

The Delhi Development Authority New Delhi

Vs

Smt. Lila D. Bhagat and Others

The Delhi Development Authority

Vs

Sardari Lal and The State

The Delhi Development Authority

Vs

R. S. Bajwa (2) The State

Civil Appeals Nos. 81-85 of 1974 and Criminal Appeals Nos. 329 and 330 of 1974

(CJI A. N. Ry, K. K. Mathew, N. L. Untwalia JJ)

19.11.1974

JUDGMENT

UNTWALIA, J. -

1. These five civil appeals and the two criminal appeals have been heard together and are being disposed of by a common judgment as the points involved in them are identical.

2. The various respondents in these appeals were being prosecuted by the Delhi Development Authority - hereinafter called the Authority - constituted under the Delhi Development Act, 1957 - hereinafter referred to as the Development Act, under Section 29(2) of the said Act. Large number of such prosecutions were started against various persons owning land and buildings in the different areas of Delhi for the alleged violation of Section 14 of the Development Act. Some of the persons prosecuted challenged the legality of the prosecution by filing writ petitions and some by filing criminal petitions for the quashing of the conviction or the prosecution. One writ petition being Writ Petition No. 728 of 1970 was disposed of by a Division Bench of the Delhi High Court consisting of Hardy and Deshpande, JJ., by their judgment reported in the case of N. K. Vasuraj v. Delhi Development Authority (ILR (1971) 2 Delhi 21). The view taken in the case was :

It is contended that no prosecution could be filed before the zonal plans in respect of the zones in which the premises are situated come into force. But the reply is that Section 14 of the Act applies "after the coming into operation of any of the plans". Therefore, as the Master Plan has come into operation and the user is contrary to the Master Plan, the prosecutions are legal even though no zonal plans have yet been framed for these zones.

3. After the decision aforesaid a number of other writ petitions were filed. Five of these came up for hearing by a Full Bench of the Delhi High Court consisting of Andley, C.J., Tatachari and Shanker,

JJ. The Bench has allowed the Writ applications and issued a writ of mandamus against the Authority from prosecuting the criminal prosecutions against the respondents which were pending before a Judicial Magistrate at Delhi. The Magistrate has also been restrained from proceeding with the cases. The five civil appeals are directed from the judgment and order dated December 3, 1973 of the Full Bench of the Delhi High Court.

4. Following the Full Bench decision aforesaid Criminal Revision 386 of 1973 was allowed by a learned Single Judge by his order dated January 7, 1974 and the conviction of the respondent in Criminal Appeal No. 330 of 1974 which arises from the said order was quashed. In the criminal miscellaneous case giving rise to Criminal Appeal No. 329 of 1974, another learned Judge of the Delhi High Court sitting singly quashed the criminal proceedings against the respondent in the said appeal by his order dated December 19, 1973, following the decision of the Full Bench.

5. In the beginning of the judgment, learned Judges constituting the Full Bench have remarked :

Various other questions have been raised in these petitions which appear to us to be questions of fact including the question whether the user in the case of any particular building is residential or non-residential either wholly or in part. We are not going into these questions of fact. We are determining these writ petitions on the assumption that the actual user is not residential. The question is whether such user is actionable under the Development Act on the ground that it is otherwise than in conformity with the Master Plan which is in force.

Preliminary objection raised on behalf of the Authority to the maintainability of the writ petitions was overruled. Various provisions of the Development Act have been referred to in the judgment of the High Court and the conclusions arrive date are the following :

1. it follows that the Master Plan may provide not only for user of land as distinguished from that of building in the various zones but also for the user of building on such land.

2. It seems to us on a perusal of Section 8 of the Development Act that in reality it is the domain of the Zonal Development Plans to provide for the uses to which buildings in a zone or in an area in a zone or upon the side in an area in a zone may be put.

3. Master Plan has been published and is in operation in various zones since September 1, 1962 but the respective Zonal Development Plans had not come into operation.

4. Section 14 would be attracted on coming into operation of the Master Plan as well as the zonal Development Plans or any of them.

5. In view of the use of both the words "land" and "building" with the word "or" between them, we are driven to the conclusion that "land" in this section must mean only land and not land and the building thereon in the sense of the definition and building must mean only building as distinguished from land.

6. The learned Judges then proceeded to consider whether as a matter of interpretation of and on reading the Master Plan it could be held that it prescribes particular use of a building belonging to any of the respondents. In other words, whether the Master Plan at all has prescribed a use for building in the zones concerned in the various cases. On a consideration of the Master Plan the finding recorded is in the following terms :

We do think that either by reason of the provisions regarding uses in use zone mentioned at page 48 onwards of the Master Plan or the land use plan annexed to it, it is not possible to say that the uses of any building as distinguished from land in any zone or of the sites of such buildings have been specified. Therefore, the respondents cannot say with respect to a particular building or group of buildings in a zone that such and such is the user thereof as specified by the Master Plan.

The Bench categorically held that the Master Plan which was produced before it had not specified the user of a building as distinguished from land; the user of building is to be shown in the Zonal Development Plans by indicating the sites of such buildings. In this view of the matter the prosecutions launched against the respondents have been quashed. The Authority has preferred these appeals on grant of special leave by this Court.

7. We do not propose to discuss or decide the correctness or incorrectness of the views of the High Court on the various points involved in these cases as in our opinion for reasons to be stated hereinafter the prosecutions against the respondents ought not to have been quashed in exercise of the writ or criminal revision jurisdiction of the High Court. In an appropriate case it may be, rather, is, permissible to protect a person from illegal and vexatious prosecution by grant of an appropriate writ or in exercise of the inherent or revisional powers of the High Court. But these are not cases of that type.

8. We shall read here Section 14 of the Development Act. It runs as follows :

After the coming into operation of any of the plans in a zone no person shall use or permit to be used any land or building in that zone otherwise than on conformity with such plan :

Provided that it shall be lawful to continue to use upon such terms and conditions as may be prescribed by regulations made in this behalf any land or building for the purpose and to the extent for and to which it is being used upon the date on which such plan comes into force.

9. The High Court has expressed the view, and it seems to us correctly too, that the inhibition contained in Section 14 comes into play after the coming into operation of any of the plans - in these cases - the Master Plan. On consideration of the other provisions of the Development Act it seems to have rightly opined that the Master Plan may provide not only for user of land as distinguished from building in the various zones but also for the user of building on such lands. Since both the words viz. "land" and "building" have been used in Section 14 it was an exercise in vain to find that the "land" in the context does not include "building". Whether word "building" also has been used in the section, no person could use or permit to be used any building in the zone in which the Master Plan had come into operation otherwise than in conformity with such plan. If a case was covered by the provisio of Section 14 of the Development Act, the matter was different. The crucial question for determination in all the criminal cases therefore was whether the Master Plan had prescribed any use for the buildings in question. In our opinion the High Court instead of leaving this matter to be decided by the criminal court unjustifiably and illegally, on the facts and in the circumstances of the cases, took upon itself the task of holding on interpretation of and on reading the Master Plan that it had not specified any use of building as distinguished from land. This view of the High Court was strenuously combated, on behalf of the appellant Authority by its learned Counsel Dr. L. M. Singhvi. Mr. V. S. Desai, learned Counsel for the respondents and also learned Counsel for the intervener - Bank - endeavoured to support the decision of the High Court in that regard. We, however, did not feel persuaded to examine for ourselves as to which of the rival contentions was correct. We must not be understood to have expressed any opinion of ours in that

regard one way or the other.

10. We, however, emphasise that largely it was a question of fact in each case whether the Master Plan had specified a particular use of a particular building and whether the person prosecuted had incurred the penal liability under Section 29(2) of the Development Act for the alleged violation of the law contained in Section 14. It may be that the determination of the question as to whether the Master Plan has specified a particular use of a particular building will largely depend upon the interpretation and reading of the Master Plan. But to arrive at a correct conclusion various other facts and circumstances will have to be taken into consideration. It was neither expedient nor possible for the High Court or this Court to arrive at a definite conclusion one way or the other on the reading and interpretation of the Master Plan alone. It was primarily and essentially within the domain of the criminal court where the prosecutions were pending to arrive at its own conclusion on appreciation of the entire evidence placed before it. It is, no doubt, true that the onus squarely is on the prosecution to bring home the charge to the accused by proving all that would be required to be proved for establishing the guilt under Section 29(2) of the Development Act. The persons prosecuted will undoubtedly have adequate opportunities of defending themselves and to show that ingredients which were necessary to be proved and established by the prosecution had not been so proved or established.

11. For the reasons stated above, we allow these appeals, quash the judgment and orders of the High Court and direct that the prosecutions against the accused respondents shall be proceeded with and brought to conclusion in accordance with law. We shall make no order as to costs.

ORDER.

By setting aside the judgment of the High Court in Criminal Appeal No. 200 of 1974, we meant not only to set aside the judgment of acquittal passed by the High Court but also the judgments of the Courts below and desired the criminal case to go back to the trial Court for fresh trial of respondent No. 1, namely, R. S. Bajwa, in the light of this judgment.

</html