

(1980) 12 DEL CK 0010

Delhi High Court

Case No: Criminal Miscellaneous (Main) Appeal No. 112 of 1980

Emkay Exporters (P.) Ltd. and
Another

APPELLANT

Vs

Delhi Development Authority
and Another

RESPONDENT

Date of Decision: Dec. 18, 1980

Citation: (1981) 19 DLT 229 : (1981) RLR 250

Hon'ble Judges: Charanjit Talwar, J

Bench: Single Bench

Advocate: G.S. Vohra, M.S. Vohra, Keshav Dayal and R. Dayal, for the Appellant;

Judgement

Charaujit Talwar, J.

(1) M/S. Emkay Exporters (P.) Ltd. and its Managing Director Shri V. Bhaskaran have filed this petition u/s 482 of the Code of Criminal Procedure challenging the legality of the order passed by Shri M. L. Mehta, Metropolitan Magistrate, Delhi, on February 15, 1980, declining their application seeking discharge for an offence u/s 14 read with Section 29(2) of the Delhi Development Act, 1957 (the Act).

(2) The petitioners are being prosecuted by the Delhi Development Authority (hereinafter referred to as "the Authority") offence u/s 14 of the Act on the allegation that premises bearing No. B-55, Greater Kailash-I, New Delhi, are being put to a non-conforming use by them as "an office of the Company whereas the building can only be used for residential purpose as per the Master Plan/Zonal Plan of Delhi.

(3) The facts leading to the prosecution are that the petitioner-Company is carrying on the business of manufacture and export of garments. Its registered office is at B-55, Greater Kailash, New Delhi. This is an admitted fact. The running of the office in the said residential premises in contravention of the Master Plan/Zonal Plan of Delhi, is also not in controversy. The petitioners' case, however, is that the Authority had permitted them to carry on the business at the said premises by imposing

certain conditions which they have fulfilled .They were required to deposit a sum of Rs. 10,000.00 with the Authority with an undertaking to the effect that they would stop the misuse as soon as a commercial plot was allotted to them by either of the Authorizes .namely, Delhi Development Authority (DDA)/ New Okhla Industrial Development Area (NOIDA), and the Delhi State Industrial Development Corporation Ltd. (DSTDC), Accordingly, the petitioners had applied to the Authority on April 15, 1976, for an allotment of an industrial plot vide Annexure "C". In reply they received a letter from Dsidc that the Company has been selected as an Entrepreneur and were being considered for allotment of the shed. They were asked to deposit certain amounts, which they have done. Thereafter, the Authority asked the petitioners to give an undertaking that the amount of Rs. 10.000.00 which they had deposited would be liable to be forfeited if they did not shift to a conforming area after the sought turn accommodation was made available to them by the D.D.A. or Noida vide Annexure "F". The undertaking asked for has also been furnished by the petitioners to the Authority.

(4) It is the admitted case that so far no industrial plot or shed has been allotted to the petitioners. The grievance of the petitioners is that in spite of their furnishing the undertaking and complying with the other terms laid down by the Authority, the petitioners have been prosecuted for an offence u/s 14 of the Act. It is urged that the offence, if any, is deemed to have been compounded by the Authority u/s 34 of the Act. It is contended that the Authority is estopped from filing the complaint till such time commercial plot is allotted to the petitioners.

(5) The respondent-Authority in its counter affidavit in opposition to the petition has raised a preliminary objection to the maintainability of the petition. It is stated that it raises disputed questions of facts which can only be adjudicated upon by the trial Court. It is urged that in exercise of its inherent jurisdiction this Court ought not to quash the proceedings. The facts alleged in the petition are, however, admitted It is admitted that the conditions imposed on the petitioners have been complied with. It is further admitted that Rs. 10,000.00 deposited by them with the Authority by way of security continue to be retained by it. The preliminary objection urged has thus no force, as on facts no dispute has been raised.

(6) On merits its case is that after the deposit of the amount and the undertaking furnished by the petitioners, the Authority had given a public notice to all those who were using the premises for non-conforming purposes to shift from those premises within a period of 60 days starting from May 13 and 14, 1978, the dates on which the advertisement by the Authority was published in the newspapers. A copy of the advertisement has been annexed with the counter-affidavit. Paragraph 2 of that advertisement has a bearing on the decision of the present petition. It reads :

" IT has been observed that the concerned industrial units in nonconforming areas have either not paid the demanded premium and/or have not availed the allotment of plots/sheds offered to them by Delhi Development Authority cr Noida and they

have failed to shift to conforming areas. It has, Therefore, become necessary to warn all commercial and industrial units through this advertisement to refrain from putting any land and building to a non-conforming use. All such non-conforming users, units, who had applied for allotment of plots /sheds to DDA/NOIDA, and also those units; which did not get themselves registered or failed to deposit the demanded premium by the stipulated date are all requested to make their own alternative arrangements to shift to any conforming areas and premises within a period of 60 days from the date of this advertisement. On the expiry of the said period they shall render themselves liable to legal action u/s 14 read with Section 29 of the Delhi Development Act, 1957 "

(7) The contention of the Authority is that by publishing the above advertisement they had warned all the industrial units, which were carrying on their commercial activity in non-conforming areas to make alternative arrangements by shifting to any conforming area. For this purpose 60 days- time had been granted. According to the Authority, the petitioners, who have admittedly an office in a residential premises, are covered by the said advertisement. After the expiry of grace period of 60 days, the present protection under the Act was launched against them. In view of the revocation of the permission already granted, the complaint filed against the petitioners is valid and within jurisdiction. The central idea of the advertisement was that the industrial units situate in non-conforming areas, which had either not paid the demanded premium and/or had not availed the allotment of the plots/sheds offered to them by the Authority/NOIDA were put on notice to shift to conforming area within 60 days of the advertisement.

(8) The petitioners, prima facie, are not covered in that category of industrial units. It is admitted that they had paid the demanded premium; they had sought for the allotment of plots/sheds which had not yet been made available to them; they had even given an undertaking that the amount of Rs. 10,000.00 deposited by them by way Of security would be forfeited if they failed to shift to a conforming area whenever allotment was made to them.

(9) Mr. Keshav Dayal, however, submits that even those non-conforming users, who had applied for allotment of plots/sheds to the D.D.A./ Noida were also covered by the said notification. He emphasised that the sentence in paragraph 2 : "All such non-conforming users, units, who had applied for allotment of plots/sheds to the D.D.A./NOIDA" is wide enough to cover the cases of all the industrial units including the petitioners. I do not agree. The sentence is being read out of context. Only those units or industrial concerns were being warned to shift which had either not paid the demanded premium and/or had not availed of the allotment made to them although they had applied for it. In my view, the public notice cannot be applicable to the petitioners who have admittedly paid the premium but had not yet been allotted a plot/shed.

(10) The permission granted to the petitioners was that they would continue to use the premises as an office till such time they are allotted a commercial plot/shed. As noticed above, for that purpose two undertakings from the petitioners have been taken. It is the admitted case that the amount of Rs. 10,000.00 deposited by them by way of security has been retained by the Authority. It appears from letter No. MK/I/R/P/76/425, dated November 17, 1976 (Annexure "G" to the petition) that the petitioners have also deposited amounts towards the price of shed. Under the circumstances and the facts of this case, the contention of the petitioners that the offence is deemed to have been compounded, appears to be valid. The Authority on the strength of the said advertisement cannot be permitted to urge that the said permission, the grant of which was within its jurisdiction, automatically stood revoked.

(11) I am of the view that the present prosecution is an abuse of the process of the Court. It is well-settled that it is the duty of the High Court in such a case to exercise its inherent jurisdiction and quash the proceedings, (see [Raj Kapoor and Others Vs. State and Others](#),). I accordingly hold that the complaint filed by the D.D.A. against the petitioners u/s 14 read with Section 29(2) of the Act, is illegal. I, Therefore, quash the same and allow this petition.