(2022) 02 DEL CK 0145

In the Delhi High Court

Case No : Civil Writ Petition No. 2067, 2068 Of 2022, Civil Miscellaneous Application No. 5951, 5953 Of 2022

Karambir Singh Khatri APPELLANT

Vs

Delhi Urban Shelter Improvement Board RESPONDENT

Date of Decision : 21-02-2022

Acts Referred:

Citation : (2022) 02 DEL CK 0145

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : Kirti Uppal, Arun Batta, Indira M, Riya Gulati, Ram Kumar

Judgement

V. Kameswar Rao, J

CM APPL. 5951/2022 in W.P.(C) 2067/2022

CM APPL. 5953/2022 in W.P.(C) 2068/2022

1. These applications have been filed seeking a restraint order against the respondent from demanding/recovering the payment of ?4,75,01,672/- (W.P.(C) 2067/2022) and ?2,10,63,888/- (W.P.(C) 2068/2022) from the petitioner and with a further direction that the respondent be restrained from taking any coercive action for non-payment of the aforesaid amounts. It is the submission of Mr. Kirti Uppal, learned Senior Counsel for the petitioner, that the petitioner was awarded two contracts with regard to car parking sites at Shivaji Place, West Delhi, District Centre, Raja Garden, Delhi (W.P.(C) 2067/2022) and G-Block, Jahangir Puri, behind Kusal Cinema (W.P.(C) 2068/2022) on payment of licence fee of ?13,97,108/- and ?5,85,108/- per month, respectively. The possession of both the sites were handed over to the petitioner on July 27, 2019 and August 28, 2019, respectively. According to him, formal agreements with respect to the aforesaid parking sites were executed. Pursuant thereto, as various problems were being faced by the petitioner at the parking sites, he made representations for reduction of the licence fee. The said requests were rejected by the

respondent vide letters dated February 28, 2020 and December 28, 2019, respectively.

2. Mr. Uppal states that it is common knowledge that in March, 2020, the country was hit by COVID-19 resulting incomplete to partial lockdown which is still continuing; which made the petitioner write to the respondent requesting it to reduce the monthly licence fee of the parking sites and not to present for clearance, the post-dated cheques issued by the petitioner. Mr. Uppal by drawing my attention to Clause 18 of the contract, submits that the request made by the petitioner for reduction of licence fee is justified because COVID-19 is a force majeure condition inasmuch as the parking sites remained closed on account of reasons beyond the petitioner’s control. He states communications were made to the respondent to treat the contract as cancelled / frustrated / unenforceable. Unfortunately, without considering the request, the respondent vide letters dated July 23, 2020 and July 08, 2020, demanded the post-dated cheques for the year 2020-2021. In fact, Mr. Uppal submits that immediately thereafter on August 04, 2020, the North Delhi Municipal Corporation had issued an order granting relief to parking contractors for the period starting from March 22, 2020. It is also his submission that similar action was taken by various other statutory bodies. The petitioner did write to the respondent stating that without reduction of licence fee, the post-dated cheques are not payable. He also submits that on November 23, 2020, the Chairman of the respondent organisation had constituted a committee to examine the applications received from various contractors including parking contractors in relation to loss of business due to COVID-19. In terms of deliberations of the committee, it has been conveyed to all the concerned Area Engineers that they were to submit a status report up to December 01, 2020 with regard to whether parking sites are in residential, commercial or mixed areas and whether parking sites were running during the period of lockdown.

3. According to Mr. Uppal, without following the process, the respondent issued show cause notices to the petitioner stating that he has breached Clauses 23, 24 and 25 of the terms and conditions of the contract and directed him to deposit post dated cheques of monthly licence fee, failing which, action was threatened to be initiated against him as per the contract, including cancellation of parking sites, forfeiture of money, damages/blacklisting etc. Mr. Uppal highlighted the fact that notice of a meeting was issued to all contractors with regard to grievances relating to loss of business on account of COVID-19 lockdown. Pursuant thereto, minutes of meeting held on February 10, 2021 were released to all contractors wherein it is stated that the monthly licence fee for the months of April, 2020 to June, 2020 is kept in abeyance temporarily till a decision is taken by the competent authority.

4. According to Mr. Uppal, the licence fee should not have been kept in abeyance but should have been reduced during the said period. In fact, the country was hit by the second wave of COVID-19 resulting in the continuance of the same

situation as was prevailing during the first COVID-19 wave. He states that the respondent, again, unmindful of various requests made by the petitioner issued letters dated June 09, 2021 demanded payments of ?3,91,19,024/- and ?1,75,53,240/- respectively from the petitioner which are double the normal licence fee, for the parking lots for the period between March, 2020 to April, 2021 and February, 2020 to April, 2021, respectively. According to him, these claims are made by the respondent by stating that the request made by the petitioner cannot be acceded to in view of the terms of the contract. Mr. Uppal states the communication also stated, that failure to deposit the amount shall entail cancellation of parking sites, blacklisting, etc. Immediately thereafter, the respondent vide letter dated June 21, 2021 and September 09, 2021, called upon the petitioner to handover the sites, which came as a surprise as it is the case of the petitioner that he is entitled to the reduction of the licence fee. He states the petitioner in his subsequent communications called upon the respondent to withdraw the communications dated June 09, 2021 and June 21, 2021 and grant waiver of monthly licence fee. Not minding the request, the respondent issued letters dated December 14, 2021 and September 01, 2021, respectively, making a demand of ?4,75,01,672/- and ?2,10,63,888/-, respectively as licence fee for the period March, 2020 to July, 2021 and February 2020 to July, 2021, failing which, action like cancellation of contract, blacklisting etc. would be taken. The communications were replied to by the petitioner by asking the respondent to withdraw the same. I must state here that during his argument, Mr. Uppal conceded that the periods of contract with respect to both the sites have expired. He also stated, the amounts claimed by the respondent are overlooking the pleas made by the petitioner in his various communications which have not been considered at all as no response thereto has been received in writing. That apart, amounts up to ?41,50,000/- and ?11,89,000/- with regard to both the contracts are lying with the respondent, which can be adjusted against the licence fee. He states that the respondent must be restrained from taking any coercive action against the petitioner for non-payment of the demands as made vide their letters dated December 14, 2021 and September 01, 2021, respectively.

5. On the other hand, Mr. Ram Kumar, learned counsel for the respondent would submit that, as per his instructions, the respondent shall charge licence fee as per the contract. On the issue of handing over the sites, he states that the concerned Executive Engineers had visited the sites to take possession, but the petitioner did not turn up to hand over the same. He seeks the dismissal of the applications.

6. Having heard the learned counsel for the parties at length, I must state, at this stage, this Court is only considering the interim applications. It is to be seen whether the petitioner has made out a prima facie case and the balance of convenience is in favour of the petitioner and whether irreparable loss would be caused to him if the interim relief is not granted.

7. There is no dispute that the country was affected by COVID-19 pandemic in March, 2020. The second wave of COVID-19 hit the country from April to May, 2021. Clause 18 o the contract on which much reliance has been placed by Mr. Uppal reads as under:-

“18. In case the site is required by the DUSIB i.e. Licensor for its own or public purposes, the Licencee shall have to hand over the vacant possession of the site at once. However, proportionate amount of licence fee for the period of such disuse would be refundable to him. In case the site is required for any particular period for the above purpose or the parking site remains closed on account of reasons beyond his control during the period of contract, a proportionate amount of licence fee for the vacant period may be refunded to him, as per rules, if due or applicable.”

8. His submission is that Clause 18 is a force majeure clause and the situation that arose, i.e., the closure of the parking sites, was due to a reason beyond the control of the petitioner, i.e., COVID-19. During the hearing he had relied upon a note sheet of the respondent furnished to the petitioner under the RTI Act, 2005 to state that it is the view of the department that the stand taken by the petitioner has merit and Clause 18 is a force majeure Clause. In this regard he has drawn my attention to page 39 of the additional documents filed on February 07, 2022.

9. The issue whether the petitioner was entitled to reduction and/or waiver of the licence fee can only be decided after a counter affidavit is filed by the respondent. But the fact remains that the respondent has now raised a claim of ? 4,75,01,672/- and ?2,10,63,888/-, respectively as licence fee for the period ending July, 2021.

10. This Court is of the view that, pending consideration of this issue, to balance the equities, appropriate shall be, the petitioner without prejudice to his rights and contention shall deposit with the respondent an amount of ?1.5 crore, with regard to the contract of Raja Garden and ?1 crore, with regard to the contract of Jahangir Puri within a period of four weeks from today. On such a deposit, no coercive action shall be taken by the respondent for non-payment of the balance amount during the pendency of the writ petition. It is made clear that the deposit of the amounts in terms of this order shall be subject to outcome of the petitions.

11. On the issue of handing over of the sites, appropriate shall be, that the respondent inform the petitioner of the date and time for taking over possession of both the sites and the petitioner shall be available on the sites at such date and time, to hand over the possession thereof to the respondent.

12. With the above, the applications are disposed of.

13. List the matter before the Registrar on April 12, 2022, the date already fixed.

