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SooperKanoon Citation : sooperkanoon.com/696213

Court : Delhi

Decided On : May-11-1987

Reported in : 1987(2)Crimes813; 32(1987)DLT249

Judge : M.K. Chawla, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 90 of 1985

Appellant : M.N. Bhardwaj and ors.

Respondent : Delhi Development Authority and anr.

Advocate for Pet/Ap. : Keshav Dayal,; B.C. Bhasin and; A.S. Chandhiok, Advs

Judgement :

M.K. Chawla, J.

(1) Shri P.N. Bhardwaj, the father of the present petitioners was originally allotted leasehold rights of plot of land measuring 800 sq. yds. bearing no./215, East Patel Nagar, New Delhi. The lessee constructed a single-storeyed house comprising of six rooms, two garages and two-rooms set above in due course of time. Shri P.N. Bhardwaj has since expired and his place, the present petitioners have become the joint perpetual lessees. They have filed the present petition under Section 482 of Cr.P.C. read with Article 227 of the Constitution of India for quashing the

initiation of criminal proceedings by the respondent-Delhi Development Authority under Sections 14 and 29(2) of the Delhi Development Act, 1957.

(2) Their case in brief is that sometime in the month of December, 1953, a portion of the house comprising of three rooms and two garages was let out for running a school in the name and style of Central City College. After sometime, the petitioners raised further construction on the said plot and let out a portion of the building to the State Bank of India in December, 1983. The premises are being used for commercial purpose. The filing of the complaint against the petitioners as well as the State Bank of India is absolutely without jurisdiction inasmuch as there has been no violation of the provisions of Section 14 read with sections 29(2) of the Delhi Development Act. It is the further case of the petitioners that the respondent-DDA have not framed any regulations as envisaged under the Master Plan and, therefore, the continuation of commercial use in the premises from December, 1953 is absolutely lawful. Even under the Zonal Development Plan of the area, the commercial activity can be allowed to continue.

(3) In any case, the offence under Section 14 of the Delhi Development Act is not a continuing offence and the present complaint of the D.D.A. is absolutely barred by limitation inasmuch as the respondent had the knowledge of the commercial user since long. Further more, the present complaint has not been instituted within a period of six months of the knowledge of the nonconforming user.

(4) It is also alleged that the State Bank of India is a public utility service and, therefore, its use is not a non-conforming use. The complaint under these circumstances is liable to be quashed.

(5) The respondents unfortunately have not filed any reply to the petition in spite of repeated adjournments. The arguments have been heard on the basis of the material on record.

(6) The first and foremost contention of the learned counsel for the petitioner is that the commercial user of the premises exists from 1953, which is much before the coming into force of the Master Plan. According to proviso of Section 14 of the Delhi Development Act, the existing user can be allowed to continue till any

conditions are imposed by framing regulations under the Zonal Development Plan. According to the learned counsel, as no regulations have since been framed, the petitioners are entitled to continue their existing user. The next submission is that the complaint of the respondent is clearly barred by limitation as it has been filed more than six months after the date of the knowledge of the alleged offence, lastly, his submissions that many banks and schools and other commercial establishments exist on the main Patel road against whom no action has so far been initiated. There is no reason to single out the present petitioner. None of these arguments finds favor with the learned counsel for the respondents. Their stand is that the commercial activity in the premises was started much after the coming into force of the Master Plan. The complaint was instituted immediately after the non-conforming user came to the knowledge of the respondent. The complaint thus cannot be quashed.

(7) On the first aspect, the learned counsel of the petitioner referred to and relied upon the observations in case *Narinder Nath Bhardwaj vs. Parmanand Dua*, Principal, Central City College, decided by Shri P.S. Sharma, Rent Controller, Delhi. In that litigation, the respondent summoned and produced Shri P.C. Bhatia, Section Officer of the Delhi Development Authority. On the basis of the record, he stated that misuse in respect of the Suit premises is prior to September, 1962 and for that reason no action was taken against the petitioners. Learned counsel also relied upon the observations of the Court indicating that the premises were let out to the respondents in the year, 1953. According to the learned counsel, the building is being put to commercial use since then though in place of the school, a bank is being run in the building. Even if that be so, the petitioners, to my mind, cannot take advantage of the statement of a Section Officer of the Office of the Delhi Development Authority unless and until the said witness or the respondent is confronted with the said statement. Admittedly, the Delhi Development Authority was not a party to the litigation between the petitioners and their tenant. The respondent has a right to show the admission to be wrong or to offer an explanation. Till then the evidence of Shri Bhatia cannot be taken on its face value.

(8) Secondly, as per the case of the petitioners, they got the portion let out for the commercial purposes to college vacated on 31.12.79. Thereafter, they raised further construction on the plot and let out a portion of the building to the State Bank of India in December, 1983. From this averment, it is clear that from 31.12.79/12/1983, no commercial activity was being carried out in the premises. In such a situation, the Master Plan lays down that if a non-conforming use is discontinued for more than one year any further use of the building and premises shall be in conformity with the Master Plan. If that is the requirement of the Master Plan, then certainly the letting out of the premises to the Bank in December, 1983 was after coming into force of the Master Plan and its user cannot be said to be in continuation of the commercial user since 1953.

(9) On the limitation aspect also, the petitioners have no legs to stand. After the discontinuance of non-conforming use, the limitation will not start running from its first letting. Even if it be assumed for the sake of arguments that the respondents came to know of the running of the bank after the premises was inspected, even then the present complaint cannot be said to be barred by limitation. This aspect can also be looked into from another angle, In Section 469(1) Cr. P.C., the words 'person aggrieved' are of wide import and should not be subjected to restrictive interpretation. This will include a person or an authority who is, by or under any law, charged with the duty to administer it and to prosecute those who violate its provisions. Assuming that the D.D.A. is the sole complainant and thus a person aggrieved and that it has to act through its officers authorised by it, can the knowledge of the Inspecting officer be imputed to the D.D.A. It cannot be, because until the matter comes to the notice of the proper person who is authorised to file a complaint, it cannot be said that the knowledge of the Inspecting officer is the knowledge of the D.D.A. It will be a matter of enquiry into facts as to when the authority which sanctioned the prosecution came to enquire the knowledge of the officer.

(10) Further more, the bar of limitation under this provision is imposed not on the filing of the complaint but on taking cognizance thereof by the court. If the offence is continuing one and continues at the moment of taking cognizance thereof, then cognizance will be within limitation irrespective of when the offence came to be

committed for the first time or when it first came to the knowledge of the person aggrieved or when the complaint was lodged. In these circumstances, the non-conforming user will never be barred by limitation if it continues on the date the court is called upon to take cognizance of the offence. Even otherwise, the period of limitation shall have to be counted from the date when the matter comes to the knowledge of the sanctioning authority. The period spent in giving the notice where such notice is in fact given and the time taken in obtaining sanction where such sanction is necessary has to be excluded in computing the period of limitation. (Oriental Bank of Commerce and another, v. Delhi Development Authority and another, 1983 DLT 46. Admittedly the limitation question is a mixed question of law and fact, and such an enquiry cannot be undertaken over here. The respondents can furnish a valid explanation for the delayed institution, if at all, of the complaint at the time the cognizance is taken or during the course of the trial. The petitioner at this stage cannot find fault with the filing of the complaint as the respondents have yet to show that the complaint was filed after complying with the various provisions of the Delhi Development Act and those of the Master Plan.

(11) On the third aspect, one has not to wait for an answer. It all depends upon the facts of a particular case. There is no material before this Court to hold that the functioning of a particular bank, school or other commercial establishments is against the Master Plan/Zonal Development Plan, or they are protected by the proviso to Section 14 of the Act. Further more, the court is not made aware of the facts as to which of the establishments is similarly situated as that of the petitioner. The petition thus lacks in material particulars. This is also a question of fact/evidence and the petitioners will be in a better position to take this plea at the trial.

(12) No other question has been urged nor requires going into. In The result, I do not find any substance in the petition and the same is hereby dismissed.