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

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Judgment delivered on: 22.09.2021

+ W.P.(C) 8131/2021 & CM APPL.25253/2021

SHOBHIT SHARMA

..... Petitioner

versus

DELHI DEVELOPMENT AUTHORITY & ORS. Respondents

Advocates who appeared in this case:

For the Petitioner:

Mr. Jagjit Singh, Mr. Preet Singh and Mr. Vipin Chaudhary, Advocates (through VC)

For the Respondent:

Mr. Gaurav Dua, Mr. Arpit Chanana and Mr. Manish Gupta, Advocates for R-1 (through VC)

Ms. Mini Pushkarna, Standing Counsel, North DMC with Ms. Khushboo Nahar and Ms. Latika Malhotra, Advocates for R-2 (through VC)

Ms. Nidhi Mohan Parashar with Ms. Nandita Rathi, Advocates for R-3 (through VC).

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner seeks quashing of the award of parking contract on license basis by the DDA to respondent No.3 and further seeks a restraint on the North Delhi Municipal Corporation from terminating or cancelling the contract awarded to the petitioner till the parking contract of respondent No.3 is cancelled/adjudicated upon by this Court.

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to HMJ Sanjeev Sachdeva.

W.P(C) 8131/2021

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2. It is the case of the petitioner that petitioner is a successful bidder for various parking lots vide Letter of Intent dated 21.06.2021. As per the petitioner when petitioner submitted his bids for the parking lot there was no additional parking existing at the spot.

3. It is contended that subsequently DDA has created additional surface parking in six plots which were handed over by the MCD to DDA solely for the purposes of construction of a multi level parking.

4. It is pointed out that by order dated 25.01.2021 in W.P(C) 1820/2020 titled *Netaji Subhash Place Traders Welfare Association (Regd) vs. Delhi Development Authority & Ors*, six plots were directed to be handed over to DDA solely for the purpose of construction of a multi level parking.

5. Learned counsel points out that in order dated 25.01.2021, the assurance of DDA is noticed that within one month the plots will be auctioned for the purposes of construction of multi level parking and in case DDA decided to construct the parking on its own, then the construction would commence within 3-4 months. It is pursuant to this direction that Municipal Corporation handed over six plots to DDA.

6. Learned counsel for the petitioner submits that DDA, instead of constructing the multi level parking, has allotted the plots for surface parking to respondent No.3. He submits that because of the allotment

by DDA and creation of additional parking, the bid submitted by the petitioner is no longer serviceable as when the bid was submitted there was no additional parking and now additional surface parking is available on six more plots.

7. It may be noted for the purposes of record that the parking lots which were allotted to the Petitioner were not taken over by the petitioner for the above reasons and they have also been temporarily allotted to Respondent No. 3 for a short period.

8. Learned counsel appearing for the DDA admits that the plots were handed over to DDA for the purposes of constructing multi level parking. He however, submits that because of certain logistic and other administrative delays including the present pandemic, auction for construction of the parking could not take place.

9. He further submits that since there was delay in auctioning the contract for construction of multi level parking, an application has been filed before the said Court for extension of time. He submits that as the plots were lying idle and there was requirement for parking, DDA has been allotted the parking to respondent No.3 for only a short period of six months w.e.f. 05.04.2021 to 04.10.2021.

10. Learned counsel further under instructions submits that the request for proposal for inviting bids for construction of multi level parking is still in the process of finalisation and shall take about one

more month and thereafter bids will be invited. He submits that in this view of the matter, the construction of parking is likely to commence after 3-4 months.

11. Learned counsel appearing for respondent No.3 submits that respondent No.3 is an allottee of the parking site for a short term period. She however, submits that during the period of allotment there was a lockdown for about 51 days because of which the parking could not be used. Accordingly, respondent No.3 has already approached the DDA for either refund of the parking fee paid in excess for 51 days or for extension of the term of the agreement by 51 days.

12. Learned counsel appearing for the Municipal Corporation submits that the land was handed over to DDA for a specific purpose and not for the purposes of letting it out as a parking site. She submits that originally the entire area was being maintained and managed by the Municipal Corporation and in terms of the orders of the Court the land was handed over to DDA only for the specific purpose of construction of a multi level parking.

13. She submits that in view of the action of the DDA, a joint meeting was held between the officers of the Municipal Corporation and the DDA and minutes of meeting dated 08.09.2021 have been drawn.

14. Learned counsel refers to the decision taken in the said minutes,

which are reproduced herein:-

5. After detailed discussions, the officers of North DMC & DDA agreed on following decisions:-

- a) The successful H-1 bidder/petitioner i.e. Shri Shobit Sharma should take over the physical possession of the parking site area admeasuring 18107 sqm from North DMC at offered price of Rs.27,27,272/- per month after deposit of complete amount of security deposit and FDR, because there is no such condition in the terms & conditions of tender document that no parking would be allowed to run in the adjoining plots handed over to DDA by North DMC. Further, as per terms & conditions of tender document, the successful bidder is bound to take possession of the site on "As is Where is basis" and no objection shall be entertained post the award of LoI. In case H-1 bidder does not take possession of the site, then North DMC can offer H-2 bidder to enter into agreement with North DMC to run parking site at approved H-1 rate i.e. Rs.27,27,272/- per month.*
- b) Delhi Development Authority has awarded the short-term contract till October, 2021 to the existing contractor selected by North DMC namely, Shri Vijay Kumar Gupta at the approved rates under agreement with North DMC. However, since North DMC has approved new contract rates of Rs.27,27,272/- per month after floating latest e-tender of area admeasuring 18107 sqm which comes to Rs.150.61 per sqm per month, therefore DDA shall charge not less than this amount from Mr. Vijay Kumar Gupta for the period of agreement w.e.f. 21.6.2021 (the date of LoI issued*

to H-1 bidder by North DMC).

- c) Further, in case of any further delay in the project of construction of multi level parking, DDA shall first offer the parking site to the existing contractor of North DMC at that time at the approved rates of North DMC. In case of denial by the parking contractor of North DMC, DDA would be at liberty to provide the parking site to any parking contractor at their own.*
- d) With effect from 21.6.2021 (the date of LoI issued to H-1 bidder) and till the decision of Hon'ble Court and further handing over/taking over of parking site by the H-1 bidder, the existing contractor of North DMC i.e. Shri Vijay Kumar Gupta to be allowed to run the parking site of North DMC of area admeasuring 18107 sqm at the rate of Rs.150.619 per sqm per month which comes to Rs.27,27,272/- per month.”*

15. It is apparent from the minutes of meeting that the subject plots were handed over to DDA for the limited purpose of constructing a multi level parking. There was no option granted to the DDA to let out the said area for the purposes of creating a surface parking.

16. However, since the period for which the contract has been awarded by DDA, is only a short period of six months and is expiring on 04.10.2021, this Court is refraining from commenting further on the validity or otherwise of the said allotment to respondent No.3 by the DDA.

17. As per the minutes of meeting it has been decided that after the contract awarded to respondent No.3 is over, the said six additional plots would also be offered to the petitioner at the same rate at which petitioner has bid for the other plots. In case petitioner/existing contractor of North DMC fails to accept the offer, then DDA would be at liberty to provide the parking site to any other parking contractor of their own.

18. Learned counsel for the petitioner under instructions submits that petitioner is willing to accept the additional plots also at the same rate at which he has furnished a bid to the Municipal Corporation for the other plots.

19. Learned counsel for the petitioner further undertakes that on 05.10.2021 simultaneously with the handing over of possession of all the parking sites including the six sites allotted to respondent No.3, petitioner shall comply with the letter of allotment and shall furnish the requisite security deposit/bank guarantees and the license fee as agreed upon.

20. He further undertakes that as soon as the contract for the six parking sites is auctioned by the DDA and possession is to be handed over for the purposes of construction, petitioner undertakes to vacate and hand over the possession to the contractor of DDA for the said purpose.

21. The undertaking is accepted.

22. The claim of respondent No.3 with regard to refund of the license fee for the period of 51 days, when lockdown was imposed, does not arise for consideration in this petition. Respondent No. 3 is at liberty to raise the said dispute in appropriate forum.

23. Further, clause (d) of para 5 of the minutes of meeting requires respondent No.3 to pay the same rate as has been offered by the petitioner for the other parking lots also temporarily allotted to Respondent no. 3.

24. Learned counsel for respondent no. 3 submits that as respondent No.3 was not a party to the said meeting and has also not submitted the same rate, he is not liable to pay the enhanced rate and is liable to only pay the rate at which the allotment was made.

25. This dispute also does not arise for consideration in these proceedings and it would be open to the parties i.e. DDA, Municipal Corporation and respondent No.3 to have the said *inter-se* dispute adjudicated in appropriate forum. The issue is accordingly left open.

26. Further, learned counsel for respondent No.3 submits that as respondent No.3 was not a party to the meeting and was never served with the copy of the minutes prior to today, respondent No.3 is not agreeable to pay the enhanced sum of Rs.27,27,272/- per month and is

willing to offer the rate as per her agreement and in case the Corporation is insistent upon the enhanced rate, then respondent No.3 is willing to hand over the possession of all the parking sites (six allotted by DDA and the additional sites allotted by North MCD) today itself.

27. The statement is taken on record.

28. In view of the above statement, it would be open to the Municipal Corporation to take a view in the matter and in case Municipal Corporation decides to accept the surrender of possession by respondent No.3 at an earlier date, they are at liberty to do so.

29. Learned counsel for the petitioner submits that in case all the plots are offered to the petitioner even before 05.10.2021, petitioner is willing to take the same as per his above undertaking.

30. The Statement is also taken on record.

31. The Petition is accordingly disposed of in the above terms.

SANJEEV SACHDEVA, J.

SEPTEMBER 22, 2021/rk