
(2014) 03 DEL CK 0331
In the Delhi High Court
Case No : Crl. A. No. 56 of 2010

Delhi Development Authority

APPELLANT

Vs

Jang Bahadur Bhalla

RESPONDENT

Date of Decision : 18-03-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 251, 281, 313
Delhi Development Act, 1957 — Section 14, 29(2)

Citation : (2014) 2 JCC 1199

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Arun Birbal, Advocate for the Appellant; Vinod Asri, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

V.K. Jain, J.—On 29.10.2003, on inspecting SFS flat No. 194, Pocket-I, Sector 9 of Dwarka, it was found, by Shri R.K. Verma, Junior Engineer (Enforcement) of DDA, that a furniture workshop under the name and style of Panchanan Furniture was functioning in the whole of the flat and as many as ten (10) persons were working there in an area measuring 90 sq. mtrs. The respondent Jang Bahadur Bhalla was found present at the time of inspection and he admitted to be the person who had permitted the use of the aforesaid premises for the furniture workshop though he refused to sign the inspection report. Based upon the aforesaid inspection, a complaint u/s 14 read with Section 29(2) of Delhi Development Act, 1957 (hereinafter referred to as the "DD Act") was filed against the respondent Jang Bahadur Bhalla.

2. On notice u/s 251 Cr.P.C. being given to the respondent, he pleaded not guilty and claimed trial. Thereupon as many as five (5) witnesses were examined by the complainant. No witness was examined in defence.

3. Shri R.K. Verma, Junior Engineer came in the witness box as CW 1 and inter alia stated that when inspected the aforesaid flat on 29.10.2003, he found a

furniture shop functioning there under the name and style of M/s. Panchanan Furniture and ten (10) persons were working at the time of inspection. He claimed that the respondent Jang Bahadur Bhalla disclosed himself to be the owner of the flat. The witness further stated that the above-referred premises falls in Zone K, Dwarka and in terms of Master Plan can be used only for residential purposes. Ex. CW1/A1, A2 are the photographs which the witness took at the time of inspects. Yet another photograph is Ex. CW1/A5. According to the witness he had located the aforesaid premises at point "X" indicated by mark "A" in the Zonal Map and the Land Use Plan Ex. CW1/B and CW1/C.

CW 2 Ms. Ritu Sharma is an official of DDA who inter alia stated that the above-referred flat was allotted to the respondent for residential purposes. A copy of conveyance deed is Ex. CW2/A.

4. CW 3 Shri S.C. Kaura was the General Secretary of the Residential Welfare Association of SFS Flat, Pocket-I, Sector 9, Dwarka at the relevant time. He inter alia stated that he had sent the letter Ex. CW1/E1 to the Vice Chairman, DDA in respect of Flat No. 194, Pocket I, Sector 9, Dwarka. He further stated that on 29.10.2003, there was a workshop of furniture functioning at the aforesaid flat under the name & style of M/s. Panchanan Furniture which was creating nuisance and noise. He further stated that now the aforesaid flat has been let out to Disha Nursery School.

CW 4 Shri Dinesh Vij was the General Secretary of Residential Welfare Association, Pocket I, Sector 9, Dwarka, who made the complaint Ex. GW1/E to DDA in respect of furniture workshop in Flat No. 194. He inter alia stated that in the year 2003, the work of wood was going on in the aforesaid flat.

5. CW 5 Shri Sunil Kumar Khanna is the officer who has filed the complaint u/s 14 read with Section 29(2) of D.D. Act against the respondent.

6. In his statement u/s 281 of Cr.P.C. read with Section 313 thereof, the respondent stated that he was only furnishing the aforesaid flat and was not undertaking any commercial activity there.

7. Vide impugned order dated 8.3.2007, the respondent was acquitted. Being aggrieved, the complainant is before this Court by way of this appeal.

8. I see no reason to disbelieve CW1 Shri R.K. Verma who being an official of DDA inspected the flat in question in discharge of his official duties as a public servant. There was no enmity or ill-will between him and the respondent. Therefore, he had no reason to prepare a false inspection report and depose falsely against the respondent. A perusal of the report of Mr. Verma Ex. CW1/A would show that at the time he inspected the premises, as many as ten (10) persons were found working in the flat in question and a furniture workshop was being run there. The deposition of Mr. Verma finds corroboration not only from the photographs which he took but also from the deposition of PW 3. Shri S.C. Kaura and PW 4 Shri Dinesh Vij. Ex. CW1/E1 is a complaint made by Residents.

Welfare Association of DDA SFS Flats, Pocket I, Sector 9, Dwarka to DDA alleging commercial activity in as many as eleven (11) flats including the flat in question, being flat No. 194. It was expressly stated in the said complaint that in Flat No. 194, M/s. Panchanan Furniture shop was being run and furniture was being manufactured. The DDA was requested to take appropriate legal action against the flat owners who were misusing the flats in the locality. The respondent does not allege any kind of animosity between him and Shri S.C. Kaura who made the aforesaid complaint to DDA. Mr. Kaura came in the witness box as CW3 and expressly stated that on 29.10.2003, a furniture workshop under the name and style of M/s. Panchanan Furniture was functioning in the aforesaid flat and creating nuisance and noise. The deposition of Shri S.C. Kaura also finds corroboration from the deposition of PW 4 Shri Dinesh Vij who made the complaint Ex. CW1/E to DDA on 6.11.2003 alleging that a furniture workshop was functioning in flat No. 194. Mr. Dinesh Vij came in the witness as CW 4 and not only did he prove the complaint made by him he also stated that in the year 2003, work of wood was going on in the aforesaid flat on account of which a complaint was made by him. He expressly denied the suggestion that no commercial activity was being carried out in the aforesaid flat though he admitted that after one (1) month the repair or renovation activity in the flat was stopped.

9. Ex. CW1/A4 and A5 are the photographs showing signboard of M/s. Panchanan Furniture on the front of flat in question. This is not the case of the respondent that the flat which appears in the aforesaid photographs is not flat No. 194 in Pocket I, Sector 9, Dwarka. Had the respondent not been carrying commercial activity in the aforesaid flat there could be no occasion for him to place the aforesaid signboard on its front. It is true that the photographs taken by CW1 do not show any worker engaged in the manufacturing of furniture in the aforesaid flat but that to my mind would not be necessary considering the deposition of CW1 which finds full corroboration not only from the deposition of CW 3 S.C. Kaura and CW4 Dinesh Vij as well as the complaints-made by them to DDA at the relevant time but also from the photographs showing the, signboard of Panchanan Furniture on the front of the shop in question.

10. Though no documentary evidence such as Shops & Establishment Registration Certificate and Sales Tax Registration Certificate has been collected by the complainant, that by itself would now show that on the date of inspection, the aforesaid flat was not being used as a workshop of furniture. It is quite possible for a person to use a residential flat for running a furniture workshop without getting himself registered with VAT Department and without obtaining registration under the Shops and Establishments Act. In fact, a person carrying commercial activity, in a residential flat may not get a VAT or Shop & Establishment Act registration, and, therefore, he is not likely to apply for such a registration. Moreover, as stated by CW4 in his cross-examination, the aforesaid activity was stopped after about one (1) month. This would indicate that though the respondent may later have stopped the misuse, he was certainly using the

flat in question for a commercial purpose on the date of the inspection. It would be pertinent to note here that this is not the case of the respondent that he was not the allottee of the aforesaid flat or was not in its possession on the date it purports to have been inspected. Admittedly, not only was he allotted the aforesaid flat, it was in his possession on the date of inspection, i.e. 29.10.2003.

11. The complainant placed on record a local News Bulletin titled Dwarka Sandesh - March, 2003 issue, in which an advertisement of Panchanan Furniture and Interiors appears. Though the aforesaid document was not exhibited, it can hardly be disputed that the aforesaid advertisement could have been given by none other than the respondent since it bears the address flat No. 194, Pocket I, Sector 9, Dwarka besides two land-line numbers and one mobile number. This is not the case of the respondent that the aforesaid telephone numbers do not belong to him. In any case, the charge against the respondent stands/duly proved even if the said advertisement is not considered.

12. Since in terms of the Master Plan and Land Use Plan, the aforesaid flat would have been used only for residential purpose, the respondent contravened the provisions of DD Act by using the same for a furniture workshop on 29.10.2003. For the reasons stated hereinabove, the impugned order dated 8.3.2007 is set aside and the respondent is convicted u/s 14 read with Section 29(2) of Delhi Development Act. The respondent is sentenced to pay fine of Rs. 5,000/- or to undergo SI for one (1) month in default. The respondent is granted four (4) weeks to deposit the fine,. The appeal stands disposed of accordingly.