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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 8386/2018**
AJAY KUMAR

..... Petitioner

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

versus

NORTH DELHI MUNICIPAL CORPORATION

..... Respondent

Through: Ms.Mini Pushkarna, SC for Nr. DMC
with Ms.Swagata Bhuyan, Ms. Ritika
Ganju and Ms.Shiva Pandey, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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15.07.2019

1. The present petition has been filed by the petitioner with the following prayers:

“It is, therefore, most respectfully prayed that this Hon’ble Court may be pleased to issue:-

- 1) writ, order or direction in the nature of certiorari thereby setting aside the letter dated 31.07.2018 issued by the respondent whereby the respondent has cancelled the parking site situated near Manglam Plaza, Rohini, Plot No.7, Vardhman Plaza, Delhi, allotted to the petitioner on 05.03.2018 by the respondent without affording any opportunity of hearing and without any justification legal or otherwise cancelled the said parking site;*
- 2) writ, order or direction in the nature of mandamus*

thereby directing the respondent to allot the parking site situated at Sukha Ped, and / or Truck Parking near Mori Gate and / or Gurudwara Road, Karol Bagh, as all the parking sites belonging to the respondent are lying vacant and their term of allotment has already come to an end in order to enable the petitioner to operate either parking as the aforesaid parking site has been cancelled illegally and arbitrary;

3) issue any other appropriate writs, orders or directions are deemed fit and proper in the facts and circumstances of the case, in favour of the petitioner and against the respondents.”

2. In substance the challenge is to a communication dated July 31, 2018 whereby the respondent Corporation has decided to cancel the parking site in favour of the petitioner by stating as under:

“In compliance of orders of the Hon’ble Court of Delhi dated 22.05.2018 in the matter of “Manglam Place Welfare Association V/s North DMC” in WP (C) 3019/2018 and as per the approval of the Competent Authority dated 06.07.2018, the allotment of parking site situated Near Manglam Plaza, Rohini (Plot No.7) Vardhman Plaza) is hereby cancelled. The parking site could made operational only from 26.04.2018 to 22.05.2018 on the area measuring 5202 Sqm. out of 9601 Sqm. due to agitation by Manglam Place Welfare Association. Accordingly, an amount of Rs.4,18,397/- is deducted from the amount of advance MLF on account of

MLF for the period from 26.04.2018 to 22.05.2018 for the operational area of 5202 Sqm. calculated on proportionate basis.

Now, an amount of Rs.42,07,035/- (after deduction MLF for the period from 26.04.2018 to 22.05.2018) is balance & lying with North DMC along with Security amount of Rs.23,16,900/- in the form of FDR. This amount shall be adjusted against future allotment of parking site to Contractor Sh. Ajay Kumar.

This issue with the prior approval of the Competent Authority.”

3. The parking site was the subject matter of a writ petition being W.P. (C) 3019/2018 titled ***Manglam Place Welfare Association (Regd.) v. North Delhi Municipal Corporation and Ors.*** It may be stated here that total area of the parking site for which the plan was prepared by the Nr. DMC was 9601 Sqm. An issue arose in the writ petition W.P.(C) 3019/2018 as to how much land, the DDA has transferred to the Nr. DMC on which the parking site was allotted.

4. The said writ petition was disposed of by the Division Bench in terms of the following conclusion:

“3. That being so, we are of the considered view that now in view of the subsequent action that has been brought on record as is indicated from the additional affidavit, no further indulgence into the matter is called for. However, during the course of hearing, learned counsel representing respondent

No.4 vehemently argued about the bonafide of the petitioner in filing the writ petition, the locus standi and various other malafides involved in the matter. That apart, he tried to indicate that this PIL at the instance of the petitioner association is a misuse of the process of law. In view of the subsequent development that has taken place and as indicated hereinabove, we need not go into all these aspects of the matter now. However, as the respondent No.4 has already challenged the action taken against him, we grant him liberty to prosecute the matter in the writ petition filed and we clarify that we have not gone into the merits of the action taken against the respondent No.4. We have only disposed of the matter being satisfied with the action. Merits of the action taken, as indicated hereinabove, for cancellation of the contract can be looked into by the learned writ Court where the matter is sub judice at the instance of respondent No.4.”

5. Mr. Wali, learned counsel for the petitioner submits that as against 9601 Sqm. the petitioner was operating the parking site on 5202 Sqm. He also submits that the petitioner would be satisfied if the petitioner is allowed to operate parking site on the land admeasuring 1263 sq. meter and in that eventuality, he will not insist on interest be paid on the amount still lying with SDMC. Otherwise, he submits that the petitioner is entitled to interest for the reason that after cancelling parking site except stating that the money shall be refunded to the petitioner, no refund has been made.

6. On the other hand, Ms. Mini Pushkarna, learned Standing Counsel appearing for the Nr. DMC justify the cancellation of the parking site awarded to the petitioner inasmuch as the petitioner could not have operated the parking site on the land measuring 9601 Sqm or 5202 Sqm. She submits that even the area of 1263 Sqm. cannot be used for parking site as it has to be re-tendered to get the best price. She has drawn my attention to the communication dated July 31, 2018 to contend that two amounts of Rs.42,07,035/- and Rs.23,16,900/- are lying with the Corporation. The later one being in the form of FDR. She states that the said amounts shall be adjusted against any future allotment of parking site to the petitioner herein.

7. In other words, she concedes to the fact that the amounts are still lying with the Corporation. At the same time, she has also drawn my attention to para 27 of the counter affidavit to contend that the department has no objection in refunding the amounts of the petitioner. On a specific query to Ms. Mini Pushkarna as to why even after cancellation on July 31, 2018, the amounts have not been refunded to the petitioner, she could not give any answer.

8. Having heard the learned counsel for the parties, the only issue which needs to be decided is whether the petitioner is entitled to operate the parking site on the land measuring 1263 Sqm. The plea advanced by Ms. Mini Pushkarna is that the Corporation intends to issue fresh tender calling for bids for operating the parking site. The plea is appealing as it is ultimately for the respondents to take a decision, which shall benefit them, and in public interest. Insofar as the alternative plea of Mr. Wali that the petitioner is entitled to interest on the amounts lying with the respondents is concerned, the same is appealing. I find from the communication dated July

31, 2018 two amounts are lying with the Corporation, they being Rs.42,07,035/- and Rs.23,16,900/-. It is clear from the said communication that the amount of Rs. 23,16,900/- lying in the form of FDR. Surely, the FDR will fetch interest. Insofar as Rs.42,07,035/- is concerned, the respondents should have refunded the same immediately on the issuance of the impugned communication dated July 31, 2018. Having not done that, the respondents are now liable to refund the said amount to the petitioner with interest. The petitioner shall be entitled to interest @ 6% per annum on the amount of Rs.42,07,035/- computed w.e.f. August 01, 2018 till the date of refund.

9. With the aforesaid observation, the writ petition is disposed of.

V. KAMESWAR RAO, J

JULY 15, 2019/aky