

The Jaipur Development Authority Vs. Prahlad Kumar

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Court : Rajasthan

Decided On : Mar-12-1987

Reported in : 1987WLN(UC)764

Judge : Inder Sen Israni, J.

Appeal No. : S.B. Criminal Leave Application No. 58 of 1986

Appellant : The Jaipur Development Authority

Respondent : Prahlad Kumar

Disposition : Application dismissed

Judgement :

Inder Sen Israni, J.

1. This S.B. Leave Application under Section 378 Cr. PC of 1973 against the judgment and order of the learned Special Additional Chief Judicial Magistrate, J.D.A. Act cases Jaipur, dated 28-8-1985 in Cr. Case No. 323/84, whereby he acquitted the accused respondent from the charge for offence under Section 32(7) of the Jaipur Development Authority Act (here in after called the Act). The accused respondent was charged for offence under Section 31(1), 32(7) and 22(2) of the Act for raising unauthorised construction/development and using the land otherwise than in conformity with the plan inspite of the notice given to him by the

complainant J.D.A. and not stopping the unauthorised construction. The trial court found him guilty and convicted the accused respondent for offence under Section 31(1) of the Act for raising/making illegal unauthorised construction and sentenced him to fine of Rs. 250/- and in default of payment, to undergo simple imprisonment for a period of one month, but acquitted him under Section 32(7) and Section 33(2) of the Act.

2. I have heard learned Counsel for the applicant J.D.A. & learned Counsel for the non-petitioner. The learned Counsel for the petitioner Mr. Gupta has stressed that the learned trial court has erred in holding that notice Ex. P. 6 regarding removal of illegal construction was not duly served upon the accused respondent. The contention of the learned Counsel is that the service of the notice effected, on Ghanshyam Gupta younger brother of the accused respondent, was sufficient as according to the provisions of Section 86 (c)(ii) of the Act if such person cannot be found, the notice can be affixed on some conspicuous part of his last known place of residence or business, or is given or tendered to some adult member of his family or is affixed on some conspicuous part of the land or building to which it relates.

3. It is therefore, contended that the service of the notice effected on brother of the respondent is quite sufficient. It has been further contended that the offence under Section 33(2) of the Act is continuing offence and therefore, the provisions of limitation provided under Section 468, Cr. PC do not apply to the present case.

4. The learned Counsel for the respondent Mr. Jagdeep Dhankar on the other hand has supported the judgment of the lower court and has stressed that it is almost impossible to get the map of construction approved from the J.D.A. and the citizens of Jaipur are thus forced to carry on construction unauthorised. At first the officers of the J.D.A. happily allow the citizens to raise the construction without sanction of necessary plans/map and when the construction is on the verge of completion, notice of unauthorised construction is given and criminal proceedings are initiated against the helpless citizens which causes extreme harassment and financial loss to them. In this way the J.D A. has become one of the biggest litigating agencies in Jaipur. He contended that the language of Sub-clause (ii) of

Clause (c) of Section 86 of the J.D.A. Act clearly shows that a proper effort in the first instance has to be made to find out the person against whom the notice has been issued and if it is not possible to trace him, then alone other methods of service mentioned in the Section can be adopted. In this case the non-petitioner is a Government Servant and could have been easily served personally, which shows that no effort whatsoever was made to serve the non-petitioner himself. Therefore, it cannot be said that the J.D.A. was not able to find out the non petitioner for serving the notice. Regarding the provision of limitation that may be applicable to the offence committed under Section 33(2) of the Act, it has been contended that since criminal prosecution has been launched against the respondent, provisions of Section 468 Cr. PC are fully applicable to the matter and the learned trial court has rightly acquitted the respondent of the charges under Sections 32 (7) and 33 (2) of the Act.

5. It will suffice to state that the arguments raised by learned Counsel for the non-petitioners regarding extreme difficulties faced by the citizens of Jaipur regarding getting their plans/maps for raising construction sanctioned from J.D A., this Court will restrict itself only to the two legal aspects of the matter raised in the application for leave to appeal. Under provisions of Section 86 of the Act it is only when the efforts to effect service personally have failed that other methods provided may be used for serving the notice. It may be pointed out that Section 64, Cr.PC deals with service of summons on persons when they cannot be found. This Section also clearly indicates that the service on some other member of the family is to be effected only when, even after exercise of due diligence, the person on whom the service of summons has to be effected, cannot be found. Therefore, it is clear that reasonable effort to serve the person himself is necessary before another mode of service be adopted for serving him. In this case there is nothing on record to shows that such reasonable effort was made to serve the non-petitioner personally and since it was not possible for the J.D.A. to serve the person himself, so there was no alternative with J.D.A. but to serve the non-petitioner through other modes as provided in Section 86 of Act.

6. I am, therefore, of the considered opinion that it was incumbent on the J.D.A. to have made reasonable efforts to serve the respondent personally before serving

the summon on his brother. Since no such efforts have been made I am of the opinion that the learned trial court has rightly held that notice Ex. P 6 was not duly served upon the respondent.

7. The next point urged by the learned Counsel for the applicant is that offence under Section 33(2) of the Act is a continuing offence, therefore, the provisions of Limitation Act as provided under Section 468, Cr. PC do not apply at all to the present case. It has been provided in Section 33(2) of the Act that any person who continues to carry out the development of land, other person, after such notice has been served, shall on conviction, be punished with fine which may extend to Rs. 5,000/- and when the noncompliance is continuing one, with a further fine which may extend to Rs. 100/- for every day after the date of the service of notice during which the non-compliance continued or continues. This Section, therefore, clearly lays down that even after service of notice, if the work, is continued, the offender shall be liable to punishment provided in Section 33(2) as stated above.

8. The learned trial court in its judgment has clearly given a finding that the petitioner has not produced any evidence to prove that after service of notice Ex. P 3 on the non petitioner on 10-10-1982 any further work of construction was made. Thereafter another notice Ex. P 6 dated 19-1-1983, under Section 32 of the Act was sent calling upon the non-petitioner to remove the un-authorised construction within 7 days. This notice was however, not served upon him personally. In Ex. P 5, which is report of site inspection dated 15-11-1982 by an officer of the petitioner, there is no mention of any construction in progress at that time and it is mentioned that the construction work has been stopped. Therefore, the learned trial court came to the conclusion that even if it may be taken that the construction was carried on up till 14-11-1982, it is evident that thereafter no construction was made. The petitioner has also not produced any evidence to prove that any construction was carried on or after 14-11-1982. In Section 33(2) of the Act it is clearly mentioned that the offence of construction shall be deemed to continue if non-compliance of the notice regarding stopping of further construction/development work is made. It, therefore, means that, even after receiving the notice to stop or remove the unauthorised construction work, the offender does not comply with the notice, the same shall be treated to have

continued till it is complied. In this case, therefore, at the most the offence can be said to have continued up till 14-11-1982 as in Ex. P 5 there is no mention of the construction work being in progress on that day. Therefore, the provisions of Section 468 and 471, Cr.PC shall be applicable to this case. In these circumstances an offence under Section 33(2) is a continuous offence only if the construction work is carried on even after service of notice to stop the same. According to Section 468 Cr.PC the court shall take cognizance of an offence which is punishable with fine only within 6 months and not thereafter. Therefore, the trial court has rightly held that since the challan was filed beyond a period of 6 months, the non-petitioner was not liable to be convicted under Section 33(2) of the Act. I therefore, find no force in this application which is dismissed.

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