
(2013) 05 DEL CK 0296
In the Delhi High Court
Case No : Writ Petition (C) 392 of 2013

Sanjay Jain

APPELLANT

Vs

North Delhi Municipal Corporation

RESPONDENT

Date of Decision : 14-05-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 05 DEL CK 0296

Hon'ble Judges : G.S. Sistani, J

Bench : Single Bench

Advocate : Amit S. Chadha and Mr. B.L. Wali, for the Appellant; Mansi Gupta, for the Respondent

Final Decision : Disposed Off

Judgement

G.S. Sistani, J.—Pursuant to a tender floated by the respondent for allotment of various parking sites, the petitioner participated in the same on 11.10.2010. Tender of the petitioner was accepted on 15.12.2010 being the highest bidder. The petitioner deposited a sum of Rs. 3,55,352/- towards one year's monthly license fee inclusive of TCS @ 2.244% on 23.12.2010 and also requested the respondent to hand over the vacant physical possession of the site at D.C. Office, Civil Line Zone (herein after referred to as the site). On 06.01.2011 the respondent handed over vacant physical possession of the site and simultaneously respondent informed the SHO Police Station Civil Lines Zone to extend full cooperation to the contractor for operating the parking site. The petitioner thereafter informed the respondent that vehicles belonging to MCD are parked in the parking sites which are neither being removed nor parking charges are being paid. Various representations were made to provide a vacant parking site but no satisfactory response was received. On 23.06.2011 petitioner was informed by the respondent that the parking site be demarcated by a thermo plastic yellow bond and to ensure use of hand held device for giving receipts of parking to commuters. Petitioner was also called upon to put several boards on

the parking site displaying various particulars. Petitioner informed the respondent that the parking site was non-operational on account of the site being obstructed by trucks and vehicles of MCD for which no payment was being made. Various reminders and requests were made but there was no favourable result. Petitioner filed a writ petition being WP(C) No. 8664/2011 seeking a direction to the respondent to allot an alternate parking site. This writ petition was disposed of on 13.12.2011 with the consent of the parties. MCD was directed to consider the pending representations made by the petitioner which were to be duly examined by the OSD, R.P. Cell, MCD. Petitioner was given liberty to seek appropriate remedies as per law if aggrieved by the decision. It is the case of the petitioner that petitioner requested the respondent to allot a parking site at Sukha Ped., Mori Gate on 23.12.2011, however, petitioner was informed on 14.02.2012 that his requests had already been considered and declined on 17.10.2011 as alternate site cannot be allotted to the petitioner as there is no such provision in this regard in the terms and conditions of the agreement. Since no favourable response has been received the present writ petition has been filed seeking a direction to the respondent to grant an alternate site preferably behind DTC Bus Depot, Netaji Subhash Place, New Delhi in lieu of site allotted to him on 15.12.2010.

2. The counsel for the respondent has opposed this petition on the ground that there is no provision in the terms of the tender for allotting an alternate site. It is also submitted that the dispute sought to be raised in the present writ petition is primarily a commercial dispute and moreover the petitioner has been running the parking site since the year 2010. The petitioner was awarded a provisional offer letter of allotment on 15.12.2010. The offer was for a period of two years which was to be renewed after the expiry of the first year with enhancement of monthly license fee by 10% for the next year subject to satisfactory completion of period of first year of contract. According to the provisional offer letter it was also made clear that the parking site is being allotted on "as is where is" basis and the MCD would not be responsible for any decline in the potential of the customers at the parking site or for any extraneous/unforeseen reason whatsoever. The petitioner has agreed to comply with the terms of the provisional offer letter.

3. There is no explanation by the learned counsel for the petitioner that in case the site was found to be unacceptable or unusable why the contract was extended for another period of one year. In any case, the dispute sought to be raised by the petitioner in the present writ petition is primarily a commercial dispute between the parties. The copies of the orders passed in WP(C) No. 2388/2011 and WP(C) No. 8664/2011 annexed with the petition and sought to be relied upon by the counsel for the petitioner show that either the orders were passed with the consent of the MCD in WP(C) No. 8664/2011 and WP(C) No. 2388/2011 or a direction was given to consider the request of the petitioner for an alternate site. No grounds made out to give/issue directions to the respondent to grant alternate site to the petitioner, as parties are governed by the terms and conditions of letter of allotment and the disputes sought to be raised cannot be

decided in the present proceeding under Article 226 of the Constitution of India. It would be open for the petitioner to avail all such remedies which are available to him in accordance with law. All rights of the petitioner are kept open. Writ petition is disposed of in above terms.

CM 785/2013 (interim relief)

Since the writ petition is disposed of, instant application seeking interim relief till disposal of the writ petition is disposed of as infructuous.