

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

WPA 14189 of 2023

Susanta Maity
Vs.
Kolkata Metropolitan
Development Authority & Ors.

Mr. Prosenjit Mukherjee,
Mr. Animesh Mukherjee,
Mr. Arghya Kamal Das
.... for the petitioner

Mr. Sirsanya Bandopadhyay,
Mr. Avishek Guha,
Ms. Akansha Chopra
.... for the KMDA

1. Learned counsel appearing for the petitioner contends that the petitioner initially had an agreement/licence to use a signboard on the property belonging to the KMDA (Kolkata Metropolitan Development Authority). Subsequently, however, the petitioner could not run the entire length of the tenure of the agreement, due to certain medical ailments of the petitioner and other reasons.
2. The petitioner challenged a tender floated by the KMDA during the subsistence of such contract. However, subsequently, the petitioner withdrew the said writ petition on the assurance of the

KMDA that a new contract would be entered into with the petitioner. Accordingly, vide communication dated February 23, 2023, the KMDA communicated to the petitioner that the concerned Department had fixed the amount of charges at Rs.8,85,000/- for installation of hoarding around CTC Park, covering an area of 1000 sq. ft., at one time basis for the period of one year from the deposit date to prepare the agreement.

3. Learned counsel for the petitioner contends that pursuant to such concluded contract, the petitioner deposited the amount, that is, Rs.8,85,000/-. However, despite repeated requests by the petitioner to that effect, no agreement was executed by the KMDA.
4. Learned counsel appearing for the KMDA cites a communication dated March 27, 2017, a copy of which is handed over in Court, purportedly by the Managing Director of the Calcutta State Transport Corporation (CSTC) to the Chief Executive Officer, KMDA intimating that in recent times, Audit had advised CSTC to explore means to generate Non-traffic Revenue for betterment of financial status of the Corporation. In the interest of generating Non-

Traffic Revenue, CSTC had purportedly allowed the agency, that is, the petitioner, to display advertisement on hoarding at the Howrah Station Bus Terminus.

5. The said letter further communicated that the KMDA may allow the petitioner to continue business till the completion of the contract period, that is, June 30, 2017 and stay call of proposed tender notice.
6. It is contended by the KMDA that as per the norms, the KMDA was required to float a tender for granting the licence for the purpose of setting up a hoarding and could not enter into a private contract.
7. In any event, it is pointed out that the KMDA has, vide communication dated June 27, 2023, offered to return the entire amount deposited by the petitioner.
8. It is submitted that the entire cause of action of the writ petition falls within the realm of private contract and, at best, the petitioner's claim may be in damages. Learned counsel further argues that the proposed setting up a hoarding tantamounts to a licence, which has been sought to be terminated by the KMDA. The court ought not to interfere with such termination.

9. A perusal of the communication dated February 23, 2023, annexed at page 58 (annexure P-8) of the writ petition indicates that there was consensus ad idem upon acceptance of the offer of the petitioner to set up a hoarding at the designated location from the end of the KMDA. The KMDA even stipulated a specific amount as charges for the petitioner to set up such hoarding around the CTC Park in respect of 1000 sq. ft. area. It was also intimated that the said payment would be on one time basis for the period of one year "from your deposit date to prepare the agreement."
10. Although several months have elapsed after the deposit of the said amount by the petitioner, it was the KMDA which was required to execute the appropriate agreement for the petitioner to set up such signboard. Since the KMDA itself dilly-dallied on the issue and failed to execute such agreement immediately, the KMDA cannot take advantage of its own wrong.
11. Hence, in true spirit of the agreement between the parties, as reflected in the communication dated February 23, 2023, the tenure of the licence/right to install a hoarding is to commence from the date of execution of the

agreement by the KMDA in favour of the petitioner, pursuant to the contract already entered into between the parties. It may be mentioned that such agreement will be a mere formal recognition of the contract already entered into between the parties on February 23, 2023, which attained completion upon the petitioner depositing the amount on the very next date.

12. The CSTC only has a bus terminus at the location but the property is admittedly owned by the KMDA. Hence, the CSTC's advice has not binding effect or relevance on the issue.
13. The KMDA, being a public authority, ought to have maintained higher standards of fairness than an ordinary litigant.
14. In such view of the matter, WPA 14189 of 2023 is allowed, thereby directing the respondent nos. 1 and 2 to execute the agreement in terms of the contract entered into between the parties pursuant to the communication dated February 23, 2023, annexed at page 58 (annexure P-8) of the writ petition, within four weeks from date. The said agreement shall incorporate the terms as agreed between the parties vide such

communication and the tenure of the permission to use the signboard/hoarding shall commence on and from the date of execution of the said agreement between the parties.

15. There will be no order as to costs.
16. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)