

SMT. MUKUL RANI VARSHNEI AND ORS.
v.
DELHI DEVELOPMENT AUTHORITY AND ANR.

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SEPTEMBER 19, 1995

[A.S. ANAND AND M.K. MUKHERJEE, JJ.]

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Delhi Development Act-1957 :

Ss.14, 29(2)—Property let out—Tenant putting it to commercial use—DDA granting permission and extending upto a point of time—Later issuing show cause notice to owner—Launching of prosecution—Owners convicted—Upheld in appeal and revision—Held, in the absence of oral or documentary evidence, conviction could not have been recorded—Conviction and sentence set aside.

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The appellants let out its property and the tenants applied to DDA for permission for using the property for commercial purposes, known as non-conforming purpose. Permission was granted and extended from time to time. In January, 1983, appellants received a notice from DDA asking them to show cause as to why they should not be prosecuted for violating S.14 of the Delhi Development Act. 1957 on the ground that the appellants had permitted the tenant to use the property in contravention of the provisions of the Master Plan and the Zonal Development Plan of Delhi. Appellants replied that they had not given any permission to the tenants to use the property for non-confirming purposes. Thereafter DDA asked the appellants to stop the tenant from misusing the property within 15 days, failing which prosecution under S.29(2) would be launched against the appellants. Appellants replied reiterating their earlier stand. They also sent a notice to the tenant through their lawyer, calling upon it to immediately stop the commercial use of the property.

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DDA launched a prosecution against the appellants for violation of S.14 of the Act, punishable under S.29(2) of the Act. The appellants were convicted and a fine of Rs. 1500 on each of the four appellants was imposed. Their appeal and subsequent revision petition stood dismissed. Hence this appeal.

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Allowing the appeal and setting aside the conviction and sentence,

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A this Court

HELD : 1.1. From a bare reading of Section 14 of the Delhi Development Act, 1957 it is obvious that a person can be said to violate the Plan, if he *uses or permits to be used* the property otherwise than in conformity with the Master/Zonal Plan. The allegations against the appellants is that they had permitted the tenant to use the property for commercial purposes in violation of the Master Plan. [806-C]

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1.2. In the instant case, there is no legal evidence led by the prosecution to show that the appellants had *permitted* the property to be used by the tenant in violation of the Master Plan for non-confirming purposes. The only witness who appeared on behalf of the respondent before the Trial Court in support of their case, viz. the Junior Engineer, DDA, (PW 2) deposed that the tenant had told him that he had been permitted by the appellants to use the property for commercial purposes. This is hearsay evidence and clearly not admissible. The tenant was not examined as a witness in the case. PW2 expressed total ignorance as to whether the tenant was actually using the property as commercial property with the *permission* of the landlord or not. No other oral or documentary evidence was led in support of the allegation against the appellant. Thus the courts below fell in error in convicting the appellants without any legal evidence on the record. [806-D-G]

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 62 of 1991.

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From the Judgment and Order dated 31.1.90 of the Delhi High Court in Crl. Rev. P. No. 246 of 1989.

Sushil Kumar, R.P., Wadhvani and Samir Tandon & Sanjeev Ralli for the Appellants.

Arun Jaithley and Ms. Kamini Jaiswal for the Respondents.

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The following Order of the Court was delivered :

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The appellants let out the property in question to M/s. Tufted Carpets and Woolen industries Limited (subsequently the name of the tenants was changed to M/s. Trans Asia Carpets Ltd.) in July, 1978. The tenants applied for permission to respondent No. 1, for using the said

property for commercial purposes, known as non- conforming purpose, A
 Permission was granted and extended from time to time by respondent No.
 1 till September 1981, though the tenants kept representing to the
 authorities for extension of time to stop the use of the premises for
 commercial purposes. In January, 1983 the appellants received a show
 cause notice dated 3rd December, 1982 from respondent No. 1 asking them
 to show cause as to why they should not be prosecuted for violating Section
 14 of the Delhi Development Act, 1957 (hereinafter referred to as the Act) B
 on the ground that the appellants had *permitted* the tenant-company to use
 the said property in contravention of the provisions of the Master Plan and
 the Zonal Development Plan of Delhi. The appellants replied to the show
 cause notice stating that they had no information that the tenant was using
 the property in contravention of the plan *without permission of respondent* C
No. 1 and asserted that they had not given any permission to the tenants
 to use the property for non- conforming purposes. The appellants were,
 thereafter, asked by respondent No.1 that the tenants should be stopped
 from misusing the property within 15 days from the date of the communica-
 tion, failing which prosecution under Section 29(2) of the Act would be
 launched against the appellants. This communication from respondent
 No.1 is dated 24th March, 1983. The appellants once again through their
 letter dated 12th April 1983, controverted the allegations contained in the
 communication and reiterated what they had stated in the reply to the show
 cause notice. They also, on the same date, through their counsel sent a
 notice to the tenant calling upon it to immediately stop the commercial use
 of the property. While the matter rested thus, prosecution was launched
 against the appellants for violation of Section 14 of the Act punishable
 under Section 29(2) of the Act. The learned Trial Magistrate convicted the
 appellants vide judgment dated 1st April 1985 and imposed a fine of Rs.
 1500 on each of the four appellants. The appellants preferred an appeal
 against their conviction and sentence before the Additional Sessions Judge,
 New Delhi but without any success and their appeals were dismissed on
 17th July 1989. The revision petitions filed by the appellants before the
 High Court were dismissed in limine. By special leave granted by this
 Court, the appellants are before us. D
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We have heard learned counsel for the parties and perused the
 record. Section 14 of the Act provides. :

"14. User of land and buildings in contravention of plans - After H

A 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 in conformity with such plan:

B 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 and 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."

C From a bare reading of the Section, it is obvious that a person can be said to violate the plan, if he *uses* or *permits to be used* the property otherwise than in conformity with the Master/Zonal Plan. The allegations against the appellants is that they had *permitted* the tenant to use the property for commercial purposes in violation of the Master Plan.

D There is no legal evidence led by the prosecution to show that the appellants had *permitted* the property to be used by the tenant in violation of the Master Plan for non-conforming purposes. The only witness who appeared on behalf of the respondent before the Trial Court in support of their case, Shri Shamimudeen, Junior Engineer, DDA, PW2, deposed that the tenant had told him that he had been permitted by the appellants to use the property for commercial purposes. This is hear-say evidence and clearly not admissible. The tenant was not examination as a witness in the case, PW2 expressed total ignorance as to whether the tenant was actually using the property as commercial property with the *permission* of the landlord or not. No other oral or documentary evidence was led in support of the allegation against the appellant. Thus, in the absence of any legal evidence to show that permission had been granted by the appellants to the tenant to use the property in contravention of the Master Plan, no conviction of the appellants could have been recorded by the Trial Court.

G The courts below thus fell in error in convicting the appellants without any legal evidence on the record.

The appeal consequently succeeds. The conviction and sentence of the appellant is set aside and they are hereby acquitted. The fine which had been paid by the appellant shall be refunded to them.