

* IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) No.2114/2010

Date of Decision: December 08, 2010

ASHIMA SECURITIES PRIVATE LIMITED Petitioner
through Mr. B.L.Wali, Advocate with
Mr. Deepak Arora, Advocate

versus

DELHI DEVELOPMENT AUTHORITY & ANR Respondents
through Mr. M.K.Singh, Advocate for
respondent No.1.
Ms. Mini Pushkarna, Advocate for
respondent No.2.

CORAM:
HON'BLE MISS JUSTICE REKHA SHARMA

1. Whether the 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

REKHA SHARMA, J. (ORAL)

The petitioner has been allotted Car/Scooter parking site at Mohan Co-operative Industrial Estate, Mathura Road (excluding main service road) by respondent No.2, i.e. the Municipal Corporation of Delhi (in short, called 'MCD'). The allotment has been made vide 'Provisional Offer Letter' dated December 12, 2007 for a period of two years, with a clause that, "it could be renewed for a further period of one year by the Commissioner, Municipal Corporation of Delhi at his discretion." It is also a term of the allotment that the Commissioner,

MCD will have the sole discretion to terminate the contract at any time without assigning any reason or without any previous notice in public interest. The physical possession of the site was handed over to the petitioner on April 06, 2009. The two years' period is due to expire on April 05, 2011.

It so happened that after the allotment was made in favour of the petitioner, respondent No.1, i.e., the Delhi Development Authority (in short, called 'DDA') also invited tenders to allot parking space and what is of significance is that the tenders so invited were in respect of the same site which stood already allotted to the petitioner.

Feeling aggrieved by the action of respondent No.1, the petitioner filed the present writ-petition, whereupon this Court passed order dated March 26, 2010 directing that "till the next date of hearing, possession of the petitioner over the area auctioned by the MCD as detailed in the 'Provisional Offer Letter' dated December 12, 2007 shall not be disturbed by the respondents." The order so passed is continuing till date.

It appears from the order dated March 26, 2010 that there was a dispute between the DDA and MCD with regard to the ownership of the land. The DDA contended that it was the owner of the land in question and being the owner, it alone was competent to invite tenders and hand over the land to the successful bidders. The MCD, on the other hand, claimed that it was the owner.

In view of the rival submissions and taking into consideration that there was a dispute between the DDA and the MCD with regard to the actual area in their respective possession, this Court by the aforesaid order of March 26, 2010 directed that a meeting be

convened between Mr. Amiya Chandra, Officer on Special Duty, OSD Remunerative Project Cell and the Commissioner (Land Disposal), DDA to enable them to verify as to who is the land owning agency of the land which have been handed over to the petitioner for a car/scooter parking and in the meanwhile, as already noticed above, directed that the possession of the petitioner be not disturbed.

It is now stated by learned counsels for the parties that the dispute between respondent No.1 and respondent No.2 has since been resolved and it is respondent No.1, i.e., the DDA which is found to be the land owning agency in respect of the site in question.

In view of the above, the question that arises for consideration is whether the licence to use the site for car/scooter parking granted to the petitioner by respondent No.2 is liable to be revoked before the expiry of the period of two years on the ground that since respondent No.2 was not the land owning agency, it could not have allotted the site.

It is true that the site in question belongs to respondent No.1, but it is also true that when the same was allotted to the petitioner, there was a dispute between respondent No.1 and respondent No.2 as to its ownership and it got resolved only after respondent No.2 had already allotted the same to the petitioner. It is obvious that respondent No.2 was labouring under a misconception with regard to the site in question and if under that misconception, it had allotted the same to the petitioner, why should the petitioner who is a bonafide allottee of the site become a victim in the cross-fire between respondent No.1 and respondent No.2. He had submitted a tender pursuant to a tender notice of the MCD and the same having been accepted, neither the

MCD nor the DDA has any right to interfere in his using the site in terms of the 'Provisional Offer Letter' dated October 26, 2010 unless he is found violating any of the terms of the said letter. Here, I am hasten to add that I am making no comment on the discretion of the Commissioner, MCD vested upon him in the 'Provisional Offer Letter' dated October 26, 2010, to terminate the contract at any time without assigning any reason or without any previous notice in public interest. If the Commissioner chooses to exercise the discretion so vested in him, it will be open to the petitioner to challenge the same in appropriate proceedings, but so long no such order is passed, the petitioner shall have the right to use the parking site without hindrance or interference from either respondent no.1 or respondent No.2 in terms of the 'Provisional Offer Letter' dated December 12, 2007.

The writ petition is allowed.

REKHA SHARMA, J.

DECEMBER 08, 2010
Ka/pc