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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: May 25, 2009
Date of Order: May 29, 2009

+OMP 45/2009

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Naresh Maheshwari
Through : Mr. S.K. Goyal, Advocate

29.05.2009
...Petitioner

Versus

The Commissioner (MCD) & Anr.
Through: Mr. Rahul Srivastava, Advocate

...Respondents

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

1. The petitioner has filed this petition under Section 9 of the Arbitration & Conciliation Act, 1996 (for short, "the Act") alleging therein that he was granted a parking contract in respect of the site in question for a period of five years. The contract was renewable every year with enhancement of license fee by 5%. The contract was valid up to August, 2012. It is alleged by petitioner that after taking over possession of the parking site he found that there were obstructions created by the shopkeepers, welfare association, Institute of Town Planners, etc who disputed the right of MCD to give this parking site on license basis. The petitioner also made a representation to the respondent that the parking site was not fully available for use and there were dustbins and *malba* and other material lying there apart from the obstructions created by others and the 60% of the parking area was non-

useable. The petitioner simultaneously withheld payment of license fee and post-dated cheques of the petitioner issued for license fee got dishonoured, resulting into a show cause notice by respondent as to why license should not be cancelled. Despite show cause notice, when petitioner did not clear the arrears of license fees, MCD gave final show cause notice for termination of contract. At this stage, petitioner approached this Court for appointment of an Arbitrator as well as made this application under Section 9 of the Act.

2. By order dated 16th March 2009, this Court appointed Shri R.P. Aggarwal as the Arbitrator to adjudicate upon the disputes. The petitioner has prayed that since the petitioner approached this Court for appointment of an Arbitrator, he apprehends that an adverse order may not be passed against him by respondent and he sought relief that he be permitted to deposit 40% of the license fees for the parking area being used by the petitioner.

3. I consider that the request of the petitioner to deposit 40% of the license fee cannot be allowed. This Court cannot come to a conclusion merely on the basis of allegations that the petitioner was using only 40% of the area. Since the Arbitrator has been appointed, it would be for the Arbitrator to go into the issue whether the respondent had not complied with the terms of the license and whether full site was handed over to the petitioner or not. Under these circumstances, I consider that in case the petitioner clears arrears of license fee within 30 days from today and continues to pay license fee in terms of the agreement henceforth, the respondent shall not terminate the license of the parking site of the petitioner till expiry of five years for which license was granted to the petitioner. The payment made by the petitioner would be without prejudice to the rights of the parties and subject to the

adjudication of the disputes by the Arbitrator.

4. In above terms, the petition stands disposed of.

May 29, 2009
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SHIV NARAYAN DHINGRA J.