justified in granting the exemption; (ii) the requirement of Master Plan and Rules have been completely ignored; (iii) the Minister totally overlooked the environmental and ecological aspect of the matter and proceeded simply on the basis that the use of basement floor did not interfere with the landscape of the site and vicinity; and (iv) the power to pass orders with retrospective effect has to be conferred by the legislature. Consequently, the High Court directed that the building constructed to the extent it was contrary to the Plan sanctioned be demolished. It also observed that the Minister has not at all applied his mind to the relevant materials before signing the order. But, on the other hand, he has taken note of irrelevant matters. The Chief Minister too has simply signed the file without entering any minute or remark. There was nothing to show that there was application of mind to the matters on record by the Chief Minister. Hence there was total lack of application of mind on the part of the Government.

The State Government as well as Hotel preferred appeals before this Court.

Disposing the appeals, this Court

HELD : 1. Considered in the light of the materials on record and in the light of the relevant Acts and the Rules applicable to the construction in question, the reasons which weighed with the High Court in quashing the two impugned Government Orders are legally sustainable. The findings of the High Court in this regard are unexceptionable. As these findings of fact are based on a proper appraisal of the entire materials available there is no reason to disturb the same under Article 136 of the Constitution. [604-E, 605-E]

2. The observations made by the High Court against the Minister and Chief Minister are not only factually correct but are absolutely necessary for proper disposal of the writ petitions. [606-H, 607-C]

*State of M.P. v. Tikamdas*, AIR (1975) SC 1429 and *Bakul Cashew Co. v. Sales Tax Officer, Quilon*, AIR (1987) SC 2239; referred to.

3. From the order of the High Court it is not clear as to whether it intended that the construction of the two floors above the road level has to be kept intact and the rest demolished, or the stepped structure of two floors arising from the natural ground level has to be kept intact and the rest demolished *Irrespective* of what the sanctioned plan indicates. This is a matter which the High Court should clarify now. Accordingly the matter is remitted to the High Court for the limited purpose of issuing fresh directions in this regard. [606-F-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8223 of 1995 Etc. Etc.

From the Judgment and Order dated 10.4.95 of the Madras High Court in W.P. No . 13231 of 1992.

G. Ramaswamy, Dr. Rajeev Dhawan, Sanjay Hegde, E.R. Kumar, for P.H. Parekh, Ms. Subhashini, A. Ranganadhan, Sriram Panchu, Dayan Krishanan, Gopal Singh, Nikhil Nayyar and P.P. Tripathi, for the appearing parties.

The Judgment of the Court was delivered by

M.K.MUKHERJEE, J. Special leave granted. Heard the learned counsel appearing for the parties.

These six appeals have been heard together as they stem from a common judgment rendered by a Division Bench of the Madras High Court disposing of three writ petitions. Facts leading to these appeals and relevant for their disposal are as under :

In April, 1981 Pleasant Stay (Kodai) Hotels Pvt. Ltd. (hereinafter referred to as the Hotel') applied to the Kodaikanal Township Committee (hereinafter referred to as the Committee') for permission to construct a hotel building in the town of Kodaikanal. Along with the application it submitted the plan and other necessary documents. According to the plan the building was to comprise a ground floor and a first floor. The plan was sanctioned by the Committee on November 1, 1991 subject to the following, amongst others, conditions :

(i) the construction should be completed by October 31, 1992 and should not be continued thereafter without renewal :

A (ii) if the construction was to be different from the sanctioned plan a new plan must be drawn and fresh permission obtained, in default, construction in breach of the plan should be removed : and

(iii) nothing should be done in variation of the sanctioned plan.

B On January 29, 1992, the Hotel sent a revised plan to the Committee for its approval with a forwarding letter addressed to its Executive Officer, wherein it stated, inter alia, "the revised plan has been necessitated as the natural earth level of our site leaves us with 20 to 50 feet beam and column structure below the approved plan at different levels". In reply thereto the

C Committee informed the Hotel, by its letter dated February 7, 1992, that the application for sanction of the revised plan was rejected as the proposal to construct more than two floors was against clause 8.6.1 of the Master Plan Rules. The Hotel was also informed that no construction work should be commenced or proceeded with without obtaining licence or permission,

D otherwise action would be taken under the Tamil Nadu District Municipalities Act, 1920 (Act for short). Aggrieved by such rejection the Hotel preferred an appeal on February 11, 1992 to the Secretary to the Government of Tamil Nadu, Housing and Urban Development, through the Executive officer of the Committee and the Director of town and

E Country Planning. In the appeal the Hotel took the stand that the Contour Plan (attached therewith) of the land was such that while constructing the ground floor and first floor of the proposed building it had to leave open column and beam structure of 20 feet to 50 feet at different levels and that through the revised plan it wanted permission to fill up the open space under the already approved plan with rooms and other facilities of tourist

F interest for otherwise the open space would have to be filled up with stone and sand which, necessarily, would be a national waste. It was also stated therein that leaving the space under the building open as per the approved plan would project it only as a big water tank.

G As inspite of rejection of the revised plan, the Hotel continued with the construction work the Committee issued another notice on April 22, 1992 asking it to remove the offending constructions with a warning that action would be taken under Section 317 of the Act. In reply thereto the Hotel alleged that the Committee was acting with ulterior motive and denied to have made any construction against the Rules and regulations.

H The Committee then filed a suit against the Hotel in the Court of the

District Munsif, Kodaikanal, for a mandatory injunction directing the demolition of the building unlawfully constructed in the suit property over and above the ground and the first floor and for a permanent injunction restraining the Hotel from raising any construction without prior approval and permission of the Committee. A

Immediately after the suit was filed Palani Hills Conservation Council Conservation Council ('Council' for short), a Society formed with the object, amongst others, of preserving and protecting hills in and around Kodaikanal and registered under the Tamil Nadu Societies Registration Act, 1975, filed a writ petition (W.P. No. 13231 of 1992) - one of the three out of which the instant appeals arise - seeking a writ of mandamus directing the State Government and the Committee to ensure that no illegal construction is put up by the Hotel and to demolished the illegal construction, if already made. Consequential directions that no electricity and water supply are given or occupancy permitted in the Hotel building or any portion thereof, if illegally constructed, were also sought for. In contesting the writ petition and praying for vacating the interim order of status-quo granted thereon, the Hotel contended, inter alia, that the reasons given by the Committee for rejection of the revised plan was not correct and that the Hotel had already filed an appeal to the Government. The grounds raised in support of the revised plan and the appeal were also reagitated. After hearing the parties the High Court passed an order on October 21, 1992 which reads, inter alia, as under : B  
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"Under such circumstances, pending disposal of the Writ Petition Respondents 3 and 4 cannot be permitted to make any construction beyond the sanctioned plan as per the sanction of the Second Respondent Township granted on 01.11.1991. If the Respondents are able to get any favourable orders in the appeal it is open to move them for appropriate permission." F

In December, 1992 the Act was amended and Chapter X A was incorporated therein making the State Government as the authority to grant licence for construction, and reconstruction of buildings and use of land in hill stations and laying down the procedure for such grant. According to the procedure so laid down every application is to be vetted by a Committee called Architectural and Aesthetic Aspects for hill station in the State ('AAA Committee' for short), constituted in terms of the Rules G  
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A framed under the Act. as amended.

B As the Amendment Act made the amendments applicable also to applications for grant of licence pending before the Committee the appeal preferred by the Hotel against the order of the Committee rejecting their revised plan was treated as an application filed under Chapter XA. Resultantly, it came to be considered by the AAA Committee and, in the meeting held on July 29, 1993, it passed a resolution recommending to the Government to reject the application in view of large scale violations of Building Rules pointed out therein. On receipt of the above recommendations the concerned department of the State Government decided to circulate the file to the Minister for Local Administration. Accordingly the file was sent to the Minister, after the Secretary made an endorsement thereon on August 24, 1993 to the effect that in view of the gross violations the request (obviously meaning that of the Hotel for construction of extra floors) might be rejected.

D While the file was awaiting disposal by the Minister a contempt application which the Council had earlier filed against the Hotel in April, 1993 for wilfully disobeying the order of the High Court by continuing with the construction of additional floors illegally was heard and disposed of on March 31, 1994 with a finding that the Hotel was guilty of contempt of Court. On such finding a fine of Rs. 2,000 was imposed and the following consequential order passed :

F "(a) Respondents 3 and 4 shall not make any further construction in any part of the building above the ground and first floor be it construction work, maintenance work or any other type of finishing work.

G (b) Respondents 3 and 4 shall not use the building except ground and first floor (which according to the respondents 3 and 4 is the first basement floor at the ground level and second basement floor above the same) for any purpose. Unless and until they get the approval from the Second Respondent or the higher authorities.

H (c) If respondents 3 and 4 are able to get sanction for the entire construction, it is open to them to complete the building and use it in a manner prescribed by law. Contempt application is ordered in the above terms."

Thereafter on May 5, 1994, the Minister for Local Administration made an order on the file that the request of the Hotel might be considered and necessary exemption from the violated Rules might be granted, subject to certain conditions as mentioned therein. On the same day the Chief Minister endorsed the note of the Minister. After the file was sent back to the Department a Joint Secretary put up a note on May 12, 1994 that the Minister desired that orders should be issued immediately. Pursuant thereto GOM No. 126 dated May 13, 1994 was issued in accordance with the recommendation of the Minister.

Having learnt about issuance of such an Order, the Council wrote to the State Government on May 30, 1994 asking for a copy thereof and also issued a legal notice for its production. As there was no response Council filed the second writ petition (Writ Petition No. 13104 of 1994) for quashing the Order and for issuing directions for demolition of the structures put up by the Hotel beyond the ground floor and the first floor. As no copy of the Order was available, the Council applied for dispensing with its production. However, under the direction of the High Court, the Council succeeded in getting a copy of the Order and after it was filed, an interim order was passed on July 29, 1994 on the second writ petition restraining the Hotel from making any further construction. In contesting this writ petition the State Government asserted that it had the power to grant exemption to any builder, that it was not bound by the recommendations made by AAA Committee and that being the licensing authority it was entitled to arrive at its own conclusions. It further contended that in granting exemption by relaxing the Rules the Government took note of the fact that Kodaikanal is a tourist station which requires development including establishment of good hotels with all facilities which will cater to the need of various types of tourists, the type of hotel that was being put up in the premises in question and also the fact that there would be no deterioration of scenic beauty or destruction of environment and ecology.

When the above two writ petitions came up for hearing on October 18, 1994 the Council pointed out that the Government had no power to pass an Order of exemption under Section 217-Q of Chapter XA, incorporated by the Amending Act in respect of a private building. Before, however, the hearing of the writ petitions could be concluded and disposed of a Bill was moved in the Tamil Nadu Legislative Assembly on November 9, 1994 to amend Section 217 Q so as to provide a power of exemption to

A the Government with regard to private buildings also. That Bill was passed and the Tamil Nadu District Municipalities (Second Amendment and Validation) Act (No. 52 of 1994) was brought on the statute book on November 28, 1994. Section 3 thereof, which contains the validation clause, reads as under :

B "Notwithstanding anything contained in any law for the time being  
in force or in any Judgement decree or order of any court or other  
authority, all acts done, proceedings taken or orders issued by the  
State Government exempting any building or class of buildings  
C from any of the provisions of the principal Act or relaxing any of  
the rules made under Chapter X or Chapter X A of the principal  
Act in respect of any building or class of buildings, during the  
period commencing on the 9th day of December, 1992 and ending  
with the date of publication of this Act in the *Tamil Nadu Govern-  
ment Gazette* shall for all purposes, be deemed to be and to have  
D always been validly done, taken or issued in accordance with law,  
as if section 217-Q of the principal Act, as amended by this Act,  
had been in force at all material times when such acts, proceedings  
or orders were done, taken or issued."

E The above enactment was followed by another Government Order,  
being GOM No. 317 dated December 6, 1994, which was published in the  
Official Gazette on the same day, to say that the building in question was  
exempted from the provisions of the Development Control Rules relating  
to commercial use zone side set back and Floor Space Index and that it  
(the Order) shall be deemed to have come into force with effect from May  
13, 1994. Immediately after issuance of the above Order the Council filed  
F the third writ petition (Writ Petition No. 20375 of 1994) seeking a writ of  
certiorari for quashing the same. This writ petition was admitted by the  
High Court on December 12, 1994 and an interim stay was granted.

G All the writ petitions were thereafter heard together and allowed by  
the High Court by quashing the impugned Government Orders and issuing  
certain directions to which we will refer to at the appropriate stage. Hence  
these appeals, three of which been filed by the State Government and the  
other three by the Hotel.

H The facts as detailed above - and discussed at length by the High  
Court ineluctably prove that (1) the plan as sanctioned by the Committee

permitted the Hotel to construct a building comprising two floors only; (ii) the request of the Hotel for sanctioning their revised plan for some additional constructions which, according to it were structurally necessary, was turned down by the Committee and (iii) notwithstanding such rejection the Hotel constructed some additional floors in breach of the sanctioned plan. In the context of the above mentioned facts that the questions as to whether the two impugned Government Orders, were lawfully and validly made and, if so, whether they could regularise the unauthorised constructions came up for consideration by the High Court.

To appreciate the reasons which weighed with the High Court in answering the above questions in the negative it will be profitable at this stage to refer to the fascicule of sections appearing in Chapter X-A of the Act which was introduced by the Amendment Act 58 of 1992 to regulate the constructions in hill stations. Section 271 B thereof prohibits construction and reconstruction of building without licence and Section 217 Q, lays down the procedure to be followed for grant of such licence. Sub-section (1) of Section 217 Q prescribes that every application for licence shall be submitted to the Executive Authority in the prescribed form containing the prescribed particulars. Sub-section (2) thereof obligates the Executive Authority to examine those applications with reference to such building rules as may be prescribed for the purposes of the above Chapter and forward the same to a committee called the Committee for Architectural and Aesthetic Aspects for all the hill stations in the State which, the Government is required to constitute under sub-section (3) with such number of officials and non-officials and having such qualifications as may be prescribed. The function of the AAA Committee is to examine every application received from the Executive Authority in all aspects and forward the same to the State Government with its remarks. The composition of the AAA Committee is prescribed by Rule 26 of the Tamil Nadu District Municipalities (Hill Stations) Building Rules, 1993 (Rules for short) framed under Section 217 Q. According to that rule the Chairman of the AAA Committee shall be the Chief Secretary to the Government and there shall be fourteen Official members and six non-official members consisting of the Director of School of Architecture and Planning, Anna University, Madras, Chairman, Institute of Architects, Tamil Nadu Chapter, Head of the Department of Structural Engineering Division, Anna University, Madras and three members representing local authorities in the hill stations to be nominated by the Government. According to the above Rule,

A the recommendations of the AAA Committee shall cover all or any matter specified under Sub-section (5) of Section 217-Q as may be applicable to each application for licence and it may also consider any other matter required for the preservation of hill ecology and environment. Sub-Section (5) of Section 217-Q lists the matters which have to be considered by that Committee while examining the applications, one of them being the possibility of the construction of the building resulting in concentration of population in and around the hill station. Section 217-D which relates to the power of the State Government to grant the licence reads as under :

C "On receipt of an application from the Committee with its remarks, the State Government if satisfied that the grant of a licence will not result in the deterioration of scenic beauty or destruction of the environment and ecosystem of the hill station, may, grant a licence subject to such terms and conditions as they may think fit to impose, or refuse to grant a licence :

D Provided that a licence shall not be refused unless the applicant has been given an opportunity of making his representation."

E Section 217-K empowers the State Government to review any order, decision or direction made by them including the grant or refusal of a licence, if it appears to them that any such order, decision or direction or the terms and conditions of the licence should be modified, annulled or reversed. Section 217-Q lays down, *inter alia*, that the provisions of Chapter XA shall have effect notwithstanding anything inconsistent therewith contained in the Act or any other law, custom, usage or contract. Section 217-Q empowers the State Government to grant exemption, subject to conditions specified, to the State or Central Government from all or any of the provisions of the Chapter. Rule 27 of the Rules framed in exercise of powers conferred by Section 217-C of the Act reads as under :

G "(1) The Government on receipt of the recommendations of the Architectural and Aesthetic Aspects Committee may either approve the proposal with or without such modifications as it deems fit or reject the proposal.

H (2) Any approval accorded by the Government will be valid for a period of one year from the date of issue of approval which may be extended for a further period of one year if the constructions

have been commenced and there are no deviations from the approved plan". A

It appears from the impugned Judgment that to ascertain what prompted the Minister for Local Administration to ignore and overrule the recommendations of the AAA Committee and the secretary of his Department that the application for revised plan be rejected and make his order dated May 5, 1994, the High Court called for and looked into the relevant file. The order of the Minister as recorded in the file and quoted by the High Court, reads as under : B

"It is a proposal for a Hotel Building at Kodaikanal Township. The petitioner now seeks necessary exemption of rules for use of basement area, below the permitted building. C

On the perusal of the plan, the site have the contour and configuration of the terrain is such that rear portion of the site is 50 - 0" below the access road level. It is proposed to use these basement area for optimum use without increasing the height of the building above road level. D

The site is reported to be lying in the permissible zone of Master Plan, where the hotel use is permitted. E

Perusal of the plan, also indicates that there are large extent of size is left for Car Parking. Further on pollution control point of view, necessary clearances had been obtained. E

On the writ petition by Palani Hills Conservation Council the Madras High Court observed and permitted the petitioner to move for the appropriate permission on appeal for construction of building. F

The question now is to use the area below the building in basement area in view of Contour conditions of the site, for optimum utility. The height of the building proposed is less than 10 meters from road level to keep the site in conformity with surrounding landscape. It is considered that the use of basement floor does not interfere with landscape of the site or its vicinity. In view of the very high cost of land, the use of site to its optimum level is also need to be considered and accepted. G H

A In the above circumstances the request of the petitioner may be considered and necessary exemption from the violated rules may be granted subject to the condition;

(i) Roof of the top should be slope roof to be in conformity with vicinity landscape.

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(ii) Necessary arrangements be made of the site for disposal of sewerage and sullage.

(iii) Height of building should be restricted to 10 metres from the access road level.

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(iv) The car parking open should not be reduced in future."

To conclude that the order of the Minister was patently bad, the High Court dealt with the same at length keeping in view the attending facts and circumstances as appearing on the records and the relevant provisions of the Act and the Rules, referred to earlier. The reasons which weighed with the High Court in drawing the above conclusion as can be culled from its judgment are as follows :

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(i) The Minister proceeded to deal with the matter as if it was an application for exemption under Section 217-Q of the Act even though no such representation was made by the Hotel for such exemption. On the contrary, prayer made in the appeal (which was treated as an application under Section 217-C of the Act) was only for grant of necessary approval for filling up the open space under the building .

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(ii) Through the AAA Committee found large scale violations extending to 182% in the matter of Floor Space Index (F.S.I.) and 304 % in the matter of height of the building, the order of the Minister commences with an observation that the Hotel seeks necessary exemption of the Rules for use of basement area below the permitted building;

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(iii) The observation of the Minister that in view of the very high cost of the land, the use of its site to its optimum level needs also to be considered and accepted was uncalled for as the cost of site was a wholly irrelevant consideration under Chapter XA of the Act :

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(iv) The observation of the Minister that the contour and configura-

tion of the terrain are such that the rear portion and the site is 50 feet below the access road level and that the Hotel proposed to use that basement area for optimum use without increasing the height of the building above road level clearly proved total non application of mind to the records made available to him. If he had seen the plans his would have found that the proposed building will be within a length of 40 metres and the building has nothing to do with the rear portion of the site which is beyond that and which is intended to be left as open space even according to the revised plan;

(v) The observation that the use of basement floor does not interfere with the landscape of the site or its vicinity is without any meaning;

(vi) The fact that two of the seven floors at the proposed building will be admittedly above road level with the consequence of affecting the scenic beauty in the vicinity and the landscape has been totally overlooked;

(vii) The requirement and the sanctity of the 'Master Plan' of Kodaikanal, which had not been - nor could legally be - superseded by the Act and the Rules framed thereunder have not at all been considered and breaches thereof in the revised plan have been completely ignored (details of such breaches have been recorded in the Judgment) :

(viii) When a high level expert committee like the AAA Committee, had after due deliberations and taking into consideration all matters relevant for sanctioning a plan under the Act rejected the revised plan, the Minister and, for that matter, the Government were not justified in granting the exemption, more so, when the files did not disclose any material, apart from what was available to and considered by the AAA Committee:

(ix) Though the Amendment Act of 1992 was brought on the Statute book to preserve the scenic beauty and environment of hill stations by preventing unplanned and mushroom growth of buildings and improve the architectural planning of the buildings and structures in the hill stations so as to harmonize them with the environment and ecosystem, the Minister totally overlooked the environmental and ecological aspect of the matter and proceeded simply on the basis that the use of basement floor did not interfere with the landscape of the site or its vicinity; and

(x) There was no ground whatsoever for relaxing the provisions in the Master Plan, particularly with reference to F.S.I. as the purpose for

A preparing and publishing such a plan, particularly for a hill station is to protect and maintain an environmental balance.

On the above findings the High Court held the Government Order No. 126 dated May 13, 1994 to be illegal, invalid and arbitrary and quashed the same.

B An ancillary submission that in view of the validation clause of Section 3 of the Tamil Nadu Act 52 of 1994 the above Government Order was not open to any challenge was repelled by the High Court with the observation that the effect Section 3, is only that the power of exemption under Section 217-Q must be deemed to have been in existence from December 9, 1992. When Chapter X-A of the Act (containing Section 217-Q) was introduced, but it cannot prevent any person from contending, in a given case, that the order of exemption was vitiated by irrelevant considerations and non-application of mind.

D As regards the other GO No. 317 dated December 6, 1994 the High Court held, in view of the judgments of this Court in (1) *State of M.P. v. Tikamdas*, AIR (1975) SC 1429 and (2) *Bakul Cashew Co. v. Sales Tax Officer, Quilon*, AIR (1987) SC 2239 and the concession made by the learned counsel appearing for the Hotel and the State, that it was not legally unsustainable as the power to pass Orders with retrospective effect has to be conferred by the Legislature.

After quashing the above two Government Orders the High Court issued certain directions, of which we are concerned, in these appeals, with the following one :

F "A Writ of Mandamus shall issued directing respondents 1 and 2 in W.P. No. 13231 of 1992 to *demolish the building constructed by the Hotel to the extent to which it is contrary to the plan sanctioned by the second respondent on 1.11.1991. Respondents 1 and 2 shall see to it that there are only two floors viz., ground-floor and first-floor above natural ground level of the site as per the original plan submitted by the Hotel for sanction in April, 1991. The remaining part of the building shall be demolished.*"

(emphasis supplied)

H To ascertain whether the reasons which weighed with the High Court

in quashing the above two Government Orders are legally sustainable or not we have carefully considered the materials on record in the light of the relevant Acts and the Rules applicable to the construction in question. Our such exercise persuades us to unhesitatingly hold that the findings of the High-Court in this regard are unexceptionable. Indeed, at the very outset of the hearing of the appeals it was made clear to the learned counsel for the appellants that in view of the well considered judgment of the High Court they would not be permitted to argue on merits and that their arguments should be confined to the alleged inconsistency in the direction as quoted above.

In assailing the above direction it was submitted on behalf of the Hotel that the case of the Council had all along been that it (Hotel) should not be allowed to make any illegal construction and the Government Orders purporting to regularise the same should be quashed. According to the learned counsel as the original sanctioned plan was never challenged by the Council, the Hotel might, at best, be directed, consequent upon the quashing of those Orders, to demolish the illegal construction, if any, made beyond the sanctioned plan. In expanding this contention it was submitted that when the Hotel started constructing the building in terms of the sanctioned plan, which was for a building with two floors above the road level, and for that purpose foundation was dug, it was found that there was a hollow space of a depth ranging from 6 to 18 matters below the ground. Since the cost of filling that hollow space was prohibitive, the Hotel was advised to erect very strong columns with adequate deep foundation below the actual floor level to bear the weight of the construction. The foundation pillars were, therefore, necessary to be put up for the approved plan construction. It is in the context of the above facts, which, the Hotel was not a ware of earlier, that the revised plan was submitted for sanction. It was further submitted that under the Master Plan a building could be put upto a height of 10 metres from the road level and as the proposed building was to be only 6 metres high there could not be any violation in respect thereof.

In repudiating the above contentions the Council submitted that the Hotel was trying to create a confusion regarding the level from which it was to construct its building. The learned counsel for the Council pointed out that in the original plan the Hotel had shown the road level as the ground level along the entire length of the proposed building even though

A the contour plan of the area clearly showed that the plot in question was gradient and the ground level and the road level was not one and the same. It was next contended that under the relevant Rules the height of a building was to be reckoned from the general ground level of the site and measure accordingly with reference to every point on the ground level. According to the council, being fully aware of the above facts the Hotel first persuaded the authorities to sanction the plan giving an impression that the two storeys were to be constructed on the ground level, and having obtained the sanction raised the bogey of instability of the proposed building in view of the hollow space thereunder and necessity of construction of the columns. The learned counsel submitted that such design of the Hotel would be evident from the fact that it not only illegally raised those columns but also constructed five more additional floors for residential accommodation. In view of the above facts the High Court was fully justified in directing demolition of all structures beyond the two floors constructed above the ground level in accordance with the sanctioned plan, argued the learned counsel.

In the context of the respective stands of the parties the question that fell for consideration before the High Court was whether the two storeyed building constructed by the Hotel above the road level was in accordance with the sanctioned plan or not. In dealing with the above question the High Court discussed the factual aspect of the matter at length, keeping in view the contour plan and other materials placed before it and recorded the following findings :

(i) The contention of the Hotel that necessity for erecting strong columns with deep foundation was realised only after digging the foundation and that the idea of constructing basement floors below the ground-floor was generated thereafter was clearly false, as such a case was put forward for the first time in the counter-affidavit filed in the Court (High Court) in the writ petition. In fact, in the letter accompanying the application for sanction of revised plan, which was submitted on January 29, 1992, it was only stated that the revised plan had been necessitated as the natural earth level of the site left the Hotel with 20 ft. to 50ft. of beam and columns structure below the approved plan at different levels but there is no reference whatsoever to the discovery of so called hollow space

after digging of the foundation. A

(ii) The story that there was such a hollow space and the natural earth level necessitated erection of 20 ft. to 50 ft. column and beam structure was falsified by the contour plan filed by the Hotel along with its appeal to the Government. B

(iii) The sequence of events gives rise to the natural inference that the Hotel had even in the beginning planned to deceive the authorities and escape the rigour of the Rules by getting sanction for construction of a building in accordance with the rules, but proceeding to construct a different building in utter violation of the Rules, so that it could put forward a plea of *fait accompli* and avoid demolition. and C

(iv) All along the contention of the Hotel had been that it was constructing only the ground floor and first floor above road level for which it had obtained approval but the Note File of the Township Committee indicated that on inspection of the premises on 31.10.1992, it was found that seven floors had been constructed and four of them were above road level. D

Since the above findings of fact are based on a proper appraisal of the entire materials available to the High Court we do not find any reason to disturb the same sitting in our jurisdiction under Article 136 of the Constitution. It was, however, contended on behalf of the Hotel that the High Court committed three basic errors in reading the contour plan, namely, (i) a wrong assumption about the starting point of height/slash depth measurement, (ii) non provision of 10 metres set back from the front of the side and (iii) assuming the length of the building to be 40 metres when in reality it was at least 10 metres longer. It was further contended that if those three errors were set at right it would be seen that the Hotel's version was correct more so when it was corroborated by an affidavit filed by the Committee which admitted that the plan was passed after the site inspection. We are not prepared to accept the above contentions for the High Court took great pains to consider the contour plan in its proper perspective. This apart, the High Court's findings as noticed above are not solely based on the contour plan but other factors also. In our considered opinion the most eloquent and patent fact that must tilt the scale in this dispute in favour of the Council is that the Hotel has admittedly made a E  
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- A residential construction of seven floors even though their sanctioned plan was only for two floors. That necessarily means that five floors of the building have been constructed illegally and unauthorisedly. It is not surprising therefore that the entire endeavour of the Hotel now is to protect the two floors constructed above the road level and to yield to any workable formula. It is in that context that the Hotel, without prejudice to its rights and contentions, had suggested that the entire structure of seven floors might be allowed to remain and, for that purpose it was prepared to give an undertaking that they would not use the five floors below the road level for any residential purpose but utilise it only for keeping air-conditioning plant and other attendant purposes for running the Hotel on the two floors above the road level. The Council, however, vehemently opposed to the above suggestion on the ground that acceptance thereof would mean giving judicial imprimatur to utter and flagrant breach of statutory provisions to which the Hotel resorted to in spite of repeated opportunities given and reminders issued to retrace their steps and any sympathy shown to the Hotel would be wholly misplaced. We need not, however, dilate on this aspect of the matter as it appears to us that there is some confusion as to the nature of the above quoted direction, given by the High Court and it requires to be clarified. According to the first part of the direction the respondent Nos. 1 and 2 are to demolish the building constructed by the Hotel *to the extent* to which it is contrary to the plan sanctioned by the second respondent on November 1, 1991. If this direction is to be complied with then in that case the demolition has to be of the five floors below the road level for the plan was sanctioned showing the road level as the ground level, while the other part of the direction seems to indicate, that besides two floors above the natural ground level of the site the rest of the construction has to be demolished. In other words, from the order it is not clear as to whether the High Court intended that the construction of the two floors above the road level has to be kept intact and the rest demolished, or the stepped structure of two floors arising from the natural ground level has to be kept intact and the rest demolished *irrespective* of what the sanctioned plan indicates. This is a matter which the High Court should clarify now.

Before we complete our discussion, we would like to mention that the State of Tamil Nadu has in their appeals raised a plea that the following observations made by the High Court against the Minister and the Chief Minister were wholly uncalled for :

"Nothing more need be said to prove that the Minister has not at all applied his mind to the relevant materials before signing the order. But, on the other hand, he has taken note of irrelevant matters. The Chief Minister has simply signed the file without entering any minute or remark. There is nothing to show that there was application of mind to the matters on record by the Chief Minister. Hence, we hold that there is total lack of application of mind on the part of the Government." A B

We do not find any substance in the above plea for not only the above quoted observations are factually correct but were absolutely necessary for proper disposal of the writ petitions. C

In the result, while upholding the judgment of the High Court, we remand the matter to it for the limited purpose of issuing fresh directions in the light of the observations made hereinbefore. The appeals are thus disposed of. There will be however, no order as to costs. D

T.N.A.

Appeals disposed of.