

(1987) 08 DEL CK 0012

In the Delhi High Court

Case No : Civil Writ Appeal No. 2219 of 1987

Rajiv Aggarwal

APPELLANT

Vs

New Delhi Municipal Committee

RESPONDENT

Date of Decision : 19-08-1987

Acts Referred:

Citation : (1987) RLR 558

Hon'ble Judges : R.N. Aggarwal, C.J.; Jagdish Chandra, J

Bench : Division Bench

Advocate : S.N. Kumar, K.B. Soni and R.K. Agarwal, for the Appellant;

Judgement

Aggarwal, C.J.

(1) The building known as "Asha Deep" 9, Hailey Road, New Delhi, was constructed by M/s. Ansal & Seigal Properties Ltd. in 1970. It is a residential building and it has a basement. The petitioners are in occupation of different portions of the basement. They are using the portions in their occupation for business/office use. The New Delhi Municipal Committee (for short NDMC) granted two electric connections ; one for light and the second for power for the basement in 1971. The electric connections were only for domestic use.

(2) On 20.7.87 a notice was given by the electricity deptt. of the Ndmc to the estate manager of M/s. Ansal & Seigal Properties Ltd. alleging misuse of the electric connections. The misuse ,inter alia, alleged was (i) unauthorised extension of electric connections at various offices and stores in the basement and (ii) misuse of electric connection due to overloading such as use of air-conditioners and is also being used for commercial purposes while the building is for residential purposes only and basement is meant for storage only.

(3) M/S. Ansal & Seigal Properties Ltd. were required to remove the deficiencies within 48 hours failing which the electricity to the premises was to be disconnected. On 28-7.87 the electricity connections were disconnected. This has brought the petitioners to this court.

(4) It is not disputed that the electricity connections allowed for the basement were for domestic purposes and the petitioners were using it for commercial purposes. Mr. S.N. Kumar, learned counsel for the petitioners, contended that the petitioners have been using the electric supply through the electric connections Nos. 70709/PC and 70708/L for commercial purposes for the last many years and the respondent Ndmc has been charging from the petitioners the electricity charges on commercial rates and that the action of the respondent Ndmc in stopping the electric supply on the grounds stated in the notice dt. 20.7.87 is not valid and legal. The counsel referred to para 4(4) of the notification dt. 23.11.59 by the Delhi Administration and contended that the petitioners, in case they were given the opportunity, could have applied to the Lt. Governor for the change of the user of the electric supply from "domestic use" to "commercial or industrial use". The said para 4(4) is : "4. Restriction on consumption of supply. Notwithstanding anything contained in any contract or agreement, no consumer shall, (4) Use a load for purpose other than the purpose for which it was sanctioned in his favor without the permission of the Lt. Governor viz. a load sanctioned for domestic/ comml. purposes shall not be used for lighting or industrial purpose or a load sanctioned for lighting purpose shall not be used for domestic/ commercial or industrial purpose without the the permission of the Lt. Governor."

(5) The counsel further referred to paras 14.12.1 and 14.12.1.1 of the Ndmc and contended that the basement could legally be used for commercial purposes. [In paragraph 6, para 14.12.1.1 is reproduced],

(6) On behalf of the respondent-NDMC it has been contended that the land use provided in the Master Plan for the land in question is residential and, Therefore, para 14.12.1.1 shall not be applicable. The counsel for the Ndmc also produced before us the sanctioned plans and contended that the sanctioned building is only for residential use and the basement could be used for stores only. The counsel further contended that the licensee, that is the Ndmc, had granted the electric connections only for domestic use and the owners/builders could not have allowed the petitioners to use the electricity for commercial purposes and there is a clear violation by the builders/ owners as well as the petitioners of the conditions on which the electricity connections were granted. The counsel further contended that the mere fact that the Ndmc charged the petitioners the commercial rate would not make any difference. The counsel contended that since the petitioners used the electricity for commercial purposes the Ndmc was justified in charging the petitioners at the commercial rate, but this would not amount to the condoning of the misuse by the licensee, or giving a right to the petitioners to continue the misuse .

(7) We have heard the learned counsel for the parties at length. The land use provided in the Master Plan for the land over which the building "Asha Deep" is constructed is residential. The building plans were submitted and sanctioned for purely residential use and the use of the "basement" sanctioned was "stores".

Para 14.12.1 of the Building Bye-laws provides that the construction of the basement shall be allowed by the authority in accordance with the land use and other provisions specified in the Master Plan. The building plans submitted by the builders were for residential purposes and the user of the basement shown was stores. The building plans were sanctioned for these very purposes. Para 14.12.1.1. in our view, applies only where the use, set backs and coverage is not provided in the Master Plan provisions but there also the basement could be used for commercial/office purposes provided the basement is air-conditioned and also fulfilled the other requirements laid down in the subsequent paras of the Bye-laws. We are of the view that para 14.12.1.1 is not applicable in this case and the basement could not be legally used for commercial I industrial purposes.

(8) Admittedly, the electric connections were given for domestic purposes. The petitioners are using the electric connections for commercial purposes. This is clearly in violation of the agreements by which the electric connections were granted to the owners/builders. The mere fact that the petitioners were charged by the Ndmc charges for electricity supply at commercial rates cannot convert the illegal user into legal user or even permissible user. Since the petitioners used the electric supply for commercial purposes they were charged for the electric supply at the commercial rates. This cannot give the petitioners a license for using the electric supply in future for commercial purposes. As regards the reliance placed on para 4(4) of the notification dt. 23.11.59 we are of the view that since the basement cannot be used for commercial purposes even the Lt. (governor cannot under the said para allow the petitioners to use the electricity for commercial or industrial purposes .To allow the petitioners to continue the use of electricity for commercial industrial purposes would be exposing all the families residing in the multi-storeyed building to a great danger and risk. This case clearly shows that for all these years the builders have been illegally using or permitting the use of the basements in residential buildings for commercial purposes and the Ndmc was conniving at this illegal user. It seems, because of a recent fire in a multi-storeyed building which took some lives that the governmental authorities have woken up and started taking action against the unauthorised and illegal user of the electric supply.

(9) We see no reason to interfere. The petitioners can only use the electricity in terms of the license, that is for domestic use ; they are not entitled to the electric supply for "commercial" purposes.