

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.M.C. 2500/2005, CRL.M.C. 2501/2005

April 30, 2007

ARUNA V.KUMAR & ANR. Petitioner
Through Mr. Manoj D. Taneja, Advocate

versus

STATE & ANR. Respondent
Through Mr. O.P. Saxena, APP for State

CORAM:**Mr. Justice S. Ravindra Bhat**

1. Whether reporters of local papers may be allowed to see the judgment.? yes
2. To be referred to the Reporter or not? yes
3. Whether the judgment should be reported in the Digest? yes

Mr. Justice S. Ravindra Bhat (Open Court)**COM. CASE. 263/2003****U/S: 29 (2) DDA ACT**

1. The petitioner claims a quashing order in respect of a complaint filed by the Delhi Development Authority alleging commission of offence under Section 29 of the Delhi Development Act.

2. The complaint of the DDA was that Ms. Aruna V. Kumar was using the premises being a residential flat for unauthorized/commercial purposes. The complaint alleged that the first petitioner Aruna V. Kumar and her daughter (second petitioner) were partners of M/s Aruna V. Kumar & Co. and were

carrying on business/ commercial activities which was impermissible.

3. Despite issuance of notice on the respondents, there has been no appearance in these proceedings by the DDA. Learned counsel relied upon the order of this Court in CW 3425/2003 dated 22.10.03 to say that residents of the locality concerned had filed writ petition levelling allegation that the petitioners were misusing the premises, i. e. B-7, second floor, 12 Shyam Nath Complex, Civil Lines. The Court had directed inspection by the DDA as well as the MCD. The petition was disposed off without requiring either of the statutory authorities to take any action against the petitioner.

4. The relevant part of the order dated 22.10.03 reads as follows:

“Inspection has been carried out both by DDA and MCD and the affidavit of the MCD has been filed in Court which is taken on record.

The affidavit of the MCD states that one of the rooms is being used by respondent Nos. 3 to 5 as their personal office. Photographs have also been filed. It has been stated that under the Master Plan, maximum of 25% of the area or 50 sq. mtrs., whichever is less, can be used for non-residential activity in residential flats and property but the activity should be which does not cause nuisance. It is stated that respondents No. 3 to 5 fall within the parameters of the Master Plan.

The photographs filed by the DDA also show that really speaking only one room is being used as an office though there are files and papers kept on the tables in other rooms.

Respondents No. 3 to 5 on their affidavit have stated that respondent No. 3 is the Honorary Secretary of Delhi Council of Child Welfare and at times personal connected with the same visit the residence of the petitioner and that is why one room is being used as an office. Learned counsel for respondent Nos. 3 to 5 states that the premises are being used and shall be used only in accordance with the Master Plan.

In view of the aforesaid position, I find no reason to pass any further direction in the writ petition especially in view of the statement of learned counsel for respondents No. 3 to 5.

Writ Petition stands disposed of.”

5. It is submitted that since the complaint was filed before the order of this Court, the trial Court ought not to have taken cognizance and that the DDA did not act *bona fide* in proceedings with the complaint. Learned counsel urged that the tenor of the complaint was that the first petitioner was carrying on commercial activity - the DDA could not have said so and pursued with the complaint after having admitted before the Court that the same petitioner was using the premises for a social welfare activity i. e. working as Honorary Secretary to the Council for Child Welfare, Delhi. It was further contended that the first petitioner died during the pendency of the proceedings, and that the description in the complaint, as if the petitioners were partners in a venture carrying on commercial activity, was completely without basis. Counsel relied upon several judgments to say that on the basis of unspecific and vague allegations, the complaint could not have been proceeded with. He submitted that the Magistrate issued the order on a cyclostyled order sheet which shows non-application of mind.

6. The records of CW No. 3425/03 had been called for by the previous order. I have gone through those records. The order as is evident shows that stand of the DDA after inspection of the premises was that it was being used for office purposes, to wit, the office of Honorary Secretary of the Council for Child Welfare. The DDA had revealed its stand that the photographs and materials relied upon by the DDA were that only one room in the premises were being used for the purpose of an office. In any event, there was no question of the same being used for any commercial activity. Equally, the DDA had nowhere stated

that either of the petitioners were members of a firm or carrying on any other activity or business.

7. Having considered the materials on record, it is evident that the complaint was filed in July, 2003 on the basis of a sanction said to have been obtained on 24.07.03. The sanction and the complaint were on the alleged inspection on 04.06.03 carried out by the DDA. Later, however, the DDA reported to the Court that no commercial activity was being carried out but that the petitioner used one room in the premises for a welfare activity. In these circumstances, I am satisfied that the criminal proceedings could not have been pressed in the manner the DDA sought to do. The entire proceedings, from inception were an abuse of process because after having suffered an order on 22.10.03 and allowed that to become final, the DDA was under an obligation to have dropped the matter.

8. The impugned order issuing process also, to my mind, betrays a completely casual and mindless approach. This Court in at least two judgments, namely, *Flex Foods Ltd. -v- Registrar of Companies* 1996 (37) DRJ 60 and also in *Charanjeet -v- DDA & Anr.* 94 (2001) DLT 334 had under-scored the requirement of application of judicial mind to materials and disclosure of such application of mind on the face of the order. It was held that an order to be called one such, should show some semblance of judicial proceeding. Issuance of a cyclostyled order cannot be called a judicial order. Such an order may perhaps be appropriate in administrative proceedings.

9. For the above reasons, this petition has to succeed. It is accordingly allowed. The criminal proceedings in complaint No. 263/2003 dated 30.07.03

titled DDA v- Aruna V. Kumar & Company & Co., pending before the Metropolitan Magistrate are hereby quashed.

S.RAVINDRA BHAT, J

APRIL 30, 2007
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