

(1993) 12 SC CK 0045

In the Supreme Court Of India

Case No : Criminal Appeals No. 337 Of 1983 With Nos. 338-451 Of 1983, 632 Of 1985, 518-A Of 1984, 342-45 Of 1983

Delhi Development Authority

APPELLANT

Vs

Kakar Timbers Traders and Others

RESPONDENT

Date of Decision : 02-12-1993

Acts Referred:

Citation : (1995) 2 SCC 587 Supp

Hon'ble Judges : K. Jayachandra Reddy, J;G. N. Ray, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. In all these appeals, the Delhi Development Authority (for short "authority") is the appellant. The authority filed complaints against the respondents in each of these appeals under Section 14 read with Section 29(2) of the Delhi Development Act. Evidence was recorded but the learned Magistrate acquitted the respondents giving them benefit of doubt by holding that the necessary acquisition of the lands in question has not been made under the Land Acquisition Act and, therefore, the authority without such acquisition cannot enforce the user of the private land for the purpose of parks and open spaces without paying compensation. The authority filed appeals against the acquittal before the High court but they were dismissed in limine. Hence the present appeals.

2. Shri Arun Jaitley, learned Senior Counsel for the authority, submits that the law declared by the Magistrate, namely, that without acquiring the land Section 14 even if attracted cannot be invoked, is erroneous and if that is the interpretation to be given to Section 14 read with other relevant provisions then some of the provisions of the Delhi Development Act will become redundant and the very object underlying the Act will be defeated.

3. The Act came into force in the year 1957. The object underlying the Act is to provide for the development of Delhi according to Master Plan and for matters

ancillary thereto. Section 2 contains the definitions. Section 3 provides for the constitution of the Delhi Development Authority with a Chairman, Vice-Chairman and other Members. Ch. 3 contains the provisions dealing with Master Plan and Zonal Development Plans. Section 7 in the said Ch. lays down that the authority shall, as soon as may be, carry out a civic survey and prepare a Master Plan for Delhi which shall define the various zones into which Delhi may be divided for the purpose of development etc. Section 8 provides for Zonal Development Plans within Delhi and it lays down that simultaneously with the preparation of the Master Plan or as soon as may be thereafter, the authority shall proceed with the preparation of a Zonal Development Plan for each of the zones into which Delhi may be divided. Ss. (2 of Section 8 deals with various particulars which a Zonal Development Plan shall contain. Section 10 provides for the procedure to be followed in the preparation and approval of the plans. Section 11 lays down that immediately after a plan has been approved by the central government, the authority shall publish in such manner as may be prescribed by regulations a notice stating that a plan has been approved and naming a place where a copy of the plan may be inspected at all reasonable hours etc. Section 11-A provides for modification to the Master Plan and Zonal Plan. Section 12 lays down that, as soon as may be, after the commencement of this Act, the central government may, by notification in the Official Gazette, declare any area in Delhi to be a development area for the purposes of this Act. Section 13 provides that every person or body desiring to obtain the permission referred to in Section 12 shall make an application in writing to the authority in such form and containing such particulars in respect of the development to which the application relates as may be prescribed by regulations.

4. Section 14 is the relevant section for our purposes and it deals with user of land and buildings in contravention of plans. It lays down that after the coming into operation of any of the plans in a zone no person shall use or permit to be used any land or building in that zone otherwise than in conformity with such plan and the proviso lays down that it shall be lawful to continue to use upon such terms and conditions as may be prescribed by regulations made in this behalf any land or building for the purpose and to the extent for and to which it is being used upon the date on which such plan comes into force. Section 29 prescribes the penalties and lays down that any person who whether at his own instance or at the instance of any other person or anybody undertakes or carries out development of any land in contravention of the Master Plan or Zonal Development Plan or without the permission, approval or sanction referred to in Section 12 shall be punishable as provided thereafter. Ss. (2 of Section 29 provides that any person who uses any land or building in contravention of the provisions of Section 14 or in contravention of any terms and conditions prescribed by regulations under proviso to that section shall be punishable with fine etc.

5. In the matters before us, the authority filed complaint against the respective accused alleging that in the lands to which the Master Plan or Zonal Plan apply,

certain structures have come into existence, therefore. Section 14 is attracted. Public Witness 2, a Junior Engineer was examined and he asserted that the lands in question fell in development zone No. F-17 of the Master Plan and it could be used for district parks and open spaces according to Master Plan but the persons concerned contrary to the plan have erected structures. When accused were examined under Section 313, Criminal Procedure Code, the allegations were denied.

6. The learned Magistrate, however, held that the authority cannot enforce the user of a private land for the purpose of district parks and open spaces without paying compensation to the persons concerned having right, title and interest in the disputed lands after duly acquiring and taking possession of the land as per the provisions of the Land Acquisition Act. Incidentally, the learned Magistrate also observed that the complainant's evidence itself establishes that still the owner of the land in question is in possession of the land and, therefore, the authority is not entitled to enforce the existence of the district parks and open spaces in the lands in question and as a natural consequence the prosecution cannot be maintained.

7. Learned counsel for the appellant submits that the learned Magistrate has wrongly interpreted the scope of Section 14 and ought not to have mixed up with the acquisition of land. Shri Pankaj Kaira, learned counsel for the respondents, submits that the authority sought to prosecute the respondents on the ground that the land was meant only for district parks and open spaces and unless the land is acquired in accordance with the Land Acquisition Act the authority cannot enforce such a right in respect of the land owned by the accused.

8. We think we need not go into the submissions of the learned counsel for the respondents, namely, whether the authority can enforce the plan in respect of the land in question i.e. that it should be used only for parks and open spaces without acquisition. What we are concerned is whether Section 14 is attracted or not. As already noted, the said section clearly lays down that after the plans come into operation, no person shall use or permit to be used any land or building in that zone otherwise than in conformity with such plan. Therefore, it presupposes certain existing conditions and if the owner of the land wants to put into a different use, he cannot do so but he can do so to the limited extent as provided under the proviso, namely, that he had already been putting the land to certain use even before the plans came to operation and that can be continued subject to certain terms and conditions. Therefore, to the extent of user of the land as contemplated under Section 14, the acquisition of land does not come into operation. It is only a contravention under Section 14 that would be punishable under Section 29.

9. But what the learned Magistrate has done is even for the purpose of prosecution under Section 14 the authority shall follow the necessary procedure under Land Acquisition Act and acquire the land. If that is the law and if the land is already acquired the question of owner being in possession and raising any

structures will not arise because the ownership gets automatically transferred in favour of the authority. The scope of Section 14 is different i.e. when a Zonal Plan or Master Plan has come into operation in respect of a particular land, the same cannot be used otherwise than in conformity with such plan and if any use otherwise is already there and is to be continued, it should be subject to the conditions laid down in the proviso.

10. The prosecution was launched in the year 1978. Admittedly, the Master Plan and Zonal Plan are in operation and assuming Section 14 is violated, we do not think at this distance of time the prosecutions or the trials in these cases should go on nor we think that these are fit cases where this court should interfere and convict the respondents because for a conviction under Section 14 read with Section 29(2) some more material is necessary. For that purpose, the cases have to be remanded but we do not propose to do so because much time has elapsed. If, however, any structures have come up subsequent to the plans, it is open to the authority to take any other appropriate action under the Act after giving due notice to the respondents.

11. With these clarifications, the appeals are disposed of.