

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-01-2015

CORAM

THE HONOURABLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

WRIT PETITION Nos.25744 and 27012 of 2014
and
M.P.Nos.1 and 1 of 2014

W.Anand

...Petitioner in WP 25744/2014

Indian Institute of Architects
Chennai Centre
rep. By its Joint Honorary Secretary
Pradeep Kumar Varma
4, 3rd Floor, Raja Annamalai Building
72, Rukmani Lakshmipathy Salai
Egmore, Chennai 600 008

...Petitioner in WP 27012/2014

vs

1. The Chennai Metropolitan Development Authority
Represented by its Member Secretary
Thalamuthu Natarajan Maaligai
Gandhi-Irwin Road
Egmore, Chennai 600 008

2. The Corporation of Chennai
Represented by its Commissioner
Rippon Building,
Periyar EVR Salai,
Chennai 600 003

...Respondents in both petitions

WP No.25744/2014 filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus forbearing the respondents from in any manner demanding an undertaking from the registered Architects with regard to structural sufficiency certificate and the construction in Forms PP - 1, PP - 2, CC - 1, CC - 2 and CC - 3 with regard to structural safety of the building contrary to the National Building Code of India, 2005, for issuance of planning permission as well as for completion certificate.

WP No.27012/2014 filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus forbearing the respondents, their officers, their men, servants or

agents or anyone claiming under them from in any manner insisting the Architects to execute the forms viz. (1) Form For Certificate For Structural Design Sufficiency (PP-I); (2) Form For Supervision (PP - II); (3) Form For Supervision (CC - I); (4) Form For Completion Certificate (CC - II) and (5) Form For Undertaking By Architect (CC - III) of the first respondent.

For Petitioners : Mr.P.S.Raman
Senior Counsel
for Mr.S.Ramesh
in WP 25744/2014 and
Mr.AR.L.Sundaresan
Senior Counsel
for Mr.CT.Murugappan
in WP 27012/2014

For Respondents : Mr.P.H.Arvind Pandian
Additional Advocate General
Assisted by
Mr.K.Raja Srinivas for R1
Mr.A.Nagarajan for R2

COMMON ORDER

(Order of the Court was made by THE HON'BLE CHIEF JUSTICE)

The apprehension of the architects arising from certain Forms required to be submitted by them to the Chennai Metropolitan Development Authority and the consequence thereof in respect of multi-storeyed buildings, has given rise to these two petitions - one filed by the Architect as a Public Interest Litigation being W.P.No.25744/2014, and the other by the Indian Institute of Architects, Chennai Centre, being W.P.No.27012/2014. The profession of Architecture as per the own say of the Council of Architecture is "a social art that touches human beings at all levels of their existence everywhere and everyday". It encompasses four major fields of human endeavour : Humanities, Science, Art and Technology. The subject aspect is best reflected in the Preface to the Conditions of Engagement and Scale of Charges published as Architectural Practice by the Council of Architecture, the relevant portion of which is extracted hereunder:-

"PREFACE

Architecture is a social art that touches all human beings at all levels of their existence everywhere and everyday. This is the only discipline, which encompasses the four major fields of human endeavour : Humanities, Science, Art, and Technology, actually putting into practice the professional inputs drawn from them. In sum, Architecture is the matrix of human

civilization - an authentic measure of the social status, and an evocative expression of the ethos of an era. When conserved, it is heritage and when in ruins, it becomes archaeology, reconstructing tell-tale pictures of the past civilizations.

The demands on the profession over the years have become much more complex in nature and much wider in scope. Architecture uses the philosophic wholesomeness of Humanities, the logical rationalism of Science, the passionate imagination of Art and the inexhaustible resources of Technology. It calls for originality, creativity, conceptualization, perception, aesthetic values, and a holistic judgement of people, places, objects and events. Architecture is primarily the art and science of designing spaces for serving the multifarious activities of human beings and for meeting their specific needs in a meaningful built environment. When various engineering services are rationally combined with Architecture's basic elements of Space, Structure and Form, the performance of human functions and the operation of mechanical utilities become efficient, pleasant and fulfilling. However, in its broadened scope and baffling complexity, Architecture has generated specializations such as Structural Design, Urban Design, City Planning, Landscape Architecture and Interior Architecture. Retrofitting of Buildings, Architectural Conservation, Construction Management have also lately emerged as specializations. Each of these compliment and support each other.

The primary objective of Structural Design is to evolve a strong, durable and an efficient skeleton so that the space which architecture encloses, and the form in which it expresses itself as interior content and an exterior container, becomes an organic extension of one another. Structure is so fundamental to architecture that it actually determines its two-pronged functions; the utilitarian appropriateness and the expressive power of aesthetics. Structural design as a creative discipline assumes an indispensable position as a natural extension of Architectural Design. Endowed with an extraordinary power of conceptualization and creativity, an architect can conjure up unprecedented structural systems leading to the genesis of design-ideas introducing new concepts of Space and Form. In other words, the architect's contribution to structural design can effectively bring about

qualitative change in the built-environment to stimulate the advancement of society towards a higher order of civilization."

2. Post Preface, the Comprehensive Architectural Services had been defined in its various ramifications and the relevant portions are extracted as under:

"Part I - ARCHITECTURE:

1.1 Taking Client's instructions and preparation of design brief.

1.2 Site evaluation, analysis and impact of existing and/or proposed development on its immediate environs.

1.3 Design and site development.

1.4 Structural design.

1.5 Sanitary, plumbing, drainage, water supply and sewerage design.

1.6 Electrical, electronic, communication systems and design.

1.7 Heating, ventilation and air conditioning design (HVAC) and other mechanical systems.

1.8 Elevators, escalators, etc.

1.9 Fire detection, Fire protection and Security systems etc.

1.10 Periodic inspection and evaluation of Construction works.

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2. SCHEDULE OF SERVICES:

The Architect shall, after taking instructions from the Client, render the following services:

CONCEPT DESIGN [STAGE 1]:

2.01 Ascertain Client's requirements, examine site constraints & potential; and prepare a design brief for Client's approval.

2.02 Prepare report on site evaluation, state of existing buildings, if any; and analysis and impact of existing and/or proposed development on its immediate environs.

2.03 Prepare drawings and documents to enable the Client to get done the detailed survey and soil investigation at the site of the project.

2.04 Furnish report on measures required to be taken to mitigate the adverse impact, if any, of the existing and/or proposed development on its immediate environs.

2.05 Prepare conceptual designs with reference to requirements given and prepare rough estimate of cost on area basis.

PRELIMINARY DESIGN AND DRAWINGS [STAGE 2]:

2.06 Modify the conceptual designs incorporating required changes and prepare the preliminary drawings, sketches, study model, etc, for the Client's approval along with preliminary estimate

of cost on area basis.

DRAWINGS FOR CLIENT'S/STATUTORY APPROVALS (STAGE 3):

2.07 Prepare drawings necessary for Client's/statutory approvals and ensure compliance with codes, standards and legislation, as applicable and assist the Client in obtaining the statutory approvals thereof, if required.

....

CONSTRUCTION (STAGE 6)

....

2.13 Visit the site of work, at intervals mutually agreed upon, to inspect and evaluate the Construction Works and where necessary clarify any decision, offer interpretation of the drawings/specifications, attend conferences and meetings to ensure that the project proceeds generally in accordance with the conditions of contract and keep the Client informed and render advice on actions, if required.

2.14 In order to ensure that the work at site proceeds in accordance with the contract documents/drawings and to exercise time and quality controls, the day-to-day supervision will be carried out by a Construction Manager (Clerk of Works/Site Supervisor or Construction Management Agency in case of a large and complex project), who shall work under the guidance and direction of the Architect and shall be appointed and paid by the Client.

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9. EXECUTION OF THE ASSIGNMENT:

9.01 The Architect shall keep the Client informed about the progress of work in his office.

9.02 The Architect shall appoint specialised consultants with the Client, if necessary.

9.03 The Architect shall be responsible for the direction and integration of the consultants work. The consultants, however, shall be fully responsible for the calculations, the detailed design and periodic inspection and evaluation of the work entrusted to them. The Architect shall, if requested, make available the design calculations.

9.04 The Architect will advise the Client on the Time Schedule (Bar Chart/PERT/CPM Network) prepared by the contractors for the completion of work, if required.

9.05 The Architect shall supply to the Client, free of cost, upto six sets of drawings at different stages.

9.06 The Architect shall not make any deviations, alterations or omissions from the approved drawings, involving financial implications

without prior consent of the Client.

9.07 Any professional services to be rendered by the Architect at the instance of the Client after the agreed project completion period shall be compensated for on mutually agreed terms.

9.08 The Architect shall exercise all reasonable skill, care and diligence in the discharge of his duties and shall exercise such general superintendence and inspection as may be necessary to ensure that works are being executed in accordance with the Conditions of Contract.

9.09 Any revision in the drawings, tenders and documents, once approved, required to be made by the Client shall be compensated as additional services rendered by the Architect and paid for @ 50% of the fee prescribed for the relevant stage (s).

9.10 No change shall be made in the approved drawings and specifications at site without the consent of the Architect.

9.11 Any curtailment of the professional services, beyond Stage 2, shall make it obligatory for the client to pay at least 20% of the fee for the remaining Stage(s) of the curtailed work/Services."

3. In substance, the contention advanced on behalf of the petitioners is that the National Building Code of India, 2005, (hereinafter referred to as Code) is succinct and thus, the respondent authorities should require the Architects to comply with obligations and fill in Forms as specified in the said Code, and the nature of Forms evolved by the respondents called upon the Architects to fill in Forms accepting liability in respect of the subject matters, for which they are not responsible, more specifically, structural safety.

4. The Code has been evolved in order to provide safe and healthy habitat and careful consideration needs to be paid to the building construction activity. Building planning, designing and construction activities have developed over the centuries. However, the Foreword to the Code also states that besides prescribing various provisions, it also allows freedom of action to adopt appropriate practices and provides for building planning, designing and construction. The provisions of this Code are intended to serve as a model for adoption by the Public Works Department and other Government Construction Departments, Local Bodies and other Construction Agencies. The existing Public Works Department Codes, Municipal By-laws and other regulatory media thus could either be replaced by the Code or suitably modified to cater to the legal requirements in accordance with the provisions of the Code. Thus the Code is in the form of a model norm available, which ought to be adopted by different bodies dealing with matters of building and construction, though it may not have a statutory force by itself. In terms of Clause 10 of the Code, the authorities are entitled to make

Rules for carrying out the provisions and intentions of the Code provided that any Rule shall not be in direct/indirect conflict or nullify/dilute any of the provisions of the Code. There are two other Clauses, which are qua structural safety i.e., the following:-

"12.2.8 Structural Sufficiency Certificate

The plans shall be accompanied by structural sufficiency certificate in the prescribed form (see Annex C) signed by the engineer/structural engineer (see Annex A) and the owner jointly to the effect that the building is safe against various loads, forces and effects including due to natural disasters, such as, earthquake, landslides, cyclones, floods, etc as per Part 6 'Structural Design' and other relevant Codes. The engineer/structural engineer shall also have the details to substantiate his design.

12.2.9 Supervision

The notice shall be further accompanied by a certificate in the prescribed form (see Annex D) by the registered architect/engineer/ structural engineer/supervisor/town planner (see Annex A) undertaking the supervision (see 9.3)"

5. Insofar as the Chennai Metropolitan area is concerned, Development Regulations have been formulated in terms of Second Master Plan for Chennai Metropolitan Area - 2026. Regulation 28 deals with special rules for multi-storeyed buildings and sub-clause (9) (a) of the same reads as under:-

"(9) Conformance to National Building Code of India:-

(a) In so far as the determination of sufficiency of all aspects of structural designs, building services, plumbing, fire protections, construction practice and safety are concerned the specifications, standards and code of practices recommended in the National Building Code of India shall be fully confirmed to and any breach thereof shall be deemed to be a breach of the requirements under these regulations."

6. It is, thus, seen that the Code has to be adhered to and insofar as the role of the Architect and the Structural Engineer qua design and planning is concerned, sub-clause (12) of the said Regulation reads as under:-

"(12) The design and plans of the building shall be made and signed by a qualified Civil or Structural Engineer and an Architect who should possess the qualification referred to in the Architect Act, 1972 (Central Act 20, 1972), so as to become a member of the profession of Architects

under the provisions of the said Act. The qualified Engineer or Structural Engineer should also be Class I licensed Surveyor registered with Corporation of Chennai/Local body concerned."

7.Thus, the design and plans of the building are to be made and signed by "a qualified Civil or Structural Engineer" and "an Architect".

8.It is apposite to refer to the essential requirements for registration and competence of an Architect vis-a-vis a Structural Engineer.

"A-2 REQUIREMENTS FOR REGISTRATION AND COMPETENCE OF PROFESSIONALS

A-2.1 Architect

The minimum qualifications for an architect shall be the qualifications as provided for in the Architects Act, 1972 for registration with the Council of Architecture.

A-2.1.1 Competence

The registered architect shall be competent to carryout the work related to the building/development permit as given below:

- a) All plans and information connected with building permit except engineering services of multistoreyed/special buildings given in 12.2.5.1.
- b) Issuing certificate of supervision and completion of all buildings pertaining to architectural aspects.
- c) Preparation of sub-division/layout plans and related information connected with development permit of area up to 1 hectare for metro-cities and 2 hectare for other places.
- d) Issuing certificate of supervision for development of land of area up to 1 hectare for metro-cities and 2 hectare for other places.

....

A-2.3 Structural Engineer

The minimum qualifications for a structural engineer shall be graduate in civil engineering of recognized Indian or foreign university, or Corporate Member of Civil Engineering Division of Institution of Engineers (India), and with minimum 3 years experience in structural engineering practice with designing and field work.

NOTE - The 3 years experience shall be relaxed to 2 years in the case of post-graduate degree of recognized Indian or foreign university in the branch of structural engineering. In case of doctorate

in structural engineering, the experience required would be one year.

A-2.3.1 Competence

The registered structural engineer shall be competent to prepare the structural design, calculations and details for all buildings and supervision.

A-2.3.1.1 In case of buildings having special structural features, as decided by the Authority, which are within the horizontal areas and vertical limits specified in A-2.2.1(b) and A-2.4.1(a) shall be designed only by structural engineers."

9.The above said provisions would amplify the fact that an Architect and a Structural Engineer have their specified roles to play in their own sphere of activities.

10.The grievance, which is sought to be made, is qua the Forms introduced subsequently viz. (i) Form for Certificate for Structural Design Sufficiency (to be submitted before issue of Planning Permission); (ii) Form for Supervision (to be submitted before issue of Planning Permission); (iii) Form for Supervision (to be submitted at the time of Completion Certificate application); (iv) Form for Completion Certificate and (v) Form for Undertaking by Architect (to be submitted at the time of CC Application in Rs.20/- stamp paper).

11.It is the say of the petitioners that these Forms seek to actually club the role of a Structural Engineer and an Architect making them composite Forms and thus putting a burden on the Architects with consequences to follow, which is not envisaged in the role, which they seek to perform. These Forms read as under:-

"(i)

FORM FOR CERTIFICATE FOR STRUCTURAL DESIGN
SUFFICIENCY

(To be submitted before issue of Planning Permission)

With respect to the building proposed/construction at (Door
No.....,
Road at
S.No...../T.S.No.....

....., Block No.....,
village, Taluk), we certify that the
structural plans of the building meet the structural safety
requirements for all situations including natural disasters, as
applicable, as stipulated under Part 6 Structural Design of the
National Building Code of India and other relevant Codes; The
design has been done after detailed soil test and we are satisfied as
to the adequacy of soil test carried out and the information given
therein is factually correct to the best of our knowledge and
understanding.

The site is fit for the proposed construction, it has been
tested vide soil test report. No.....

dt..... done by
Signature of owner/ Signature of the Signature of Signature of
Builder with date Registered Engineer Architect Geo
Tech

/Structural & Regn.No. expert with
Engineer Regn.No. Regn. No. of
the Company
or ST Regn.
No.

Name :.....

Address:.....

Mobile
No.....

e mail
ID

(ii)

FORM FOR SUPERVISION

(To be submitted before issue of Planning Permission)

I hereby certify that the development, erection, re-erection or
for making alteration in the building No. (Door
No.....
..... Road at

S.No...../T.S.No..... Block
No.....

Village, Taluk, shall be carried out under
our supervision and we certify that all the materials (type and
grade) and the workmanship of the work shall be generally in
accordance with the general and detailed specifications, as per NBC
standards and to meet out the structural design of the proposed
building.

We undertake not to continue construction without any
supervision by out Site Engineer and submit the report to the local
body.

1. Signature of Architect.....

Name of Architect with Reg. No.....

Address of the Architect

2. Signature of Structural Engineer

Name of Structural Engineer with reg. No.....

Address of the Structural Engineer

3. Signature of Site Engineer

Name of the Site Engineer.....

Address of the Site Engineer.....

<https://hcservices.ecourts.gov.in/hcservices/>

Date :

Place:

(Address must also contain valid e-mail id and mobile number)

I certify to engage the above mentioned Engineers for the active period of building execution and I hereby assure to give revised certificate, in case of any change of Engineer, I would ensure no work is taken up in this period till required engineers are engaged by me.

In case construction work is entrusted by a builder's agreement to a 3rd party, I would undertake to include these conditions as part of the agreement.

Signature of Land Owner/Builder

(iii)

FORM FOR SUPERVISION

(To be submitted at the time of Completion Certification application)

I hereby certify that the development, erection, re-erection or for making alteration in the building No. (Door

No....., Road at

S.No...../T.S.No..... Block

No....., Village, Taluk, has been carried out under

our supervision and we certify that all the materials (type and grade) and the workmanship of the work was in accordance with the

general and detailed specifications, as per NBC standards and met out the structural design of the constructed building.

The construction was made under the supervision of Site Engineer and submitted the report to the local body periodically.

1. Signature of Architect.....
Name of Architect with Reg. No.....
Address of the Architect.....

2. Signature of Structural Engineer.....
Name of Structural Engineer with reg. No.....
Address of the Structural Engineer.....

3. Signature of Site Engineer.....
Name of the Site Engineer.....
Address of the Site Engineer.....

Date :
Place:

(Address must also contain valid e-mail id and mobile number)

I certify I have engaged the above mentioned Engineers for the active period of building execution.

Signature of Land Owner/Builder

(iv)

FORM FOR COMPLETION CERTIFICATE

I hereby certify that the development, erection, re-erection or material alteration in/of building No..... or the on/in Plot No..... in Colony/Street (Door No....., Road, at S.No...../T.S.No..... Block No....., Village, Taluk), has been supervised by me and has been completed on according to the plans sanctioned, vide No..... dated The work has been completed to my best satisfaction, the workmanship and all the materials (typed and grade) have been used strictly in accordance with general and detailed specifications. No provisions of the National Building Code of India, no requisitions made, conditions prescribed or orders issued thereunder have been transgressed in the course of the work. The building is structurally fully safe and is fit for occupation.

I hereby also enclose the plan of the building completed in all aspects.

1. Signature of Architect.....

Name of Architect with Reg. No.....

Address of the Architect

2. Signature of Structural Engineer/

Name of Structural Engineer with Reg. No.....

Address of the Structural Engineer

3. Signature of Site Engineer

Name of the Site Engineer

Address of the Site Engineer

Note : The Architect and Structural Engineer must one who signed the PPA, the construction engineer who has signed at the time of PPA and signed at the time of furnishing progress report. (Address must also contain valid e-mail id and mobile number)

Place

Date:

Signature of the Owner/PP
applicant/Builder

(v)

FORM FOR UNDERTAKING BY ARCHITECT

(To be submitted at the time of CC Application in Rs.20/- stamp paper)
<https://hcservices.ecourts.gov.in/hcservices/>

I hereby certify that the building located in Door No.....,

Road at
S.No...../T.S.No.....
Block No.....,
Village, Taluk, has been designed
by me and the Structural Design was made
by Thiru to the approved plans sanctioned
in the Planning Permission No.....
dated and the Building Permit
No..... dated The Building has
been constructed and completed under my guidance and supervision as
per the structural design furnished by the Structural Engineer
engaged by us.

I also assure and undertake that, I have signed in the plan and
in "as on site" plan and the same is structurally safe and fit for
occupancy based on my personal assessment and certification of the
Structural Engineer engaged by us.

1. Signature of Structural Engineer
Name of Structural Engineer with Regn. No.....
Address of the Structural Engineer
Mobile No.....
e mail ID

2. Signature of Architect
Name of Architect with regn. No.....
Address of the Architect
Mobile No.....
e mail ID

3. Signature of owner/builder with date
Name
Address
..... सत्यमेव जयते
Mobile No.....
e mail ID

Place
Date:"

12. For example, it is stated that the first Form, while
talking about the structural design (a role in respect of which the
petitioners do not seek to be absolved) is sought to be clubbed with
soil test and the adequacy of the same. Thus, structural plan and
structural safety are sought to be clubbed together.

13. It is submitted that the incorporation of these Forms is
in the nature of an immediate creation arising out of the unfortunate
incident of the building collapse, which occurred at Moulivakkam.

14.We heard the learned Counsel for parties at length.

15.We would like to say at the inception, that there is no particular factual matrix before us, in respect of which we can adjudicate the dispute. The petitions arise more out of apprehensions rather than facts. The apprehension thus, is that unfortunately if an incident occurs of a building collapse, the architects would be saddled with the responsibility, apart from other persons, despite their role being limited.

16.As a general proposition, we are unable to accept the plea of constrained nature of role of an Architect, which is sought to be propounded before us. The Preface to the Conditions of Engagement and Scale of Charges placed before us and reproduced by us in extenso aforesaid, itself would belie such a plea. In fact, the word "Architect" is often used as a universal word in different fields for a creator. It is the own explanation of the role of an Architect by the Council of Architecture, which shows the wide role, which an Architect is required to play.

17.As far as certain aspects of Forms required to be filed by them are concerned, no doubt, there are composite Forms and the endeavour is to possibly see that all concerned undertake to perform their roles. If in a particular case, a role has not been performed by the Architect, then naturally, he cannot be burdened with the responsibility of the same. Thus, it is really an apprehension at this stage of time, that for a possible negligence of a Structural Engineer, the consequences may flow to an Architect. We would, however, hasten to add that it does not mean that we are absolving the Architects of over-all role envisaged for them as per their own charter. However, the consequences, in case of an incident, would depend on the facts of each case and it is not possible to lay down any general proposition.

18.The Forms per se have been made under the Regulations and in our view, cannot be said to be in conflict with the Code. In fact, it is not necessary that what an authority provides has to be identical to what the Code provides as play has been given to the authorities in this behalf; but, what has been recorded is this play should not amount to a conflict with the provisions of the Code.

19.Wherever a Form is required to be signed by more than one professional, naturally, each of the professional is responsible in respect of the role to be performed by that professional and the Forms cannot be understood in a manner that qua some aspect, which a professional is not required to perform, he will incur the consequences of breach of performance by another professional. In our view, this should take care of the apprehensions of the Architects.

20.We dispose of the writ petitions with the aforesaid observations. The parties to bear their own costs. Consequently, connected MPs are closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

nsv

To

1. The Member Secretary
The Chennai Metropolitan Development Authority
Thalamuthu Natarajan Maaligai
Gandhi-Irwin Road
Egmore, Chennai 600 008
2. The Commissioner
The Corporation of Chennai
Rippon Building,
Periyar EVR Salai, Chennai 600 003

1 CC to M/s.A.L.Ganthimathi, Advocate SR.No. 4218

1 CC to Mr.K.Raja Srinivas*, Advocate SR.No. 3645

1 CC to Mr.A.Nagarajan, Advocate SR.No. 3562

1 CC to Mr.S.Ramesh, Advocate SR.No. 3801

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W.P.Nos.25744 and 27012 of 2014

RSK (CO)
PSI (06.02.2015)

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