

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP No.2788 of 2014 (O&M)

Date of Decision: 20.11.2018

Seema Rajpal

... Petitioner

Versus

UT of Chandigarh and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Rahul Sharma-I, Advocate,
for the petitioner.

Mr. P.S.Dhaliwal, Advocate,
for the respondents.

ARUN MONGA, J.

1. Petitioner herein is a qualified Architect registered with Council of Architects, New Delhi with valid registration up to 31.12.2019. Vide impugned order dated 23.07.2013 (Annexure P-2) passed by respondent No.2 i.e. The Estate Officer, Union Territory, Chandigarh, it was directed that (a) Estate Office should write to Council of Architects to take appropriate action in view of the report of the SDO (B) and (b) Meanwhile, Estate Office should refuse taking any documents from the petitioner/Architect. petitioner-Architect.

2. The delinquency attributed to the petitioner-Architect is that when the ownership verification report was made, while submitting building design documents by her, the same was wrongly made in favour of Sh. T.S.Ahluwalia and the name of Co-owner Sh. O.S.Ahluwlaia was deleted by her. It is further opined

by the Estate Officer that due inquiry in respect of the ownership ought to have been made by the petitioner-Architect in respect of the ownership from the office of Estate Office and/or from all the other co-owners.

3. The inquiry report of SDO (B) held that the petitioner-Architect cannot escape the responsibility because she was aware that the property was in the joint names of two brothers and it was her duty to point out the same to the Estate Office and the said default on her part is a deliberate attempt of concealment. In view of the said report the Estate Officer passed the order that the Estate Office should write to Council of Architects and the same was done vide letter dated 25.09.2013 with a request to cancel the licence of the petitioner-Architect for wrongfully getting revised building plan sanctioned in respect of the property in the name of single co-owner alone by concealing the ownership of the other co-owner of the said property.

4. It was stated in the said letter dated 25.09.2013 that the following acts of omission in commission were committed by the petitioner- Architect:-

- “a) Making of wrong verification in respect of ownership.*
- b) Processing and passing of building plans in the name of one person when ownership was, as per sale deed, in the name of two brothers.*
- c) Issue of two show cause notices which for piecemeal building bye laws' violations.”*

5. It is contended by learned counsel for the petitioner that under **Rule 6-A of the Punjab Capital (Development and**

Regulation) Building Rules, 1952 (hereinafter referred to 'Rules, 1952') read with Rule 7 thereof that the duty of registered architect is merely to undertake the design of any building in Chandigarh. As per Rule 7, the application in the prescribed Form-A is to be made by the person who wants to erect or re-erect any building. The said Rules 6 and 7 of the 1952 Rules, *ibid* are extracted hereinbelow:-

6 (a) An architect registered with the Council of Architecture India shall be allowed to undertake the design of any building in Chandigarh.

b) A licenced supervisor Enrolled as such by the Chief Administrator upto the date of notification of these amended rules, shall be allowed to undertake only the supervision of construction of the buildings governed by the Frame Control. He shall not undertake the design of any building in Chandigarh. Further, no person shall be enrolled as licenced supervisor/registered Surveyor.

c) The licenced Engineers registered with Chandigarh Administration shall be allowed to continue their activities as structural engineers only.

7) Application to build:- Every person who intends to erect or re-erect any building shall make an application in writing to the Chief Administrator in the Form prescribed in Form A, annexed to these rules and shall at the same time submit in triplicate duly signed by himself or his legally authorised agent or attorney, (1) a site plan detailed in Rule 8, (2) plan elevations and sections of the proposed structure detailed in Rule 9 or 10, (3) drainage plans detailed in Rule 11 and (4) the specifications detailed in Rule 12.

ii) Every person who erects or re-erects any building shall get his buildings duly supervised during the period

of construction by an Architect named by him in Clause 3 of Form 'A' and any change in the name of such Architect shall be intimated to the Chief Administrator within seven days of the date of change.

Provided that a registered surveyor shall not undertake the supervision of construction in any area other than the Frame Control Area."

6. Learned counsel for the petitioner contends that a combined reading of Rules 6 and 7 of the 1952 Rules contemplate that:-

a) It is not the duty of an Architect to make an application for the erection or re-erection of a building in Chandigarh;

b) An architect is enjoined only with the duty to design and supervise the construction of a building in Chandigarh.

7. He further contends that petitioner has been submitting duly verified building plans designed by her in the Estate Office for past more than 13 years. However, in the month of July, 2013 all of a sudden Estate Officer returned the building plans submitted by the petitioner relating to House No.1231, Sector 19-B, Chandigarh. Not only that, the Estate Office refused to receive any building plans with regard to other houses designed by her. Learned counsel for the petitioner further contends that in spite of best efforts made by the petitioner, she was not informed as to why the building plans designed by her not being entertained and the petitioner was forced to approach the Estate Officer under RTI, 2005.

8.

8. Pursuant thereof impugned order dated 23.07.2013 was supplied to the petitioner and it is the contention of the petitioner that the same has been passed without granting her any opportunity of being heard. Learned counsel for the petitioner contends that only after supply of the impugned order under RTI, petitioner made further inquiries wherein it was revealed that some preliminary fact finding inquiry was also conducted against the officers of the Estate Office who dealt with the building plan sanction in respect of House No.2164, Sector 15-C, Chandigarh.

9. He contends that in the said inquiry petitioner was also called to explain whether the building/site plans submitted by one Sh. B.S. Ahluwalia were presented by her to which she replied in affirmative. However, petitioner had also explained to the Inquiry Officer that the plan was submitted in view of the report of the officer of the department herein that the ownership of House No. 2164, Sector 15-C, Chandigarh was recorded in the name of Sh. B.S.Ahluwalia. Learned counsel for the petitioner contends that the said report regarding ownership in the name of Sh. B.S.Ahluwalia was duly recorded in Form-A submitted under Rule 7 of the Building Rules 1952, *ibid*.

10. Learned counsel for the petitioner further contends that the petitioner was neither issued any notice nor any inquiry was held against her. Even copy of the inquiry report was also not supplied to her.

11. Learned counsel has argued that an Architect has no role, whatsoever qua the verification of the ownership in respect of

the building for which the services of an architect are hired to design the building plans.

12. In view thereof, the petitioner approached the Estate Officer and submitted representation dated 27.08.2013 (Annexure P-3) followed by representation dated 09.09.2013 (Annexure P-4) but despite that she has not been granted any opportunity of being heard. On the other hand, no documents/building designs submitted by the petitioner are being received by the Estate Office as is reflected from Annexure P-5 vide which building plan in respect of the another client of the petitioner have been returned by SDO (B) citing the order/recommendation dated 23.07.2013 of respondent No.2-Estate Officer.

13. Learned counsel for the petitioner further contends that assuming that the mistake in verification of the ownership was attributable to the petitioner even then under Rule 18-A (viii) of 1952 Rules, *ibid*, at the first instance, a warning ought to have been issued and it is only on the second instance that the registration of an erring architect can be suspended that too only for a period of 01 year and at the third instance or any subsequent instance, the registration of the architect can be revoked and a fine can also be imposed thereof. **Rule 18-A (viii) (supra)** reads as under:-

“18-A. Procedure for dealing with applications for permission to occupy- (viii) Incorrect information or certification supplied by the Architect in Form 'E' would make him liable for a warning in the first such instance and for suspension of his registration with the Chandigarh Administration for a period of at least one year in the second such instance. In the case of a 3rd

such instance or a subsequent instance the Chief Administrator may in addition, revoke the registration of the Architect and may impose a fine upto Rs.10,000; and may also request the Council of Architecture to take suitable action.”

14. Having heard the rival contentions of both sides, this Court is of the view that the impugned recommendation/order dated 23.07.2013 does not stand scrutiny of law as the petitioner-architect has a fundamental right under Article 19 of the Constitution of India to practice her profession and she cannot be deprived of her livelihood in a summary manner. On top of it, the same was done, as resorted to by the respondent No.2 Estate Officer, without granting any opportunity of being heard.

15. Learned counsel for the petitioner states that if only opportunity of being heard had been given, before passing of the impugned recommendation/order (Annexure P-2) behind the back of the petitioner by the Estate Officer, she would have been able to explain the case. Apropos the said contention, the learned counsel for the respondent states that the Estate Officer would now grant an opportunity of hearing to the petitioner pursuant to representations Annexures P-3 and P-4 and pass a speaking order.

16. Writ petition is, accordingly, disposed of with a direction to the Estate Officer-respondent No.2 to pass a speaking order after granting due opportunity of being heard to the petitioner and keeping in view the provisions of law as mentioned hereinabove.

17. In the circumstances, the impugned order (Annexure P-

2) is quashed qua the petitioner with liberty to pass fresh orders within a period of two months after granting an opportunity of hearing to the petitioner.

18. No order as to costs.

20.11.2018

vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No