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SHRI NARESH MAHESHWARI

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

THE COMMISSIONER (MCD) & ANR

Through: Ms. Mini Pushkarna, Advocate.

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

- RAJIV SAHAI ENDLAW, J.**

- Page 1 of 5

of the area of the parking site was not available for parking owing to restrictions placed by the Police Station in the adjoining property. The petitioner thus claimed remission in the licence fee which he had agreed to pay to the respondent MCD.

3. The counsel for the petitioner has contended that, in fact, the respondent MCD also admitted that the entire area on the basis whereof the bid had been submitted by the petitioner was not available for parking but arbitrarily gave a remission of 25% only and that too from the date on which such remission was sanctioned; it is contended that there is no reason for not giving remission from the date of the commencement of the contract of the petitioner i.e. 27th August, 2007. The said disputes led to the filing of the petition aforesaid under Section 11 of the Act.

4. The present petition has been filed to restrain the respondent MCD from, during the pendency of the arbitral proceedings, cancelling/terminating the license agreement with the petitioner and from taking any adverse action against the petitioner during the pendency of the arbitration proceedings.

5. The counsel for the respondent MCD has appeared on advance notice and has handed over in Court, the internal letter dated 29th January, 2009 of the MCD regarding the receipt of an advisory from the traffic police authorities with respect to certain parking sites in Delhi including the parking site in question; she has also handed over a copy of the letter dated 18th September, 2009, issued by the respondent MCD to the petitioner intimating to the petitioner that on the basis of recommendations of the traffic police, the parking site in question comes under the 'no recommended' category and as such the parking contract with the petitioner cannot be renewed beyond

26th August, 2009 and cancelling the contract. She has also handed over a copy of the show-cause notice dated 22nd July, 2009, earlier issued to the petitioner for breach of the agreement by the petitioner. The counsel for the respondent has also drawn attention to the provisional offer letter dated 8th August, 2007 of the respondent vide which the tender of the petitioner was accepted. The said letter, *inter alia* provides that the Commissioner, MCD has the sole discretion of terminating the contract at any time without assigning any reason or without issuing any notice in public interest.

6. The counsel for the petitioner also admits that the petitioner came into possession/management of the parking site only on 27th August, 2007. The standard form agreement containing the arbitration clause and on the basis whereof this petition has been filed, though provides duration period of the contract as five years from the date of handing over of the site, however, provides that the contract shall be renewed after the expiry of every one year with enhancement in license fee and subject to the satisfactory completion of the period of one year of the contract.

7. It has been put to the counsel for the petitioner as to what is the right of the petitioner to continue in occupation/management of the parking site.

8. The counsel for the petitioner has contended that the letter of termination, copy whereof has been handed over in the Court today has not been served on the petitioner and has been issued as a counter blast to the petitioner having instituted this petition. He has further contended that he is still in possession of the site and is entitled to protection. It is also contended that the contract, in fact,

is for a term of five years. In response to the term for the provisional offer letter aforesaid, it is contended that the Commissioner, MCD cannot act arbitrarily.

9. The counsel for the respondent MCD in support of her submissions has also relied upon ***Rajasthan Breweries Limited vs. Stroh Brewery Company, AIR 2000 Delhi 450*** wherein the Division Bench has held that the specific performance of contracts determinable by their very nature cannot be granted.

10. The counsel for the petitioner in response to the query as to whether the contract has been renewed for the year commencing from 26th August, 2009, has drawn attention to the letter dated 15th September, 2009, of the petitioner to the respondent enclosing a cheque for Rs.6,31,128/- towards the license fee for the year 2009-10 in terms of the agreement. The counsel for the respondent, however, states that the cheque aforesaid is still in the original file brought to the Court today and will be returned to the petitioner.

11. Even otherwise, there is nothing to show that the respondent has renewed the contract of the petitioner for the year 2009-10. The contention of the counsel for the petitioner that such renewal is a formality and the contract is, in fact, for five years is not found correct on the interpretation of the term of the agreement. The duration of five years is the maximum time for which the contract can be renewed annually. The renewal is not only a formality; discretion has been given to the MCD to renew the contract, subject to satisfactory completion of the previous year.

12. In the present case, in the face of the show cause notice having been issued to the petitioner prior to the date of renewal, it cannot be said that the petitioner has satisfactorily completed the period of the contract. Even otherwise, I find from the documents regarding the advisory of the traffic police that the Commissioner, MCD has become entitled to terminate the contract with immediate effect for the said reason also which is found to be in public interest. Thus, it cannot be said that the petitioner has a right to remain in occupation/management of the parking site. In the absence of such right, the petitioner has no *prima facie* case for grant of any interim measure. Even otherwise, the petitioner, if at all able to make out a case in the arbitration proceedings of the action of the respondent MCD being illegal, can be compensated by damages. The balance of convenience is also not found in favour of the petitioner or in granting the interim measures claimed. The petition is, therefore, dismissed. No orders as to costs.

IA No. 12526/2009 (for exemption) in OMP No. 568/2009

Allowed, subject to all just exceptions.

The application is disposed of.

RAJIV SAHAI ENDLAW, J

September 25th, 2009
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