

Dda Vs. Inderjit Singh

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Court : Delhi

Decided On : Nov-25-2003

Reported in : 2004(74)DRJ416

Judge : R.S. Sodhi, J.

Acts : Delhi Development Act - Sections 14 and 29(2)

Appeal No. : CRLA 127/1989

Appellant : Dda

Respondent : inderjit Singh

Advocate for Def. : O.P. Faizi and ; Ashish Agarwal, Adv.

Advocate for Pet/Ap. : C. Mohan Rao, Adv

Disposition : Appeal allowed

Judgement :

R.S. Sodhi, J.

1. This appeal is directed against the judgment and order of the Metropolitan Magistrate, New Delhi dated 20th July, 1988 in Case No. 353/87, whereby the learned Judge has acquitted the respondent of the charge under Section 14 read with Section 29(2) of the Delhi Development Act (for short 'the DDA Act').

2. The facts of the case are that the accused was found running a shop in the name and style of M/s Bawaja Electricals Works on the ground floor with the help of three persons in premises NO. B-3/22, Rajouri Garden. The aforesaid premises is residential premises where commercial activities are not allowed either in the Master Plan or in the Zonal Development Plan. The aforesaid fact was proved on record by witnesses produced by the DDA which even today does not appear to be questioned.

3. Learned counsel for the Delhi Development Authority points out that in a decision by the Division Bench of this Court in DDA Vs . Rajinder Mittal : 42(1990)DLT592 it has been held that a residential building or a part of the building including basement cannot be used for commercial purposes.

4. Counsel for the respondent argues that Delhi Development Authority by virtue of a notice published on 20th February, 1976 to the following effect :

'The Delhi Development Authority is happy to announce the decision to give another opportunity to the industries functioning in the non-conforming areas which are under acquisition for various public purposes to obtain land in the conforming industrial areas which have been developed by the Delhi Development Authority in different localities in Delhi in accordance with the provisions of the Master Plan.

This is the final opportunity for the industries and industrialists concerned are advised in their own interest to avail of this last opportunity and help the authorities in not resorting to the penal provisions including clearance.'

Has compounded the offence and therefore prosecution could not have been launched. The learned Trial Court agreed with this contention of the counsel holding that so long as alternative accommodation is not provided the offence of misuse of premises stood condoned. Counsel has also referred to a judgment of this Court in EMKAY EXP. P. LTD VS. DDA [1981 Rajdhani Law Reporter 250] as also M/S SAWHNEY BROS, NEW DELHI VS. DELHI DEVELOPMENT AUTHORITY [1984 Criminal Law Journal 412] wherein the learned Single Judge of this Court has held :

'Even otherwise, petitioners having agreed to shift to the conforming area as soon as the allotment has been made and the petitioners having complied with all the conditions laid by the Authority in that behalf it would be improper to the Authority to prosecute the petitioners in respect of either of the two locations.'

5. I have heard counsel for the parties and with their assistance gone through the judgment under challenge as also the material on record. It is not disputed that the premises in question is being put to non-conforming use inasmuch as commercial activities are being undertaken in a residential area. Such activities are prohibited under the Act and therefore, prosecution in respect of any violation under the Act is permissible. It is true that the DDA in order to mitigate the hardship if at all had offered alternative accommodations to those who chose to avail of the opportunity but the DDA on no account permitted the user of the residential area for commercial purposes. It cannot be said by any stretch of imagination that the offence has been compounded, on the contrary, what is sought to be argued by counsel for the respondent is that the advertisement in the newspaper is a cats blanka for misuse of premises. This with great respect to the counsel, is incorrect. The law does not permit the use of premises meant for residential purposes to be misused for commercial activities and offer of alternative accommodation could not be made use of by the petitioner to continue misuser. The respondent must stop impermissible activities in the area in question. Development of Delhi cannot be allowed to be haphazard and lawlessness given a premium to. An alternative accommodation is an offer to set up business elsewhere but that itself does not mean that in residential premises commercial activities can continue so long as alternative accommodation is not provided. Such an interpretation to the advertisement is with great respect a complete negation to the rule of law. This court in various judgments has held that residential premises cannot be put to commercial use. I draw upon DDA VS . RAJINDER MITTAL : 42(1990)DLT592 and judgment cited therein for this proposition.

6. With this I hold that on the admitted facts of this case an offence under Section 14 of the DDA Act punishable under Section 29(2) of the Act is made out.

7. On the question of sentence, I have heard counsel for the respondent who submits that a lenient view should be taken in the given circumstances of this case since even till today the DDA has not provided any alternative accommodation. He submits that this is the first offence and there is no evidence to show its continuation and that a token sentence may be awarded.

8. Having given my careful consideration to the submissions of counsel for the respondent I find considerable scope to take a lenient view.

9. In this view of the matter, I set aside the order dated 28th July, 1988. The respondent stands convicted for an offence under Section 14 read with Section 29(2) of the Delhi Development Act and is sentenced to pay a fine of Rs.250/- (rupees two hundred fifty).

10. Crl.A. 127/1989 is accordingly allowed.

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