

White Hill Vs. Delhi Development Authority and anr.

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Court : Delhi

Decided On : Mar-18-1986

Reported in : 30(1986)DLT234; 1986(11)DRJ33

Judge : J.D. Jam, J.

Acts : [Delhi Development Act, 1957](#) - Sections 14

Appeal No. : Criminal Revision Appeal No. 168 of 1984

Appellant : White Hill

Respondent : Delhi Development Authority and anr.

Advocate for Pet/Ap. : Keshav Dayal,; R. Dayal and; P.N. Talwar, Advs

Judgement :

J.D. Jain, J.

(1) The facts given rise to this revision petition succinctly are that the petitioner is a partnership firm carrying on the business of dry-cleaning on the ground floor of premises No. L-28, Kirti Nagar, New Delhi. At the relevant time Gulab Rai and his two sons VishanLal and Darshan Lal were partners in the petitioner firm. Shri Virender Bhatia, Junior Engineer of the respondent Delhi Development Authority inspected the premises in question on 5th August 1978 and found that the entire ground floor thereof was being used for commercial purpose viz. dry-cleaning

business of the petitioner firm. Since the user was in contravention of the Zonal Development Plan, he made a report Ex. Public Witness 1/A to this effect to the concerned officer. As a sequel thereto, a show-cause notice dated 10th August, 1978 was issued to the petitioner, Gulab Rai and his two sons Vishan Lal and Darshan . Lal as to why they should not be prosecuted for contravention of the provisions contained in Section 14 read with Section 29(2) of the Delhi Development Act (hereinafter referred to as 'the Act'). Gulab Rai sent a reply dated 6th September, 1978 to the said notice, inter alia, stating that he had taken the premises in question on rent from Shri Asa Nand Sehgal, who was its owner, with effect from 1st December, 1968 and since then he had been , using the premises for commercial purpose. To begin with he was running a General and Provisions Store and thereafter he started the business of dry-cleaning in 1972 which business he had been carrying on since then under the name and style of the petitioner firm. He further stated that both his sons Vishan Lal and Darshan Lal were partners in the said business. He pointed out that an eviction petition had been filed against him by the landlord, inter alia, on the ground of misuse of the demised premises i.e contrary to the purpose for which the same were let, but he successfully contested the same on the ground that the letting purpose itself was commercial. The eviction petition was accordingly dismissed.

(2) Not satisfied with the said Explanationn, the respondent instituted & complaint against the petitioner, Gulab Rai, Vishan Lal and Darshan Lal on 2nd of February,. 1979 for their prosecution for infringement of the pro- visions of Section 14 read with Section 29(2) of the Act. It was, inter alia, contended, 'It has been reported by the field staff of the Delhi Development Authority, New Delhi vide report dated 5-8-78 that the above mentioned accused persons have put to use building bearing No. L-28, Kirti Nagar, to a non-conforming use by running dry-cleaning shop. The said building falls in Zone No. G 2 and can be used only for residential purposes according to the Master Plan for Delhi/Zonal Development Plan of this Zone G2, as referred to under Section 14 of the Delhi Development Act and have thereby committed an offence punishable under Section 29(2) of the said Act,'

(3) The petitioners while admitting the commercial user of the premises for their dry-cleaning business took up the defense that they had been carrying on their

business in the premises ever since the inception of the tenancy from 1st December 1968 and as such they being covered by the protection afforded by the proviso to Section 14 of the Act they were not guilty of any infringement of the provisions of Section 14. They also refuted the claim of the respondent that the prescribed user of the premises in question under the Master Plan/Zonal Development Plan was residential only. In other words, their stand was that the building in question did not fall in the residential zone, as alleged.

(4) The trial court vide its judgment dated 9th July 1981 convicted both the petitioner (firm) and Gulab Rai. However, it acquitted Vishan Lal and Darshan Lal for want of requisite proof that they were also in charge of and responsible to the firm for the conduct of its business, Along with their father Gulab Rai as envisaged in Section 32 of the Act. Both Gulab Rai and the petitioner were sentenced to pay a fine of Rs. 2,500.00 each. It, however, transpired later on that Gulab Rai had died on 6th July 1981 i.e. three days before the judgment. Feeling aggrieved by the order of the trial Court, the petitioner alone filed an appeal against its conviction and sentence for the said offence through Vishan Lal, one of its partners. However, the petitioner met with no success and the appeal was dismissed by an Additional Session Judge vide his judgment: dated 7th July, 1984. Hence this revision petition.

(5) The learned counsel for the petitioner has made a two fold submission. In the first instance, he has fervently canvassed that the petitioner had been using the premises in question for a commercial purpose ever since the inception of the tenancy in 1968 and that such user having commenced prior to the coming into force of the Zonal Development Plan it was entitled to carry on its business as before in the absence of any rules and regulations framed by the respondent-Delhi Development Authority under the proviso to Section 14 of the Act. The said Section is reproduced below for ready reference :

'AFTER the coming into operation of any of the plans in a zone no person shall use or permit to be used any land or building in that zone otherwise than in conformity with such plan : Provided that it shall be lawful to continue to use upon such terms and conditions as may be prescribed by regulations made in this

behalf any land or building for the purpose and to the extent for land to which it is being used upon the date on which such plan comes into force.'

(6) On its plain language it is manifest that the user of the land or building which is not in conformity with any of the two plans viz. Master Plan or Zonal Development Plan, will come within the mischief of the prohibition contained therein. However, the proviso is in the nature of an exception to the main provision and misuse of the land or building, as the case may be, if it has commenced before the coming into force of any of the two plans may be continued lawfully subject, of course to the terms and conditions as may be prescribed by the regulations in this behalf. The scope and ambit of this Section came up for consideration before a full Bench of this Court in *B.T. Menghani v. The Delhi Development Authority, Vikas Bhawan, New Delhi & others*, : AIR1974 Delhi159 . The Full Bench observed that :-

'.....THE ordinary meaning of Section 14 without the proviso, if we may put it that way, is that after the coming into operation of either the Master Plan or the Zonal Development Plans or any of them in a zone, no person shall use or permit to be used any land or building in that zone otherwise than in conformity with such Master Plan or such Zonal Development Plan. The prohibition contained in Section 14 would, therefore, be effective in any zone if any of these plans has come into operation in such zone. It is not anomalous to say about the Master Plan that it has come into operation in a zone. The Master Plan is in operation in the entire area, that is, in all the zones, and, therefore, inevitably in each zone. If, therefore, there is a user of any land or building otherwise than in conformity with either the Master Plan or the Zonal Development Plans or any of them after such plan has come into operation, it will be actionable under Sub-section (2) of Section 29 of the Development Act.....'

(7) In *Lal Singh & Others v. The Lt. Governor, Delhi & Others*, (1971) Delhi 392, which is a Bench decision of this Court, it was held that:

'THE proviso lays down an exception to the main section and states that it shall be lawful to continue the previous user even if the said user is different from that mentioned in the Master Plan or the Zonal Development Plan upon such terms and conditions as may be prescribed by regulations made in that behalf. It is true

that the proviso states that the continuation of the user has to be upon such terms and conditions as may be prescribed by regulations made in that behalf. But, that does not mean that the exception recognised under the proviso does not operate so long as no regulations are made. The words 'upon such terms and conditions as may be prescribed by regulations made in this behalf' in the proviso only enable the authority concerned to make regulations prescribing terms and conditions for continuation of the previous user. If regulations are not made prescribing such terms and conditions, it only means that the continuation of the user permitted by the proviso would be subject to no terms and conditions. In other words the petitioners not lose the benefit of the proviso if they are otherwise entitled to it, merely because the authority concerned has not chosen to make regulations prescribing terms and conditions for the continuation of the previous user. The concerned authority, by choosing not to avail of the enabling provision in the proviso, cannot circumvent the rest of the provisions in the proviso and deprive the petitioners of the benefit conferred there under.'

(8) This authority was quoted with approval in a later Bench decision of this Court in Delhi Development Authority v. Ganga Singh, : 18(1980)DLT354 . Prithvi Raj, J., speaking for the Court observed that : 'It is true that proviso carves out an exception to the general rule embodied in Section 14 and the exception envisaged in the proviso would be subject to such terms and conditions as may be prescribed in regulations made in that behalf. But if the Authority fails to make regulations no disability is created for using any land or a building for a purpose for which it was previously being used. Proviso to Section 14 is intended to relieve the hardship in carrying out the planned development of a zone. The words 'use upon such terms and conditions as may be prescribed' in the proviso enable the Authority to restrict by regulations the use of any land or building for a purpose for which it was being previously used. In other words so long as regulations are not framed an occupier of a land or a building cannot be deprived of taking advantage of the proviso to Section 14. Pending framing of the regulations prosecution in respect of a non-conforming user prior to the coming into force of any of the plans, is misconceived.'

(9) In view of this clear enunciation of law, all that is to be seen is whether commercial user of the premises in question which is admittedly situated in a residential area as per the Zonal Development Plan had commenced prior to the coming into force of the Zonal Development Plan or not. Admittedly the building in question falls in Development Zone No. G2, Zonal Plan in respect of which was published vide notification No. F-16 (59)/MP/74/ dated 26th October, 1974. As stated above, the contention of the petitioner is that it started commercial user of the premises ever since the inception of the tenancy in December, 1968. This stand of the petitioner was clearly spelt out in reply to the notice dated 10th August, 1978 given to the petitioner and other accused persons by the respondent. Unfortunately, however, the petitioner did not adduce an iota of evidence with regard to its plea of prior commercial user. No suggestion with regard to the same was even made to the Junior Engineer who had appeared as a star witness of the prosecution at trial. For obvious reasons, therefore, this plea was not considered by the trial Court, It would, however, appear that at the appellate stage the petitioner filed a copy of order dated 8th November, 1979 of the Rent Control Tribunal in the appeal filed by him against the eviction order passed earlier by the Additional Rent Controller, inter alia, on the ground of misuse of the premises in question. To be precise, the eviction petition had been filed by the landlord against Gulab Rai deceased, inter alia, on the ground that the premises in question had been let to him for residential purpose but he had been using the same for commercial purpose by carrying on dry-cleaning business in the name and style of White Hill Dry Cleaners contrary to the terms of tenancy. So, the eviction of Gulab Rai was sought on the ground falling under Clause (j) of the proviso to Section 14(1) of the Delhi Rent Control Act. In the written statement, Gulab Rai took the plea that the premises had been taken by him on rent for commercial purposes and the same had been used by him for the commercial purpose ever since the inception of the tenancy. This plea did not find favor with the Additional Rent Controller and an order of eviction was, therefore, passed against Gulab Rai on the said ground. However, Gulab Rai challenged the correctness of the eviction order in appeal and the Rent Control Tribunal on a reappraisal of the entire evidence on record found that in fact the premises had been let for commercial purpose. So, he allowed the appeal and dismissed the

eviction petition on the said ground. It was, therefore, with a view to countenance his plea of consistent commercial user of the premises in question from the very inception of the tenancy that the petitioner had filed copy of the judgment of the Rent Control Tribunal in the appellate court. Unfortunately the learned Additional Sessions Judge does not seem to have attached any importance to the same. He brushed aside the contention of the petitioner with the following observations :

'IT is not the case of the appellant that it is using the premises for commercial purposes much before the enforcement of the Master Plan/Zonal Development Plan and without any terms and conditions having been imposed it has a right to carry on its use for that very purpose. If any such special facts were within the knowledge of the appellant it should have led sufficient or atleast some evidence in that behalf. It is rather argued on behalf of the prosecution that the misuse started only in the year 1972 when the appellant began using the premises to run business of dry cleaning. The proviso added to Section 14 of the Delhi Development Act, therefore, is of no help to the appellant. The learned counsel for the appellant then submitted that an eviction order was passed by the Rent Controller on the ground of misuse but that order was set aside by the Rent Control Tribunal in an appeal that the purpose of letting has been determined to be commercial and so no prosecution could be launched against him. If the user is prohibited by Delhi Development Act or any other . law and the landlord lets out the premises in contravention of that provision, he is still not estopped from seeking eviction of the tenant.'

(10) To say the least, the learned Additional Sessions Judge has proceeded on a totally wrong premises. The question before him was whether the petitioner had commenced commercial user of the premises in question before the Zonal Development Plan came into operation and not whether the landlord could claim eviction of the tenant under clause (j) even though he had himself let the premises for commercial user in violation of the provisions contained in the Act. He failed to notice that the tenancy in favor of Gulab Rai had come into being in December 1968 and the finding of the Rent Control Tribunal clearly supported the plea of the petitioner that commercial user of the premises in question had commenced since the very inception of the tenancy. Had the learned Additional Sessions Judge read

the judgment of the Rent Control Tribunal rather carefully he would not have failed to notice this important feature of the case, but instead be allowed himself to fly off at a tangent and scuttle down the judgment of the Rent Control Tribunal unceremoniously on an altogether different and irrelevant consideration. It is well settled that ordinarily a criminal court should have due regard to a civil decree and decision and it should avoid giving a contradictory finding. Hence, the said judgment constitutes a valuable piece of evidence supporting as it does, the defense plea of prior commercial user of the premises.

(11) The petitioner has, however, made an application (Cr. M. No. 1115/85) for permission to produce additional evidence. It purports to be under Section 401 read with Sections 386 & 391 of the Code of Criminal Procedure (for short 'the Code'). The documents sought to be tendered in evidence now, inter alia, comprise (1) copy of the judgment of the Rent Control Tribunal, adverted to above ; (2) duplicate amended registration certificate issued under the Delhi Shops and Establishments Act in respect of the establishment of the petitioner showing that the said establishment was duly registered on 18th November, 1972 ; (3) the original summons dated 10th February, 1970 issued to Gulab Rai under Section 417 of the Delhi Municipal Corporation Act ; and (4) notice issued to Gulab Rai for unauthorised construction on the ground floor in June 1972. Obviously these documents purport to emanate from the concerned authorities in due discharge of their official duties. Apparently their testimonial value is unimpeachable. It is true that the petitioner could have produced these documents at the trial, but unfortunately he failed to do so, may be that it was due to lack of proper legal advice and guidance. Anyhow, the interests of justice demand that the petitioner should be permitted to adduce additional evidence even at this stage particularly when the genuineness of these documents cannot be doubted.

(12) The application is, however, opposed by the learned counsel for the respondent who has vigorously urged that no additional evidence can be permitted in revisional proceedings. However, this contention flies in the face of the specific provisions contained in the Code in this regard. Subsection (1) of Section 401 of the Code which defines High Courts power of revision, explicitly provides that the High Court may in its discretion exercise any of the powers conferred on a Court of

Appeal by Sections 386, 389, 390 & 391. Section 391(1) lays down that in dealing with any appeal under this Chapter the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate. It cannot, therefore, be doubted for a moment that the High Court can while exercising its revisional power permit additional evidence provided it thinks it to be necessary. Obviously the object of this Section is to see that justice is done between the prosecutor and the person prosecuted. However, the discretion which vests in the court has to be exercised judicially and not arbitrarily only when the interests of justice demand such a course. In *Rajeswar Prasad Misra v. The State of West Bengal* and another. AIR 1965 Sc 1887, the Supreme Court observed :

'ADDITIONAL evidence may be necessary for a variety of reasons which it is hardly necessary (even if it was possible) to list here.....It may, however, be said that additional evidence must be necessary not because it would be impossible to pronounce judgment but because there would be failure of justice without it. The power must be exercised sparingly and only in suitable cases. Once such action is justified, there is no restriction on the kind of evidence which may be received. It may be formal or substantial.'

(13) Obviously the additional evidence sought to be tendered by the petitioner at this stage is very vital to his defense. It is not just a question of filling up the gaps or lacunae. Refusal to receive the documents mentioned above is bound to result in miscarriage of justice, and the court cannot shut its eyes to this glaring aspect of the matter. Hence I am of considered view that the documents mentioned above be received in evidence, as they are of the type that no formal proof is even necessary. Indeed they are in consonance with the plea raised by the petitioner at the earliest available opportunity i.e. in reply to the show-cause notice served on them by the respondent. Once that is done there is no escape from the conclusion that the commercial user of the premises in question had commenced much before the coming into force of the Zonal Development plan. Since the respondent has not so far made any regulations the petitioner cannot be deprived of taking advantage of the proviso to Section 14. In the words of Prithvi Raj, J.(in *Ganga*

Singh (supra)) :

'PENDING framing of the regulations prosecution in respect of a nonconforming user prior to the coming into force of any of the plans, is mis-conceived.'

(14) The next submission of the learned counsel for the petitioner is that the prosecution of the petitioner firm and the partners therein for contravention of the Master Plan was never in the contemplation of the respondent as would be manifestly clear from the First Information Report dated 5th August 1978 submitted by the field staff on inspection of the premises in question Ex. PW1/A and the show-cause notices issued to the petitioner and other accused (Ex.PW1/8 to PW1/E). A perusal of these documents would show that the Fir regarding non-conforming use of the premises in question only dealt with the prescribed use under the Zonal Development Plan and its violation by the petitioner. It is absolutely silent with regard to the infringement of the Master Plan as such. Likewise in the show- cause notices the respondent simply stated, 'You have put to use the affricated premises in contravention of Zonal Development Plan of Zone No. G2 referred to under Section 14 of the Delhi Development Act'. There is not even a whisper in the said notices with regard to the contravention of the Master Plan. However, in the show-cause notice Ex. PWI/E which was addressed to Gulab Rai deceased, it was stated that he had put to use the premises in question in contravention of the Master Plan of Delhi. There is also reference to Zone No. G2 in the said notice although there is no mention of the contravention of' Zonal Development Plan as such. That apart, the complaint instituted by the respondent against the petitioner and other accused persons specificity talks of both Master Plan and Zonal Development Plan of Zone No. G2. So, it Cannot be said by any stretch of reasoning that the petitioner was not prosecuted for violation of the Master Plan a.s distinct from the violation of the Zonal Development Plan of Zone No G2. However, that is not the end of the matter inasmuch as the prosecution had still to establish by proper evidence that the commercial user of the premises in question was in fact contrary to its prescribed user in the Master Plan.

(15) Shrivirender Bhatia, Junior Engineer of the respondent who was the solitary witness examined on this point, inter alia, deposed that the building in question fell

in the Development Zone No. G2 of the Master Plan for Delhi and could be used for residential purposes alone according to the Master Plan for Delhi and the Zonal Development Plan of the area. He further explained that he had located the building in question in the Zonal map Ex. PW1/O and the Zonal Development Plan, Ex. PW1/P and indicated the same by mark 'A' after taking necessary measurements. He had taken the measurements at the spot with the help of the layout plan of the colony which had been duly sanctioned by the Municipal Corporation of Delhi and he recorded the marginal notes on the Zonal map in accordance with the land use plan of the Master Plan correctly. The said note reads as under : 'Medium Density 75-125 persons per gross residential acre' (Extract taken from Land Use Plan of Master Plan for Delhi.)

(16) During cross-examination he further stated that he had not kept the notes of the measurements taken by him and he had done nothing on the layout plan nor did he make any delineation on the said map. therefore, he could not produce the same in Court.

(17) As regards the Land Use Plan the learned counsel for the respondent has invited my attention to Chapter li of the Master Plan which deals with zoning regulations and sub-division regulations. At page 44 of the book it states : 'that for the purposes of these Regulations, the Union Territory of Delhi has been divided into 24 use zones as designated therein.' It proceeds to explain that :

'THE land use plan shows the various use zones. In the case- of District Centres where no separate areas have been marked: for retail shopping, work centre or flatted factory and government office but are indicated in the text of the Land Use Plan, such demarcations will be shown in detailed plans. The land use plan does not show local shopping, local parks, schools etc. Hence, in built up areas, the local municipal authorities may allow such uses, based on quick surveys and on an ad hoc basis, until zonal development plans are prepared. The latter, when prepared, will incorporate the use proposals prepared by the local authorities. In new areas development shall take place only on the basis of the Zonal