
(2007) 04 DEL CK 0223
In the Delhi High Court
Case No : Writ Petition (C) 4193 of 1995

Sohan Pal Mittal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-04-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi Development Act, 1957 — Section 12, 14, 29, 29(2), 49

Citation : (2007) 139 DLT 698

Hon'ble Judges : Vikramajit Sen, J; J.P. Singh, J

Bench : Division Bench

Advocate : P.N. Lekhi and Sanjay Gupta, for the Appellant; R. Mohanty, for DDA/ R-3 and R-4 and O.P. Saxena and Shardha Saxena for MCD/R-5 and R-6, for the Respondent

Final Decision : Dismissed

Judgement

J.P. Singh, J.—In these Civil Writ Petitions under Article 226 of the Constitution of India it is prayed that a writ of certiorari or any other writ, order or direction be issued for quashing the complaints and the entire proceedings pending in the Court of Metropolitan Magistrate, Patiala House, New Delhi.

2. We have heard Mr. P.N. Lekhi Sr. Advocate, learned Counsel for the petitioners and Mr. R. Mohanty, Advocate, learned Counsel for Respondents No. 3 and 4 as also Mr. O.P. Saxena, Advocate, learned Counsel for Respondents No. 5 and 6.

3. Perusal of the complaints u/s 14 read with Section 29(2) of the Delhi Development Act, 1957, filed by Delhi Development Authority (DDA), shows that the Petitioners in WP(C) No. 4193/1995 are owners of the property No. A-1, Kirti Nagar, New Delhi and Petitioners in WP(C) No. 2830/2001 are the tenants. It is alleged in the complaints that the owners and tenants have put the property to non-conforming use by permitting running of an office, although the building could be used only for residential purposes according to the master plan/zonal development plan of Zone G-2. It is averred that previous sanction u/s 49 of the

Delhi Development Act had been obtained vide resolution No. 137 dated 15.7.1978, before filing the complaints.

4. On the basis of the said complaints the Petitioners were summoned by the Metropolitan Magistrate and were enlarged on bail, to contest the complaints. Almost immediately thereafter the present Writ Petitions were filed for quashing the criminal complaints and the summoning orders. The proceedings were got stayed. As the Petitions are pending since long we are not going into the question of maintainability of the Petitions under Article 226 of the Constitution of India and have heard the matters on merits.

5. Learned Counsel for the Petitioners has contended that the DDA could not initiate prosecution because the Municipal Corporation of Delhi with the consent and knowledge of Delhi Development Authority allowed the commercial activities in the area and even the Master Plan allows commercial use, Therefore the complaints are malafide and malicious and the proceedings are void-ab-initio.

6. It is stated that the Petitioners in WP(C) No. 4193/1995 are the bonafide purchasers and the property was already being used by the United Insurance Company [(WP(C) No. 2830/2001] for its office, as tenants. The said tenants attorney to the Petitioners in WP(C) No. 4193/1995. It is argued that the adjoining properties are also being used for commercial purposes. Therefore, the Petitioners' property could not be singled out for prosecution. Moreover, even the Master Plan and Zonal Development plan are not clear about the user and as per Resolutions the Government has barred the prosecutions and in any case the user for office is allowed. In the Petitions the disputed property has been mentioned as A-1, Tagore Market, Kirti Nagar, New Delhi at several places. There is reference to provisions of the Master Plan-1962 and the users enumerated therein; resolutions of the Municipal Corporation of Delhi regarding the Tagore Market, Kirti Nagar, New Delhi and powers of the DDA and the MCD to permit user on ad hoc basis until the Zonal Development Plan is prepared are also detailed in the Petition. There is reference to the Master Plan-2001 and powers of the DDA under various provisions of the DDA Act. Some Gazette Notifications of the Ministry of Urban Development are narrated. It is pleaded that there are modifications in Master Plan-1962. A question as to whether the Master Plan-2001 modifies, alters or supercedes Master Plan, 1962 has been raised. Copies of several provisions of Master Plan and related site plans have been filed on record by both sides.

7. In the counter affidavits by Respondents No. 3 and 4 it is stated that prosecution was initiated after sanction from the Competent Authority. It is averred that the premises A-1, Kirti Nagar was being misused and is not recognized as commercial. All the allegations in the Petitions are denied. It is stated that Banks, Nursing Homes and Guest Houses were allowed in public interest in the residential areas but only after obtaining permission from the DDA. Offices were not allowed.

8. It is further stated that the property in question was not in the market but is situated in the residential colony and can be used for residential purposes only. It is pleaded that Master Plan-2001 was notified on 12 August, 1990 and was to be followed from that date and the complaint was filed in October, 1994. It is averred that the cited Resolutions of different Authorities and the provisions of the Master Plans are not applicable to the property in question. It is disputed that any Resolution of the MCD is binding on the Delhi Development Authority. It is argued that both are independent Authorities and as per provisions of Section 53(A) and Section 12 of the Delhi Development Act the Local Authorities cannot make Rules and pass Regulations to undo the provisions of the Delhi Development Act.

9. Even an additional affidavit was filed by the DDA on our directions, where it has been clarified that property No. A-1, Kirti Nagar was located "along" the commercial road but it is reasserted that the use of A-1, Kirti Nagar as an office was in contravention of the land use and the other adjoining properties where there is violation of the DDA Act are also being proceeded against in accordance with law.

10. Needless to say that under Article 226 of the Constitution of India, we cannot deeply probe the various disputable facts that have arisen in this matter viz. whether it is a market or residential colony, whether every structure on the road has been permitted commercial activity on every floor, whether the MCD resolutions can have overriding effect on the Delhi Development Act and whether there is violation of Section 14 read with Section 29 of the Delhi Development Act. All these are matters of evidence to be recorded by the Trial Court on oath and the witnesses are to be cross examined in accordance with law. Even if a large number of adjoining properties owners and residents have converted their properties from residential to commercial, the case of the respondents is that it has been done in violation of law. In such facts and circumstances the High Court under Article 226 of the Constitution of India can not permit commercial user to the petitioners, without a proper adjudication on the disputed facts and other mixed questions of facts and law. In our view this matter requires complete trial.

11. Considering all the facts and circumstances, we find no merits in these Petitions. The same are, Therefore, dismissed.

12. Nothing said herein will tantamount to expression of opinion on the merits of the case.

13. Parties are directed to appear before the trial court on 23.4.007. The trial court is directed to dispose of the matter within six months.