

(2020) 05 DEL CK 0114

In the Delhi High Court

Case No : Civil Writ Petition No. 2924 Of 2020, Civil Miscellaneous Application
No. 11227 Of 2020

Binay Kumar Mishra

APPELLANT

Vs

Director (R.P. Cell), Delhi Urban Shelter Improvement Board
And Ors

RESPONDENT

Date of Decision : 21-05-2020

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Citation : (2020) 05 DEL CK 0114

Hon'ble Judges : Rajiv Sahai Endlaw, J; Sangita Dhingra Sehgal, J

Bench : Division Bench

Advocate : Kaadambari, Parvinder Chauhan

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J

1. This petition under Articles 226 and 227 of the Constitution of India seeks mandamus to the respondents Delhi Urban Shelter Improvement Board (DUSIB) and its officers, to take back the decision of issuing fresh Notice Inviting Tender (NIT) for the parking site at N-Block, Raghbir Nagar Delhi, without deciding the request of the petitioner for extension of tenure of tender with respect to the said parking site earlier issued in favour of the petitioner and to extend the tenure of the tender earlier issued in favour of the petitioner, on the basis of principle of equity, with enhanced monthly licence fee by 20% as per contract entered into with the petitioner.

2. The petition came up before a Single Judge of this Court first on 19th March, 2020, when the same was ordered to be listed before the Division Bench. Vide order dated 20th March, 2020, notice of the petition as well as of the application for interim relief was directed to be issued and time of three days given for filing counter affidavit and thereafter for filing of rejoinder. The petition though

directed to be listed on 27th March, 2020, was adjourned owing to the working of the Courts being affected in the prevalent COVID-19 situation. The petitioner has filed CM No.11227/2020 for early hearing of the petition, contending that the auction of the subject parking site is scheduled on 22nd May, 2020 and considering that the offices of the Delhi Government have resumed working, is likely to be held and if the subject parking site is auctioned and allocated to another, the same will make the writ petition infructuous.

3. Considering the nature of the urgency, CM No.11227/2020 for early hearing is allowed and we have with consent heard the petition finally.

4. It is the case of the petitioner, (i) that in the auction held on 28th August, 2017 of the subject parking site, the bid of the petitioner being the highest, was accepted and the subject site allotted to the petitioner for a period of two years and five months i.e. up to 31st March, 2020; (ii) that as per the contract signed between the petitioner and the respondents, "the contract can be extended for further period of one year by the CEO, DUSIB, at his sole discretion with 20% enhancement, whose decision shall be final and binding upon the tenderer"; (iii) that the tenure of the tender so allotted to the petitioner was coming near conclusion and as there is a trend in respondent department that tenure of almost all tender for parking site has been extended for one year, therefore the petitioner vide letter dated 10th December, 2019 applied for extension of tenure for one year beyond 31st March, 2020; (iv) the respondents however did not even respond to the said request of the petitioner, inspite of reminders dated 20th February, 2020 and 21st February, 2020 of the petitioner; (v) the petitioner learnt that the respondents, without taking any decision on the request of the petitioner for extension of tenure of tender in his favour and without even responding to the request of the petitioner therefor, had decided to issue fresh NIT and fresh NIT for the said parking site, from 1st April, 2020 to 31st March, 2022 was issued on 28th February, 2020; (vi) the petitioner applied under Right to Information (RTI) Act, 2005 regarding the extension in parking sites granted by the respondents; (vii) in response to the RTI query aforesaid, the petitioner came to know that in almost all parking sites, the respondents were following a trend to extend the tenure of the tender for the parking site; (viii) the respondents being an instrumentality of the State are required to act in a fair, equal and just manner; (ix) the petitioner's security deposit is already lying with the respondents and the petitioner is ready to enhance the monthly licence fee by 20%; and, (x) the petitioner has made the parking sites suitable for parking and has spent money and effort therein.

5. Though the petitioner in the petition has pleaded that from the response to the query made under the RTI Act the petitioner learnt that tenure of tender of all parking sites under the respondents had been extended but a perusal of the said response shows that the respondents thereunder informed the petitioner of extension granted of one year of the earlier tenure of two years, of three parking sites only, on 25th August, 2017 and 30th January, 2018 i.e. more than two to

three years prior to the time when the term of the tender of the petitioner was expiring on 31st March, 2020.

6. The respondents, in their counter affidavit have pleaded (i) that as per the terms of the tender in which the petitioner was the highest bidder and of the contract signed by the petitioner with the respondents, the term for which the parking site was allotted to the petitioner was from 1st October, 2017 to 31st March, 2020; (ii) the parking site was handed over to the petitioner on as is where is basis; (iii) that the request of the petitioner for extension was duly considered by the CEO of DUSIB but who was of the view that since tender for eleven other parking sites had already been approved and was to be floated, the subject site be also put up for fresh tender along with other sites; (iv) that the petitioner has no legal or vested right for extension of the contract; (v) that as per the term of allotment also, extension for one year was in the sole discretion of the CEO of DUSIB whose decision was to be final and binding; (vi) the petitioner is relying upon extensions granted with respect to three sites only and which extensions also were granted long back i.e. of two out of three sites almost three years back in the year 2007 and of the third site more than two years back; (vii) extensions granted with respect to other sites cannot in any manner be a ground for extension to the petitioner and do not create any right in favour of the petitioner for extension; (viii) the contractual period for the three sites with respect where to extension was granted, was for two years only as against the contractual period of two years and five months for the subject parking site in favour of the petitioner; (ix) the earlier minimum reserve price of the said parking site was Rs.1,64,000/- per month and the bid of the petitioner for Rs.1,67,000/- per month was accepted; however considering the potentiality of the subject parking site and its location, in the forthcoming tender the minimum reserve price has been enhanced from Rs.1,64,000/- per month to Rs.3,34,000/- per month; this is in the interest of the Public Exchequer; (x) before so enhancing the minimum reserve price, physical inspection of the subject parking site was carried out and enquiries with respect to minimum reserve price of other adjoining parking sites of Municipal Corporation, DUSIB and others were verified and it was found that the monthly reserve price of other parking sites was much higher; (xi) it was felt that the subject parking site is capable of fetching much more than what the other parking sites in the vicinity were fetching, considering its location; (xii) since the time the tender in which the petitioner was successful, much water has flown; (xiii) enhancement in minimum reserve price of the subject parking site was effected after much consideration; (xiv) fixation of terms and conditions of tender and of the minimum reserve price of any parking site is within the domain of the policy decision of the Government Authority and the petitioner has no locus to challenge the same; (xv) the petitioner even otherwise is bound by the terms of his contract with the respondents and in contractual matters there is no question of any legitimate expectation; and, (xvi) even otherwise the contract of the respondents with the petitioner was determinable even during the term thereof

and the petitioner has no right of specific performance.

7. Though the petitioner has filed rejoinder to the aforesaid counter affidavit but the same was not referred to during the hearing and need to advert thereto is not felt.

8. Though the electronic file pursuant to which today's hearing has been conducted did not contain the counter affidavit, but again, considering the urgency, the matter was passed over and the counter affidavit e-mailed to us.

9. The counsel for the petitioner has contended, (i) that the minimum reserve price for the auction scheduled for tomorrow for the subject parking site has been enhanced by 103%; (ii) there is no justification for such enhancement considering that the subject parking site is situated in a jhuggi jhopri colony; (iii) that the petitioner was the first allottee of the subject parking site and has at his costs and effort developed the same and popularised the same; (iv) that the petitioner for the first six months of allotment in his favour did not even have any income from the subject parking site; (v) that the respondents have not communicated to the petitioner any decision taken on his request for extension of the contract; (vi) though the petitioner does not have any vested right in the subject parking site or in seeking extension but extension of term of allotment of parking sites is a matter of public policy and there is no justification for not granting extension to the petitioner when others have been granted; (vii) that in fact in the NIT scheduled for opening on 22nd May, 2020, as initially drafted, the subject parking site was not even included and has been included subsequently; (viii) that the petitioner apprehends that he is being victimized on account of past litigation with the respondents; (ix) that other three parking sites added to the NIT along with the subject parking site are situated next to a market place and are much better placed than the subject parking site situated next to residences; (x) the list of parking sites pleaded in the counter affidavit is misleading; the parking sites with which the subject parking site is being compared, are not adjacent to the subject parking site and all are located in commercial area, while the subject parking site is located in a residential area; and, (xi) there is no rationale for 103% increase in minimum reserve price.

10. The counsel for the petitioner, in support of her case has referred to (i) Ramana Dayaram Shetty Vs. International Airport Authority of India (1979) 3 SCC 489; (ii) Rudraiah Raju Vs. State of Karnataka MANU/KA/0255/1986 (DB); (iii) M.M. Dinesh Vs. The Union Territory of Pondicherry AIR 2006 Mad 166; (iv) West Bengal State Electricity Board Vs. Patel Engineering Co. Ltd. (2001) 2 SCC 451; (v) A.L. Kalra Vs. Project and Equipment Corporation of India (1984) 3 SCC 316; and, (vi) the judgment of the High Court of Allahabad in Service Bench No.1110/2014 titled Rajendra Singh Vs. State of U.P.

11. We have however enquired from the counsel for the petitioner, whether not it was/is in public interest that maximum return is fetched on a public resource, as the subject parking site is. It was further enquired, how the petitioner has any

locus to challenge the fixation of the minimum reserve price of the subject parking site, especially when the counsel also in her contentions has admitted that the petitioner has no vested right. It was yet further enquired, how a case of unequal treatment being meted out to the petitioner is made out inasmuch as the three parking sites of which reference was given in the petition and referred to in the response to the query under the RTI Act, were not similarly situated as the subject parking site and what may have been done two or three years back does not bind the respondents today, especially if the respondents feel that they are capable of fetching a much higher amount of licence fee per month than the 20% increase over the existing licence site offered by the petitioner. It was further put to the counsel for the petitioner, whether not the proof of correctness of the price envisaged by the respondents is about to be revealed in the bids scheduled for opening tomorrow and if no bid for any higher amount than offered by the petitioner is received, the petitioner would be entitled to continue.

12. The counsel for the respondents, in addition to what is already pleaded in the counter affidavit, also points out that the petitioner has participated in the tender scheduled for opening tomorrow and has been technically qualified. It is also contended that the matter being purely contractual, this petition under Article 226 of the Constitution of India is not maintainable.

13. Having considered the rival contentions, we do not find the petitioner to be entitled to the relief claimed. This petition has been filed only to perpetuate the hold of the petitioner over the subject parking site inspite of term of the contract therefor in favour of the petitioner having expired on

31 st March, 2020. The petitioner already, owing to the prevalent COVID-19 conditions, has continued to operate the subject parking site beyond 31st March, 2020 and if the respondents are able to fetch a higher licence fee therefor, it is in public interest that the same be fetched, rather than accommodating the petitioner with respect thereto at a much lower than market price. In fact the respondents would be violating the public policy, if rather than fetching the maximum price which the subject parking site is capable of fetching, extend the term of contract with the plaintiff therefor, without the plaintiff having any right under the said contract to extension as sought. Though the petitioner in the petition sought to give a colour of discrimination to the action of the respondents, of issuing fresh NIT for the subject parking site while granting renewals with respect to other similarly situated parking sites but the petitioner has utterly failed to make out the said case. Even otherwise we are of the view that merely because the respondents may grant extension with respect to one parking site qua which the assessment of the respondents is that it is incapable of fetching more, would not be a ground for compelling the respondents to grant extension with respect to another parking site also, which indeed in the assessment of the respondents also is capable of fetching a much higher licence fee. Court interference in price fixation is only on a case of mala fide and arbitrariness being established and which has not been done in the present case.

14. There is no merit in the petition. Dismissed.