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

+ W.P.(C) 3783/2016, CM Appl. nos. 16103-04/2016

SHASHI KANDWAL & ANR

..... Petitioners

Through Mr. S.K. Bharti, Ms. Kumkum Bhatt
and Mr. M.S. Miglani, Advs.

Versus

SOUTH DELHI MUNICIPAL
CORPORATION & ORS

..... Respondents

Through Mr. Sanjay Poddar, Sr. Advocate with
Mr. Mukesh Gupta, ASC for SDMC

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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06.05.2016

1. This writ petition is a gross abuse of process of law. Petitioner had earlier filed a writ petition bearing WP(C) No. 1908/2016 for quashing of termination letter dated 24th February, 2016 (Impugned in this petition), before the Division Bench, but had withdrawn unconditionally on 3rd March, 2016. Another petition cannot be entertained for the same relief only because petitioner has added some ancillary reliefs to the main relief of quashing of termination letter. Even otherwise, compensation for the

termination cannot be considered in the writ petition. Relief of investigation by CBI has been claimed without any material.

2. Briefly stated factual matrix is that respondent no. 1 invited tenders for allotment of 35 advertisements sites for short period. Tender was invited on 22nd September, 2015. Petitioners submitted the bid documents and were declared successful bidders for ₹1,46,66,667/- per month. One Almass filed a writ petition bearing WP(C) No. 9505/2015 thereby challenging the tender process, wherein stay order was passed. However, respondent no. 1 on 23rd November, 2015 entered into an agreement with the petitioners in respect of 35 sites on payment of monthly licence fee upto 31st March, 2016 and depositing security amount equivalent to one months' licence fee. Petitioners did not comply the above terms. They paid advance licence fee only upto 20th February, 2016 and did not deposit the security money.

3. It may be noted that subsequently WP (C) No.9505/2015 was disposed of. During the course of hearing, learned Senior Counsel for the respondent no. 1 has pointed out that petitioners had installed seven additional unipoles over and above 35 unipoles. Petitioners violated the terms and conditions of the agreement for the above stated reasons.

4. Respondent no. 1 terminated the agreement, vide letter dated 9th

February, 2016, with effect from 12th February, 2016 and also asked the petitioners to deposit the balance amount of ₹2,29,77,788/- towards the licence fee with effect from 13th February, 2016 to 31st March, 2016. Petitioners challenged the termination order by filing a writ petition bearing WP(C) No. 1212/2016; which was disposed of vide a consent order dated 12th February, 2016. Petitioners were afforded an opportunity to file an affidavit of undertaking within one week containing the terms as spelled out in paras (a) to (f) of the order dated 12th February, 2016, inasmuch as to comply with the terms of undertaking in letter and spirit. It was made clear that in case of any breach, petitioners shall be liable to the legal consequences as may entail on account of breach of undertaking. Petitioners did not comply the consent order. Instead filed CM No. 8157/2016 for extension of time but the same was dismissed vide order dated 3rd March, 2016.

5. It is, thus, clear that petitioners did not comply the consent order dated 12th February, 2016 passed in WP(C) No. 1212/2016. A perusal of the order dated 12th February, 2016 shows that learned Senior Counsel for the respondent no. 1 had made a statement that Annexure P-7 (termination letter dated 9th February, 2016) will not be enforced subject to petitioners filing

affidavit of undertaking. In view of this statement, it appears that petitioners were allowed to carry on the business of advertisement in terms of the agreement. Since the order dated 12th February, 2016 was not complied with, contract was again terminated vide order impugned in this petition. It is this order which was also challenged in WP(C) No. 1908/2016 which has been withdrawn unconditionally on 3rd March, 2016, before the Division Bench.

6. It may be noted here that respondent no. 1 has also filed a Contempt Petition No. 173/2016 for enforcement of the order dated 12th February, 2016 and the same is listed for 23rd May, 2016. Petitioners have again re-agitated the same issue of the termination of contract by filing this writ petition by adding certain other prayers which are consequential to the main relief.

7. For the aforesaid reasons, present petition is dismissed with costs of ₹10,000/- to be deposited with Delhi High Court Legal Services Committee within four weeks.

A.K. PATHAK, J.

MAY 06, 2016

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