

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: May 27, 2019

Judgment delivered on: July 01, 2019

+ W.P.(C) 7163/2017

DHARMENDER AGGARWAL

..... Petitioner

Through: Mr. J.K. Bhola, Adv.

versus

NORTH DELHI MUNICIPAL CORPORATION AND
ANR

..... Respondents

Through: Mr. Rajan Sabharwal, Standing
Counsel with Ms. Dipti Jain, Adv. for
R1.
Ms. Monika Arora, Mr. Kushal
Kumar and Mr. Praveen Singh,
Adv. for SDMC.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present writ petition has been filed by the petitioner challenging letter dated July 13, 2017 and order dated May 18, 2017 passed by the respondent Nos.4 and 3 respectively. Vide the impugned letter / order, the petitioner was debarred as Engineer / Structural Engineer for a period of two years with effect from the date of issuance of the circular i.e July 10, 2017.

2. The case of the petitioner in the writ petition is that he was granted license by respondent No.2 South Delhi Municipal

Corporation as “*Engineer*” (License No. E-1943) and as “*Structural Engineer*” (License No. SE/0138). The validity of the licenses were upto December 31, 2017. It is the case of the petitioner that upon the issuance of the licenses in the year 2014, his services have been impeccable. There was no complaint regarding the working/services provided by the petitioner under the aforesaid licenses. That there was a construction of residential building at property bearing No.4085, Gali Mandir Wali, Pahari Dhiraj, Delhi for which he had applied for sanction of building plans online through its President, who was the authorized signatory. He had applied for sanction of building plans as per the given rules and regulations, bylaws etc. There was in existence a single storied structure at site at the time of sanctioning of building plans. The authorized signatory of the owner of the said property had certified that there is no construction carried out after date of sanctioning of building plans i.e. February 08, 2017.

3. It is the case of the petitioner that the, authorized representative filed an undertaking / affidavit stating that the sanction of the building plans was for construction of building at the given site and also to demolish the existing structure before commencement of construction work. It is his case that the President has also given an undertaking in terms of the guidelines issued by the respondents for intimation to them before starting the construction. It is averred that after the plans were sanctioned in the name of the owner on February 08, 2017, the engagement of the petitioner was over / came to an end. It is his case that at

the time when the plans were sanctioned, he had clearly informed the owners in writing that the date of construction has to be communicated to him, otherwise he would not be in a position to carry out the services of supervision of construction in the property, if being undertaken by him. After some time, petitioner came to know that the respondents are contemplating to take some action against him for violation of some conditions. Upon enquiries, he came to know about a show cause notice being issued to him (which was never served on him). The petitioner with all his sincerity upon coming to know gave his reply on May 17, 2017 stating that it is the owner, who submitted an affidavit vide online ID No. 10037937 for demolition of existing construction before commencement of construction of work, in other words, he never submitted any affidavit while applying online. Unfortunately, there was no information from the owner to the petitioner regarding the commencement of the construction with regard to the said property till the time he submitted his reply to the show cause notice or even till the filing of the petition. He clearly stated that he has never undertaken the services of supervision of construction on the said property. Despite reminders being given to the higher officials of the respondents on June 28, 2017 and July 11, 2017, respectively, for consideration of the reply submitted by the petitioner to the alleged show cause notice, unfortunately without taking into consideration the same, the impugned letter dated July 13, 2017 has been issued communicating thereof the decision to debar the petitioner as “*Engineer / Structural Engineer*” for a period of

two years. It is also stated by him that the order dated May 18, 2017 by which a decision was taken was never communicated to him.

4. A status report has been filed by the respondent No.1 / Nr. DMC wherein it is stated that the impugned letter dated July 13, 2017 was issued to the petitioner for certain omission and commissions while applying for the building plans of property bearing No. 4085, Gali Mandir Wali, Pahari Dhiraj, Delhi under Saral Scheme vide I.D. No. 10037937. It is the case of respondent No.1 that the report of the Assistant Engineer (Plan) Nr. DMC dated May 15, 2017 was received by the respondent No.3 i.e Deputy Commissioner regarding submission of false affidavit to the effect that the Building will be constructed after demolishing the existing one but instead of demolishing the old building, it was found the construction is not being raised as per the BBL-2016 at site. The petitioner being the registered Architect and having obtained the sanctioned building plans under Saral Scheme, it was his duty to supervise the construction and ensure that the building is constructed as per BBL-2016 and MPD-2021. The report dated May 15, 2017 was considered by the Deputy Commissioner and vide order dated May 18, 2017, the petitioner was debarred for a period of two years for submission of proposal of sanctioned building plans as Architect as well as Structural Engineer. The said recommendation was sent to respondent No.2 SDMC for circulation of order of debarment of the petitioner because the said task on behalf of all the three Corporations was being dealt by SDMC.

5. A short affidavit has been filed by the SDMC also through the Executive Engineer, Building Department, wherein it is stated that SDMC is the Nodal agency for issuing circulars pertaining to empanelment and de-panelment of approved architects on behalf all the three Municipal Corporations of Delhi. In the present case, SDMC has issued debarment circular on the basis of order dated May 18, 2017 issued by the Deputy Commissioner, Sadar Paharganj Zone. It is averred that the petitioner filed an application for sanction of building plans in respect of property No. 4085, Gali Mandir Wali, Pahari Dhiraj, Delhi. Suffice it would be to state that, the SDMC filed an affidavit on similar lines as has been filed by Nr.DMC.

6. Mr. Bhola, learned counsel for the petitioner had submitted that the impugned action of the respondents against the petitioner is, totally illegal as, according to him, the petitioner has only applied under the Saral Scheme for sanction of building plans. He had never submitted any undertaking / affidavit that the existing structure shall be demolished before effecting the construction as per the sanctioned building plans. He stated that the petitioner had no clue about the owners undertaking the construction activity, as they had not informed the petitioner about the same. In other words, it is his submission, if any construction was undertaken, that was by the owners without his knowledge and surely, consequence thereof cannot be fastened on him. He also stated that the petitioner had submitted reply to the show cause notice on May 17, 2017 wherein he has clearly stated that the owner started the construction without his knowledge.

He has also stated that he has already withdrawn his supervision pertaining to the said property. In other words, having withdrawn himself from the supervision work, he cannot be held liable for any violation of affidavit / undertaking and the regulations.

7. On the other hand, Mr. Rajan Sabharwal, learned counsel for the respondents has reiterated the stand taken by the respondents in their respective status report / affidavit. He has also produced the file wherein the impugned decision has been taken.

8. Having heard the learned counsel for the parties, there is no dispute that the petitioner had applied for the approval of the plans under the Saral Scheme with ID No. 10037937. During submission of the plans, an undertaking and an affidavit were submitted by the owner of the property in question i.e 4085, Gali Mandir Wali, Pahari Dhiraj, Delhi stating that the building shall be constructed as per the building bylaws under the supervision of structural engineer and he shall intimate about the construction completion to the Municipal Corporation. It was also stated by the owner in the affidavit that he shall demolish the old structure before commencement of the construction work.

9. The plea of the learned counsel for the petitioner is that, pursuant to the sanction of the building plans, the owner had informed the petitioner that as and when the construction is started, he shall be intimated. Unfortunately, no intimation was forthcoming and in fact, the owner started the construction in violation of the undertaking / affidavit without demolishing the old construction. This aspect was not in the knowledge of the

petitioner and cannot be a ground to debar the petitioner, from providing the services as “*Engineer and Structural Engineer*”.

10. I am unable to agree with the said submission of the learned counsel for the petitioner for the simple reason that the petitioner was licensed as an “*Engineer / Structural Engineer*”. There is no dispute that as a structural engineer, the petitioner was to supervise the construction of the property in question. He got the building plans sanctioned for the construction. If the petitioner was informed by the owner that he shall inform him at the time of construction of the property and was not informed, the petitioner cannot absolve himself of the consequences thereof of the building being constructed in violation of the sanctioned building plans and contrary to the affidavit / undertaking given by the owner. This I say so, the responsibility surely, was on the petitioner to keep an eye on the property in question and to ensure that there is no illegality committed by any person, even the owner. If there was violation, he was required to inform the authorities about the violation by the owner. He has not done that. The reliance placed by the petitioner on the withdrawal letter dated May 17, 2017, which reads as under, shall also not help the case of the petitioner for the reason stated above. In fact, the letter proves that he was to supervise the construction also.

*“That I Dharmender Aggarwal (E-1943) was appointed for the sanction of Building Plan and supervision of construction of the property bearing no. 4085, Gali Mandir Wali, Pahari Dhiraj, Delhi-110006. After sanction of building plan President of **Digamber Jain Panchayat (Regd.)** owner / Authorized Signatory of the above property, said that he will start the work after some time. But today I came to know that he*

started the construction without my knowledge therefore, I stand withdrawn my supervision pertaining to property no. 4085, Gali Mandir Wali, Pahari Dhiraj, Delhi-110006. After this I will not be responsible with any matter related to property no. 4085, Gali Mandir Wali, Pahari Dhiraj, Delhi-110006. Thanking you in anticipation”

11. So it follows, no “*Structural Engineer*” can put the blame on the owner to escape the liability / consequences. A structural engineer, who is licensed with the Corporation, has certain obligation to ensure that the construction is being done as per the sanctioned building plans and affidavit / undertaking, which the petitioner, in the case in hand has failed to adhere to.

12. In view of my above discussion, I am not convinced with the stand taken by the petitioner in the petition and also during the oral arguments. The petition is devoid of any merit and the same is dismissed. No costs.

V. KAMESWAR RAO, J

JULY 01, 2019/jg