

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

CWP No.9036-2021

Date of Decision: 29.04.2021

MONIKA ABBI

....PETITIONER

Versus

STATE OF HARYANA AND OTHERS

....RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH**

Present : Mr. Abhilaksh Grover, Advocate,
for the petitioner.

SANT PARKASH, J.

The aforesaid presence is being recorded through video conferencing since the proceedings have been conducted in virtual court.

Present petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of order dated 30.03.2021 (P-17) passed by respondent No.2/Estate Office (HSVP), whereby Occupation Certificate granted towards the petitioner's house was revoked by respondent No.2 in complete violation of principles of natural justice as well as in violation of the Haryana Building Code 2017 (for short "Code 2017") (P-9) as well as quashing of Public Notice dated 18.01.2021 (P-13) issued by

respondent No.2, the same being against the provisions of Code-2017.

Brief facts of the case are that initially the plot No.425, Sector-51, Gurugram, measuring 76.795 Sq. Mtrs. (826.6 Sq ft) was allotted to Ramesh D. Behal by the Haryana Urban Development Authority (for short, HUDA) vide conveyance deed dated 10.01.2013, pursuant to which, re-allotment was issued by HUDA in the name of Mr. Ramesh D. Behal. Subsequently, the property was transferred to Smt. Krishna Kapoor by the original allottee vide sale deed dated 05.03.2013 as a free hold property, according to which, re-allotment was duly issued by HUDA in the name of Krishna Kapoor. Thereafter, the entire built up independent residential basement and ground floor was transferred by Smt. Krishna Kapoor in favour of her daughter, namely, Konika Kapoor on 10.09.2019 and the 2nd floor with exclusive roof rights to the petitioner. Additionally, the 1st floor was sold to one Mr. Saurabh Mahendru. In this way, the petitioner became the owner of the suit property vide transfer deed dated 04.06.2015 issued in her favour by her mother. It was inadvertently mentioned that the petitioner is the owner of ½ share of the suit property. However, vide rectification deed dated 01.09.2016, the said error was rectified. Further, vide rectification deed dated 01.04.2021, it was specifically stated that the petitioner shall have exclusive roof rights and rights of further construction on the 2nd floor. Prior to the transfer made in the name of the petitioner, building plan was approved by respondent No.2 on 12.08.2013 and thereafter, Occupation Certificate was issued to the petitioner's mother vide letter dated 21.04.2015. Subsequently, respondent No.2 issued allotment

offer for 3 separate floors including ground floor in accordance with the earlier norms. Re-allotment letter for the independent 2nd floor of the suit property was issued by respondent No.2 in accordance with HUDA-1997 as well as Haryana Urban Development Authority (Regulation) 1979. Petitioner's mother sold the rights of 1st floor to Mr. Saurabh Mahendru and his wife Nidhi Mahendru and the petitioner retained rights of the 2nd floor as well as terrace to the exclusion of Mr. & Mrs. Mahendru. The entire built up independent residential basement and ground floor was transferred by Krishna Kapoor in favour of her daughter namely, Konika Kapoor on 10.09.2019. Since, the petitioner's mother was in talks to sell one of the floors to a 3rd party, it became imperative in 2017 to affix an additional door after the 1st floor segregating the 2nd floor and the terrace floor for security. Additional, in terms of the Code 2017, a small room as well as attached toilet has been constructed on the terrace keeping the height below 15 metres while remaining within the prescribed FAR limit. On 28.12.2020, Mr. & Mrs. Mahendru owner of the 1st floor started harassing the petitioner and filed frivolous complaints against her before respondent No.2. On 18.01.2021, a public notice was posted outside the office of respondent No.2 to state that wherever stilt is not constructed, in those cases, only ground plus two floors are allowed and no construction is allowed on terrace, thereby virtually debarring any construction on the terrace. Subsequently, a show cause notice dated 18.02.2021 (Annexure P-14) was received by the petitioner for revocation of the Occupation Certificate on account of illegal encroachment on stair case and

construction on terrace, in accordance with the provisions of Code 2017. It was also mentioned in the notice that a personal hearing can be claimed within 15 days or the occupation certificate will be revoked. The petitioner replied to the notice dated 18.02.2021, vide letter dated 03.03.2021 explaining her grievance and submitting that any construction made was in accordance with the Code 2017 and if not then the petitioner be allowed to get the same compounded. Thereafter, the petitioner was waiting to be granted an opportunity of personal hearing but, respondent No.2 vide order dated 30.03.2021 revoked the Occupation Certificate for the suit property without granting any opportunity to her and without considering the reply dated 03.03.2021.

Notice of motion.

At this stage, Mr. Ankur Mittal, Addl. Advocate General, Haryana accepts notice on behalf of the respondent-State.

Learned counsel for the petitioner contends that the impugned order dated 30.03.2021 passed by respondent No.2 is against the principles of natural justice as the provisions contained in Rule 4.12 of the Code 2017 have not been complied with while passing the same. He submits that the alleged violations are compoundable in nature and thus, an opportunity of hearing should have been given to explain and to compound the same instead of issuing the impugned order. Learned counsel further submits that the show cause notice itself shows that the petitioner could avail a personal hearing within 15 days of issue of this notice on any working day in the office. However, no opportunity of hearing was given to the petitioner.

Learned counsel lastly submits that the petitioner would be satisfied if the impugned order is set aside and he be given an opportunity of personal hearing before the concerned authority.

We have heard learned counsel for the parties and perused the case file.

It is apt to reproduce Rule 4.12 of the Code 2017, which is as under:-

“Revocation of Occupation Certificate:-

In case, after the issuance of occupation certificate, if found at any stage that the building is used for some other purpose against the permission or make any addition/alteration in the building then, after affording personal hearing to the owner, the competent authority may pass orders for revocation of occupation permission and the same shall be restored only after removal of violations.”

Perusal of aforesaid rule makes it crystal clear that in case, at any stage it is found that building is used for some other purpose against the permission or make any addition/alteration in the building, the competent authority may pass orders for revocation of occupation certificate after affording personal hearing to the owner.

Perusal of case file reveals that show cause notice dated 18.02.2021 was issued to the petitioner regarding revocation of occupation certificate of plot No.423/SF, Sector 51, Gurugram, to rectify the building within 15 days from the date of issue of this notice or the petitioner could avail a personal hearing on any working day, to which, petitioner filed reply dated 03.03.2021 (Annexure P-15), vide which she sought a personal hearing on any working day.

Concededly, opportunity of personal hearing as envisaged in Code 4.12 of the Code 2017 has not been provided before passing the impugned order. Resultantly, we agree with the limited prayer made by the petitioner that a fresh order can be passed after granting such an opportunity.

In view of the above, impugned order dated 30.03.2021 is set aside being violative of the provisions of Code 4.12 of the Code 2017. Respondent No.2 is directed to pass a fresh and well reasoned speaking order after affording an opportunity of hearing, duly intimating a date of personal hearing to the petitioner.

Petition stands disposed of accordingly.

**(JASWANT SINGH)
JUDGE**

**(SANT PARKASH)
JUDGE**

29.04.2021
sonika/avin

whether speaking/reasoned:	Yes/No
whether reportable:	Yes/No