
(2011) 01 DEL CK 0125
In the Delhi High Court
Case No : LPA 823 of 2010

Union of India (UOI)

APPELLANT

Vs

Harish Uppal

RESPONDENT

Date of Decision : 20-01-2011

Acts Referred:

Citation : (2011) 2 AD 332 : (2011) 179 DLT 707

Hon'ble Judges : Dipak Misra, C.J; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Jatan Singh, CGSC, for the Appellant; Party-in-Person, for the Respondent

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.—Union of India, Land and Development Office, assails the order dated 20th July, 2010 passed by the learned Single Judge quashing their notice dated 15th July, 2009. By the said notice, the Respondent-Dr. Harish Uppal was informed that he had not stopped the misuse of the basement in 20, Todarmal Road, New Delhi (property, for short) as required vide earlier office letter dated 4th/12th September, 2008. The Respondent was given opportunity to get the breach regularized, failing which the Appellant would re-enter the property for violation of the terms of the lease deed.

2. The letter dated 4th/12th September, 2008 alleges that the Respondent was using 496 sq.fts. of the basement as an office of an Advocate. The contention of the Respondent was/is that he has not violated the terms of the lease deed as there was no misuse of the basement. The said contention of the Respondent has been accepted by the learned single Judge.

3. Learned Single Judge has referred to the office order dated 22nd March, 1983, the relevant portion of which stipulates :

(a) Rooms being used for professional work by the occupants such as Doctors, Hakims and voids, Lawyers, Architects, Engineers, Chartered Accountants,

Business Consultants and journalists when it is committed by the occupants of the whole or the major part of the residential premises and the portion is being used for professional work does not exceed 30% of the covered area or 500sq. ft. whichever is less. These are effective from 17.6.1982.

4. Learned Counsel for the Appellant has submitted that the office order does not apply to buildings in the Lateen's Bungalow Zone area. Albeit, this is not stated in the office order or circular. There is no office order or circular clarifying such position.

5. Learned Counsel for the Appellant submitted that the office order refers to "rooms" and does not refer to the "basement". This contention is not acceptable as under the Master Plan of Delhi 2021 w.e.f. 7th February, 2007 under Clause 15.8.iv existing professional activity can continue. The said clause reads as under:

15.8. PROFESSIONAL ACTIVITY Subject to the general terms and conditions specified in para 15.4, professional activity is permissible in plotted development and group housing under the following specific conditions:

i. Professional activities shall mean those activities involving services based on professional skills namely Doctor, Lawyer, Architect, and Chartered Accountant, Company Secretary, Cost and Works Accountant, Engineer, Town Planner, Media professionals and Documentary Film maker.

ii. In group housing, and plotted development with multiple dwelling units, professional activity shall be permitted on any floor subject to maximum of 50% of the permissible or sanctioned FAR whichever is less of each dwelling unit.

iii. In the case of plotted development with single dwelling unit, professional activity shall be permissible on any one floor only, but restricted to less than 50% of the permissible or sanctioned FAR whichever is less on that plot.

iv. Existing professional activity in basements may continue in plotted development, subject to relevant provisions of Building bye laws, structural safety norms and fire safety clearance. In case the use of Basement for professional activity leads to exceeding the permissible FAR on the plot, such FAR in excess shall be used subject to payment of appropriate charges prescribed with the approval of Government.

6. Learned single Judge in the impugned order has specifically referred to order dated 27th September, 1996 passed in C.M. (M) No. 143/1999 titled Harish Uppal v. NDMC. In the said order relying upon Hiralal Kapur Vs. Prabhu Choudhury, and with reference to NDMC guidelines/directions, it was held that basement to the extent of 500 square feet can be used as a residential office by a professional who is residing in the same house, subject to certain conditions. NDMC was accordingly directed to provide an electricity connection. The Appellant was not a party to the said litigation but NDMC was. Building bye law are framed by NDMC and implemented by them. The question was whether there

was misuse or violation of the building bye laws and the Master Plan. The question was answered against NDMC and in favor of the Respondent for the reasons stated in the order dated 27th September, 1996.

7. Learned Counsel for the Appellant has submitted that Clause 15.8 of the Master Plan of Delhi 2021 is not applicable to Lateen's Bungalow Zone in view of Clause 15.3.2.5. The said clause reads:

5. In respect of colonies falling in NDMC area Excluding Lateen's Bungalow Zone, government housing, institutional and staff housing of public and private agencies and buildings/precincts listed by the Heritage Conservation Committee, existing mixed use streets/stretchers will be notified by NDMC. Future notification of mixed use streets/stretchers will be done on a field level survey to assess the community needs, environmental impact and traffic circulation/adequate parking and in consultation with Residents Welfare Associations concerned.

8. Lateen's Bungalow Zone etc. are excluded from the said concessions but the aforesaid clause relates to mixed use streets and stretches and protects existing mixed use streets and stretches notified by NDMC and not to a particular building or plotted development. It further stipulates that future notification of mixed use streets and stretches will be done on field level survey while keeping in mind the conditions stipulated therein. Here we are not concerned with mixed use streets/stretchers but whether there is any misuse when a professional has an office at the place of his residence within 500 sq.ft.? This aspect is specifically dealt with in Clause 15.8 of the Master Plan, quoted above. Clause 15.8 is subject to the conditions mentioned in Clause 15.4. It is not alleged that there is violation of Clause 15.4. The existing professional activity is protected in Clause 15.8.iv subject to certain condition being satisfied. The notice dated 15th July, 2009 or the earlier notice dated 4th/12th September, 2008 did not state or stipulate that conditions mentioned in Clause 15.8.iv are not satisfied.

9. In these circumstances, we do not find any merit in the present appeal and the same is dismissed. No order as to costs.