

(2019) 10 DEL CK 0372

In the Delhi High Court

Case No : Civil Writ Petition No. 11289 Of 2019, Civil Miscellaneous Application No. 46501, 46502 Of 2019

Faith Academy (Recognised Unaided Christian Minortiy Senior Secondary School)

APPELLANT

Vs

North Delhi Municipal Corporation And Ors

RESPONDENT

Date of Decision : 22-10-2019

Acts Referred:

Citation : (2019) 10 DEL CK 0372

Hon'ble Judges : G.S. Sistani, J;Anup Jairam Bhambhani, J

Bench : Division Bench

Advocate : M. Qayam-Ud-Din, Mini Pushkarna, Warisha Farasat, Arjun Pant

Final Decision : Disposed Of

Judgement

G.S.Sistani, J

1. This is the third round of litigation arising out of almost identical facts inter-se the parties. The petitioner is an unaided minority school situated at John L. Dorsey Road, Prasad Nagar, New Delhi.

2. It is claimed that the school is running in two shifts-morning and evening ; has a strength of about 5000 students ; staff of 300, and a building comprising 105 rooms.

3. The bone of contention is that the DDA has issued notice for e-tender for allotment of the parking site in the open area just outside the school provided by DDA, which according to the petitioner, is meant for parking buses and vehicles of staff and parents of the students.

4. Aggrieved by a similar action of respondent No. 1 in issuing a notice for auction of the parking area on the side of the road leading to the petitioner school and the open parking space available in front of two main gates of the petitioner school, which had resulted in traffic congestion and which became a

traffic hazard for students, the petitioner had approached this court in the year 2012 by way of W.P.(C) No. 4260/2012 and interim protection was granted in its favour.

5. Thereafter in the year 2015, when respondent No. 1 was proposing to issue a tender notice for parking on Tank Road, the petitioner being aggrieved thereby on the ground of safety of children, had filed another writ petition being W.P.(C) No. 5277/2015 for quashing the said proposed tender and vide order dated 25.05.2015, while issuing notice in the matter, award of the impugned tender had been stayed.

6. Ms. Pushkarna, learned counsel for the respondent who appears on advance copy submits that, as a matter of fact, vehicles are already being parked in front of the petitioner school in a haphazard way without any supervision. She submits that the main object and purpose of inviting tenders is to ensure that the vehicles are parked in an organized manner.

7. We have heard learned counsel for the parties.

8. In W.P.(C) No. 4260/2012, the following order was passed on 18.07.2012 :

"4. Learned counsel for the petitioner submits that petitioner school is aggrieved by the action of respondent no. 1, by which respondent no.1 has auctioned the parking on the side of the road leading to the petitioner school and the open parking space available in front of two main gates of the petitioner school, which has resulted in traffic congestion and is a hazard for the students. Counsel further submits that footpaths on either side of the petitioner school have also been obstructed by cycle-rikshaws, cycle-vans, cars and other obstructive materials, making it almost difficult for the students and their parents to use the footpaths. Counsel also submits that the parking contractors have also mismanaged the open parking space available in front of both the gates of the school to their own advantage.

5. Issue notice to show cause to the respondents as to why petition be not admitted. Notice be also issued in the application. Ms. Mansi Gupta, Advocate, accepts notice on behalf of respondent no. 1 MCD and Mr. Abhay Raj Varma, Advocate, accepts notice on behalf of respondents no. 2 to 6.

6. Let counter affidavit be filed within two weeks from today. Let rejoinder, if any, be filed within two weeks thereafter. Let a status report be also filed by DCP/Traffic within two weeks from today.

7. Meanwhile, respondents shall ensure that the ingress and egress of the students of petitioner's school and the school buses, upto gates no. 1 and 2 of the school; is not blocked."

9. On 07.01.2013, the following order was passed :

"1. Counter affidavit has not been filed by respondent no. 1 MCD despite time having been granted on 18.7.2012 and 13.9.2012. Let counter affidavit now be

filed by respondent no. 1 within four weeks from today subject to payment of costs of Rs.2000/- to be paid by respondent no. 1 to the petitioner. Rejoinder, if any, be filed within two weeks thereafter.

2. Learned counsel for the petitioner submits that respondent no. 1 has not even bothered to remove the unauthorized encroachments on the footpaths. Respondent no. 1 is directed to inspect the area and ensure that footpaths are clear from all encroachments within two weeks from today.

3. List on 12.4.2013.

4. Interim orders to continue till further orders.

5. DASTI to the parties.

10. We are informed that W.P.(C) No. 4260/2012 is still pending before a learned Single Judge of this court. It is submitted that subsequently, another tender was invited by respondent No.1 and the petitioner approached this court by filing W.P. (C) No. 5277/2015, wherein the following order was passed on 25.05.2015 :

"Issue notice. Notice is accepted by the learned counsel appearing on behalf of the respondent No. 1 as also by learned counsel for respondent No.2, 3 and

6. Notice is also accepted by the learned counsel appearing on behalf of the respondent No. 5. Notice shall go to respondent No. 4.

Renotify on 08.07.2015.

In the meanwhile, if the tender has not been awarded, the same shall not be awarded till further orders from this Court.

In the meanwhile, the respondent Nos. 2 and 3 are directed to ensure that there is free access to the petitioner's school from the road."

11. W.P.(C) No. 5277/2015 stands disposed of by order dated 01.02.2017 which we reproduce below :

" We have heard the counsel for the parties and also persons who wanted to intervene. After hearing everybody, we are of the view that for the convenience of the pedestrians, the wall which has been constructed by the DDA pursuant to our directions given on 14.12.2016 ought to be replaced by a zig-zag opening of a similar kind as shown in the photograph marked as 'A' which has been handed over by Mr Bansal on behalf of the DDA. The same is taken on record. This would be constructed and maintained by the North Delhi Municipal Corporation. We are also making it clear that the said opening shall be used only for passage of pedestrians and shall not be utilized for loading and unloading of commercial goods. The North Delhi Municipal Corporation shall carry out this direction within one week from today.

The writ petition stands disposed of. All pending applications also stand disposed of.

Dasti under the signature of the Court Master."

12. Ms. Pushkarna has contended that the present writ petition is not maintainable, firstly, since the issue sought to be raised is an invitation to tender on identical grounds that are the subject matter of W.P.(C) No. 4260/2012.

13. Learned counsel for the petitioner however submits that the petitioner did not file an application in the pending writ petition since the cause of action is distinct and separate ; and has arisen subsequent to the subject matter of W.P. (C) No. 4260/2012.

14. While we refrain from expressing any opinion on the merits of the matter, we are of the considered view that the present writ petition as filed does not pertain to the terms of the tender but really to the issue as to whether the area outside the petitioner school can at all be auctioned for public parking. This question is already subject matter of W.P.(C) No. 4260/2012.

15. In view of the above, we grant liberty to the petitioner to file a fresh writ petition challenging the terms of the tender issued by respondent No. 1 within a period of ten days from today, which petition would be tagged and listed alongwith W.P.(C) No. 4260/2012.

16. We are informed that the tender is open but not yet awarded. In the circumstances, we direct that further proceedings in the tender would be kept in abeyance for a period of 2 weeks from today.

17. The writ petition and the pending application are disposed of in the above terms.