(1990) 11 DEL CK 0046

In the Delhi High Court

Case No : Criminal Revision Appeal No. 9 of 1983

Amar Nath APPELLANT

Vs

Delhi Development Authority and Another RESPONDENT

Date of Decision : 15-11-1990

Acts Referred:
Delhi Development Act, 1957 — Section 14

Citation : (1991) 43 DLT 15

Hon'ble Judges : M. Sharief-ud-din, J

Bench : Single Bench

Advocate : O.P. Khadaria and Usha Kumari, for the Appellant;

Judgement

Malik Sharief-ud-Din, J.

(1) The petitioner was prosecuted for using premises .No. 17. North Avenue Road, Punjabi Bagh. Delhi, for non-conforming use. He was running a tailoring shop and was found indulging in this activity on 25th November 1980 in the said premises, though the premises falls within the residential zone and could only be used for residential purpose and not for commercial purpose. The inspection was carried out by Shri V. M. Aggarwal, Zonal Engineer.

(2) The controversy falls within a very narrow compass inasmuch as even though the petitioner had pleaded not guilty he confessed that he was running a tailoring shop in the garage of the building. The learned court of the Metropolitan Magistrate relying on the prosecution story and evidence found the petitioner guilty and imposed a fine of Rs. 1000.00 , in default simple imprisonment for three months but in appeal the learned Sessions Judge while upholding the finding of guilty reduced the fine to Rs. 400.00 in default to simple imprisonment to one month. While the appeal was being argued before the learned Sessions Judge, no challenge was thrown to the correctness of the prosecution case that by running the tailoring shop in the residential premises the petitioner had committed a breach of the Master Plan. The only submission made before the

Sessions Judge was that a lenient view may be taken.

(3) Now, Mr. Khadaria while arguing this petition wants the court to hold that the petitioner had implied permission of the Municipal Corporation of Delhi to run this commercial activity in the residential premises and that this inference may be drawn from the fact that the ground floor of the premises in which this activity is being carried on was being assessed for the purpose of property tax, electricity and water charges as commercial premises from the very beginning. According to him, the Master Plan permits in such areas in which the present is situated that the local authority will conduct quick surveys and permit commercial activities on adhoc basis. This is because no Zonal Development Plan has come into force in the Punjabi Bagh area which is a free-hold built-up colony.

(4) I may make it clear that it is not possible for this court to hold on principle that any business activity can be permitted in a residential premises, that would be against the scheme of the Master Plan and the planned development of the city of Delhi. It is also not possible for me to hold that simply because the petitioner''s premises has been assessed for the purpose of house tax, electricity and water charges as a commercial premises Therefore it should be treated as an implied permission by the M.C.D. to run the commercial activity. This is also for the reason that permission to run a commercial activity according to the Master Plan must be based on a survey though quick by the M.C.D. That makes it very clear that the permission by Itself is to be granted according to some scheme. In fact, the case of the petitioner is that he was not aware of the fact that the premises was meant for residential purpose only. If that be so, then the question of implied permission does not arise. The fact that the activity which he was carrying on did not require any license from the Municipal Corporation and. Therefore, he was not required to approach the Municipal Corporation is of no consequence. The important question is that after coming to the conclusion that the premises can only be used for the residential purpose this court on principle will not be able to regularise any violation of the Master Plan if the premises in contravention of the scheme is used for carrying on some business activity. According to Mr. Khadaria this premises was being used for commercial purpose even before 1970. There is no evidence to this effect on record excepting a bald statement of the petitioner himself. Mr. Khadaria further submits that from 1984 onwards the petitioner has been duly licensed to run a tailoring-cum-draper shop by the M.C.D. in this very premises. This I make a part of the judgment because Mr. Khadaria wants me to do so for whatever reason or consequences. I find no merit in the petition, which is dismissed. However, keeping in view, the long drawn litigation and the agony which the petitioner has undergone, the fine is reduced to Rs. 100.00 . The Petition is disposed of accordingly.

