

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 485 OF 2021

Shabbir A. Tambawala]
1901, Tivoli, Central Enclave]
Hiranandani Gardens, Powai,] ... Petitioner
Mumbai - 400 076]

Versus

1. State of Maharashtra]
Backbay Reclamation]
Mumbai 400 020.]
]]
2. Council of Architecture]
Through its Secretary]
Having its office at]
Indian Habitat Center,]
Core - 6A 1st Floor, Lodhi Road] ... Respondents
New Delhi - 110003.]
]]
3. Hafiz Contractor, Architect,]
29 Bank Street, Fort,]
Mumbai 400 023.]
]]
4. Suhas Joshi, Architect,]
29 Bank Street, Fort,]
Mumbai 400 023.]

Mr. Rohit Kapadia, Senior Advocate (Through VC) with Mr. S.C. Naidu, Mustafa Kachwala, and Sakshi Sri i/b. K. Law, Advocate for the Petitioner.

Ms. Anupamaa Pawar, AGP for Respondent - State.

Mr. P.V. Dhopatkar, Advocate for Respondent No.2.

Mr. Karl Tamboly a/w. Mr. Ernest Tuscano i/b. Mr. Anil

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D'souza, Advocate for Respondent No.3.
Mr. Chetan Kapadia, Senior Advocate with Ms. Vidisha Rohira i/b. M/s. Dastur Kalambi & Associates, Advocate for Respondent No.4.

**CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.**

DATED: 10th MARCH 2026.

JUDGMENT (PER : MANJUSHA DESHPANDE, J.):-

1. The Petitioner challenges the order dated 06.12.2019, passed by the Council of Architecture in Disciplinary Enquiry No. 332, wherein it is held that Respondent Nos. 3 and 4 are not guilty of professional misconduct, resultantly dismissing the complaint of the Petitioner.

2. The Petitioner had purchased 4 flats in a building named 'Tivoli' at Powai developed by Lakeview Developers, a company of the Hiranandani Group of Companies. The agreements for sale of the four flats were executed on 21.02.2004 on the basis of brochures and layout plan of the building, which included a common club house and recreation ground for the building. Upon completion of building and issuance of occupation certificate by the MCGM, the Developer handed over the possession in September

2004. The Developer had not constructed a common club house, as assured and indicated in the building layout plan. On 12.05.2006, the Developer sent an Email to the Secretary of the Society accompanied by a copy of a plan dated 11.05.2004. This Email sought permission of Society for connecting a podium ramp to the building with the adjacent under construction building, and it was further informed that both the societies i.e. 'Tivoli' and 'Evita', will be sharing the same entrance, and a common club house which was altogether removed from the plan.

3. It is alleged that this plan was signed by Respondent No. 4 on behalf of Respondent No. 3 as an Architect. This plan was different from the plan which was shown to the Petitioner while entering into the agreement to sale. Therefore, being aggrieved by the conduct of Respondent Nos. 3 and 4, the Petitioner has filed a complaint against them, under Chapter VII of Council of Architecture Rules, 1973 on 24.04.2009. After hearing the parties, the complaint of the Petitioner came to be dismissed vide order dated 22.03.2010.

However, the Petitioner thereafter preferred another complaint against Respondent Nos. 3 and 4 on 22.12.2010. In response to the second complaint, Respondent Nos. 3 and 4 were called upon to file their reply. Even the second complaint was dismissed by the Respondent No.2 *vide* order dated 16.11.2011. Being aggrieved by the order of dismissal and complaint, the Petitioner filed Writ Petition No. 130 of 2013 in this Court. This Court *vide* its order dated 17.06.2015, has quashed and set aside both the orders dated 22.03.2010 and 16.11.2011 passed by Respondent No.2 and directed to hear the complaints of the Petitioner on its own merits and pass appropriate orders in accordance with law.

After the remand of the matter to Respondent No.2, the Petitioner was informed that it was decided to refer the matter to the Disciplinary Committee for detailed investigation, and after considering the oral and written submission of the parties, the disciplinary committee submitted its report to Respondent No.2 on 16.05.2018. It was decided by Respondent No.2 to refer the matter to the Full Council in its 70th meeting held on 22.11.2018. On 27.07.2019, a Full Council of Respondent No.2 heard the

Petitioner and Respondent Nos. 3 and 4 and thereafter an order came to be passed on 06.12.2019, which is impugned in this Petition.

4. The learned Senior Advocate, Mr. Rohit Kapadia, for the Petitioner appeared through Video Conferencing and submitted that, the impugned order does not reflect application of mind by the Respondent No.2. It is the specific case of the Petitioner that, the plan sent by the Developer and stamped by Respondent Nos. 3 and 4 is forged, fabricated and materially different from the sanctioned plan. Respondent Nos. 3 and 4 alongwith the Developer have misled the Petitioner and the society by changing the plan of the entire project without the flat purchaser's knowledge or consent which constitute professional misconduct on the part of Respondent Nos. 3 and 4 under Section 22(2) of the Architects Act, 1972 read with Architects (Professional Conduct) Regulations, 1989.

5. The impugned order does not consider that there are material differences in these two plans, the original one contained 10 buildings, while the forged plan contained 12

buildings. The common club house which was part of the original plan was altered by removing the common club house and recreational area. The sanctioned plan contained signatures of MCGM personnel (Authorities) in the right hand side column, whereas in the forged plan, it was absent. The plan was sanctioned on 11.05.2004, there could not have been two materially different plans approved by the MCGM on the same date and under the same file name/number.

6. He further submits that the stand of Respondent No.3 has shifted multiple times with regard to this matter. The Respondent Nos. 3 and 4 have not given any explanation regarding the discrepancies in the two plans. Respondent No.2 has not passed a reasoned order, and no finding is recorded, about the discrepancies in sanctioned plan and forged plan. The complaint has been disposed of by merely directing Respondent No. 4 to apologize to the Petitioner. Without recording any reason as to why it was decided to absolve Respondent No.4, when in fact, the intentional fabrication and manufacturing of a document, and an attempt to pass that document as an original document were writ large on the face of the record.

7. It is further submitted that, the order passed by the Respondent No. 2 is contrary to the report of the Disciplinary Committee dated 16.5.2018, wherein the Respondent Nos. 3 and 4 have been found to have acted in violation of Regulation 2(1) (iv), (x) and (xii) of the Architects (Professional Conduct) Regulations, 1989, for purportedly carrying out work in the absence of a written agreement. Most importantly, the impugned order is not supported by any reason for arriving at the conclusion that Respondent No. 4 had inadvertently signed the forged plan.

8. It is submitted that creating and circulating a forged plan cannot be brushed aside casually by holding it to be just an error, since it has resulted in misleading the Petitioner. This conduct of Respondent Nos. 3 and 4 warranted strictest action against them. Therefore, the order impugned is required to be set aside and this Court may be pleased to hold Respondent Nos. 3 and 4 guilty of misconduct under the provisions of Architects Professional (Conduct Regulation), 1989, and direct Respondent No.2 to remove their names from the Register and terminate their license to practice.

9. Mr. Karl Tamboly, Advocate for Respondent No.3, has resisted prayer in the Petition by contending that the building named 'Tivoli' was completed in the year 2004. Respondent No. 3 was an Architect and Licenced Surveyor for the Powai Area Development Scheme Project i.e. Lakeview Developers of the Hiranandani Group of Companies, while Respondent No.4 was the Consultant Architect of Hiranandani Group of Companies. Respondent No.3 had given a Special Power of Attorney to sign and execute layout plans and building plans or any other letter or document, as may be required for submission to the authorities of MMC Or MMRDA or Government body or Authority mentioned therein for the purpose of development of the properties belonging to the Hiranandani Group of Companies in Greater Mumbai and Navi Mumbai. Respondent No. 3 has ceased work with Lakeview Developer on 06.03.2009 and the Power of Attorney stood terminated since then. Respondent No. 3 had nothing to do with the incorrect certification of the layout plan dated 24.06.2005, since he was not aware that, any such plan was being sent via Email to the Society by the Developer. It is pertinently

pointed out that, only the Petitioner has raised such a grievance, the society has not raised any grievance against Respondent No.3 or Respondent No. 4, for the inadvertent mistake. No prejudice or loss is caused to the Petitioner or the Society. Therefore, there is no substance in the challenge raised by the Petitioner and the Writ Petition deserves to be dismissed.

10. The Respondent No.4 led by Mr. Chetan Kapadia has resisted the Petition by contending that the Petitioner who had purchased 4 flats in the 'Tivoli' building forms part of larger layout comprising of many other buildings in the residential cum commercial scheme at Powai, developed by the Lakeview Developers. The Tivoli Building was constructed in accordance with the approved plan dated 03.03.2001. After the Petitioner purchased 4 flats in the Tivoli Building on 21.02.2004, occupation certificate was granted by the MCGM on 11.05.2004. It is submitted that after the earlier layout plan dated 03.03.2001, the MCGM approved an amended layout plan on 24.06.2005. It is further submitted that two Emails were received by the society from the Lakeview Developers requesting permission

to use the access from 'Tivoli' for an adjacent building, named, 'Evita', which was then under construction. The society also received an Email seeking permission for an access, which would connect 'Evita' with another building proposed to come up as, 'Tivoli-II (Vidisha)'. Pursuant to the aforesaid request, the Managing Committee of the Tivoli Committee passed the Resolution recording that the society had no objection to sharing common access with the 'Evita' building alongwith, 'Tivoli-II (Vidisha)'. It is also urged that the club house shown in the layout plan on 03.03.2001 was only a proposed layout, the MCGM has approved amended layout plans on 24.06.2005 and 29.11.2006, respectively. Therefore, there is no element of cheating or attempt to mislead the Petitioner.

As regards the signature of the Respondent No.4 which appeared on the plan of the building, which is alleged to be forged is concerned, it is submitted that the clerk cum assistant of Respondent No.4 had inadvertently stamped the plan as 'true copy stamp of full occupation certificate of Tivoli building', instead of copy of stamp of 'approved layout plan dated 24.06.2005'. This was sheer inadvertence and there

was no intention of committing any fraud or collusion. He has already tendered an apology for the inadvertent mistake committed by him, hence, the Writ Petition does not deserve any consideration.

11. Mr. P. V. Dhopatkar appearing for contesting Respondent No.2, relying on the affidavit filed through the Registrar-Secretary of Respondent No.2 submitted that, the Disciplinary Committee of the Respondent Council, after conducting several hearings of the Petitioner's aforesaid complaint, submitted its report to the Full Council of the Respondent No.2. The Full Council, in its 70th Meeting held on 22.11.2018, after going through the report of Disciplinary Committee has decided to summon both the parties i.e. the complainant as well as the Respondent Nos. 3 and 4. Accordingly, both the parties appeared before the Full Council on 27.07.2019. They were granted full opportunity of hearing and after considering the submissions, the Full Council passed the order on 06.12.2019. The Learned Counsel raises a preliminary objection for the belated challenged to the impugned order and submits that the Petition suffers from delay and laches. It is submitted that

the Council dismissed the complaint only after following the due procedure prescribed under the Architects Act, 1972 and Rules made thereunder. It is also submitted that this is a private contractual dispute between the complainant and the developer for which an alternate remedy is available for redressal of his grievance and Writ Petition would not be maintainable. Full opportunity of hearing was given to all the parties by Respondent No.2, there are no procedural lapses while conducting the Disciplinary proceedings.

12. The Disciplinary Committee has rightly observed that in absence of an agreement, it would be impossible to draw a conclusion, on the levels of performance of omissions and commissions of Respondent Nos. 3 and 4, due to which, the Disciplinary Committee is not in a position to adjudicate on the merits of the case in absence of any signed agreement or contract. There are no grounds made out for causing interference, in the decision taken by the Respondent No. 2 Council. The Respondent No.2 is an competent expert body consisting of the nominees of Central Government, all State Government undertakings, Head of Architectural Institutions, IIA, Institutions of Engineers India, these

Members of the body are the experts in the field, hence their decision does not warrant any interference, unless there is some irregularity or breach committed during the enquiry that is obvious from the face of the record.

13. We have heard the respective counsel and we have also perused all documents placed on record, relied upon by the parties. The grievance of the Petitioner in short appears to be that while entering into an agreement for sale on 21.02.2004, the Petitioner was shown an approved layout plan, which included a common club house and recreation ground. After issuing the completion certificate by the Municipal Corporation of Greater Mumbai, the possession was handed over in September 2004. The approved building plan dated 11.05.2004 accompanying the Email was received by the society in May 2006, which did not show the common club house, on the contrary, additional buildings were shown in the plan. This plan according to the Petitioner is a forged plan. Upon noticing the difference in the two plans, the Petitioner obtained the copy of the sanctioned approved plan, by the MCGM dated 11.05.2004, through RTI. Upon comparing the two plans, there was material difference in

these two plans. The number of buildings were increased from 10 to 12; club house was removed in the forged plan; the recreation area and its location were altered; the sanctioned plan bore signature of the officers, whereas it was absent in the forged plan; and the forged plan was signed by Respondent No. 4 on behalf of Respondent No.3.

14. Although the two complaints filed against Respondent Nos. 3 and 4 were dismissed by Respondent No.2. This Court in Writ Petition No.130 of 2013, remanded the matter to be heard afresh. After the remand, initial hearing was conducted by the Disciplinary Committee, and a report was submitted in May 2018. Since a *prima facie* case of professional misconduct was recorded in the report, it was referred to the Full Council by Respondent No.2.

15. The Petitioner and the Respondents were heard by the Full Council in its 70th meeting. After hearing the explanation given by Respondent No. 4 about the inadvertent stamping of plan, the Petitioner was again granted an opportunity to rebut the submissions and finally, after deliberating over the issue, by the majority of the Full Council, decided that there

was no professional misconduct, by Respondent No.3 and 4; however, there was a mistake committed by Respondent No.4 in signing and stamping a building plan on 24.06.2005, for which he needs to tender an apology to the Petitioner as well as the Council, and also assure that such conduct will not be repeated in future. By making these observations, the complaint has been dismissed.

16. In the wake of the above facts and circumstances as well as the documents on record, we are called upon to decide the correctness of the decision of Respondent No.2, who is the Apex Regulating body of the Architects in India. The Apex Regulating body has already evaluated the case of the Petitioner and has come to the conclusion that there is no professional misconduct committed by the Respondent Nos. 3 and 4, however, it was directed that Respondent No.4 should apologize to the complainant as well as the Council, and assure that no such conduct would be repeated in future.

This decision has been challenged before this Court by invoking powers of judicial review. The powers of this Court for entertaining such petitions challenging the decisions of

statutory or regulatory authorities are very limited. It is trite law that correctness of the decision of a statutory/quasi-judicial authority cannot be decided by treating it as an Appeal and re-appreciating the findings recorded by such Authority. The jurisdiction of this Court is limited; it can interfere in the findings only in case of an illegality committed in the decision-making process, such as decision is flawed due to lack of jurisdiction; or exercise of jurisdiction not vested in such Authority. Only in case the order impugned is irrational, arbitrary or unreasonable to such an extent that it shocks the conscious of a normal human being it can be interfered with by this Court.

17. In the present case when we perused the impugned order, it is passed in the exercise of its powers conferred under the Architects Act 1972, and the Regulations of 1982 framed in exercise of power conferred under Section 45 Sub-clause (1) read with clauses (a), (b), (c), (d), (e), (f), and (i) with sub-section 2 of the Architects Act, 1972, approved by the Central Government read with Regulations of 1989. The Council of Architect is constituted under the said Act and the disciplinary authority is constituted under Rule 35 of the

Council of Architecture Rules, 1973. The Disciplinary Committee is constituted to inquire into the professional misconduct of an architect as provided under Rule 35 of the Rules of 1973. The procedure to inquire into the complaints against the Architect is provided in Rule 35 Sub-clause 3 to 8 and Rule 36. Upon completion of the inquiry, a report is to be submitted to the Council, as provided under Rule 37, upon receipt of such report from the Disciplinary Committee, if the Council is of the opinion that further report is necessary, it may call further report from such Authority and thereafter proceed accordingly.

Upon perusal of the impugned order, we find that there are no procedural irregularities committed by the Council. All the parties were afforded an opportunity to put forth their case and after receiving the report of the disciplinary committee, it was decided to place the complaint before the Full Council. Even before the Full Council, all the parties were heard, after hearing both the parties again the opportunity was granted to the Petitioner to rebut the submissions made by Respondents Nos. 3 and 4, and only after detailed deliberations in the matter, the majority of the Full Council

decided that, there is no misconduct either on part of Respondent No. 3 or Respondent No.4. This procedure, adopted by Respondent No.2 in no way can be faulted with since it has proceeded in accordance with the prescribed rules. All the parties were heard and the orders passed are in accordance with the powers conferred on the Council of the Architects Act 1972, and the Regulations of 1982.

18. It is well within the powers of the Council as provided in Rule 37 (2) of Rules of 1973 to call for further report, if it is of the opinion that further report is necessary. Therefore, when a report dated 16.05.2018 held that the Respondent Nos. 3 and 4 have violated Regulation No.2 (1) (iv), (x) and (xii) of the Architects (Professional Regulations, 1989, by reason of absence of an agreement while giving their professional services to the Developer, was placed before the Council. Respondent No.2 thought it fit to place it before the Full Council for passing an order in terms of Section 30 Sub-clause 2 of the Architect's Act, 1970. The Full Council by majority has taken a decision. Thus, there is no irregularity or illegality in the procedure committed by Respondent No.2,

while exercising its powers and passing the order which is impugned in this Petition.

19. So far as the contention of the Petitioner that the order impugned is not a reasoned order and a penalty should have been imposed as provided in the Regulations is concerned, the Full Council has arrived at a conclusion that the conduct of Respondent No.4 of stamping of plan as a true copy of the full occupation certificate, was an inadvertent mistake which necessitated apology and assurance of not repeating the same conduct in the future. While passing this order, a finding is recorded that there is no fraud, collusion or *malafide* intention in the matter. Even no particulars for collusion have been provided by the Complainant. Therefore, in view of the admission of the inadvertent mistake by Respondent No.4, appropriate punishment has been awarded. Similarly, the stand of the Respondent No.4 that the signature was affixed by him in his personal capacity and not in exercise of the power conferred on him by the Special power of Attorney given to him by Respondent No.3, a finding is recorded that there was no misuse of power by Respondent No.4.

20. Thus, even on merits there is no substance in the contention of the Petitioner that the order impugned is an unreasoned order. The order impugned is a reasoned order passed after hearing of parties at length and taking into consideration the law and facts applicable to the given case.

21. So far as the grievance of the petitioner that a harsher penalty ought to have been imposed on Respondents Nos. 3 and 4, the quantum of punishment to be imposed is always the discretion of the Disciplinary Authority, i.e. Respondent No.2, who is an expert body consisting of technical persons appointed by the Central Government, State Government and Institute of Architect. The opinion of Respondent No.2 being an opinion of an expert body, are in a better position to assess the misconduct of the Architects and to impose appropriate penalty in proportion to the alleged misconduct. Respondent No.2 has accordingly acted and arrived at a conclusion that it would be sufficient if an apology is tendered by Respondent No.4 with a request not to repeat the mistake in future. We do not find penalty of tendering apology to be shockingly disproportionate for the alleged misconduct, which would warrant interference in the order impugned.

22. We may profitably refer to the land mark decision of the Hon'ble Supreme Court in case of *Union of India and Ors. Vs. P. Gunasekaran*¹, wherein the bounds within which the Courts can exercise its powers of judicial review have been stated. In paragraph no. 12, in the case of *Union of India and Ors. Vs. P. Gunasekaran (Supra)*, the Hon'ble Supreme Court has observed thus:

“ (12) Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting g the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*

1 (2015) 2 SCC 610

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion:

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.”

Thus, from the aforementioned judgment as well as catena of other judicial pronouncement, governing the field, it is evident that power of this Court while exercising powers of judicial review are restricted only to the breach of certain conditions in the decision-making process. Nevertheless, it is a settled position of law that this Court cannot exercise powers of judicial review by sitting in Appeal over a decision of a Statutory or Regulatory Authority.

23. Hence, we do not find any arbitrariness or illegality in the decision rendered by Respondent No.2. As a result, the challenge to the impugned order fails and Writ Petition is dismissed. No order as to costs.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)