

(2005) 04 DEL CK 0070
In the Delhi High Court
Case No : Criminal M.C. No. 2649 of 2004

Ravi Hasija

APPELLANT

Vs

M.C.D.

RESPONDENT

Date of Decision : 08-04-2005

Acts Referred:

Delhi Municipal Corporation Act, 1957 — Section 347, 461

Citation : (2005) 120 DLT 661

Hon'ble Judges : Manju Goel, J

Bench : Single Bench

Advocate : S.P. Kalra and Sanjay Kalra, for the Appellant; Richa Kapoor, for the Respondent

Final Decision : Allowed

Judgement

Manju Goel, J.—The petitioner has been summoned to stand trial in a case filed by the respondent-Municipal Corporation of Delhi (in short 'MCD')- for offences punishable under Sections 347/461 of Delhi Municipal Corporation Act (in short 'the Act') on the allegations that the petitioner has been using a part of his residential premises at No. E-1, Ajay Enclave, New Delhi for training/teaching in typing, shorthand and computer education which is not permissible in residential premises and constitutes violation of Section 347 of the Act and punishable u/s 461 of the Act. The petitioner contends that the petitioner has been using a small part of the residential premises for a long time without any protest from the respondent and that the activity is done only to the extent permitted by the respondent and hence constitutes no offence. The petitioner seeks quashing of the complaint case which is opposed by the respondent.

2. The petitioner has set up the order of the Executive Engineer(Building), West Zone of the respondent bearing No. D/1480/EE(Pr)/WZ/03 dated 14.11.2003 where the Executive Engineer has considered whether the petitioner has used the premises in contravention of Section 347 of the Act. What has been found by the Executive Engineer is as under:

"7. That the factual matrix of this case is that as per the Layout Plan of the colony the total size of the plot No. E-1, Ajay Enclave is 325 sq. yds. Out of this the Sh. Hasija is occupying half of the total property. The FAR of a property of the size of 325 sq. yds. is 140% which comes out to be 455 sq. yds. 25% of this comes out to 113.75 sq. yds. which is more than 50 sqm. Therefore for the whole of the property No. -E-1, Ajay Enclave professional activities shall be permitted only in an area of 50 sqm. Since Sh. Ravi Hasija is occupying only half of the property, he shall be permitted to use only 25 sqm. area for carrying out professional activities while on inspection of the property he was found using approximately 35 sqm. of area for running his short hand, type writing college.

Since Sh. Ravi Hasija is using more area for running his short hand, type writing college than permitted, the exemption from action for misuse u/s 347 read with section 461 of the DMC Act is not available to him. In view of this it is held that the MCD has rightly initiated prosecution action u/s 347 read with section 461 of the DMC Act against Sh. Ravi Hasija for misusing property No. -E-1, Ajay Enclave, New Delhi."

3. It is quite clear from the above paragraph that MCD considers that 50 sq. meter of the property and plot No. E-1, Ajay Enclave, New Delhi to be the area in which the activity of running training classes in typing, shorthand, etc. can be permitted. It is also clear that the petitioner has been using only 35 sq. meter of the property for running his classes. Therefore, so far as the respondent is concerned there should not have been any ground for objection. The Executive Engineer has, however, gone one step further by saying that the petitioner was owner only of the half of the property and, Therefore, could have used only 25 sq. meters. This stand could not be justified by the learned counsel for the respondent appearing before the MCD. Nor do I find an justification for this view of the Executive Engineer. The respondent is concerned with the extent of the area in that property which can be put to professional use. Since no other part of the property is being used for similar activity the area of 50 sq. meters could be used for the purpose. The area actually being used is only 35 sq. meters and, Therefore, it cannot be said that there has been any violation of Section 347 of the Act. The petitioner, Therefore, could not have been prosecuted or summoned for the offence. The complaint against the petitioner bearing No. 286/03 titled MCD v. Ravi Hasija is quashed.