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

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Date of Decision: 12.04.2021

% W.P.(C)4547/2021

SUSHIL KUMAR SINGH

..... Petitioner

Through: Mr. Aman Bhalla, Advocate.
versus

NORTH DELHI MUNICIPAL CORPORATION

..... Respondent

Through: Ms. Mini Pushkarna, Standing
Counsel with Ms. Khushboo
Nahar, Ms. Latika Malhotra,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J. (ORAL)

CM APPL. 13944/2021

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) 4547/2021 & CM APPL. 13943/2021

1. Issue notice. Ms. Pushkarna accepts notice on behalf of the respondents.
2. We have heard learned counsels at some length. At this stage itself, we proceed to dispose of the present writ petition.
3. The petitioner has preferred this petition to restrain the respondents from proceeding to call for bids in respect of the parking site for Car/Two

W.P.(C) 4547/2021

Page 1 of 8

Wheelers/ Three Wheelers near Ruby Taxi Stand at Distt. Centre, Rajendra place vide e-tender dated 16.03.2021, NO. DC/RP CELL/ NDMC/2021/D-539 and Corrigendum/ addendum dated 26.03.2021, No. DC/ RP CELL I NDMC/ 2021/D-601 listed at Item No. 75 of the Tender List.

4. The case of the petitioner is that the petitioner was awarded the contract for the aforesaid parking site for a period of two years by the Letter of Intent on 23.01.2019. The two year period expired on 22.01.2021. In terms of Clause 3 of the License Conditions, the petitioner applied for renewal of Licence. According to the petitioner, the petitioner is entitled to extension of license for a further period of two years – one year at a time, with enhancement of monthly license fee by 5%. For this purpose, the petitioner places reliance on Clause 3 of the Licence Conditions, which reads as follows:

“3 Duration of License:

The license of surface parking will be for duration of two years and in case of MLUG/Stack Parking(s) the duration would be of three years respectively, further extendable to two years on satisfactory completion of the existing contract (with effect from the date of handing over the parking site to the licensee). However, the agreement shall be renewed after the expiry of each one year with the enhancement of Monthly License Fee by 5% (Five Percent) for the next year, subject to the satisfactory completion of period of first year of contract.

Satisfactory completion implies that there should not be any dues pending against the contractor. However, if the allottee/ licensee continue to operate the site after expiry of period his security deposit and other parking facilities etc. provide to/ by him will be forfeited and action be taken to vacate him from the site considering him as an encroacher. However, he shall be liable to pay to the Corporation the misuse/ damages charges @ double the Monthly License Fee

for such period of unauthorised occupation.”

5. Learned counsel for the petitioner submits that after the filing of this Writ Petition, the petitioner has received a communication extending the licence period till the new H-1 Bidder takes over the parking site from the petitioner in terms of the impugned NIT. The said communication has been shared with us, and the same reads as follows:

“
North Delhi Municipal Corporation.
(Remunerative Project Cell)
16th Floor, Civic Centre
Minto Road, New Delhi-110002
Tel. No. 23226602.

No. DC/RP Cell/NDMC/2021/D- 024

Dated:-09/04/2021.

To,

Sh. Sushil Kumar Singh,
R/o H. no. 178-A, Gali No. 4/2,
Karwal Nagar, Extn., Delhi 110042.

Sub:-Extension of the Contract of parking site situated at Near Ruby Taxi stand at Distt. Cnetre Rajender Place/Karol Bagh Zone.

I am to inform your that the Competent Authority vide its orders dated 26.03.2021 has been pleased to grant further extension for further one year i.e. 14.02.2021 to 13.03.2022 with enhancement of 5% in MLF i.e. Rs. 48,896/- + TCS subject to maximum extension period of handing over the site to new H-1 in e-tender process in ensuing NIT vide No. D-539 dated 16.03.2021.

The issues with the prior approval of Competent Authority.

Section Officer
R. P. Cell/North DMC”

6. Learned counsel for the petitioner submits that the petitioner has a

legitimate expectation of it being granted the extension for two years – one year at a time in terms of Clause 3, since, admittedly, there has been no default on the part of the petitioner in the performance of the contract, and it is not even the case of the respondents that the petitioner has not satisfactorily completed the contract during the contractual period.

7. Learned counsel for the petitioner submits that the enhanced licence fee payable for the extended period comes to Rs. 46,568/- per month.

8. Ms. Pushkarna, who appears for the respondents submits that the petitioner is essentially seeking specific performance of the agreement which is not permissible in view of the fact that the contract itself is determinable. In this regard, she has drawn our attention to Clause 22 of the Licence Conditions, which reads as follows:

“22. Determination of licensee;

***At the determination of agreement for whatever causes** the licensee shall restore the land in the condition in which it stood immediately before the licensee took it over and shall peacefully hand over the possession of the said site to the licensor. In the event of determination of license, North DMC reserves the right to ask the licensee to run and maintain the parking site on the terms & conditions of that agreement for a specific period as specified by North DMC, but in any case not beyond a period of 3 months. In case the Licensee refuses the offer or the extended period of 3 months elapses without the new licensee through the new tendering process being in place, the North DMC shall invite the H-2 bidder of the last tender failing which the other licensees running the other sites satisfactorily to run the site for a period not exceeding 3 months at the terms and conditions of the last agreement or at the modified terms and conditions to be determined by the Committee appointed by the Commissioner North DMC for this purpose. Normally the MLF shall not be less than the MLF of*

the earlier H-1 bidder. However, in case no one comes forward to run the parking at the MLF offered by the H-1 Bidder, the preference shall be given to (i) H-1 at H-1 rate, (ii) H-2 bidder at H-1 rate and (iii) any existing/new parking contractor at H-1 rate or as decided by the Committee appointed by the Competent Authority in this regard.” (emphasis supplied)

9. Ms. Pushkarna submits that the respondents have made a scientific assessment of the actual worth of the parking site by using CAD Drawings, and on that basis, it has found that the minimum parking fee that the respondent can derive is to the tune of Rs.72,000/- per month. She submits that in view of the said discovery, a conscious decision was taken by the respondents to grant extension to the petitioner till only the new H-1 Bidder is finalised. She submits that this decision is taken in the interest of public revenue. She has placed reliance on a decision of Division Bench of this Court in W.P.(C) No.2924/2020, ***Binay Kumar Mishra v. The Director (R.P.Cell), Delhi Urban Shelter Improvement Board and Ors.***, and in particular paragraph 13 of the said decision, which reads as follows:

“13. Having considered the rival contentions, we do not find the petitioner to be entitled to the relief claimed. This petition has been filed only to perpetuate the hold of the petitioner over the subject parking site inspite of term of the contract therefor in favour of the petitioner having expired on 31st March, 2020. The petitioner already, owing to the prevalent COVID-19 conditions, has continued to operate the subject parking site beyond 31st March, 2020 and if the respondents are able to fetch a higher licence fee therefor, it is in public interest that the same be fetched, rather than accommodating the petitioner with respect thereto at a much lower than market price. In fact the respondents would be violating the public policy, if rather than fetching the maximum price which the subject parking site is capable of fetching, extend the term of contract with the

plaintiff therefor, without the plaintiff having any right under the said contract to extension as sought. Though the petitioner in the petition sought to give a colour of discrimination to the action of the respondents, of issuing fresh NIT for the subject parking site while granting renewals with respect to other similarly situated parking sites but the petitioner has utterly failed to make out the said case. Even otherwise we are of the view that merely because the respondents may grant extension with respect to one parking site qua which the assessment of the respondents is that it is incapable of fetching more, would not be a ground for compelling the respondents to grant extension with respect to another parking site also, which indeed in the assessment of the respondents also is capable of fetching a much higher licence fee. Court interference in price fixation is only on a case of mala fide and arbitrariness being established and which has not been done in the present case.”

10. She has also shared with us the relevant file notings relating to this case – where the respondents have taken a decision that the fair assessment of the worth of the parking site would henceforth be made on the basis of CAD Drawings, and inputs. Ms Pushkarna further points out that the tender Forms are available till 5.PM. today i.e. 12.04.2021, and it is open to the petitioner to participate in the tendering process even now.

11. Learned counsel for the petitioner has sought to distinguish the decision in **Binay Kumar Mishra** (supra) by submitting that in that case, the contractual term of the contractor was already over. On the other hand, in the present case, the petitioner is entitled under the terms of the licence itself, to two extensions of one year each with enhancement of the license fee of 5%.

12. We have considered the submissions of learned counsels for the

parties. Clause 3 of the terms and conditions shows that the term of the licence was two years which, admittedly has come to an end. It provides that the contract may be extended further. The right of the licensee to seek extension is pre-conditioned by his satisfactory completion of the period of the contract. Without such satisfactory completion, the contractor cannot even plead for further extension of the contract. However, that does not mean that in every case, the respondents are bound to grant the extension of the contractual term. Certainly, the respondents cannot act arbitrarily or whimsically, while taking a decision whether, or not, to grant extension of the contractual term. But, if there are good and germane reasons for not granting extension of time, or limiting its extension for a period of less than one year at a time, it would not be correct for the Court to sit in judgment, and overrule the said decision of the respondents. The respondents have brought out the rationale for extending the petitioner's contract only till the award of the fresh contract to H-1 Bidder. The file notings shared with us do show that the worth of the parking site has been scientifically assessed at a minimum of Rs.70,000/- per month, which is substantially more than the license fee that the petitioner would be paying even after 5% enhancement i.e. Rs. 46,568/- per month. The parking sites are auctioned by the respondent to augment its revenue for discharging its public duties.

13. That being the position, we find complete justification in the respondents not granting extension to the petitioner in terms of Clause 3 of the terms and conditions of the license, for a period of one year, and granting extension only till the new H-1 Bidder is finalised in terms of the impugned tender.

14. We do not find any merit in this petition and dismiss the same leaving the parties to bear their respective costs.

VIPIN SANGHI, J

REKHA PALLI, J

APRIL 12, 2021

N.Khanna

