

(2021) 03 DEL CK 0104

In the Delhi High Court

Case No : Arbitration Petition No. 779 Of 2020

Meena

APPELLANT

Vs

Delhi Transport Infrastructure Development Corporation
Limited

RESPONDENT

Date of Decision : 09-03-2021

Acts Referred:

Citation : (2021) 03 DEL CK 0104

Hon'ble Judges : C. Hari Shankar, J

Bench : Single Bench

Advocate : Rajiv Khosla, Shadan Farasat

Final Decision : Disposed Of

Judgement

C. Hari Shankar, J

1. Mr. Shadan Farasat, learned Counsel appearing for the respondent submits that a reply to this petition may not be necessary, as the respondent is not objecting to the dispute between petitioner and the respondent being referred to arbitration under the aegis of the Delhi International Arbitration Centre (DIAC).

2. The petition sets out the dispute between the parties in sub-paras (a) to (l) of para 7 thereof, which may be reproduced thus:

"a) That the Petitioner was allotted the 1st cluster of 06 Shops in link block, ISBT, Kashmere Gate, Delhi after being declared successful bidder for the same and consequently an agreement to operate a shop/ outlet at I.S.B.T was executed on license basis between the Petitioner and Respondent (Delhi Transport Infrastructure Development Corporation Limited). A copy of the said agreement was notarized on 17.04.2017 and was handed over to the respondent.

b) That the Petitioner deposited the requisite amount along with the security of Rs. 7,92,792/- upon which possession letter in respect of the said shop was also given to the Petitioner on 01.02.2017. However, it is pertinent to mention here

that the actual possession of the said shop was not given to the Petitioner for a long time.

c) That the Petitioner requested the officials of the respondent to give possession of the site immediately upon signing of the possession letter but the officials of respondent adopted deli-[sic] delaying tactics. The Petitioner was not satisfied with the attitude of the officials of the respondent as the agreement to license agreement was for a period of three years starting from 01 Feb 2017 and was to expire on 31 Jan 2020. The Petitioner thereafter met the Managing Director of the Respondent in that regard who was kind enough to direct the officials of DTIDC/ respondent to expedite the handing over possession of the said shops and also assured the Petitioner that the said period will be counted from the date of execution of the agreement between the parties. The agreement was finally signed by the Petitioner on 17.04.2017 and on the same day the actual possession was handed over to the Petitioner.

d) That the Petitioner was however shocked when the officials of the respondent asked the Petitioner to pay monthly license fees w.e.f month of Feb onwards. The Petitioner immediately met the officials and protested in respect of the same as the agreement was not signed by that time and the shops were still under renovation. The agreement to license was finally signed on 17.04.2017 and the main work for selling several items actually started after signing the agreement, however, the Petitioner paid the license fee for the month of January and February 2017, upon assurance that the license fee will be adjusted towards the end of the license period.

e) That the Petitioner believed on the assurances and thereafter kept on working on the shops allotted to her. The Petitioner during the running of the said shop got one more opportunity to fill up the tender of one more space for shop no. MS-01, near entry gate service lane towards the metro station, ISBT, Kashmere Gate, Delhi, (area measuring 30.00 sqft) and was declared successful bidder upon which, a letter of acceptance bearing no. Fno.-DTIDC/2017/-18/ISBT/KG/954/220 dated 25.05.2018 was given to the Petitioner. Consequently, the Petitioner deposited the requisite amount on 01.06.2018 in favor of the Executive director, DTIDC (respondent). Thereafter the officials of the respondent asked the Petitioner vide letter dated 05.06.2018 bearing no. F.No.-DTIDC/2017-18/KG/972/266 to take possession of the site for the said shop and execute the agreement within 7 days of issue of the letter and consequently, possession letter was given on 05.06.2018 itself. However actual possession was not given and the Petitioner was told to wait for some time as the matter is still under consideration at a higher level. Meanwhile, the respondent also sent a bill to pay the monthly license fee in respect of shop no. MS - 01 but as actual physical possession of the site was not handed over, therefore the Petitioner did not make payment of the same unlike the previous allotment in respect of the 1st cluster.

f) That the Petitioner kept on requesting the officials of the respondent to give possession of the site in respect of shop no MS- 01 near entry gate service lane

towards metro station ISBT, Kashmere Gate, Delhi but the officials of the respondent again as usual postponed the same on account of one or other excuse. The Petitioner apprised the same to the officials of the respondent that earlier also in case of allotment of 1st cluster of 06 shops in link block, the Petitioner suffered a lot and waited for quite some time to get the possession and also had to pay the license fee for three months, though the actual work on all these 06 shops of the 1st cluster could start only after signing of the agreement. The Petitioner wrote a letter dated 02.08.2018 requesting the officials of the respondent to give possession of MS- 01 at the earliest, as he had completed all formalities in respect of the said shops on 05.06.2018 but again the officials of the respondent asked the Petitioner to wait for some more time. The Petitioner thereafter received one letter dated 23.08.2018, bearing F No.- DTIDC/ 2017-18/ ISBT/ KG/972/463 from the respondent whereby the Petitioner was informed that due to security reasons, the respondent has decided to cancel the bid in respect of the said shop. The Petitioner was shocked to receive such a letter and vide another letter dated 04.09.2018, requested to the respondent to give an alternative space of the said shop and even apprised about certain shops which were unallotted at that time for giving one of them in lieu of the shop no. MS- 01. The Petitioner did not get any response in respect of same and constrained to send a detailed letter dated 19.09.2018 requesting for allotment of an alternative space on the same pattern which is being adopted in other similar types of cases and mentioned five available unallotted shops for considering any one of them as an alternative space in lieu of shop no MS- 01. But the officials of the respondent instead of giving alternative space for shop no. MS- 01 rather vide letter dated 15.10.2018 bearing F no. DTIDC/2017-18/ KG/972/603 canceled the allotment and also rejected the request for allotment of shop on other location and informed the Petitioner to take back the license fee of 6 months and performance security through account branch.

g) That the Petitioner protested against the cancellation of the shop no MS- 01 without offering space for another shop as was being done in other cases. The Petitioner brought to the notice of the officials of the respondent about a similar case of Ms. Geeta Jeena, where such practice of offering alternative space was adopted vide letter dated 20.03.2018, bearing F No. DTIDC/2017-18/ KG/934/122.

h) That the Petitioner met senior officials of the respondent in the said connection and thereafter the Petitioner was assured that her request for alternative space in lieu of shop no MS- 01 will be considered at the time of expiry of license in respect of 1st cluster of 06 shops in link block by 16th April 2020 however, such assurance was verbal and no letter was given to the Petitioner in respect of the same despite repeated request.

i) That the Petitioner who belongs to the suppressed class had to believe upon the assurances given by the higher officials of the respondent . The Petitioner upon such assurances was constrained to take back the advance license fee and

performance security deposited with the respondent/ DTIDC which was returned after a long time.

j) That the Petitioner took up her case with the officials of the respondent in 1st week of December 2019 to consider her request on the aforesaid lines, to give alternative space in lieu of shop no. MS-01, however instead of considering her genuine request, the Petitioner was shocked to receive a letter dated 24.12.2019 bearing F. No DTIDC 2016-17 /KG/786/1 004, whereby she was asked to vacate possession of shop of 1ST cluster of 06 shops at link Block, ISBT, Kashmiri Gate on 01.02.2020 which was illegal as the period of 3 years from the date of signing the agreement, was to be construed from 17.04.2017 to 16.04.2020 and the said fact was very much in the knowledge of the officials of the respondent, who had categorically assured the Petitioner that the period of license will be reckoned from the date of signing and submitting the agreement, the said date and month will be considered for deciding the period of three years.

k) That the Petitioner met the senior officials of the respondent in that regard who clearly told the Petitioner that they were not in knowledge of any such assurance given by the officials of the respondent as those officials have already been transferred and they would go strictly go by the date mentioned in the document. These officials also did not consider the other request of the Petitioner that she was entitled to alternative space in lieu of the shop no MS- 01, as was assured by the officials of the respondent who unfortunately had been transferred by that time. These officials refused to go through the documents/ papers in respect of the shop no MS-01 which was sufficient to prove that the possession letter as a matter of practice is signed much earlier than the actual date of handing over the possession. These officials also did not consider the other relevant fact that the agreement to license of the 1st cluster shops was signed on 17th April 2017 and therefore under no circumstances, the date of starting the license period could be from 1st Feb 2017. These officials also refused to accept any letter by the Petitioner in that regard and rather threatened to throw all the material of the shop on 1st Feb 2020 if the Petitioner did not vacate the shops. These officials also did not consider the fact that in case the Petitioner was compelled to vacate the shops by 01.02.2020 then the Petitioner will suffer very badly as most of the material was purchased by the Petitioner keeping in view that her license will expire on 16th April 2020. The officials of the respondent thus did not consider the fact that the Petitioner will suffer a huge loss on account of non-fulfillment of the assurances made by erstwhile officials of the Respondent and threaten the Petitioner that in case the Petitioner does not vacate the 1st cluster of 06 shops, then material lying in her shops will be thrown out on the road.

1) That when the Petitioner was going through all this trauma, the officials of the respondent instead of accepting the genuine demand made on the basis of the documents in similar cases as well as assurances given by the previous officials of the respondent to extend the period of license till 16th April 2020 and also

consider allotment of alternative space in lieu of shop no MS-01, sent a demand notice dated 03.01.2020, in order to usurp the security amount of Rs. 7,92,792/- lakhs. The Petitioner protested against the same and asked them as to how at the fag end of the contract, the terms and conditions of the license can be changed but the officials did not pay any heed to it and instead issued tax invoice on 3rd January 2020 wherein additional demand of Rs. 6,13,624 was made which is contrary to the terms and conditions of the license. The Petitioner categorically told the officials of the respondent that water and maintenance charges cannot be increased and the Petitioner is not liable for any water charges as the type of work for which the said kiosk was provided, the same did not require any consumption of water and despite this, the respondent was illegally charging Rs.500/- per month as water charges which under compelled circumstance, the Petitioner was paying, and therefore the Respondent was not entitled to take any further charges towards water or any other account at the time of the return of the security amount. However, the officials of the respondent continued to remain adamant to adjust Rupees 6,13,624/- from the security amount which is illegal, unjust, and arbitrary and is against the terms and conditions of the License Agreement."

3. The petitioner asserts that, in the aforesaid circumstances, she was left with no alternative but to seek arbitration for resolution of the disputes between the parties. Clause H of the agreement between the parties, which provide for arbitration, reads thus:

"Any dispute arising out of, or in connection with this Agreement, failing amicable settlement, shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996. This place of arbitration shall be Delhi/ New Delhi. The language used in the arbitration proceedings shall be English. The Procedure to be followed for the arbitration including the appointment of arbitrator/ arbitral tribunal, the rules of evidence which are to apply shall be in accordance with the Arbitration and Conciliation Act, 1996. The dispute if arises, will be referred to the sole Arbitration, appointed by the Managing Director/Chairman, DTIDC. Any decision or award resulting from arbitration shall be final and binding upon the parties. The parties hereto hereby waive, to extent permitted by law, any right to appeal or to review such awards by any court or tribunal. The parties hereto agree that the arbitral award may be enforced against the parties to the arbitration proceeding or their assets wherever they may be found and that a judgment upon the arbitral award may be entered in any court having jurisdiction thereof The fees and expenses of the arbitrator and all other expenses of the arbitration shall be initially borne and paid by respective parties subject to determination by the arbitrator."

4. The petitioner sent a notice, invoking arbitration, on 18th January, 2020, but there was no response thereto, from the respondent, resulting in the petitioner moving this Court by means of the present petition.

5. Mr. Farasat, as already noted hereinabove, has no objection to the dispute

being referred to arbitration under the aegis of the DIAC. Mr. Khosla is also agreeable to the suggestion.

6. In view thereof, the disputes between the parties are referred to arbitration under the aegis of the DIAC, which would appoint a suitable arbitrator to arbitrate thereon. The arbitration would be carried out in accordance with the rules and procedures of the DIAC and the arbitrator would be entitled to fees according to the schedule of fees maintained by the DIAC.

7. With the aforesaid directions, this petition stands disposed of.