

Delhi Development Authority Vs. Amar Auto Works and ors.

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Court : Delhi

Decided On : Apr-28-2006

Reported in : 130(2006)DLT376; 2006(89)DRJ459

Judge : J.M. Malik, J.

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

Appeal No. : Crl. Appeal No. 98/1993

Appellant : Delhi Development Authority

Respondent : Amar Auto Works and ors.

Advocate for Def. : Ashish Aggarwal, 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 19th September, 1990. The indictment against the respondent/accused is that it was using premises bearing number 19-

20 Corner, Malviya Nagar, New Delhi. It was found that auto repairs under the name and style of M/s Amar Auto Repair was functioning there, in flagrant disregard of provision of master plan, which came into force on 1st September, 1962. According to which, the said property could be used only for residential purposes. Braham Parkash, Surveyor, DDA vide his report dated 15th March, 1984, proved on record as Ex.PW1/A, reported that the premises in dispute were being used for non conforming purposes, by the respondent a partnership firm. Show cause notices proved on the record as Ex.PW1/B, PW1/C and PW1/D were issued. In his cross-examination Braham Parkash conceded that he had not seen the house tax record. He could not say when the premises were being used for commercial purposes. He could not say whether in the year 1961-1962 the premises in question were being used for commercial purposes. However, the appellant launched a prosecution under Section 14 read with Section 29(2) of [Delhi Development Act, 1957](#) against the respondent.

2. Before the trial court, in order to scrub the charge, the respondent produced copy of the house tax assessment register for the year 1955-1959 Ex.DA, which depicts that there was a wooden shop in premises bearing number 1913-A and 1914. Respondent has also filed a certified copy of Delhi Municipal Corporation record Ex.DY, according to which premises bearing number 1913-A and 1914 (Old numbers) and premises bearing number 19 & 20 are the same as per D.C. Register for the year 1987-1988. Consequently, the learned Metropolitan Magistrate exonerated the respondent of the above said offence.

3. I have heard learned Counsel for the parties. The learned defense counsel did not pick up a conflict with the above said documents marked as Ex.DA and Ex.DY. These are otherwise per se admissible in evidence under the MCD Act. The argument urged by the learned Counsel for the respondent has the following three 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. Secondly, he submitted that the respondent/accused has changed the user of premises in question. Lastly, it was

pointed out that, although, the respondent has proved that he was using the property in dispute for commercial purposes till 1959, yet the master plan came into force w.e.f. 1st September, 1962. He urged that there is no evidence on behalf of the respondent showing that from 1959 till the date of master plan came into force, the above said property was used for commercial purposes.

4. 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.

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

6. 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 conferred there under. This view was taken in *Lal Singh and Ors. v. The Lt. Governor, Delhi and Ors.* (1971) 2 Delhi 392.

7. 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.

8. 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,

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.

9. Its stand established that the property in dispute was used for commercial purposes from 1955-1959. Consequently, the onus of proof shifts on to the prosecution. It was for the prosecution to prove that it was not being used for commercial purposes on the crucial date when the master plan came into force on 1st September, 1962. The above said Apex Court authority clearly states that the accused is not supposed to prove his case fully.

10. Again, this is not the case of the appellant that the respondent is using more space than it was being used by them earlier. 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. 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.

11. 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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