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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 6445/2011

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Judgment dated 25.09.2012

HARISH KUMAR SHARMA

..... Petitioner

Through : Mr.B.L. Wali and Mr.Deepak, Advs.

versus

MCD

..... Respondent

Through : Ms.Mini Pushkarna, Adv. along with
Mr.Anil Kumar, UDC and Mr.Satender
Saini, UDC.

Mr.R.K. Saini and Mr.Vikram Saini,
Advs. for the intervenor in CM 5346/12

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Present writ petition has been filed by petitioner under Articles 226 and 227 of the Constitution of India seeking a writ, order or direction directing the respondent to allot an alternate parking site to the petitioner in lieu of car/scooter parking site allotted to the petitioner at Basement Municipal Market, Saraswati Marg, New Delhi. The petitioner also seeks a direction to the respondent to refund the entire license fee of Rs.12,40,440/- deposited by the petitioner on 30.12.2010 along with interest.
2. Pleadings in this matter are complete. Learned counsel for the parties submit that present writ petition may be disposed of at this stage itself.
3. Rule. With the consent of counsel for the parties writ petition is set down for final hearing and disposal.
4. The brief facts, to be noticed for disposal of the present writ petition, are

that on 19.9.2010 the respondent MCD invited tenders on a prescribed form for allotment of approximately 221 MCD authorized car/scooter parking sites in Delhi on license fee basis for a duration of two years including a car/scooter parking site at Basement Municipal market, Saraswati Marg, New Delhi. The last date of submission of tender was 7.10.2010, however, the respondent vide its notice dated 5.10.2010 notified that due to administrative reasons the date for submission of the tender had been postponed to 11.10.2010. Petitioner being interested in running the car/scooter site at Basement Municipal Market, Saraswati Marg, purchased the tender form and filed the same with the respondent on 11.10.2010. Along with the application form, the petitioner also deposited the earnest money on 11.10.2010 and also offered a monthly license fee of Rs.1,01,101/- for operating and running the aforesaid parking site. Since, petitioner's offer was the highest the same was accepted and a provisional offer letter dated 15.12.2010 was issued by the respondent to the petitioner to run the said site for a period of two years at a monthly licence fee of Rs.1,01,101/- plus TCS of 2.244%. By the aforesaid letter the respondent required the petitioner to deposit in the first year the complete license fee for the year to be paid in the form of a demand draft. After completion of the first year the petitioner was required to deposit license fee for another year with 10% enhancement in the MLF. The petitioner deposited a sum of Rs.12,40,440/- with the respondent towards the first year's advance monthly license fee on 23.12.2010. A request was also made by the petitioner to the respondent to hand over vacant possession of the site. On 6.1.2011 respondent handed over vacant possession of the site at 6.00 p.m. to the petitioner, however, the said possession was only handed over on paper and no physical possession was handed over to the petitioner. Respondent vide

communication dated 6.1.2011 informed the SHO of Police Station Karol Bagh that the parking site had been allotted to the petitioner for one year and requested him to extend full cooperation to the contractor for operating the parking site. Possession was again handed over to the petitioner on 23.5.2011 only on paper.

5. It is the case of the petitioner that although the paper possession has been handed over to the petitioner but physical possession of the same was not handed over to him.
6. Similar letter was addressed by the respondent to the SHO on 23.5.2011. Petitioner informed respondent on 25.5.2011 that he is unable to operate the parking site allotted to him as the market association is not allowing him to take vacant possession of the parking site. The Inspector of the respondent along with the Police visited the parking site for handing over physical possession of the site to the petitioner, however, possession could not be handed over to the petitioner. The petitioner again informed the respondent on 7.6.2011 that the market association is not allowed the petitioner to run the parking site. Similar requests were also made by petitioner to the respondent on 27.6.2011 and 29.7.2011.
7. Learned counsel for the respondent submits that the problems being faced by the petitioner are genuine and the respondent has in fact been writing to the market association to run the parking site at the terms and conditions offered to the association, however, no finality has been achieved. Counsel on instructions submits that the respondent is willing to refund the sum of Rs.12,40,440/- to the petitioner and the offer was made to the petitioner as far back as in the month of February, 2012. Mr.Wali submits that the petitioner did not accept the refund as the petitioner has been requesting the respondent for an alternate site.
8. Mr.Wali, learned counsel for the petitioner, has also drawn the attention

of the Court to list of cases filed along with the rejoinder to show that in the past the MCD has considered the request of the contractors in similar circumstances and granted an alternate site. Counsel further submits that in case an alternate site is granted to the petitioner within two months from today petitioner is willing to forego his prayer for grant of interest.

9. I have heard learned counsel for the parties, considered their rival contentions and also perused the relevant material placed on record. It is not in dispute that the petitioner was declared as a successful tenderer for allotment of a MCD authorized car/scooter parking site at Basement Municipal Market, Saraswati Marg, New Delhi. The petitioner offered a license fee of Rs.1,01,101/- for operating and running the aforesaid parking site. The petitioner also deposited one year's license fee with the respondent. The various letters placed on record leave no room for doubt that the petitioner was unable to derive any benefit of the parking site allotted to him despite his having paid one year's license fee in advance. The interference from the market association is also established from the fact that respondent did not hand over possession of the site to the petitioner on the spot. The letters addressed by the respondent to the SHO of the area to extend full cooperation to the contractor would also show that there was interference from the market association. The petitioner, thus, cannot be made to suffer on account of his being deprived the possession of the parking site.
10. Mr.Wali has strenuously argued before this Court that respondent should be directed to offer an alternate site to the petitioner to mitigate his losses as he was the successful tenderer.
11. Having regard to the facts that the petitioner has been made to suffer on account of the market association having taken law in their own hands and the inability of the respondent and the Delhi Police and MCD to render

assistance to him, the MCD is directed to take a sympathetic view in the matter and grant an alternate site to the petitioner. Since in large number of cases the MCD has acceded to such request, it is hoped that the MCD will consider the request of the petitioner on the same lines expeditiously. In case an alternate site is not granted to the petitioner within two months from today the petitioner would be entitled to refund of Rs.12,40,440/-, deposited by the petitioner with respondent, which has already been offered to the petitioner by the respondent, together with interest @8%, per annum, from the date of payment till the date of handing over of the amount. .

12. Writ petition stands disposed of in above terms.

CM 5346/20112

13. In view of the order passed in the writ petition, learned counsel for the applicant does not wish to press present application and the same is accordingly dismissed as not pressed as not pressed.

14. DASTI.

G.S.SISTANI, J

SEPTEMBER 25, 2012

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