



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

+ **W.P.(C) 5755/2022**

Date of Decision: 07.04.2022

IN THE MATTER OF:

M/S NYONI ENTERPRISES PVT. LTD Petitioner
Through: Mr. Arun Batta, Ms. Indira & Ms.
Neha Kumari, Advocates

Versus

SOUTH DELHI MUNICIPAL CORPORATION & ORS..... Respondents
Through: Mr. Tushar Sannu, Standing Counsel
for SDMC/Respondent No. 1 alongwith Ms.
Priyansha Sinha, Advocate alongwith W/SI
Mamta, P.S. Dwarka South
Mr. Achal Gupta, Advocate for Respondent
Nos. 2 & 3

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

CM APPL. 17247/2022 (Exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 5755/2022 & CM APPL. 17246/2022 (Stay)

1. The present writ petition has been filed under Article 226 of the Constitution of India on behalf of the petitioner seeking the following



reliefs:-

“a. Issue a writ, order or direction in the nature of Mandamus or any other writ thereby directing the Respondent Nos.1 to 3 to take appropriate action against the Respondent No.4 Association and its members, Customers, local politicians etc. and stop them from interfering/creating any hindrance in the peaceful running of the authorized Parking Site of the Petitioner at Dwarka Sector -11 Market (Pocket-4), Dwarka.

b. Issue a writ, order or direction in the nature of Certiorari or any other writ thereby restraining the Respondent No. 4 Association from interfering in the peaceful running/Collection of parking charges/creating any obstacles in smooth running of the Parking Site of the Petitioner at Dwarka Sector -11 Market (Pocket-4), Dwarka.

c. Issue a writ, order or direction in the nature of Mandamus or any other writ thereby directing the Respondent No. 1 not to charge any Monthly Licence Fee till the time the authorized Parking Site of the Petitioner at Dwarka Sector -11 Market (Pocket-4), Dwarka becomes fully functional.

d. Any other or further order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

2. The petitioner claims to be a Private Limited Company engaged in the business of running of Parking Sites under contracts/licenses issued by various Departments like MCD, DDA, Indian Railways, DMRC etc.

3. It is further claimed that respondent No.1/SDMC had floated NIT (Notice Inviting Tender) No.AC/RPC/SDMC/2021/D-200 dated 17.08.2021 for operation of various parking sites, including the parking site at Dwarka Sector-11 Market (Pocket 4), Delhi on monthly license fee for a period of five years. The petitioner, being the successful bidder, was issued an offer letter dated 21.10.2021 by the respondent/Corporation. Consequent to the same, the petitioner deposited three months' advance license fee i.e., Rs.7,56,324/- alongwith



equivalent amount of security deposit/performance guarantee. Thus, the total amount deposited by the petitioner came to about Rs.15,12,648/-.

4. It is also claimed that vide letter dated 21.10.2021 bearing No.AC/RPC/SDMC/2021/D-412, the petitioner was directed to take over the possession of the parking site within a period of 7 days from the date of issuance of the offer letter and consequently, on 24.11.2021, the physical possession of the parking site was handed over to it vide possession letter bearing No.AC/RPC/SDMC/2021/D-509.

5. Learned counsel for the petitioner has contended that when the petitioner sought to install the parking boards/banners, some of the shopkeepers of the local market gathered and stated that they would not pay parking charges to the petitioner. It is submitted that on account of resistance by the shopkeepers belonging to respondent No.4/Association, the petitioner has not been able to operate the parking site. It is also the grievance of the petitioner that despite being informed, the SHO/respondent Nos. 2 & 3 failed to take necessary action.

6. In support of his submissions, learned counsel for the petitioner has placed reliance on the order dated 17.08.2018 passed in Jagtar Singh v. Delhi State Industrial and Infrastructure Development Corporation Ltd. and Ors., W.P.(C) 8648/2018.

7. Learned Standing Counsel appearing on behalf of respondent No.1, on the other hand, has taken a preliminary objection to the maintainability of the present petition. He has referred to the averments made in the petition as well as in the letters written by the petitioner to submit that concededly, the possession of the parking lot was handed over by respondent No. 1 to the petitioner, whereafter the local



shopkeepers, stated to be the members of Respondent No. 4/Association, obstructed its way to operate the parking site.

8. I have heard learned counsels for the parties and perused the material placed on record.

9. Admittedly, the petitioner was awarded a contract to operate the parking site at the subject property and the possession of the parking site was also handed over to it.

10. The petitioner has neither raised any issue with respect to the NIT nor imputed any shortcoming to respondent No.1/Corporation. It is also not the petitioner's case that the parking site by itself cannot be put to use. The only issue agitated on behalf of the petitioner is that the local shopkeepers, stated to be belonging to respondent No. 4/Association, are causing hindrance in the petitioner's operation of the subject parking site.

11. There is no gainsaying that remedy under Article 226 of the Constitution of India lies against action of the State and indeed, respondent No. 1/Corporation is an instrumentality of the State within the meaning of Article 12 of the Constitution of India. However, a perusal of the averments made in the petition as well as submissions made by learned counsel for the petitioner would show that the petitioner has not made out any grievance against respondent No.1/Corporation. The petitioner's sole grievance is against the shopkeepers, stated to be belonging to respondent No.4/Association.

12. In this backdrop, suffice it to note, the petitioner cannot enforce its private rights against the members of respondent No. 4/Association by way of a writ petition. Even the alleged inaction of the police authorities i.e., Respondent Nos. 2 & 3 cannot be assailed in the present proceedings as alternate remedy is available with the petitioner.



13. Further, the reliance placed by learned counsel for the petitioner on the order passed in Jagtar Singh (Supra) is misplaced as the said order was only interim in nature, whereby the petitioner was given liberty to approach the concerned SHO. In fact, on the next date of hearing, the petition was dismissed as withdrawn.

14. In view of the aforesaid, the present petition is dismissed, alongwith the pending application.

15. It is clarified that this Court has not gone into the merits of the contentions raised. As such, the rights and contentions of the parties shall remain reserved.

(MANOJ KUMAR OHRI)
JUDGE

APRIL 07, 2022
p'ma



न्यायमेव जयते