

(1995) 09 SC CK 0084

In the Supreme Court Of India

Case No : Criminal Appeal No. 62 of 1991

Mukul Rani Varshnei (Smt) and Others

APPELLANT

Vs

Delhi Development Authority and Another

RESPONDENT

Date of Decision : 19-09-1995

Acts Referred:

Delhi Development Act, 1957 — Section 14, 29(2)

Citation : (1995) 4 Crimes 49 : (1995) 6 JT 681 : (1995) 5 SCALE 456 : (1995) 6 SCC 120 : (1995) 3 SCR 803 Supp

Hon'ble Judges : M. K. Mukherjee, J;A. S. Anand, J

Bench : Division Bench

Advocate : Sushil Kumar, R.P. Wadhwani, Samir Tandon and Sanjeev Ralli, for the Appellant; Arun Jaitley and Kamini Jaiswal, for the Respondent

Final Decision : allowed

Judgement

1. The appellants let out the property in question to M/s. Tufted Carpets and Woolen Industries Limited (subsequently the name of the tenants was changed to M/s. Trans Asia Carpets Ltd.) in July, 1978. The tenants applied for permission to respondent No. 1, for using the said property for commercial purposes, known as non-conforming purpose. Permission was granted and extended from time to time by respondent No. 1 till September 1981, though the tenants kept representing to the authorities for extension of time to stop the use of the premises for commercial purposes. In January, 1983 the appellants received a show cause notice dated 3rd December, 1982 from respondent No. 1 asking them to show cause as to why they should not be prosecuted for violating Section 14 of the Delhi Development Act, 1957 (hereinafter referred to as the Act) on the ground that the appellants had permitted the tenant-company to use the said property in contravention of the provisions of the Master Plan and the Zonal Development Plan of Delhi. The appellants replied to the show cause notice stating that they had no information that the tenant was using the property in contravention of the plan without permission of respondent No. 1 and asserted

that they had not given any permission to the tenants to use the property for non-conforming purposes. The appellants were, thereafter, asked by respondent No. 1 that the tenants should be stopped from misusing the property within 15 days from the date of the communication, failing which prosecution u/s 29(2) of the Act would be launched against the appellants. This communication from respondent No. 1 is dated 24th March, 1983. The appellants once again through their letter dated 12th April 1983, controverted the allegations contained in the communication and reiterated what they had stated in the reply to the show cause notice. They also, on the same date, through their counsel sent a notice to the tenant calling upon it to immediately stop the commercial use of the property. While the matter rested thus, prosecution was launched against the appellants for violation of Section 14 of the Act punishable u/s 29(2) of the Act. The learned trial Magistrate convicted the appellants vide judgment dated 1st April 1985 and imposed a fine of Rs. 1500/- on each of the four appellants. The appellants preferred an appeal against their conviction and sentence before the Additional Sessions Judge, New Delhi but without any success and their appeals were dismissed on 17th July 1989. The revision petitions filed by the appellants before the High Court were dismissed in limine. By special leave granted by this Court, the appellants are before us.

2. We have heard learned Counsel for the parties and perused the record. Section 14 of the Act provides:

14. User of land and buildings in contravention of plans - 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:

Provided 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.

3. From a bare reading of the Section, it is obvious that a person can be said to violate the Plan, if he uses or permits to be used the property otherwise than in conformity with the Master/Zonal Plan. The allegations against the appellants is that they had permitted the tenant to use the property for commercial purposes in violation of the Master Plan.

4. There is no legal evidence led by the prosecution to show that the appellants had permitted the property to be used by the tenant in violation of the Master Plan for non-conforming purposes. The only witness who appeared on behalf of the respondent before the trial court in support of their case, Shri Shamimudeen, Junior Engineer, DDA, PW2, deposed that the tenant had told him that he had been permitted by the appellants to use the property for commercial purposes. This is hear-say evidence and clearly not admissible. The tenant was not examined as a witness in the case. PW2 expressed total ignorance as to whether the tenant was actually using the property as commercial property with the

permission of the landlord or not. No other oral or documentary evidence was led in support of the allegation against the appellant. Thus, in the absence of any legal evidence to show that permission had been granted by the appellants to the tenant to use the property in contravention of the Master Plan, no conviction of the appellants could have been recorded by the trial court.

5. The courts below thus fell in error in convicting the appellants without any legal evidence on the record.

6. The appeal consequently succeeds. The conviction and sentence of the appellant is set aside and they are hereby acquitted. The fine which has been paid by the appellant shall be refunded to them.