

(2012) 02 DEL CK 0039

In the Delhi High Court

Case No : Writ Petition (C) . 3736 of 2011 and CM No. 2127 of 2012

Ranjeet Jha

APPELLANT

Vs

MCD

RESPONDENT

Date of Decision : 16-02-2012

Acts Referred:

Citation : (2012) 3 AD 748 : (2012) 190 DLT 682

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : B.L. Wali, for the Appellant; Mini Pushkarna, Standing Counsel, MCD., for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.—The petitioner has filed the present petition praying inter alia for issuance of directions to the respondent/MCD to deliver possession of car/scooter parking site at Sukha Ped, Mori Gate allotted to him vide provisional offer letter dated 15.12.2010 at a monthly fee of Rs. 4,26,000/- in terms of the site plan dated 5.4.2006 and not the changed site plan dated 5.10.2010 issued by the respondent/MCD.

2. C.M. No. 2127/2012 is filed by the petitioner praying inter alia for staying the operation of the NIT dated 06.01.2012 and the corrigendum dated 24.01.2012 issued by the respondent/MCD in respect of the bus parking site at Mori Gate.

3. With the consent of the parties, the main writ petition is also taken up for hearing, along with the pending application.

4. While counsel for the petitioner submits that the space for car/scooter parking allotted to the petitioner is set out in a site plan dated 5.4.2006, the said contention is refuted by the learned counsel for the respondent/MCD who states that right from the beginning, the petitioner was well aware of the fact that the space allotted to him for car/scooter parking was not as per site plan dated 5.4.2006, but as per site plan dated 5.10.2010.

5. Having perused the documents placed on record by the parties and upon examining the stands of both sides, it is clear that disputed questions of facts have been raised and the same cannot be a subject matter of adjudication in writ proceedings.

6. After addressing arguments at some length, counsel for the petitioner seeks leave to withdraw the present petition and also the pending application while reserving the right of the petitioner to seek his remedies against the respondent/MCD on the civil side.

7. Leave, as prayed for, is granted. The petition is dismissed as withdrawn alongwith the pending application.

8. While parting with this case, the Court is compelled to observe that the terms and conditions of the NIT floated by the respondent/ MCD for allotment of authorized parking sites in Delhi is completely silent on the aspect of the exact space available at each parking site to be allocated. Condition No. 5 of the NIT placed on record in the present case, refers to the responsibility of the tenderer before offering a bid, and it mentions that the tenderer shall inspect the parking site, which will be given on "as is where is basis" and the applicant may obtain necessary clarification, if any, regarding the same to satisfy himself fully before offering a bid for the same. It is the case of the respondent/MCD here that the exact measurement of space at the site is ordinarily made available to the tenderers at the time when performa applications are given to them for participating in the tender process. However, this fact is not borne out from a perusal of the terms and conditions of the tender documents, thus leaving some scope for ambiguity on this aspect. This ambiguity in itself has consistently been a reason for a spate of litigations between successful bidders and the respondent/MCD on account of disputed measurement of the space available at different sites. The simplest method of obviating any such lingering dispute as to the exact space allocated to a tenderer is to bring the same in public domain, at the stage of floating of the tender, be it by way of displaying/making available a site plan on paper, or in a C.D. or on the website of MCD.

9. Further, the submission of the counsel for the respondent/MCD that a CD is also made available to an applicant at the time when he applies for the tender document, is also not borne out from the terms and conditions of the tender. Condition No. 10 of the tender, which deals with parking details, states that MCD shall supply a map of the space allocated for parking of cars/scooters/motorcycles etc., for the licensee to use the same strictly in accordance with the map. It is not understood why such a map cannot be made available to the tenderer at the time when the performa application is supplied to him by the MCD, so as to nip in the bud any dispute raised at a later stage on account of the exact space allocated to the tenderer at a particular parking site.

10. If it is the stand of the respondent/MCD that the terms and conditions of the tender are available on its website, nothing precludes it from adding the details

of the space available at each parking site on the said website, so that there is complete transparency with regard to the exact parking space that would be ultimately allocated to a successful bidder of a parking site. This can then be followed by the exchange of maps of the space allocated by MCD for parking of vehicles, at the time of handing over/taking over of the parking site. In the present case, it is only because there is a dispute as to the exact space allocated to the petitioner at the parking site in question that this Court is refraining from entertaining the present petition.

A copy of this order shall be forwarded by the Registry forthwith to the Commissioner, MCD, for perusal and for follow up action.