

Delhi Development Authority Vs. Varun Enterprises and ors.

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Court : Delhi

Decided On : Apr-28-2006

Reported in : 131(2006)DLT473

Judge : J.M. Malik, J.

Acts : [Delhi Development Act, 1957](#) - Sections 14 and 29(2); Evidence Act - Sections 105; Municipal Corporation Delhi, Act

Appeal No. : Crl. Appeal No. 224/1995

Appellant : Delhi Development Authority

Respondent : Varun Enterprises and ors.

Advocate for Def. : Ayush Gupta, Adv.

Advocate for Pet/Ap. : Arun Birbal, Adv

Disposition : Appeal dismissed

Judgement :

J.M. Malik, J.

1. This appeal has been preferred by the DDA against the order of acquittal passed by the learned Magistrate dated 28th January, 1995. The indictment against the respondent/accused is that it was using premises number E-564,

Greater Kailash-II, New Delhi for running a show room on the ground floor under the name and style of M/s Varun Enterprises, a partnership firm, in flagrant disregard of provision of master plan, which came into force on 1st September, 1962. According to the master plan, the said property could be used only for residential purposes. Mr. K.P. Jawa, Junior Engineer, DDA visited the spot and found that respondent firm was functioning on the ground floor over an area of about 400 sq. feet vide his report Ex.PW3/A. Consequently, the appellant launched a prosecution under Section 14 read with Section 29(2) of [Delhi Development Act, 1957](#) against the respondent.

2. In his cross-examination, Mr. K.P. Jawa stated that he was aware that the record of the building is available in the MCD. He deposed that he had gone through the MCD record but in the same breath he clarified that he could not succeed in finding the record. He could not admit or deny whether the premises were being used for commercial purpose before 1962.

3. Before the trial court, in order to scrub the charge, the respondent produced Ex.DX, which is the certified copy of the inspection book of MCD, of the property in question, dated 30th January, 1961 which goes to show that the above said property was used for commercial purposes and approximate area of rooms or frontage in case of shops, was found to be 550 sq. yards. There were as many as four shops which were used for commercial purposes. Consequently, the learned Metropolitan Magistrate exonerated the respondent of the above said offence.

4. I have heard learned Counsel for the parties. The learned defense counsel did not pick up a conflict with the above said document marked as Ex.DX. It is otherwise per se admissible in evidence under the MCD Act. The argument urged by the learned Counsel for the respondent has the following two prongs. He vehemently argued that onus of proof as per proviso appended to Section 14 of DDA Act, 1957 and Section 105 of Indian Evidence Act is upon the respondent. He also argued that as per proviso appended to Section 14, the respondent is also liable to prove the extent of the premises i.e. the extent of space, which is meant for commercial purposes. He also argued that new building has been constructed on the spot. Lastly, he submitted that the respondent/accused has changed the

user of the premises in question.

5. Instead of touching the heart of the problem, the learned defense counsel has laid emphasis on peripheral issues. In the celebrated authority reported as DDA v. H.S. Kalra 1964 PLR 1144, it was held that the deviation from one commercial user to another cannot be treated as contravening the provisions of Section 14. In this case, the premises were used as a Co-operative Store prior to the master plan coming into force. After the master plan came into force, the same premises were converted into a scooter repair workshop. the respondent was charged under Section 29(2) for contravention of Section 14 of the Act. The Division Bench in this case held that the charge cannot be sustained simply on the ground that before coming into force of the master plan the premises was being used as Co-operative Society's store and subsequently they were converted for being used as a scooter repair workshop. Once a premises is shown to have been used for commercial purpose from before coming into force of the master plan; simply because the nature of that purpose was changed into another one, though retaining the commercial character, would not amount to deviation from the purpose. It may be that on a narrow interpretation placed upon the words 'for the purpose and to the extent for', violation of Section 14 of the Act can be detected even where there occurs a change in the nature of one commercial user to another commercial user. In this case, the Court preferred to adopt the former interpretation, on the ground that when criminal or quasi-criminal liability is sought to be imposed on the basis of the provisions of law which are capable of two reasonable interpretations, the favorable to the accused must prevail. The respondent was thus acquitted in this case.

6. The same view was taken in another authority reported in White Hill v. Delhi Development Authority and Ors. : 30(1986)DLT234 .

7. Secondly the words 'upon such terms and conditions as may be prescribed by regulations made in this behalf' in the proviso only enables the authority concerned 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 rest of the provision in the proviso and

deprive the respondent of the benefit confirmed there under. This view was taken in *Lal Singh and Ors. v. The Lt. Governor, Delhi and Ors.* (1971) 2 Delhi 392.

8. In the instant case the respondent has produced solid and unflappable evidence in support of his case, the above said MCD record has substance, it can do without frills. This documentary proof puts the prosecution case in an impregnable position. The case of the respondent is safely entrenched behind undeniable facts. The above said doubts raised by the DDA have been proved to be puerile and baseless. As a matter of fact, the DDA is trying to make bricks without straw. The above said documentary evidence has thrown the oral allegation into shade.

9. Moreover, it is well settled that the burden on the accused is not as onerous as that which lies on the prosecution. While, the prosecution is required to prove its case beyond reasonable doubt, the accused can discharge his onus by establishing a mere preponderance of probability. In *Goswami v. State of M.P.* : 1972 CriLJ511 , it was observed that :

The onus of proving all the ingredients of an offence is always on the prosecution and at no stage does it shift to the accused. It is no part of the prosecution duty to somehow hook the crook. Even in cases where the defense of the accused does not appear to be credible or is palpably false that burden does not become any the less. It is only when this burden is discharged that it will be for the accused to explain or controvert the essential elements in the prosecution case which would negative it. It is not, however, for the accused even at the initial stage to prove something which has to be eliminated by the prosecution to establish the ingredients of the offence with which he is charged, and even if the onus shifts upon the accused and the accused has to establish his plea, the standard of proof is not the same as that which rests upon the prosecution. Where the onus shifts to the accused, and the evidence on his behalf probabilises the plea he will be entitled to the benefit of reasonable doubt.

10. Again, this is not the case of the appellant that the accused are using more space than it was being used by them earlier or a new building has been constructed. There is no such indictment. No such evidence was led and no decision was given by the lower court. It appears to be an after thought.

Consequently, this plea cannot be raised for the first time during the appeal. The same has to be eschewed out of consideration.

11. However, the record shows that previously the respondent was using commercial space to the extent of 550 sq. yards. Now, the DDA alleges that it is using space for commercial purpose up to 400 sq. feet. It, therefore, means that less space is being used by the respondent for commercial purposes.

12. Last but not the least, similar type of cases were dismissed in liming except the last one, by this Court, viz. Crl. A. No. 44/1990 titled DDA v. Manjit Spare Parts dated 15th December, 2003; Crl. A. No. 139/1982 titled DDA v. Lodha & Co. dated 10th December, 2003; Crl. A. No. 249/1982 titled DDA v. Oriental Fire & General dated 10th December, 2003 and Crl. A. No. 103/1994 titled DDA v. Mountain Travels (I) P. Ltd. dated 4th December, 2003.

13. The prosecution case is a watershed of uncertainty. The case of the respondent is clear. It all boils down to the conclusion that the appeal is meritless. The same is, therefore, dismissed.

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