

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 8651/2008**

Date of decision : 06.08.2009

IN THE MATTER OF :

NARESH MAHESHWARI Petitioner
Through: Ms. Amrit Kaur Oberoi, Advocate

versus

M.C.D. & ANR. Respondents
Through: Mr. Amit K. Paul, Advocate with
Mr. R.L. Pruthi, Asstt. Commissioner, Central Zone,
MCD.

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* **HON'BLE MS.JUSTICE HIMA KOHLI**

1. Whether Reporters of Local papers may be allowed to see the Judgment? No.
2. To be referred to the Reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

HIMA KOHLI, J. (ORAL)

1. Pleadings are complete. With the consent of the parties, the matter is being heard for disposal today.

2. The present writ petition is filed by the petitioner praying *inter alia* for directions to the respondent/MCD to hand over possession of the parking site surrounding Hindu Rao Hospital, Delhi, in terms of the provisional offer letter dated 15.10.2008, issued to the petitioner.

3. Briefly stated, the facts of the case are that vide public notice dated 25.07.2007, the respondent/MCD invited tenders for car/scooter parking at the aforesaid site at a monthly license fee with reserve price of Rs.25,000/-. The petitioner participated in the aforesaid bid by submitting an application dated 10.08.2007, wherein he quoted Rs.56,786/- as the monthly license fee in respect of the aforesaid site. After a period of 14 months, the respondent issued a provisional offer letter dated 15.10.2008 informing the petitioner that his bid had been accepted for a period of five years, renewable after expiry of every one year, with monthly license fee enhanced by 5% each year. The petitioner was called upon to deposit an amount equal to four months' license fees as security and one month's advance license fee in the shape of bank drafts in favour of the Commissioner, MCD, besides 11 post dated cheques towards license fees for the remaining 11 months. Immediately upon receipt of the aforesaid letter, the petitioner complied with all the requisite formalities and deposited a sum of Rs.2,27,144/- and Rs.56,786/- by way of bank drafts with the respondent. The petitioner also handed over 11 post dated cheques to the respondent within the time granted. However, as the respondent failed to hand over the physical possession of the parking site to the petitioner within the stipulated time and even thereafter, the petitioner was compelled to file the present writ petition on 04.12.2008 seeking intervention of the Court.

4. When the writ petition was listed for admission on 05.12.2008, counsel for the petitioner made an oral submission to the effect that the respondent had advertised the very same site for auction for a lesser area, in the daily newspaper dated 04.12.2008. Copy of the said newspaper was handed over in the Court whereupon, the respondent was restrained from conducting any auction with regard to the site in question, pursuant to the aforesaid public notice dated 04.12.2008. The matter was directed to be listed on 6th April, 2009. It is pertinent to note that the aforesaid order was passed in the presence of the counsel for the respondent.

5. In the meantime, the petitioner filed an interim application in the month of February, 2009, registered as CM 2137/2009, stating *inter alia* that the respondent had issued a letter dated 02.01.2009 to the petitioner, cancelling the tender for allotment of the parking site due to "non-availability of the announced parking space" and calling upon the petitioner to submit the receipts of security amount and one month advance license fee, for refund. Vide order dated 13.02.2009, while issuing notice on the aforesaid application, the cancellation notice dated 02.01.2009 was stayed. It is pertinent to note that in the teeth of the aforesaid stay order, the respondent prepared a cheque dated 29.04.2009 for being handed over to the petitioner, as refund amount, which cheque has been brought in Court

today and offered to be paid to the petitioner.

6. The stand of the respondent in the counter affidavit is that on account of objections raised by the Medical Superintendent of the Hospital, the parking site was reduced to 20% of what was originally put to auction and that it was always open for the petitioner to take possession of the site physically available and claim remission for the reduction in space. However, since the petitioner insisted on the entire space, the respondent decided to auction the reduced space, which was physically available at the site.

7. Considering the fact that the bid of the petitioner was accepted by the respondent vide letter dated 15.10.2008, any subsequent offer of reduced space could have emanated from the respondent in writing, by overriding the earlier offer letter dated 15.10.2008. Counsel for the respondent has brought the original records. No such communication has been placed on the record by the respondent. On being called upon to show any correspondence by which, the respondent asked the petitioner to accept the reduced parking space of 20% of the original parking site, counsel for the respondent states that no such written intimation was communicated to the petitioner in supercession of the earlier letter. He, however, states that the petitioner had been visiting the office of the respondent and it was in the

course of one such visit, i.e., on 23.10.2008, that the respondent had conveyed this offer to the petitioner, which he orally refused. He is unable to point out any letter of refusal on the part of the petitioner. Hence, it has to be held that between 15.10.2008 and 02.01.2009, the respondent not only did not allot the assigned parking space to the petitioner, but also did not correspond with the petitioner by offering reduced parking space to him before issuing an advertisement in the press for the same parking site. Instead, the respondent retained the amounts of Rs.2,27,144/- and Rs.56,786/- deposited by the petitioner in terms of the offer letter dated 15.10.2008 issued to him, and went a step further by issuing the cancellation letter dated 02.01.2009, thus seeking to frustrate the present petition itself, knowing very well that the issue was under consideration in the present proceedings.

8. The conduct of the respondent leaves much to be desired. Prima facie, the letter dated 02.01.2009 appears to be an attempt to overreach the Court. The feeble attempt made on the part of the respondent to justify issuance of letter dated 02.01.2009 on the ground that only the advertisement for conducting the auction of the parking site was stayed vide order dated 05.12.2008, is taken note of, only to be rejected. Merely because vide order dated 05.12.2008, the advertisement for conducting the auction with regard to the site in question was stayed, does not mean that

the respondent had a carte blanche to cancel the very same tender on the ground of "non-availability of announced parking space", without approaching the Court, more so, when no written offer for the reduced space was shown to be made by the respondent, overriding its earlier offer, and claimed to be rejected by the petitioner.

9. At this stage, Mr. R.L. Pruthi, Assistant Commissioner, Central Zone, MCD, under whose signature the cancellation letter dated 02.01.2009 was issued to the petitioner, tenders an unqualified apology and seeks leave to withdraw the same. Counsel for the respondent states that the respondent is still willing to hand over 20% of the originally offered parking site, i.e., the reduced space, to the petitioner. He states that the license fee shall be proportionately reduced and calculated by the respondent and duly communicated to the petitioner.

10. The apology tendered by the respondent is accepted. Counsel for the petitioner expresses the readiness and willingness of the petitioner to accept the reduced space of 20% of the parking site originally offered by the respondent, on proportionately reduced license fee. The writ petition is accordingly disposed of on the following terms:-

- (i) The respondent No. 1 shall issue a fresh offer letter to the petitioner, specifying the proportionately reduced license fee for the reduced

- parking site of 20% of the original site within one week from today.
- (ii) Alongwith the aforesaid letter, the respondent shall refund the proportionate 80% of the advance license fee taken as security deposit amount and one month's advance license fee deposited by the petitioner in terms of the earlier offer letter dated 15.10.2008.
 - (iii) The respondent shall pay the petitioner simple interest @8% per annum on the refunded amount from the date, the drafts were submitted by the petitioner, till the aforesaid proportionate amount is released to the petitioner.
 - (iv) The respondent shall fix a date and time for handing over the physical possession of the reduced site to the petitioner within a period of one week from the date of issuing a fresh letter of offer to the petitioner.

The writ petition is allowed with litigation costs quantified at Rs.10,000/-, payable by the respondent.

AUGUST 06, 2009
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HIMA KOHLI,J