

24

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(C) 3050/2017 & CM No.13362-63/2017

M/ STARLINE SECURITY SERVICES PVT LTD Petitioner

Through: Mr.Sunil K. Sharma, Adv.

versus

NORTH DELHI MUNICIPAL CORPORATION

THROUGH: ITS COMMISSIONER AND ORS Respondents

Through: Mr.Mukesh Gupta, Adv. for /NDMC
Ms.Manika Tripathy Pandey, Adv.
for R-3 & 4.
Mr.Madan Lal TI/Darya Ganj.
SI Rishi Pal, PS Jamia Masjid.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

ORDER

%

04.05.2017

1. North Delhi Municipal Corporation auctioned the parking site at Jagat Cinema, Murga Market, New Delhi-110006 in which the petitioner gave the highest bid which was accepted whereupon the aforesaid parking site was allotted to the petitioner vide an agreement dated 27th May, 2016 for a period of one year w.e.f. 28th May, 2016 to 27th May, 2017. The agreement is coming to an end on 27th May, 2017.
2. The petitioner has not placed the copy of the agreement and the terms of the agreement on record. Learned standing counsel for NDMC has handed over the agreement which is taken on record.
3. According to the petitioner, there is illegal encroachment in the parking site.

4. Learned standing counsel for respondent no.1 submits that the writ petition is not maintainable and the petitioner may avail appropriate remedies available in the realm of a private law. It is further submitted that the parking site is allotted on 'as is where is basis' and the petitioner cannot raise any objection at the fag end of the licence.

5. The Court is of the view that the writ petition is not maintainable. In ***Kerala State Electricity Board v. Kurien E. Kalathil***, (2000) 6 SCC 293, the Supreme Court held that dispute arising out of the terms of a contract have to be settled by the ordinary principles of law of contract. Relevant portion of the judgement is reproduced here under:

“11. A statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions. Dispute arising out of the terms of such contracts or alleged breaches have to be settled by the ordinary principles of law of contract. The fact that one of the parties to the agreement is a statutory or public body will not by itself affect the principles to be applied. The disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act. Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have power to contract or deal with property. Such activities may not raise any issue of public law. In the present case, it has not been shown how the contract is statutory. The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. That is a matter for adjudication by a civil court or in arbitration if provided for in the contract. Whether any amount is due and if so, how much and refusal of the appellant to pay it is justified or not, are not the matters which could have been agitated and decided in a writ petition. The contractor should have been relegated to other remedies.”

(Emphasis Supplied)

6. The writ petition and the pending applications are dismissed with liberty to the petitioner to avail appropriate remedies available to it in

accordance with law.

7. Copy of this order be given *dasti* to counsels for the parties under signature of Court Master.

J.R. MIDHA, J.

MAY 04, 2017

`ns'