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

+ W.P.(C) No.8186/2015

M/S WHARTON ENGINEERS & DEVELOPERS

PVT. LTD.

..... Petitioner

Through: Mr. Ravi Gupta, Sr. Adv. with Ms.
Shobna Takiar and Ms. Bhoomija
Verma, Advs.

versus

NEW DELHI MUNICIPAL COUNCIL

..... Respondent

Through: Mr. Vivek B. Saharya, Adv. with Mr.
Y.V.V.J. Rajasehkar, Director
(Estate), NDMC.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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01.04.2016

CM No.10108/2016 (of the petitioner for modification of order dated 25th February, 2016).

1. This order is in continuation of the earlier order dated 30th March, 2016.
2. In compliance therewith Mr. Y.V.V.J. Rajasehkar, Director (Estate), of the respondent New Delhi Municipal Council (NDMC) is present. According to him, while going through the files while complying with the order dated 25th February, 2016 of this Court some doubts arose as to the fairness of the procedure for inviting tenders for the properties of which subject property was a part and it is for this reason that the order is not being complied with.
3. On enquiry though he had earlier stated that he was the Director of Estate also at the time of inviting and opening of tenders though had joined

only five months before that but now when the order is being dictated he states that he was not the Director of Estate at that time; on further enquiry he states that Mr. R.K. Gaur was the Director of Estate and Competent Authority at the relevant time. On yet further enquiry as to what action has been initiated against the Competent Authority of the relevant time on whose actions doubt has arisen, he is unable to give any reply. All that he states is that he is preparing a note for putting up before the Council of the respondent.

3. I have however put to the counsel for the respondent NDMC as to how are all these averments relevant. The respondent NDMC, after having invited tenders and after opening the tender and accepting the bids and also delivering possession of the properties, cannot now at this stage deny performance of the remaining obligations on such grounds especially when it is not even attempting to identify the guilty officials or proceeding against them. In law, once the bid is accepted, a binding contract has come into being in terms of the tender conditions and the respondent NDMC is obliged to abide by the same. If at all any grounds are available to the respondent NDMC under the law of contract, to wriggle out of the same, proper procedure has to be taken by the respondent NDMC; else respondent NDMC cannot keep in abeyance the fate of persons with whom it has so contracted and to at the same time claim performance from such persons of their part of the Agreement/contract. In this regard it may be stated that one of the grievance of the petitioner, in the petition, was that though the respondent NDMC was not providing electricity/water connection in the premises and not executing the Licence Deed, as it was obliged to do as per the conditions

on which tenders were invited but was claiming monthly licence fee from the petitioner. I am also of the view that officials successively occupying a post, as of Competent Authority/Director of Estates, cannot ordinarily be permitted to so put on hold contractual obligations, vaguely citing 'public interest' and doubting the fairness of the decision making by their predecessor. If the same were to be permitted, it would rather harm public interest by earning of NDMC from such properties being held up in the interregnum. The respondent NDMC, in the present case invited bids as far back as on 11th January, 2015, accepted the bid of the petitioner on 8th April, 2015, put the petitioner in possession on 2nd September, 2015 and now for the last more than six months dithering in the matter, not wanting to categorically give any reasons.

4. The senior counsel for the petitioner states that though in accordance with the decision taken by the respondent NDMC, the petitioner as the licensee of the first floor flat has exclusive access from the rear courtyard and the occupant of the shop on the ground floor has no rights with respect to the rear courtyard, but the respondent NDMC has been refusing to execute the Licence Deed on the said ground. Attention in this regard is invited to the Status Report at running page 59 of the paper book which is as under:-

“As regards the status report as asked by the Police Station, Lodhi Colony is concerned, it is submitted that the entrance of the Shop is from the front side and the shopkeeper has no right of the open courtyard. The entrance of the flat is from the backside of the courtyard. Furthermore, the licensee of the flat has no authority to construct anything in the courtyard which always remain

open. It is also submitted that the licensee of the Shop should restrict to the shop only and not beyond that.”

5. The counsel for the respondent NDMC states that as per the Status Report dated 19th December, 2015 filed in this proceeding, the respondent NDMC is agreeable thereto. He has also from his file shown to the senior counsel for the petitioner the clause to be inserted in the License Deed in this respect and the senior counsel for the petitioner is satisfied therewith.

6. Though I had while disposing of the petition on 25th February, 2016 directing installation of electric and water connection in the premises only directed consideration by the respondent NDMC within one month, of the representation of the petitioner qua execution of Licence Deed, and not issued any direction with respect thereto but since the respondent NDMC has not complied with the said direction also and now it has emerged that no dispute remains with respect to contents of Licence Deed, to avoid any further litigation it is deemed appropriate to issue direction with respect to that also.

7. The application is thus disposed of with a direction to the respondent NDMC to in accordance with the contract which has come into force, grant electricity and water connections and execute the Licence Deed, within ten days of today, subject of course to the petitioner complying with all the formalities.

8. It is clarified that the aforesaid will not come in the way of the respondent NDMC, if finds any merits in the doubts expressed by Director of Estate, in future taking further action for avoiding the contract in

accordance with law.

No costs.

Dasti under signature of Court Master.

RAJIV SAHAI ENDLAW, J

APRIL 01, 2016

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