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IN THE HIGH COURT OF DELHI AT NEW DELHI

DATE OF DECISION: DECEMBER 05, 2013

+ CRL.M.C. 2838/2013 & CrI.M.A.10824/2013

KADAM MARKETING LTD. & ANR. Petitioners
Through: Mr. Mohit Mathur, Adv.

versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through: Mr. Rajesh Mahajan, Adv.

**CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA**

J U D G M E N T

: SUNITA GUPTA, J.

1. This is a petition u/s 482 Cr.P.C seeking quashing of CrI. Complaint bearing case No.130/2005 titled as DDA vs. Kadam Marketing Ltd. & Anr., pending in the Court of Mr. Naveen Gupta, learned Metropolitan Magistrate.

2. I have heard Mr. Mohit Mathur, Advocate for the petitioner, and Mr. Rajesh Mahajan, learned counsel for the respondent/DDA. Trial Court record has also been requisitioned.

3. As per the case of the respondent, on 14.01.2003, premises of the petitioner, bearing No.R-868, New Rajinder Nagar, New Delhi was inspected by Mr. Anil Kumar, Junior Engineer, DDA and the office was found to be running at ground floor and in violation of Master Plan of

Delhi which provided for user of the premises for residential purpose only. As such, a complaint was filed against the petitioner/accused. Notice u/s 251 Cr.P.C was served upon the petitioner and the petitioner pleaded “not guilty” and claimed trial. The trial has been concluded and the matter is at the stage of final arguments.

4. It is the case of the petitioner that during the trial proceedings, they came to know that there has been a policy decision taken by Hon’ble Lt.Governor and vide order dated 19.08.2009, direction has been given to the respondent to withdraw all those cases wherein the shop-keepers have regularised their shops by paying the required fees to the authorities. The petitioner also deposited the requisite amount for conversion and regularisation of the premises and the same was duly accepted by the concerned authority. After depositing the amount, the petitioners informed the respondent about the deposit of amount vide letter dated 14.05.2012 and requested the respondent to withdraw the proceedings filed by them, in view of the order of the Lt. Governor, but no reply was received. This fact was also brought to the notice of the Trial Court. Accordingly Assistant Engineer (Enforcement) was summoned who stated that the premises in question does not fall under mixed land use and is still covered under the residential use, therefore, the petitioners are not covered as per the aforesaid order passed by the Lt. Governor. He also filed a site plan and extract of MPD 2021, which stated that only half of the road where the

property of the petitioner is situated is covered under the category of residential land use and rest falls under the mixed land use. Petitioner sought time to verify the said fact and accordingly filed RTI dated 22.03.2013 asking certain questions in regard to the said premises in order to answer the queries raised by learned Trial Court but the petitioners did not receive any reply. It was submitted that keeping in view the fact that the premises fell under mixed land use and requisite charges has been paid by the petitioner, the criminal proceedings filed against the petitioners are liable to be quashed.

5. It was further submitted that the premises of the petitioners are situated on the same road which according to the respondent falls under the mixed land use. Hence the statement given by the respondent that only half of the road falls under mixed land use is totally in violation of the Master Plan-2021 and infringes the right of the petitioner. The submission of the respondent that the premises of the petitioners do not fall under mixed land use is totally wrong and incorrect in view of MPD-2021. As per MPD-2021, the minimum eligibility criteria for any premises under the said category to be used under the mixed land use is that the premises should be situated at a road which is minimum of 9 mt Row for rehabilitation colonies whereas the petitioner no.1 is situated at a road which is of 13.5 mt Row and, therefore, fulfils the minimum criteria of

being covered under mixed land use and, therefore, the complaint is bound to be quashed.

6. Reliance was placed on *State of Karnataka v. Muniswamy and Others*, 1977 SCC (Cri) 404 and *Indian Oil Corporation v. NEPC India Ltd and Others*, (2006) 6 SCC 736.

7. Quashing of the criminal complaint is opposed by learned Standing Counsel for the respondent DDA on the ground that the case is at the stage of final arguments. The plea taken by the petitioners are in the shape of his defences which is a matter of trial. Disputed questions of facts are not required to be adjudicated upon in these proceedings. This Court is not required to see whether the premises in question falls under mixed land use or not. In case the petitioner has not received complete reply in pursuance to the application moved under RTI Act, then complete procedure is provided under the Act itself, which can be resorted to by the petitioner. However rushing to this Court is not tenable and petition is liable to be dismissed.

8. I have given my considerable thoughts to the respective submissions of learned counsel for the parties and have perused the record.

9. By virtue of this petition, the petitioner is seeking quashing of the criminal complaint on the ground of subsequent events that during the pendency of the case, Lt. Governor of Delhi vide order dated 19.08.2009 directed respondent DDA to withdraw all those cases wherein shop-

keepers have regularised their shop by paying the required fees to the authorities. According to the petitioners, they deposited the requisite amount for conversion and regularisation of the premises and thereafter called upon the respondent to withdraw the proceedings but no reply was received. Petitioner has placed on record typed copy of the order, which is to the following effect:-

“L.G. Secretariat has been receiving representations regarding withdrawal of cases from the Court which were registered by DDA against the shopkeepers/commercial establishment prior to notification of mixed land use under MPD-2021. DDA has said that these cases cannot be withdrawn from the Court because cases were filed while earlier MPD was in force.

It has also been brought to the notice of Hon’ble LG that MCD has already initiated process to withdraw Criminal cases where the shopkeepers have got their houses/establishment regularized by paying required fees.

Hon’ble Lt.Governor has directed that DDA should take action as taken by MCD and withdraw the cases from the Court.

Compliance report in this regard be sent within three weeks for information of Hon’ble Lt.Governor.”

10. In order to get benefit of this order, it is incumbent upon the petitioner to prove:

- (i) The premises in question falls under mixed land use under MPD 2021;
- (ii) The petitioners have paid the required fee to regularisation of the premises.

11. According to the petitioner, he has deposited conversion charges with MCD. However, mere payment of conversion charges by itself will

not entitle the petitioner to get the benefit of this order unless the premises are covered within the four corners of the aforesaid order. As per the statement made by the Assistant Engineer before the learned Trial Court on 22.01.2013, the premises in question does not fall under mixed land use and is still covered under the residential use, therefore, the petitioners are not covered by the orders passed by the Lt. Governor. He also deposited a site plan and extract of MPD 2021 showing that only half of the road where the property of the petitioner is situated is covered under the category of residential use, rest falls under mixed land use.

12. It is the case of petitioner that the statement made by the respondent before the Trial Court that the premises of the petitioner does not fall under mixed land use and only half of the road falls under the mixed land use is totally wrong and incorrect inasmuch as, as per Annexure 1 of MPD-2021, the premises of the petitioner falls under the category of rehabilitation colonies and is therefore covered under category 'D' in the categorization of colonies adopted by MCD for unit area method of property tax assessment. It is further submitted that as per MPD-2021, the minimum eligibility criteria for any premises under the said category to be used under the mixed land use, the premises should be situated at a road which is minimum of 9 meter Row for rehabilitation colonies whereas admittedly the petitioner no.1 is situated at a road which is of 13.5 meter Row and therefore fulfils the minimum criteria of being covered in the mixed land

use. He submits that the contention of the respondent that the premises in question does not fall under the mixed land use is entirely false and incorrect as per the MPD-2021 as there used to be a taxi stand at the end of the road within which the shop of the petitioner is situated and therefore, taking the present taxi stand to be a yard stick in order to declare a land use as mixed land use is not correct.

13. This Court in exercise of its power u/s 482 of the Code of Criminal Procedure is not required to embark upon an inquiry as to whether the stand taken by respondent is tenable or not. For the purpose of proceedings under Section 482 of the Code of Criminal Procedure, the allegations made in the complaint have to be taken as correct, and on their face value and if on consideration of the allegations, it appears to the High Court that ingredients of the offence alleged to have been committed by the petitioners are made out and there is no material to show that the prosecution is frivolous or fictitious, it would not be appropriate for it to interfere with the prosecution, in exercise of extraordinary power conferred upon it under Section 482 of the Code of Criminal Procedure. The exercise of jurisdiction envisaged in Section 482 of the Code of Criminal Procedure to quash the complaint being an exception, the petition for quashing needs to be entertained with care and circumspection.

14. In the instant case, if the petitioner is aggrieved by the decision of the respondent whereby they have come to a conclusion that the premises

of the petitioner does not fall under mixed land use, then they can seek the remedy available to them under law but this is not an appropriate forum where this matter can be agitated. Therefore, the reliance placed by him on *State of Karnataka*(supra) does not help him inasmuch as, in that case, it was held that the High Court under its inherent power u/s 482 Cr.P.C can quash the proceedings before the Sessions Judge on the ground of “insufficiency of evidence”. It is not the case of the petitioner that the evidence which has come on record before the Trial Court is insufficient and, therefore, the proceedings cannot be sustained. For the same reason, *Indian Oil Corporation*(supra) does not help him inasmuch as, in that case it was observed that a complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety do no prima facie constitute an offence or make out a case alleged against the accused. As stated above, the petitioner has not challenged the complaint either on the ground that “it does not disclose any offence” or the subsequent proceedings on the ground of “insufficiency of evidence”. In fact the same has been filed in view of the subsequent order passed by Lt. Governor where directions were given to DDA to withdraw the criminal proceedings, subject to the compliance of the conditions mentioned therein. If the case of the petitioner had been covered by the order of the Lt. Governor and despite that the complaint was not withdrawn, then the petitioner could have been aggrieved by the

same. However, he is seeking a declaration that the stand taken by the respondent in not declaring the area where the premises of the petitioner is situated as not covered by mixed land use so as to get benefit of the order as illegal, which cannot be granted in these proceedings. At the cost of repetition, it may be mentioned that the petitioner should seek his remedy available to him under law but for that reason, there is no ground for quashing of the criminal complaint pending before the learned Metropolitan Magistrate.

The petition is accordingly dismissed. Copy of the order along with the Trial Court record be sent back.

**SUNITA GUPTA
(JUDGE)**

DECEMBER 05 , 2013
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