

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**CWP No. 9853/2026 a/w CWP
No.9566/2026****Decided on: 08.07.2026****1. CWP No.9853/2026**

Madan Lal Sharma	Petitioner
	Versus	
State of H.P and others		..Respondents

2. CWP No. 9566/2026

Dev Bhumi Wheels LLP	Petitioner
	Versus	
State of H.P and others		..Respondents

Coram**Ms. Justice Jyotsna Rewal Dua****Whether approved for reporting?¹**

For the Petitioners:	Mr. Mohan Singh, Advocate vice Mr. Sanjay Kumar Sharma, Advocate for the petitioner in CWP No.9853/2026 and for respondent No.6 in CWP No. 9566/2026.
	Mr. K.B. Khajuria, Advocate, for the petitioner in CWP No.9566/2026 and for respondent No.6 in CWP No.9853/2026.
For the Respondents:	Mr. L.N. Sharma, Additional Advocate General, for respondents No. 1 to 5- State in both the matters.

Jyotsna Rewal Dua, Judge

Both these writ petitions are centered around the permission accorded by the Himachal Pradesh Ground Water Authority Shimla to Dev Bhumi Wheels LLP on

¹Whether reporters of print and electronic media may be allowed to see the order? Yes.

20.02.2026 to drill borewell for extracting groundwater @8000 liters per day in area Plot No.104-D, Industrial Area, Shoghi, District Shimla, H.P. for commercial purposes subject to terms and conditions mentioned in the sanction letter. Dev Bhumi Wheels LLP has moved Civil Writ Petition No. 9566/2026 seeking directions for providing it adequate police protection for installation and commissioning of bore well in accordance with the sanction granted to it whereas Civil Writ Petition No. 9853/2026 has been instituted for setting-aside the same sanction accorded for extraction of ground water. The Himachal Pradesh Ground Water Authority Shimla-contesting respondent has filed its reply in CWP No.9853/2026. The relief prayed for in these two writ petitions running counter to each other and centered around the same sanction granted by the Ground Water Authority, with consent of learned counsel for the parties, both matters were taken up and heard together.

2. Today's hearing was also attended by Dr. Mandeep Gupta, Member Secretary, the Himachal Pradesh Ground Water Authority. During hearing of the matter, the Member Secretary, H.P. Ground Water Authority apprised that entire State of Himachal Pradesh is a notified area under the provisions of the Himachal

Pradesh Ground Water (Regulation and Control of Development and Management) Act, 2005 (in short, the Act) as amended time to time. Section 5 of the Act gives power to notify areas to regulate and control the development and management of ground water. On improvement in availability of groundwater in the notified area, the State government on recommendation of the Authority may de-notify the area. The Section reads as under:-

“5. Power to notify areas to regulate and control the development and management of ground water.-

(1) The Authority shall function under the over all control and supervision of the State Government.

(2) If the Authority is of the opinion that it is necessary or expedient in the public interest to control and or regulate the extraction of ground water in any form in any area, it shall advise the State Government to declare any such area to be a notified area for the purposes of this Act.

(3) The State Government after examining the advice of the Authority, received under sub-section (2), and after making such further enquiry, as it may deem fit, may by notification, declare such area or part thereof to be the notified area, with effect from such date, as may be specified therein:

Provided that the State Government may *suo motu* by notification declare its intention to notify any area to be the notified area under this section, if deemed necessary.

(4) Every such notification issued under sub-section (3) shall, in addition to its publication in the Official Gazette, be published in not less than two daily regional language newspapers having wide circulation in the State and shall also be served by

affixing a copy of the notification at the offices of the Gram Panchayats located in the said area and at some conspicuous places of the locality.

(5) The persons likely to be affected by the notification issued under sub-section (3), may file objections or suggestions within thirty days from the date of publication of the same in the Official Gazette, against such declaration to the State Government which shall be decided by it within thirty days, after public hearing and thereafter, final notification shall be issued within thirty days.

(6) If in the opinion of the Authority, the availability of the ground water has improved in a notified area, it may advise the State Government to de-notify such area, and the State Government may in the like manner, de-notify such area.

(7) The Authority shall take steps to ensure that exploitation of ground water resources does not exceed the natural replenishment to the aquifers and wherever, there is mismatch, steps shall be taken to ensure augmentation of ground water resources in addition to regulatory measures.”

Section 7 of the Act pertains to grant of permit to extract and use ground water. Sub-Section (5) thereof prescribes certain parameters which are to be kept in view while granting or refusing permit for extracting ground water viz. the purposes for which water is to be used, existence of other competitive users, availability of water, quality of ground water to be drawn with reference to proposed usage, spacing of ground water structures keeping in view the purpose for which water is to be used, minimum distance of two hundred meters in case of shallow well and three hundred meters in case of tube

well from the existing source of water supply scheme or irrigation scheme, as the case may be, long terms ground water level behaviour, and other relevant factors. The provision is as follows:-

“7. Grant of permit to extract and use ground water.-

(1) Any user of ground water desiring to sink a well within notified area, for any purpose shall, on payment of such fee as may be prescribed, apply to the Authority for grant of a permit, and shall not proceed with any activity connected with such sinking unless a permit has been granted by the Authority.

(2) Every application made under sub-section (1) shall be in such form and contain such particulars as may be prescribed.

(3) The Authority shall consider the application made under subsection (1) and if satisfied, may grant a permit, in such form as may be prescribed, subject to such conditions and restrictions as may be specified, within sixty days from the date of receipt of the application:

Provided that while considering the application the Authority shall give first priority for drinking water needs in preference to other needs:

Provided further that no permit shall be refused without affording an opportunity of being heard.

(4) The decision regarding grant or refusal of the permit shall be intimated by the Authority to the applicant within a period of thirty days from the date of decision.

(5) In granting or refusing a permit under sub-section (3), the Authority shall have regard to-

- (a) the purpose or purposes for which water is to be used;
- (b) the existence of other competitive users;
- (c) the availability of water;
- (d) quality of ground water to be drawn with reference to proposed usage;

- (e) spacing of ground water structures keeping in view the purpose for which water is to be used;
- (f) minimum distance of two hundred meters in case of shallow well and three hundred meters in case of tube well from the existing source of water supply scheme or irrigation scheme, as the case may be;
- (g) long term ground water level behaviour; and
- (h) any other factor relevant thereto."

Drinking water has been defined under Section 2(d) as under:-

"2(d) "drinking water" means water for consumption or use by human population for drinking and for other domestic purposes, which shall include consumption or use of water for cooking, bathing, washing, cleansing and other day-to-day activities and shall include water meant for consumption by the livestock."

"Exploitation limit" has been defined under Section 2(e) as "such limit where the estimated annual ground water extraction is more than eighty five percent of the estimated average annual ground water recharge".

"User of ground water" in terms of Section 2(o) has defined as under:-

"2(o) "user of ground water" means a person or an institution including a company or an industry or an establishment, whether Government or not, who or which uses ground water for any purpose excluding domestic use."

The above clause underwent an amendment under the Act No. 14 of 2022 as follows:-

"(c) in clause (o), for the words " excluding domestic use", the words and signs, "excluding

individual domestic consumer, rural drinking water supply scheme, Armed Forces and Central Armed Police Forces establishments, agricultural activities and micro and small enterprises drawing ground water less than 10 cubic meter per day" shall be substituted."

3. Grievance of the petitioner in CWP No.9566/2026 is that pursuant to the permission granted to it for extracting ground water, it engaged an authorized Contractor, spent substantial amount towards mobilization and execution of the borewell work but petitioner in CWP No. 9853/2026 unlawfully obstructed and prevented the execution of the work. The petitioner in CWP No.9566/2026 seeks police protection for installing and commencing the borewell works for extracting groundwater. Grievance projected in CWP No. 9853/2026 is that Dev Bhumi Wheels LLP (petitioner in CWP No.9566/2026) deals with sale and purchase of the vehicles; The borewell has been proposed to be installed inside the showroom, extracted water is to be used for washing of cars; No survey has been conducted prior to the sanction of the said borewell; The borewell is at 20 meters aerial distance & 150 meters from the local source of water and caters to the water requirement of more than five nearby villages; The water source is crucial to the villages; Commercial exploitation of groundwater will

adversely affect local water source and in turn the entire area & its habitation; Sanction given to one Industrial Unit for extracting ground water may result in seeking similar permissions by the other Industrial Units located in the area. This petitioner also alleges the sanction for extraction of groundwater to be in violation of Section 7(5) of the Act (extracted earlier). The petitioner asserts that these provisions have not been kept in view by the Competent Authority while granting the permission in favour of Dev Bhumi Wheels LLP. Petitioner also highlights violation of breach of procedure mandated in Rule 17 of the Himachal Pradesh Ground Water (Regulation and Control of Development and Management) Rules, 2007, (in short, the Rules), which made it compulsory for the authority to publish notice in two leading newspapers as first step towards initiating the process for examining the application seeking groundwater extraction through borewell for commercial usage. That statutory notice under Rule 17 of the Rules was not published in two leading newspapers inviting objections from Local Panchayat or residents. The said rule reads as under:-

“17. Publication of notice of application for permit.-

(1) If the Authority finds the application for grant of permit in the notified area is complete in all respects and is accompanied by the requisite information and documents, it shall publish notice of the application in Form-2 appended for inviting objections from the interested persons: -

(a) In case of commercial/industrial use, in two leading daily news papers and also display a copy thereof on the notice board of the Gram Panchayat or urban local authority having jurisdiction, as the case may be; and

(b) In case of irrigation, display a copy of the notice on the notice board of the local authority having jurisdiction.

(2) If no objections are received from any quarter by the due date given in the notice, the Authority shall proceed further for the grant or refusal of the permit in accordance with the provisions of the Act and under these rules.”

This aspect has been admitted by the Himachal Pradesh Ground Water Authority, Shimla though according to it, non-publication of notice in newspapers under Rule 17(1) was an unintentional administrative oversight and not deliberate action. The relevant portion from the reply is as under:-

“6. That, it is most respectfully submitted that the non-publication of the notice in newspapers under Rule 17(1) by the field-level Executive Engineer was an unintentional administrative oversight. It is humbly submitted that this omission was neither deliberate nor contumacious. There was absolutely no malafide intention on the part of any official to bypass the statutory procedure or to cause prejudice to the local residents. It is well-settled principle of law that a procedural irregularity or administrative oversight by a subordinate field officer, committed in good faith and without any mala fides, cannot vitiate the substantive and

technically sound decision of the Authority, especially when the "Doctrine of Substantial Compliance" is met through rigorous scientific validation(hydro geological report proving the 237.39m distance). No actual prejudice has been caused to the petitioner or the public at large, as the permission is heavily guarded by Condition No.5 of the permit which provides that "permission/sanction can be withdrawn or the quantity of water to be extracted can be restricted in case the ground water in the area is adversely affected in terms of quantity and/or quality". The replying respondent most humbly prays that this Hon'ble Court may graciously take a lenient view of this curable procedural, as they have acted entirely in good faith. If this Hon'ble Court deems fit, the Authority is fully amendable to a direction for post-facto publication to cure the procedural defect, while protecting the technically valid permission."

Apart from above, Dr. Mandeep Gupta, Member Secretary, Himachal Pradesh Ground Water Authority, Shimla, during hearing further apprised that out of permitted extraction of 8000 liters groundwater per day, 6000 liters per day was meant for projected drinking water requirement of petitioner's workforce of 150 persons.

It appears that complete provisions of the Act and Rules framed thereunder were not kept in view by the Himachal Pradesh Ground Water Authority while sanctioning extraction of 8000 liters of groundwater per day in favour of petitioner in CWP No.9566/2026 for commercial use. However, there is no necessity to go

further into that region as it has been admitted by the Himachal Pradesh Ground Water Authority that mandatory procedure prescribed under Rule 17 of the Rules was not followed which was pre-requisite before undertaking any further process/consequent action. At this stage, learned counsel for petitioner in CWP No.9566/2026 submitted that petitioner in CWP No.9853/2026 was aware of the sanction for groundwater extraction accorded to the petitioner (in CWP No.9566/2026). Be that as it may, even if it is assumed to be correct then also the authorities cannot claim defence of no prejudice to the petitioner as it is well settled that an action to be taken in a particular manner as provided by a statute, must be taken, done or performed in the manner prescribed or not at all. (**Reference: Nazir Ahmad versus King Emperor²**). Further it is not just the petitioner in CWP No.9853/2026 who was to be apprised about proposed groundwater extraction applied for by the petitioner in CWP No.9566/2026. There would be several other stake holders/villagers who would be affected with the such proposal. They all have been denied the opportunity to voice their concern against the

²AIR 1936 PC 253

proposed extraction of 8000 KL of groundwater per day for commercial use in the industrial area.

5. For all the aforesaid reasons, sanction dated 20.02.2026 granted in favour of Dev Bhumi Wheels LLP by the Himachal Pradesh Ground Water Authority, Shimla for extracting 8000 liters per day ground water for commercial use is quashed and set-aside. The respondents, however, are at liberty to consider the application of Dev Bhumi Wheels LLP afresh in accordance with law after following and keeping in view all the provisions of the Act and Rules made. Both these writ petitions are accordingly disposed of. Pending miscellaneous application(s), if any, shall also stand disposed of.

July 08, 2026
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Jyotsna Rewal Dua
Judge