

S-1 & 2

%01.10.2010

Present: Mr. V.P. Singh, Sr. Advocate with Mr. Ashok Bhasin, Sr. Advocate, Mr. Lovkesh Sawhney, Advocate for the petitioners.
 Mr. Sandeep Sethi, Sr. Advocate with Mr. Sanjeev Narula, Advocate for the petitioner in WP (C) 2915/2010.
 Ms. Madhu Tewatia, Advocate with Ms. Sidhi Arora, Advocate for the respondent/NDMC.
 Mr. Ajay Arora, Advocate with Mr. Sarfaraz Ahmed, Advocate for Respondent MCD.
 Mr. Rajeshwar Gupta, Advocate for Palika Place Traders Association.
 Mr. Pushkar Sood, Advocate for respondent/DMRC.

+ CM APPL. 12208/2010 IN W.P. (C) 2200/2010, CM APPL. 5798/2010, CM APPL. 12211/2010, CM APPL. 12214/2010 IN W.P. (C) 2915/2010.

(common order)

These writ petitions are off-shoot of orders dated 14th July, 2009 whereby certain LPAs and Writ Petitions were disposed of. The said order is reproduced in its entirety as it will give a gist of the controversy involved which was resolved amicably and settled resulting into agreed order passed in those proceedings.

"To state in brief, land of certain shopkeepers at Panchkuain Road is sought to be taken for the purpose of MRTS. This was on the basis that they are the only licensees over the land which is occupied by them on which they are running their shops. These affected persons filed writ petitions before the learned Single Judge, which have been allowed by the learned Single Judge vide impugned orders dated 02.06.2006. LPAs are filed by the

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DMRC against the judgment. Certain writ petitions have also been filed.

In order to resolve the issue and to ensure that all these affected persons are accommodated in the proposed building to be constructed by the appellant/DMRC, matter was considered from time to time by the Division Bench and various orders have been passed. One problem, which DMRC was facing was about the ground coverage as DDA had allowed only 25% of the ground coverage and because of this, because of this limited coverage, the appellant was not in a position to accommodate all the shopkeepers on the ground floor. In these proceedings, DDA has made the statement and allowed increase of the ground coverage to 40%. With this, the above difficulty stands resolved.

Another difficulty was in respect of FAR. The DMRC has submitted plans to DUAC with FAR 150, which was not accepted. In order to resolve this issue, order was passed on 21.05.2009 by this Court directing convening of a meeting of Officers of all the concerned departments. We are informed that such a Meeting was convened on 15.06.2009. Note dated 17.06.2009 as placed before us, which records the Minutes of the Meeting. The FAR 150 of this building has not been agreed, at the same time FAR 125 has been accepted. This is acceptable to the DMRC as well. Learned counsel for the DMRC also makes statement at par that with the construction on the basis of FAR 125 all the affected persons would be accommodated on the ground floor of the proposed building. We are also informed that the DMRC has already submitted modified plans to the NDMC on 13.07.2009.

Learned counsel for the NDMC states that this plan would be processed and approved as expeditiously as possible and not beyond a period of 60 days from today. She further submits that no extension in this behalf shall be asked for and the matter shall not be delayed.

We expect that within the aforesaid period, necessary approval from DUAC would also be taken and NDMC would inform the DMRC to start the construction on the basis of the

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proposed/sanctioned plan. Copy of the proposed plan shall be handed over to the learned counsel for the respondent/shopkeepers. The private respondents shall also remain bound by the order dated 17.9.08.

These appeals as well as writ petitions are disposed of in the aforesaid terms."

Pursuant to the aforesaid agreement arrived at between the parties and other interim orders passed from time to time, the Delhi Metro Rail Corporation (DMRC) has offered the shops to the petitioners of approximately 14 sq. mtr at Bhai Vir Singh Marg constructed by it. This offer letter dated 13th November, 2009 indicates that the allotment was proposed on licence basis for a period of 30 years and it is subject to certain conditions. The conditions with which the grievance is made by the petitioners are as under:-

- (i) Though it was agreed that the DMRC shall allot shops of an area 160 sq. ft, what is offered is 14 sq mtr. which is approximately 150 sq. ft. only.
- (ii) Though it was agreed that the allotment will be on lease basis, the offer of shops is given on licence basis and not lease basis.
- (iii) The cost of rs. 9.5 lacs which was agreed upon is demanded even when the area offered now is less.
- (iv) The DMRC has demanded NOC from MCD/NDMC in respect of Panchkuyan Road Shops which are presently occupied by these petitioners.

It was pointed out that since there were disputes about the charges payable by these petitioners to MCD/NDMC and during the pendency of the said dispute; MCD/NDMC would not give NOC to the petitioners. It is also submitted that petitioners are not liable to pay the due as demanded by the MCD/NDMC till the resolution of the said disputes. On this premise, it is argued that demand of NOC of MCD/NDMC is not called for.

It is also submitted that reading of this letter gives an impression that a sum of Rs. 9.5 lacs is asked twice whereby total amount of Rs. 19 lacs is made. This aspect is not correct in as much as Mr. Sood, learned counsel for the DMRC has stated at the bar, on the basis of instructions received, that amount demanded is only Rs.9.5 lacs and not Rs. 19 lacs.

The petitioners also pointed out that the building in which they are going to be shifted i.e. Bhai Vir Singh Marg shopping complex, four lifts as per sanctioned plan are to be installed. However, so far two passengers lifts have been installed and the DMRC is unnecessary delaying the installation of the remaining two lifts which will cause inconvenience to the customers and the petitioners.

In so far as offer of 14 sq. met area is concerned, instead of 160 sq. ft. which was agreed upon earlier, it was explained by Mr. Sood

that plans have been sanctioned and construction made on that basis and, therefore at this stage it would not be possible to increase the area from 14 sq mtr. Having regard to this fact, on the last date of hearing i.e. 24th September, 2010 it was purposed that the payment demanded i.e. Rs. 9.5 lacs should be reduced to Rs. 9 lacs. Furthermore, since the agreement entered into between the parties and as recorded in those proceedings (LPAs etc.) as the DMRC had clearly agreed to allot the area on lease hold basis, it was also purposed to DMRC to allot the shops to the petitioners on lease hold basis. On these two aspects Mr. Sood was asked to obtain instructions and file the affidavit. Incompliance with these directions, Affidavit of Mr. N.P. Singh, General Manager, (Law), DMRC has been filed.

In so far as question of reduction of amount from 9.5 lacs to 9 lacs is concerned, it is sought to explain that it would not be applicable in the present case as the area of 14 sq. mtr is the carpet area of each shop and once the partition walls are also taken into account, the total area would be 165 sq. ft. We find it too technical approach adopted by the DMRC in rejecting the offer which was given and was found to be equitable and reasonable having regard to the circumstances of this case. The area of 160 sq. ft which was agreed to in the agreement arrived at earlier did not mention about the

inclusion of partition walls while calculating this area. Since the agreement was silent on this aspect, such a superficial plea cannot be taken by the DMRC now to reject the offer. We would have commended the DMRC had it come at its own and accepted the fair suggestion given by the Court which was, on the last date of hearing, accepted by the petitioners as well. In these circumstances, we are of the view that amount to be charged from the petitioners be reduced to Rs. 9 lacs. While making this direction, we have also taken into consideration the submission of learned counsel appearing for the petitioners to the effect that the total cost of each shop is much less than even 9 lacs. This submission is based upon the information which the petitioners have received from the DMRC under Right to Information Act.

In so far as allotting the shops on lease hold basis is concerned, it is pointed out that in the past, the DMRC has allotted the shops on licence basis. At the same time it is stated in the affidavit that the DMRC shall abide by the directions passed by this Court in this behalf.

Since there was a clear agreement between the parties in the earlier proceedings that the shops would be offered on lease hold basis and also having regard to the fact that the period is of 30 years, we are of the opinion that when the allotment is on lease basis, there is no reason that be not reflected in the agreement also

which would entered into between the petitioners and the DMRC. It would be of use to mention at this stage that in the earlier proceedings the petitioners had succeeded before the learned Single Judge. Against the judgment passed by the learned Single Judge, appeals were preferred by the DMRC and in those appeal proceedings agreement was arrived at as mentioned above. When the parties settled the matter amicably, one of the terms of the settlement was that the shops shall be allotted on ground floor on lease hold basis. The apprehension of the DMRC appears to be totally unfounded as the allotment to the petitioners is going to be in the aforesaid circumstances and that too, on the basis of agreed terms, we thus fail to understand as to how it will be quoted as a precedent. We thus direct that offer shall be made by the DMRC on lease hold basis.

In so far as NOC from MCD/NDMC is concerned, we make it clear that as there are disputes between the petitioners and the said local authorities, DMRC shall not insist on the NOCs at the time of allotment. However, the petitioners shall file an affidavit giving an undertaking that they shall clear MCD/NDMC dues as finally determined in those legal proceedings.

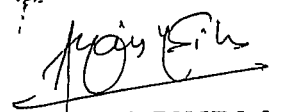
As far as providing of other lifts is concerned, Mr.Sood, makes a statement at the bar that whatever is the provision regarding lifts as

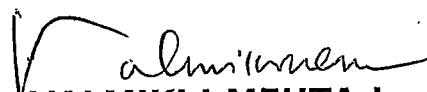
per the sanctioned plan, same shall be made without any further delay, and in any case within two months from today. Having regard to the nature of business carried out by the petitioners namely the furniture shops, they would be permitted to construct the temporary lofts within the shops as per Building and Municipal By-Laws.

At this stage, learned counsel appearing for the petitioners submit that orders passed in the LPAs of allotment, the petitioners were supposed to shift to the new premises by 13th September, 2010. This date has expired due to the pendency of these writ petitions. In these circumstances, learned counsel for the petitioners submit that time upto 10th November, 2010 may be granted to the petitioners to shift the shops in the new premises. While accepting this plea of the petitioners, we make it clear that in no circumstances, time would be extended further.

The writ petitions as well as all pending applications are disposed of.

Dasti allowed.


A.K. SIKRI, J.


VALMIKI J. MEHTA, J.

OCTOBER 01, 2010/skb

jud
- C.M. no - 14926/10 - for directions
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