
(2008) 02 DEL CK 0095

In the Delhi High Court

Case No : Criminal M.C. 1636 of 2004 and Criminal M.A. 4947 of 2004

Dr. Nitin Chopra

APPELLANT

Vs

M.C.D.

RESPONDENT

Date of Decision : 19-02-2008

Acts Referred:

Citation : (2008) 02 DEL CK 0095

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Davinder N. Grover, for the Appellant; O.P. Saxena, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—This petition u/s 482 Cr.P.C. seeks the quashing of Criminal Complaint No. 1516/2001 titled Municipal Corporation of Delhi v. Dr. Nitin Chopra under Sections 347/461 of the Delhi Municipal Corporation Act, 1957 (DMC Act) pending in the Court of the learned Metropolitan Magistrate (MM), Delhi and all proceedings consequent thereto.

2. The facts relevant for the present petition are set out in paras 1, 2, 4 and 4 of the aforementioned criminal complaint filed by the MCD which read as under:

1. That according to the Prosecution Report of Sh. Sanjeev Jain, Jr. Engineer(Bldg.), South Zone, dt. 3.9.2001, the accused Dr. Nitin Chopra, owner/ Occupier of property No. G-35 (Ground Floor), Green Park Main, New Delhi, was found committing the following offence on 3.9.2001 at 4.30 P.M. u/s 347 of the Delhi Municipal Corporation Act, 1957 (hereinafter called the Act), which is punishable u/s 461 of the DMC Act:

That Dr. Nitin Chopra, owner/Occupier of property No. G-35(Ground Floor), Green Park Main, New Delhi, has changed the use of property from residential to commercial by running a shop of M/s Colonel's Dental Clinic without written permission of the Commissioner, MCD. The sanctioned/permissible use of this

property is residential only.

2. That the above accused is the owner/occupier of the above said property.

3. That I am authorized by the Administrator, Delhi, vide Notification No. F.1/32/77-LSG/Vol.III(Policy)/4599 dt. 10.8.90 to file a complaint against the above accused on behalf of the M.C.D.

4. That the above named accused has, Therefore, committed the offence u/s 347 read with Section 461 of the Act and is liable to be held guilty and punished according to law.

3. On 19th May, 2003, the learned MM passed the following order:

19-5-03.

Present : AMP FOR MCD.

Accused on bail with counsel.

Heard on discharge application.

It is contended that accused is a Doctor by profession and according to provision of the DMC Act. He is allowed. Photocopy of the B.B.L. filed. According to the same a maximum of 25% FAR or 100 sq. mtrs. Whichever is less, for non-residential but non-nuisance activities for rendering service based on professional skills.

I have gone through the complaint and material placed on record. Neither the complainant nor the accused has brought on record any document to show that accused is running his dental clinic within the prescribed limit of the area. Hence, it is a matter of trial by which it can be decided whether he is using the portion of the property in question as per provisions or not. Hence, at this stage no ground for discharge. Application is dismissed. Notice was given. Adj. for P.E. on 28/1/04.

4. The revision petition filed by the petitioner against the aforementioned order was dismissed by the learned Additional Sessions Judge, Delhi by an order dated 16th March, 2004 on the ground of delay and thereafter the present petition has been filed.

5. Learned Counsel for the Petitioner contends that the Petitioner was occupying a portion admeasuring 110 sq. ft. in the ground floor of the premises at G-35 (Ground Floor), Green Park Main, New Delhi and that the total Floor Area Ration (FAR) of the premises was 2700 sq. ft. He relies on the building bye-law of 1983 which permits professional activity to be carried on in an area up to a maximum of 25 per cent of the FAR or 100 sq. mt. whichever is less. It is submitted that inasmuch as the Petitioner is a dentist by profession and is running a dental clinic in an area of only 110 sq. ft. out of total area of 2700 sq.ft., he should be allowed the benefit of the aforementioned building bye-law. Since there is no unauthorized use of the premises in terms of the building bye-law, criminal

prosecution is not justified. Learned Counsel for the petitioner also relies on the judgment of this Court in Ms. Jaishree Manchanda Vs. New Delhi Municipal Council and others, in support of this proposition. In addition it is submitted that even before the inspection of the premises on 3rd September, 2001, the Petitioner had out of abundant caution on 15th November, 2000 made a request for permission to operate the clinic by giving the aforementioned details.

6. The contention of Mr. O.P. Saxena, the learned Counsel appearing for the MCD on the other hand is that that the aforementioned building bye-law, which is consistent with the Notification dated 23rd July 1998 amending the Master Plan for Delhi 2001, indicates that the benefit will be available to a person who is the occupier of the entire premises which is residential and is using 25 per cent thereof for his professional activity. However, in the present case the entire premises owned by the Petitioner was 110 sq. ft. Therefore, there was no question of the entire premises being exempted. He accordingly submits that no error has been committed in filing the criminal complaint against the Petitioner. He further submits that any application that the petitioner may make for compounding or regularization in terms of any Mixed Land Use Notification, will be considered on merits and in accordance with law.

7. The building bye-law relied upon by the petitioner reads as under:

Professional Activity

Professional activity shall be allowed in residential plots and flats on any floor on the following conditions:

Part of the premises shall be permitted to be used up to a maximum of 25% of FAR or 100 sq. mtrs. Whichever is less, for non-residential but non-nuisance activities for rendering service based on professional skills.

8. The wording of the above clause begins with "Part of the premises" and Therefore any person seeking benefit of the above exemption clause will have to be show that only a part of the premises is used for the professional activity and not the entire premises. Here admittedly the Petitioner owns 110 sq. ft. and is running a clinic in that entire area of 110 sq. ft. Therefore, there is no question of the Petitioner being allowed to avail of the above exemption. If the Petitioner had been occupying the entire ground floor for residential purposes and was using a part of the floor not exceeding 25 per cent of the FAR for his professional activity, then he would be able to avail of this exemption. In any event, the Petitioner would have to show that the remaining area of the ground floor where he is occupying is 110 sq. ft. has in fact being used for residential purposes. Even this is not the case here since admittedly even the remaining portion of the ground floor is being used for non-residential purposes. In that view of the matter, no error can be found with the lodging of the criminal complaint by the MCD. In Jaishree Manchanda this Court noticed that the Petitioner there was proposing to apply to the NDMC to seek relief in terms of an amended bye-law for using of the basement for her professional work. No finding was given by this

Court on the interpretation of the said amended provision.

9. For the aforementioned reasons, there is no ground made out for interference by this Court u/s 482 Cr.P.C. The Petition is dismissed with no order as to costs. The interim order stands vacated. The matter will now be listed before the trial court on 10th March, 2008 for directions.

10. A certified copy of this order be sent to the concerned trial court within five days.

11. Order dusty.