

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

8

+

ARB.P. 817/2016

MANOJ KUMAR

..... Petitioner

Through: Mr. B.L. Wali, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Mr. Anupam Sharma, Advocate.

CORAM: JUSTICE S.MURALIDHAR

ORDER

%

20.01.2017

1. This is a petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996 ('Act') seeking the appointment of an Arbitrator for adjudication of the disputes arising out of the award of contract for a running parking site at Netaji Subhash Place, Pitampura, New Delhi by the Respondent, Delhi Development Authority ('DDA') by its letter dated 11th May, 2009.
2. It appears that in relation to the same parking site, there was a dispute involving Municipal Corporation of Delhi ('MCD') which had made a provisional offer letter to another contractor. That formed the subject matter of Writ Petition (Civil) No. 7829 of 2009 in which an order was passed by this Court on 27th October, 2010 directing the parking contractor to run the parking site without hindrance or interference either from MCD or DDA.
3. Thereafter, on 29th August 2011, the Petitioner wrote to the DDA stating

that the parking site had not been allotted to him despite the disputes with the MCD having been resolved. The Petitioner then filed Writ Petition (Civil) No. 4753 of 2012 in this Court in which an order was passed on 12th September, 2013 directing that the Petitioner should deposit a monthly license fee of Rs. 5,67,300 in the Court subject to which the North Delhi Municipal Council ('NrDMC') would allot the parking site in favour of the Petitioner. The Court noted that the said order had been made "because of the dispute between the Respondents MCD and Delhi Development Authority (DDA) as to which of the two was entitled to the licence fee of the said parking site."

4. The Court was informed subsequently on 1st June, 2016 that on 19th May, 2016, the Petitioner surrendered the said parking site and sought to be relieved from the obligation of payment of Rs. 5,67,300 per month. Learned counsel for NrDMC maintained that the parking site now belonged to NrDMC and therefore, they were entitled to the amount lying in the Court. Further, it was pointed out that the Petitioner had not complied with the order of deposit and as against approximately Rs. 1.80 crores, only about Rs. 1 crore had been deposited. The Court then gave NrDMC the liberty to remove all the belongings of the Petitioner from the parking site and to take charge of the parking site, "subject of course to the rights of the Respondent DDA and any action which the Respondent/DDA may take in this regard and oust the Petitioner therefrom".

5. At that stage, learned counsel for the Petitioner gave an undertaking to the Court that the entire amount computed at the rate of Rs. 5,67,300 per month

with effect from 31st October, 2013 till 19th May, 2016 less the amount already deposited, would be deposited within two months. Importantly, the Court observed that “as far as the disputes between the Respondents DDA and NrDMC are concerned, whosoever gets an order in its favour can have the amount lying deposited in this Court released in its favour. Till then, the amount lying deposited in the Court to be kept in a maximum interest bearing deposit.

6. At the subsequent hearing on 2nd June, 2016, the following order was passed:

“1. This order is in continuation of yesterday’s order dated 1st June, 2016.

2. The counsel for the Petitioner states that he is depositing a sum of Rs. 10 lacs in this Court today and the balance amount shall be deposited as already undertaken.

3. Though the counsel for the North Delhi Municipal Corporation (NrDMC) today also contends that there is no dispute as to whom the parking site belongs but this petition is not concerned with the *inter se* dispute between the NrDMC and the Delhi Development Authority (DDA) and they are free to agitate the said dispute in a separate proceeding and in accordance with the order wherein the amounts lying deposited in this Court and to be further deposited by the Petitioner in terms of his undertaking shall be disbursed.

4. The petition is dismissed as withdrawn.

5. The date of 1st August, 2016 is cancelled.

No costs. Dasti.”

7. Meanwhile, on 7th May 2016, the Petitioner had written to DDA invoking

the arbitration clause in the Licence Deed and requesting the Vice Chairman, DDA to act as an Arbitrator.

8. In response thereto, on 11th May, 2016 the DDA informed him that the matter had been taken up with the Competent Authority for appointing an Arbitrator and that he would be “informed as and when appointed.” Having not heard from DDA thereafter, the present petition has been filed.

9. At the first hearing on 23rd December, 2016, learned Standing counsel for the DDA sought time to obtain instructions. Today, one of the submissions made by Mr. Anupam Sharma, learned counsel for the DDA is that given the above background, NrDMC must be made a party to the present petition.

10. The above plea is opposed by Mr. B.L. Wali, learned counsel for the Petitioner who points out that the Licence Deed/Agreement is entered into only by the Petitioner and the DDA. He further submits that such prayer for impleading NrDMC can be made before the Arbitrator to be appointed by the Court.

11. The existence of the arbitration clause in the Licence Deed and its invocation by the Petitioner is not disputed. In terms of Section 11 (6A) of the Act as amended with effect from 23rd October, 2015, the Court has to proceed to appoint an Arbitrator for adjudication of disputes between the parties including claims and counter-claims.

12. Accordingly, this Court appoints Mr. Justice Devender Gupta, a former Chief Justice of Andhra Pradesh High Court (Mobile No. 9818065456) as

sole Arbitrator for adjudication of disputes between the parties including claims and counter-claims. The learned Arbitrator shall fix his own terms and fees. In the first instance the proposed Arbitrator will make a disclosure to the parties in terms of Section 11 (8) read with Section 12 (1) of the Act and thereafter enter upon reference. In the event the disclosure is not made within a reasonable time or such disclosure discloses the inability of the proposed Arbitrator to act as such, it will be open to the parties to apply to this Court for directions.

13. Subject to compliance with the above direction, the learned Arbitrator will act as Arbitrator and enter upon reference.

14. The petition is disposed of. A copy of this order be communicated to the learned Arbitrator forthwith.

15. Order be given *dasti*.

S.MURALIDHAR, J

JANUARY 20, 2017

Rm