

(2009) 11 DEL CK 0383

In the Delhi High Court

Case No : Criminal Appeal No. 578 of 1999

Municipal Corporation of Delhi

APPELLANT

Vs

Subhash

RESPONDENT

Date of Decision : 18-11-2009

Acts Referred:

Delhi Municipal Corporation Act, 1957 — Section 331, 332, 461

Citation : (2009) 11 DEL CK 0383

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

Bench : Single Bench

Advocate : Anand Aggarwal, for the Respondent

Final Decision : Disposed Off

Judgement

V.K. Jain, J.—This is an appeal against the judgment dated 10th July, 1995 whereby the respondent was acquitted of the charge u/s 461 of Delhi Municipal Corporation Act, 1957 read with Section 332 thereof.

2. The case of the appellant is that on 20.11.1989, during inspection by the concerned Junior Engineer of South Zone, it was found that the respondent had carried out unauthorized construction of shop by laying roof on the existing wall in premises No. 20/6-7, Yusuf Sarai, New Delhi without prior permission of Commissioner of MCD.

3. The appellant / complainant produced three witnesses in support of its case, whereas one witness was produced by the respondent in his defence.

PW-1 Shri Naresh Sharma, Jr. Engineer stated that on 20.11.1989 he inspected premises No. 20/6-7, Yusuf Sarai, New Delhi and found that the respondent was getting unauthorized construction of a shop by laying of roof on the existing walls. He further stated that existing walls were about 6 ft. height and respondent had raised the height by about 2 feet from 3 sides and laid the roof over it and then fixed two shutters on the road side at ground floor. The curing and finishing work was found in progress at the time of inspection. PW-2 and

PW-3 are formal witnesses whose testimony are need not be discussed.

3. In his statement u/s 313 Cr. P.C. the respondent stated that he did not make any unauthorized construction.

4. DW-1 Sita Ram is a resident of 69, Yusuf Sarai. He has stated that he knew the respondent, who was having godown in 20/6-7, Yusuf Sarai and that he had never seen any new construction, addition or alteration in 20/6-7 Yusuf Sarai either on or before or after 20.11.89.

5. The Ld. MM held that laying of roof is not an addition to a building and therefore offence alleged against the respondent did not stand prove.

6. Section 332 of Delhi Municipal Corporation Act, 1957 provides that no person shall erect or commence to erect or execute any of the works specified in Section 334, except with the previous sanction of the Commissioner, nor otherwise than in accordance with the provisions of this Chapter and of the bye-laws made under this Act in relating to the erection of buildings or execution of works.

Section 331 of the Act defines the expression "to erect a building". It means amongst others to roof or cover an open space between walls or buildings to the extent of the structure which is formed by the roofing or covering of such space.

7. The allegation against the appellant is that he raised the height of the walls and then put roof over them. Though, in the report, prepared by PW-3, there is no mention of raising the height of the walls, it has been specifically recorded in this report, which was prepared at the time of inspection, that unauthorized construction of shop had been done by laying roof on the existing walls in premises No. 20/6-7, Yusuf Sarai, New Delhi without prior permission of Commissioner MCD, with the help of labour. Therefore, presuming that the height of the walls had not been raised, the respondent would nevertheless be guilty of erecting a new building within the definition of 332 of DMC Act if he laid roof on the existing boundary walls of the premises No. 20/6-7, Yusuf Sarai. In view of the specific definition given in Section 331(f), it cannot be disputed that laying roof or covering an open space between the walls would amount to erection of a building. Therefore, the Ld. MM was not at all correct in saying that laying of roof does not amount to erection of a building. In fact, the Ld. MM has not even considered the definition of "erection of a building" given in Section 331 of the Act and has come to a wrong conclusion without there being any basis for drawing such a conclusion. It is rather strange that she did not even advert to the definition given in the Act, and gave her own meaning to the expression "to erect a building."

8. There is no reason to disbelieve the deposition of PW-3 which stands corroborated from the report Ex. PW3/A which he prepared at the time of his inspection. There is no enmity between him and the respondent and therefore he had no reason to prepare a false report and make a false allegation of laying of roof on the existing walls of house No. 20/6-7, Yusuf Sarai, New Delhi.

9. This is not the case of the appellant that he was not in possession of premises in question at the relevant time or that later on walls were laid by some person other than him. DW-1 has also admitted in his cross examination that the respondent is owner of premises in question. Since it was the respondent who was in possession of premises in question, no other person could have laid roof on the walls of that building. Therefore, charge u/s 461 of Delhi Municipal Corporation Act r/w Section 332 thereof and further read with Schedule 12 of Delhi M.C. Act stands duly proved against the respondent and the respondent is convicted accordingly.

10. As regards sentence, the appellant has filed an affidavit stating therein that he had given possession of the premises in question to his brother about 10 years ago and his brother has also handed over its possession to its owner. This appeal itself is pending for the last more than 10 years. Keeping in view all these facts and circumstances, the respondent is sentenced to pay a fine of Rs. 5,000/- or to undergo SI for three months in default. He is granted two weeks time to deposit the amount of fine in the trial court.

The criminal appeal stands disposed of.