

(2015) 06 BOM CK 0274
In the Bombay High Court
Case No : Writ Petition No. 3378 of 2011

Jagdish P. Deshpande

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 29-06-2015

Acts Referred:

Architects Act, 1972 — Section 2, 35

Bombay Provincial Municipal Corporations Act, 1949 — Section 2, 2(e), 24, 30, 35

Constitution of India, 1950 — Article 226, 254, 254(1)

Citation : (2015) 06 BOM CK 0274

Hon'ble Judges : Abhay Shreeniwas Oka, J; Revati Mohite Dere, J

Bench : Division Bench

Advocate : Virendra Tulzapurkar, Senior Advocate i/b Chandana Salgaonkar, for the Appellant; V.S. Gokhale, A.G.P., Advocates for the Respondent

Final Decision : Allowed

Judgement

Abhay Shreeniwas Oka, J—The submissions of the learned senior counsel appearing for the petitioner, the learned counsel for the respondent Nos. 2 and 3, the learned senior counsel for the respondent No. 4 and the learned AGP for the respondent No. 1 were heard on Friday, 26th June 2015.

2. The petitioner is a registered Architect within the meaning of the provisions of the Architects Act, 1972 (for short "the said Act"). The petitioner is aggrieved by the order dated 15th April 2011 passed by the Municipal Commissioner of the respondent No. 2 - the Municipal Corporation of city of Pune. The operative part of the said order reads thus:

"5.1. Considering all the findings recorded above and the provisions of law, the undersigned is of the considered view that continuance Mr. Jagdish P. Deshpande as licensed Architect is not in the interest of the citizens of the city of Pune. Hence, the following orders are passed.

"(a) Under the powers conferred upon the undersigned, under section 372 of

BPMC Act of 1949, Mr. Jagdish P. Deshpande, bearing Council of Architects license No. CA/84/8316 is hereby held guilty of professional misconduct and also deceit of the flat purchasers of building "G" and "I" and that of the Pune Municipal Corporation while getting various plans sanctioned for the development of the cited property. And thus, no license and/or renewal license shall be granted and/or continued in favour of Mr. Jagdish P. Deshpande as licensed Architect for operations within the jurisdiction area of Pune Municipal Corporation, in the larger public interest and to safeguard interest of the prospective customers of the entire building industry.

(b) All the proposals and building permissions submitted hereafter by the architect Mr. Jagdish Deshpande shall be treated as invalid.

(c) All the concerned development/owners, whose proposals submitted through architect Mr. Jagdish Deshpande that are pending and/or under construction activity, shall be informed and be directed to replace the Architect with any other suitable licensed Architect.

(d) The effect of present order be published for the benefit of public at large to prevent further inconvenience to them in mass media after a period of two weeks from the date of communication of this order to the architect Mr. Jagdish P. Deshpande.

(e) Implementation of this order is stayed for a period of two weeks from the date of the communication of this order to the Architect as per the directives of Hon'ble High Court in Writ Petition No. 1963/2011. After the expiry of the two weeks, the operating part of (a), (b), (c) and (d) shall automatically come into effect. During the period of said two weeks, the Architect Mr. Jagdish P. Deshpande shall not submit fresh plans as directed by the Hon'ble High Court, Mumbai."

3. The learned senior counsel for the petitioner invited our attention to various provisions of the said Act as well as section 372 of the Maharashtra Municipal Corporations Act, 1949 (for short "the said Act of 1949"). He also relied upon the decision of the Division Bench of this Court in the case of Jaswantsing s/o. Attarsingh and others Vs. Municipal Corporation Aurangabad and another Writ Petition No. 4 of 1985 dated 3rd July 1987. He also relied upon another decision of a Division Bench of this Court in the case of The Indian Institute of Architects, Maharashtra Chamber vs. Pimpri Chinchvad Municipal Corporation Writ Petition Nos. 4692 of 1990 and 1830 of 1988 decided on 29th November 2004. His submission is that in view of the enactment of the said Act, section 372 of the said Act of 1949 to the extent to which it requires Architects duly registered under the said Act to obtain a licence will have to be held as void. Inviting our attention to the various provisions of the said Act, he urged that the power to cancel registration of an Architect under the said Act vests in the Council of Architecture. Relying upon section 30 of the said Act as well as Rule 35(1) of the Council of the Architecture Rules, 1973, he urged that elaborate procedure has

been prescribed for dealing with the complaints of professional misconduct made against the Architects duly registered under the said Act. He pointed out that in fact the respondent No. 2 - Municipal Corporation has filed a complaint with the Council of Architecture against the petitioner. He urged that so long as the petitioner is a registered Architect, the respondent No. 2 - Municipal Corporation has no power to prevent him from practising as an Architect.

4. The learned counsel for the Municipal Corporation invited our attention to the detailed findings of fact recorded by the Municipal Commissioner after giving an opportunity of being heard to the petitioner. He pointed out that the finding of the Commissioner is that the petitioner has indulged in fraudulent acts and has played with innocent flat purchasers. He urged that considering the findings recorded by the Commissioner after holding an enquiry and considering the conduct of the petitioner reflected from the said findings this is not a fit case to interfere in the writ jurisdiction under Article 226 of the Constitution of India. The learned counsel for the respondent No. 4 supported the legal submissions made on behalf of the petitioner.

5. We have given careful consideration to the submissions. Section 37 of the said Act reads thus:

"37. Prohibition against use of title -

(1) After the expiry of one year from the date appointed under sub-section

(2) of section 24, no person other than a registered architect, or a firm of architects shall use the title and style of architect:

Provided that the provisions of this section shall not apply to -

(a) practice of the profession of an architect by a person designated as a "landscape architect" or "naval architect";

(b) a person who, carrying on the profession of an architect in any country outside India, undertakes the function as a consultant or designer in India for a specific project with the prior permission of the Central Government.

Explanation - For the purposes of clause (a)-

(I) "landscape architect" means a person who deals with the design of open spaces relating to plants, trees and landscape;

(ii) "Naval architect" means an architect who deals with design and construction of ships.

(2) If any person contravenes the provisions of sub-section (1), he shall be punishable on first conviction with fine which may extend to five hundred rupees and on any subsequent conviction with imprisonment which may extend to six months or with fine not exceeding one thousand rupees or with both."

Chapter III of the said Act lays down an elaborate procedure for preparation and

maintenance of the register of Architects. It also lays down the qualifications for entry in the register. Section 37 of the said Act provides that no person other than a registered Architect or a Firm Architects shall use the title and style of "Architect". Thus, unless a person who claims to be an Architect is registered in accordance with the said Act, he is disentitled to use the title and style of the Architect. The clause (a) of section 2 of the said Act defines an "architect" to mean a person whose name is entered in the register of Architects. The said Act is a subsequent central enactment.

6. In the case of Jaswantsingh, the issue was whether an Architect within the meaning of the said Act is required to obtain a licence under section 372 of the said Act of 1949. In paragraph 7, the Division Bench held thus:

"In the present case we have pointed out that how the law made by Parliament and this law made by State Legislature on the subject of architect occupy the same field and are regulatory. The Architects Act provides for the control of the working of architects and also the manner in which the cases of misconduct may be dealt with. There can be no doubt that an exhaustive code in respect of this subject has been laid down by the Architects Act. It would not be open in the face of central legislation for the Commissioner under section 732 of the Corporations Act to refuse to issue licence to an architect under the guise that Respondent No. 1 has framed Building Bye-laws and requires qualifications and experience other than that provided by the Architects Act for issuance of licence. He would not have the power in fact of provisions regulating and controlling the conduct of the architects under the Architects Act to inquire into unfitness, through incompetency, misconduct or other grave reason under the guise of the power which purports to have been conferred on him by virtue of Section of the Corporations Act for refusing the license to an Architect. It is, therefore, difficult to say that the provisions of Section 372 of the Corporations Act and the Building Bye-Laws which we have noticed can co-exist with the corresponding provisions of the Architects Act of 1972."

(Underline supplied)

7. In paragraphs 11 and 12, the Division Bench proceeded to hold as under:

"11. ... Once it is clear that sub-section (2) of section 35 of the Architects Act, 1972, gives its preferential right to an architect as defined in section 2(e) a meaning which would permeate into sub-section (1) of Section 35, the petitioners cannot be asked to obtain licences from Respondent No. 1. That would be a position irreconcilable with the provisions of the Architects Act and would be repugnant to it. In view of this obvious repugnancy, the provisions of Article 254(1) would operate and the Corporations Act would be rendered inoperative to that extent.

12. In the view which we have taken, the Architect registered under the Architects Act, 1972, would not be required to obtain licences under the Corporations Act of 1949 and the Building Bye-laws made thereunder..."

(Underline added)

8. In the decision in the case of Indian Institute of Architects, the Division Bench dealt with the similar issue of a registered Architect requiring a license under section 372 of the said Act of 1949. In paragraph 6 of the said decision, the Division Bench held thus:

"6. We are unable to accede to the submissions of the learned counsel. Whatever may be the position before coming into force of the Architects Act, 1972, what we have to consider is whether after coming into force of the Architects Act the Municipal Corporation constituted under the MPMC Act has any power to regulate practice of Architects by the insistence that they must possess licences issued by the Corporations. The Architects Act sets out qualifications being possessed by the persons to be registered as architects under the said Act. It also prohibits persons, who do not have such registration from describing themselves as architects and also deal with disciplinary action for misconduct of architects. It is therefore a complete enactment, the effect of which is that a person cannot call himself as an Architect unless he is registered under the said Act. The argument of the learned counsel that the two Acts occupied different legislative fields is not correct. A comparison of the provisions of the two enactments would show that section 372 of the MPMC Act and the Building bye laws made under the said Act, occupy the same field for which provisions have been made in the Architects Act, 1972. Sub-section (1) of section 35 of the Architects Act makes it clear that any reference in any law for the time being in force to an architect shall be deemed to be a reference to an architect registered under the said Act and this would show its reach to the provisions of any other enactment for the time being in force in relation to an architect. In the instant case the State law is earlier legislation and the Parliamentary Act of 1972 came later and the State legislation contains provisions which are clearly repugnant to the provisions made under the 1972 Act. We have therefore no hesitation to hold that in view of this apparent conflict Parliamentary legislation has to prevail and the law made by the State Legislature to the extent of repugnancy becomes void..."

9. Thus, the law on the point laid down by this Court can be summarised as under:-

1] In view of clause (1) of Article 254 of the Constitution of India in the light of obvious repugnancy between the relevant provisions of the said Act and section 372 of the said Act of 1949, that part of Section 372 of the said Act of 1949 which applies to the Architects shall be rendered inoperative to that extent;

2] It shall not be necessary for an Architect within the meaning of clause (a) of Section 2 of the said Act to apply for and to obtain a license under Section 372 of the said Act of 1949;

3] No Municipal Corporation incorporated under the said Act of 1949 can insist on an Architect within the meaning of clause (a) of Section 2 of the said Act obtaining a license under Section 372;

4] No Corporation constituted under the said Act of 1949 shall be entitled to prevent, any Architect within the meaning of clause (a) of Section 2 of the said Act from practising as an Architect within the limits of the said Municipal Corporation so long as his or her name is not removed from the register of Architects maintained under Chapter III of the said Act.

10. The impugned order proceeds on the assumption that no Architect can function as an Architect without a license under Section 372 and that a Municipal Corporation has a power to prohibit an Architect from working as an Architect within the limits of the said Municipal Corporation. As observed earlier, the disciplinary proceedings against an Architect can be initiated and conducted only by the Council of Architecture in accordance with law under the said Act and the Regulations framed therein. So long as the name of an Architect continues on a Register of Architects maintained under the said Act, no Municipal Corporation can prevent such Architect from practising within its limits.

11. Now, coming to the impugned order, various findings have been recorded by the Commissioner of the Municipal Corporation against the Petitioner. It is not necessary for us to go into the merits of the findings recorded on the conduct of the Petitioner for the simple reason that the operative order passed in clause 5.1 of the impugned order suffers from lack of jurisdiction. The effect of the said order is that the Commissioner of the Municipal Corporation has held the Petitioner guilty of professional misconduct and has directed that he will not be entitled to a license under Section 372. The effect of clauses in clause 5.1 is that the Petitioner has been prevented from practising as an Architect within the limits of the said Municipal Corporation. It is not in dispute that the name of the Petitioner continues to be on the Register maintained under the said Act. Hence, the impugned order deserves to be set aside. It is brought on record that the Municipal Corporation had submitted a complaint to the Council of Architecture complaining about the professional misconduct on the part of the Petitioner. While setting aside the operative part of the impugned order, we must hasten to add that we have recorded no findings on the allegation made by the Municipal Corporation against the Petitioner. We also make it clear that we have made no adjudication on the question whether the alleged conduct of the petitioner attracts any liability under the criminal law. The said issues are left open to be decided by the appropriate authority/appropriate Court of law.

12. Hence, the Petition must succeed and we pass the following order:-

ORDER

(i) The impugned order dated 15th April, 2011 (Exhibit-AA to the Petition) is hereby quashed and set aside only on the ground that Section 372 of the said Act of 1949 is not applicable to the Architects within the meaning of clause (a) of Section 2 of the said Act and, therefore, the Commissioner of the Municipal Corporation had no jurisdiction to pass the impugned order;

(ii) We make it clear that we have made no adjudication on the merits of the

allegations made by the Pune Municipal Corporation against the Petitioner and all issues in that behalf are kept open to be decided in appropriate proceedings in accordance with law;

(iii) Subject to what is observed in clause (ii) above, Rule is made absolute in terms of prayer clause (a) which reads thus;

"(a) That this Hon"ble Court be pleased to issue a writ or certiorari or any other writ, order or direction in the nature of certiorari and after examining the legality, validity and propriety thereof, the impugned order dated 15th April 2011 passed by the Municipal Commissioner of the Municipal Corporation of the City of Pune, Respondent No. 3 herein being Exhibit "AA" to this Writ Petition be quashed and set aside."

(iv) In view of the findings which we have recorded above, Rule is also made absolute in terms of prayer clause (b) which reads thus;

"(b) this Hon"ble Court by pleased to declare that Section 372 of the B.P.M.C. Act, 1949 is ultra vires the provisions of the Architects Act, 1972 in so far as it relates to regulation of licences to Architects who are registered with the Council of Architects under the 1972 Act"

(v) Considering the facts of the case, there shall be no order as to costs.