

(1983) 05 DEL CK 0028

In the Delhi High Court

Case No : Criminal Misc. (M) No's. 621 and 251 of 1980

M/s Sawhney Bros., New Delhi

APPELLANT

Vs

Delhi Development Authority, New Delhi

RESPONDENT

Date of Decision : 23-05-1983

Acts Referred:

Citation : (1984) CriLJ 412 : (1983) 2 Crimes 751 : (1983) 24 DLT 112 : (1983) 5 DRJ 250 : (1983) RLR 653

Hon'ble Judges : H.L. Anand, J

Bench : Single Bench

Judgement

1. These petitions u/s 482 of the Cr.P.C. by a common family partnership and its members are directed against two separate complaints filed by the Delhi Development Authority against the petitioners u/s 14 read with Section 29(2) of the Delhi Development Act, 1957 in respect of the two different premises, being A-4 and A-14, Nizamuddin West, on allegation that the aforesaid premises can be used only for residential purpose and are being used by the petitioners for a commercial purpose, contrary to the provisions of the Master Plan and the Zonal Development Plan.

2. The petitioners are admittedly carrying on business in both the premises. Both the premises are also admittedly of a residential nature and situated in a predominantly residential locality. Prior to the institution of the present complaints, the petitioners were prosecuted by the Authority for the aforesaid offence in relation to one of the aforesaid premises, namely, A-14, Nizamuddin West. At the trial of that complaint, the petitioners set up a plea that the petitioners had applied for alternative accommodation both to the Authority and to NOIDA. In terms of the policy of the Authority contained in a public advertisement of September 18, 1976 in which the Authority had represented to the general public that the industrial units from non-conforming areas should get themselves registered with the D.D.A. or with NOIDA for allotment of plots sheds by October 15, 1976 after depositing a specified premium for allotment as per

the Rules of the Authority and if they did so. They would be allowed to continue the present use till such time as the concerned Authority was in a position to give possession of the plots and/or sheds to such units. It was further urged that the petitioners had also deposited a sum of Rs. 10,000/- in terms of the policy and that the allotment had not as yet been made by NOIDA. Evidence was produced at the trial that such a representation had been made and that the petitioners, whose address at that time was 16-A, Shankar Market, had applied for alternative accommodation to NOIDA and the petitioners had their unit at that time at A-4 Nizamuddin West. The trial court returned the finding on this material that the petitioners had applied to NOIDA for alternative accommodation and that in the advertisement issued by the Authority, it was not a condition that a unit functioning in non-conforming area was to give the address of the premises under misuse or that it could not shift to some other non-conforming area. It was further observed that if one party was having more than one unit in non-conforming areas, it was not necessary for it to apply separately for each unit. It was, Therefore, held that the absence of the address of premises in question with NOIDA or the Authority at the time of the application for alternative accommodation was of no consequence and the case of the petitioners squarely fell within the four corners of the advertisement. The petitioners were accordingly acquitted by the trial court by an order of September 20, 1978. The order of acquittal was not challenged by the Authority and has, Therefore, become final.

3. Notwithstanding the aforesaid acquittal, the Authority has filed the present complaints on identical allegations, one in respect of premises No. A-4, and the other in respect of premises No. A-14, Nizamuddin West. It was not seriously disputed on behalf of the Authority that in view of the acquittal of the petitioners in the earlier complaint, which was based on the misuse of A-14, Nizamuddin West, the petitioners could not be prosecuted with regard to the said premises. It was, however, faintly suggested that the offence u/s 29(2) was a continuing offence and the acquittal of the petitioners in the earlier complaint could not bar fresh prosecution. It was, however, not disputed that if the petitioners could not be prosecuted because they had deposited the amount in terms of the policy of the Authority and were still awaiting allotment of an alternative accommodation, no further prosecution could be possible until the petitioners failed to move from the premises notwithstanding the allotment or otherwise do not avail of the allotment or fail to comply with the conditions with regard to further payment in terms of the policy.

4. As regards premises No. A-4, it was however, alleged on behalf of the Authority that the earlier complaint was not concerned with A-4 and the earlier acquittal, Therefore, had no impact on the present proceedings with reference to this premises. It was, however, not disputed that in the order of acquittal, premises A-4 was also mentioned as a place where the petitioners have a unit. Even otherwise, petitioners having agreed to shift to the conforming area as soon as the allotment has been made and the petitioners having complied with all the

conditions laid by the Authority in that behalf, it would be improper for the Authority to prosecute the petitioners in respect of either of the two locations. Counsel for the petitioners undertakes that on the allotment being made, the petitioners would shift their activity, being carried at both the locations, to the conforming area. It would, Therefore, be an abuse of the process of the court to allow the petitioners to be prosecuted in such circumstances for either of the locations.

5. Counsel for the Authority, however, sought to distinguish the circumstances of the earlier complaint and to justify the institution of the present proceedings on the ground that the policy announced in the advertisement of September 18, 1976 was subsequently modified by the Authority. The petitioners had acted on the representation of the Authority pursuant to the original policy, had deposited a substantial amount and had agreed to shift on the allotment of alternative accommodation, any subsequent change in the policy could not have retrospective effect or otherwise affect the rights and obligations of the parties. Offence with reference to the misuse stood compounded prior to the change in the policy and the subsequent change in the policy left the compounding unaffected. Even otherwise, all State action must be fair, just and reasonable and any change in policy after the petitioners had acted to their prejudice, pursuant to the earlier policy, could hardly be said to be just and reasonable.

6. A vague suggestion was made on behalf of the petitioners that the Authority had been filing thousands of complaints indiscriminately either with a view to pressurize non-conforming users to shift to conforming areas or to collect heavy fines even though the alternative accommodations have not been made available. It was further urged that the complaints are being filed in a mechanical manner, without even verifying if the non-conforming users had made deposits pursuant to the earlier policy and were waiting for alternative allotment. It would be beyond the scope of the present proceedings for this Court to look into this aspect of the matter. It is also not possible to rule on this contention one way or the other on the existing material. I, however, do hope that these allegations are not true and that the authority exercises the necessary circumspection before launching large scale prosecutions.

7. I would, Therefore, accept Crl.M(M) 621/80 and Crl.M(M) 251/80 and quash the proceedings arising out of Criminal Case No. 285/79 pending in the court of Shri J. P. Sharma, Metropolitan Magistrate and, Criminal Case No. 147/80 pending in the Court of Shri M. L. Malik, Metropolitan Magistrate, Delhi.

8. Order accordingly.