

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ OMP No. 1084/2014

% Judgement Reserved on: 08.09.2014
Judgement pronounced on: 12.09.2014

MANPREET SINGH & CO. Petitioner

Through: Mr.B.L.Chawla, Adv.

versus

NORTH DELHI MUNICIPAL CORPORATION Respondent

**Through: Mr.Sunil Goel, Mr.Pranav Sapra and
Mr.Varun Chawla, Advocates**

CORAM:

HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1. The petitioner, by way of this petition, has challenged the award dated 04.06.2014, whereby his claim was rejected and the counter-claim of the respondent was allowed.

2. The admitted facts of the case are that the respondent had invited tenders for allotment of multi-level underground parking at Asaf Ali Road vide NIT dated 11.10.2010 for a period of two years, renewable at the end of first year with enhancement of monthly licence fee by 10% for the second year. As per the site plan, the total area of the site was 112,500 square

metre. It is also the undisputed fact that the site was offered on “as is where is basis” and the tenderers were given an opportunity of examining the site before making the bid and to submit the bid after taking into consideration the existing situation/position and condition of the site on inspection. The petitioner submitted his bid for the site and offered the monthly licence fee of Rs.12,81,717/- and his bid was accepted by the respondent by way of a provisional offer letter dated 15.12.2010. This provisional offer was accepted by the petitioner.

3. By accepting this provisional offer, the petitioner had, thus, also accepted all the terms and conditions which were part of this provisional offer and the contract. This provisional offer letter clearly stipulates that the parking site was being allotted on “as is where is basis” and that MCD would not be responsible for any declining in the potential of the customers at the parking site for any extraneous unforeseen reasons whatsoever. Any claim for remission on the basis of harm to business interest or extraneous unforeseen conditions/reasons shall be summarily rejected by MCD and licensee shall not be entitled to make any claim/remission on that account. After the petitioner completed all the formalities, the site was allotted to the petitioner for two years and the possession was handed over on 01.01.2011.

The duration of the contract was to expire on 31.10.2012, but it was extended by one month vide letter dated 05.02.2013. The petitioner/claimant, however, continued to run the site till 01.04.2013, despite non-extension of the contract period. The possession of the site was officially taken over by the respondent with effect from 02.04.2013.

4. The petitioner, thereafter, had raised a claim. His contention before the learned Arbitrator was that as per the site plan, which was part of the agreement, the total area of the site was 1,12,500 square metre, but the actual area of the site was 33,500 square meter. He had also contended that at the time of delivery of the site about 225 unclaimed vehicles were lying dumped in the parking lot and the facility of electricity was not brought at the site and it was also being used unauthorizedly by the staff and the visitors of the respondent, without payment of parking charges. He also claimed that the drainage system at the site was not working and the basement used to get flooded with water in rainy season and the claimant had to make arrangement for pumping out the water at his own cost and expenses. He had claimed a sum of Rs.1,55,37,153/- by way of compensation on account of these defaults on the part of respondent. The interest on this amount was also claimed along with litigation expenses.

5. The contention of the respondent before the learned Arbitrator was that in the NIT, the respondent had made it clear to the public that the offer was on “as is whereas basis” and an opportunity to examine the site before making any bid was also provided and it was advised to make the bid, keeping in mind the existing position of the site. Their contention was that there was no violation of the terms and conditions of the contract/agreement by the respondent and so the petitioner was not entitled for any compensation. They have claimed a sum of Rs. 35,36,544/- on account of the fact that the petitioner had continued to stay at the site beyond the licensed period and had illegally and unauthorizedly use the place from 01.02.2013 to 02.04.2013, without payment of monthly licence fee and hence is liable to pay the said sum for the unauthorized use of the site.

6. On the basis of these facts, the learned Arbitrator had formulated the following issues:-

- “1. Whether the claimant remained in possession of the parking site unauthorizedly from 01.02.2013 to 02.04.2013? If so, its effect? OPD
2. Whether the site was allotted to the claimant on “as is where is” basis? If so its effect? OPD
3. Whether the claimant is entitled to the relief claimed in para 14 of the petition? OPD

4. Whether the respondent is entitled to the counter-claim as claimed in the reply to the claim petition? OPD

5. Relief.”

The learned Arbitrator had given findings on each and every issue.

7. The petitioner vide this petition has challenged the said award on the grounds that the learned Arbitrator has wrongly interpreted the terms of the tender for allotment of the site and has also wrongly applied the ratio of judgments of the Courts referred in the award on the facts of the case and that he has also not appreciated clause 10 of the terms of the allotment, requiring MCD to provide map of space allotted and it is further contended that finding of the Arbitrator that the petitioner was in unauthorized possession of the parking site from 01.02.2013 to 01.04.2013 is wrong and, therefore, award is liable to be set aside.

8. Heard.

9. It is settled principle of law that an award cannot be set aside if the Arbitrator has discussed every aspect, including the case law with adequately elaborate and convincing reasons in the award. Illegality for purpose of setting aside the award must be capable of going to the root of the matter. Trivial illegality cannot be termed as contrary to public policy (Reliance placed on findings in the case of *Prathyusha Associates Vs.*

Rashtriya Ispat Nigam Ltd., 2006 (1) ALT 691 (DB).

10. It is also a settled principle of law that a Court does not sit in appeal over the award of an arbitral tribunal by re-assessing and re-appreciating the evidence. It can be challenged only on the grounds mentioned in section 34 (2) of the Act. (Reliance placed on findings in the case of ***P. R. Shah Shares & Stock Broker (P) Ltd. Vs. M/s B. H. H. Securities (P) Ltd. & Ors., 2012 (1) SCC 594.***

11. In the case of ***Sudarshan Trading Co. Vs. Govt. of Kerala***, (1989) 2 SCC 38, the Supreme Court has clearly held that the Courts are not required to examine the award in order to find out whether the arbitrator had acted correctly or incorrectly. Also in the case of ***Ispat Engg. & Foundry Works v. SAIL***, (2001) 6 SCC 347, the Supreme Court has held that there exists a long catena of cases through which the law seems to be rather well settled that the reappraisal of evidence by the court is not permissible.

12. In the case of ***Oil & Natural Gas Corporation Ltd. Vs. Saw Pipes Ltd.***, 2003 (5) SCC 705, the Supreme Court has clearly held that the illegality in the award must go to the root of the matter and if the illegality is of trivial nature it cannot be held that award is against the public policy. Award could also be set aside if it is so unfair and unreasonable that it

shocks the conscience of the Court. Such award is opposed to public policy and is required to be adjudged void.

13. The award can be interfered with only on the grounds enumerated under Section 34 (2) of the Arbitration and Conciliation Act. Learned counsel for the petitioner has failed to point out any procedural error committed by the learned Arbitrator. The petitioner has not challenged the award on the basis that the award is against any public policy of India. Learned counsel for the petitioner has failed to show that the award is patently wrong or it suffers from such illegality which goes to the root of the award.

14. The claim of the petitioner before the Arbitrator was that he was given less area than what was shown in the site plan, which was part of the NIT, by which the bid was called for by the respondent for allotting the site on the basis of the licence fee. The findings of the learned Arbitrator are also based on the terms and conditions reduced in writing between the parties by way of the agreement clauses, which clearly postulates that the site was offered on “as is where is basis” and the opportunity for examining the site before making the bid was also given and the learned Arbitrator had reproduced the relevant clause of the provisional offer letter in the award. It is reproduced

as under:-

“The parking site is being allotted on “as is where is basis”. It is made clear that MCD will not be responsible for nay decline in the potential of the customers at the parking site for any extraneous/unforeseen reason(s) whatsoever. Any claim for the remission on the basis of harm to business interest on as extraneous/unforeseen conditions/reasons whatsoever, shall be summarily rejected by the MCD without any kind of response to the licensee and the licensee shall not be entitled to make any claim/remission on that account”

15. He has also produced the eligibility clause for participation in the tender as under:-

“a. The tenderer shall inspect the parking site which will be given on “as is where is basis” and may obtain necessary clarification, if any regarding the same to satisfy himself fully before offering bid for the same.

b. The tenderer should bid the amount by considering its entire potential to attract customers MCD will not be responsible for any decline in the potential of the customers at the parking site for any extraneous/unforeseen reason(s) whatsoever. Any claim for the remission on the basis of harm to business interest on extraneous/unforeseen conditions/reasons whatsoever, shall be summarily rejected by the MCD without any kind of response to the licensee and the licensee shall not be entitled to make any claim/remission on that account.”

16. The Arbitrator, basing his findings, on the terms of provisional offer letter and the terms and conditions of the eligibility for participation in the tender, has given its finding that since the claimant had accepted the bid on “as is where is” basis, the claimant is precluded from raising any dispute in

regard to alleged loss as the site was occupied by the claimant with open eyes. The learned Arbitrator has also relied on the findings of this Court in the case of ***S.K. Pandey vs. MCD & Ors.***¹⁸⁹ (2012) DLT 476, where the expression “as is where is basis” has been discussed and interpreted. He has also relied on the findings of the Supreme Court in the case of ***UT Chandigarh Admn. Vs. Amarjeet Singh*** (2009) 4 SCC 660 and ***Punjab Urban Planning and Development Authority vs. Raghu Nath Gupta and Ors.*** (2012) 8 SCC 197. 14. In the case of ***Punjab Urban Planning*** (*supra*), the Supreme Court has discussed its findings in its earlier judgment of ***UT Chandigarh Admn.*** (*supra*), wherein the Supreme Court has referred to its judgment in ***Municipal Corporation, Chandigarh vs. Shantikunj Investment (P) Ltd.*** (2006) 4 SCC 109 and had reproduced the relevant paras as under:-

“19. ... In a public auction of sites, the position is completely different. A person interested can inspect the sites offered and choose the site which he wants to acquire and participate in the auction only in regard to such site. Before bidding in the auction, he knows or is in a position to ascertain, the condition and situation of the site. He knows about the existence or lack of amenities. The auction is on ‘as is where is basis’. With such knowledge, he participates in the auction and offers a particular bid. There is no compulsion that he should offer a particular price.

20. Where there is a public auction without assuring any specific or particular amenities, and the prospective purchaser/lessee participates in the auction after having an opportunity of examining the site, the bid in the auction is made keeping in view the existing situation, position and condition of the site. If all amenities are available, he would offer a higher amount. If there are no amenities, or if the site suffers from any disadvantages, he would offer a lesser amount, or may not participate in the auction. Once with open eyes, a person participates in an auction, he cannot thereafter be heard to say that he would not pay the balance of the price/premium or the stipulated interest on the delayed payment, or the ground rent, on the ground that the site suffers from certain disadvantages or on the ground that amenities are not provided.”

17. The Supreme Court in *Punjab Urban Planning* (*supra*) has given its findings as under:-

“We may reiterate that after having accepted the offer of the commercial plots in a public auction with a super imposed condition i.e. on "as is where is" basis and after having accepted the -terms and conditions of the allotment letter, including installment facility for payment, Respondents cannot say that they are not bound by the terms and conditions of the auction notice, as well as that of the allotment letter.”

18. It, therefore, is clear that the learned Arbitrator has acted as per the law, while giving its findings and has taken into consideration the law of the land laid down by the Supreme Court and, therefore, it cannot be said that the findings of the learned Arbitrator on issue Nos. 1, 2 and 3 suffer with any illegality. As regards the findings of the Arbitrator with respect to issue No. 4 is concerned, there is no dispute to the fact that the petitioner remain

in possession of site till 01.04.2013 and from 01.02.2013 to 01.04.2013, he has no extension letter of the agreement in his favour. He, therefore, was unauthorizedly in possession of the site and these findings of the learned Arbitrator are not contrary to the terms and conditions of the agreement between the parties or of any existing substantive law.

19. It is apparent that the award of the learned Arbitrator does not suffer from any infirmity. No ground has been made out by the petitioner for issuance of notice to the respondent.

In view of the above discussion, the petition is dismissed *in limine*.

**DEEPA SHARMA
(JUDGE)**

**SEPTEMBER 12, 2014
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