Jvs

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15904 of 2023
WITH
INTERIM APPLICATION NO. 18237 OF 2023

Boomerang Restaurant and Bar } Petitioner
versus
Airport Authority of India & Anr. } Respondents

Mr. Nitin Gaware Patil with Mr. Aadesh Varma and Mr. Divyesh Jain for the petitioner.

Mr. Satish S. Adsul for respondent no. 2.

CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.

DATE: 20th DECEMBER, 2023

P.C.:

1. Heard Mr. Gaware Patil, learned counsel representing the petitioner and Mr. Adsul, learned counsel representing respondent no. 2.

2. This writ petition seeks to assail E-tender notice dated 17th November 2023 floated by respondent no. 2 for allotment of commercial spaces on licence basis at International Airport, Shirdi taluka, District Ahmednagar.

3. The thrust of the arguments of the learned counsel for the petitioner, challenging the impugned tender notice, is that under the licence agreement entered into between the petitioner and respondent no. 2 and as per the terms of the minutes of meeting dated 27th April 2022, the petitioner is entitled to operate till 3rd June 2024.

4. Submission of the learned counsel for the petitioner is that a commercial space was allotted to the petitioner by way of a licence agreement, which, *inter alia*, contains a clause providing that the licence shall remain in force for a period of 3 (three) years and based on the performance of the petitioner, it may be further extended to another two years subject to renewal/extension. The submission, thus, is that under the said clause (4) of the licence agreement dated 8th April 2019, the petitioner is entitled to extension for a further period of 2 years from the date of expiry of earlier term, i.e., for a period of two years w.e.f. 7th April 2022. It is submitted that in a meeting held on 27th April 2022 between the representative of the petitioner and those of respondent no.2, it was decided, *inter alia*, that extension will be granted to the petitioner from 4th June 2022 to 3rd June 2024 and therefore, in terms of the minutes of the meeting dated 27th April 2022, the respondent no. 2 is bound to extend the period.

5. It has further been argued by the learned counsel for the petitioner that the principle of promissory estoppel binds the respondent no. 2 to extend the period for the reason that in terms of the minutes of the meeting dated 27th April 2022, the petitioner had altered its position, inasmuch as that in terms of clause (1) of the said minutes, the petitioner had cleared the dues relating to licence fee and that part of the decision taken had been acted upon by respondent no. 2, inasmuch as that after expiry of the term of the licence on 4th April 2022, the petitioner had already been granted extension for a grace period of 2 (two) months, i.e., from 4th April 2022 to 3rd June 2022. It has, thus, been urged that once the petitioner, in terms of the minutes of the meeting dated 27th April 2022, altered its position, the principle of promissory estoppel will operate and that mandates the respondent no. 2 to extend the period of licence.

6. On the other hand, opposing the writ petition, Mr. Adsul, learned counsel representing respondent no. 2 has argued that the petitioner is not entitled to any extension as a matter of right. He has also submitted that the terms of minutes of meeting dated 27th April 2022 have not been adhered to by the petitioner, inasmuch as that though the said minutes, *inter alia*, provided that the petitioner shall deposit additional security deposit of 6 (six) months' licence fees in the form of 'demand draft' or 'bank guarantee' to respondent no. 2, however, the said security deposit has not been made and accordingly, the petitioner cannot plead that on the basis of principle of promissory estoppel the respondent no. 2, in any manner, is bound to extend the term of licence. It has, thus, been argued by the learned counsel for respondent no. 2 that the writ petition is liable to be dismissed at its threshold.

7. On a query made to the learned counsel for the petitioner as to whether clause (3) of the minutes of meeting dated 27th April 2022 has been complied with by the petitioner, he has feebly attempted to argue that the quantum of amount to be deposited as security deposit was not made known to the petitioner and hence, the said additional security deposit could not be made. We are afraid, we cannot be in agreement with the petitioner in this regard as from a bare perusal of clause (3) of the minutes of meeting dated 27th April 2022, it is clear that the said clause clearly stipulates the quantum of additional security, which is equal to 6 (six) months' licence fee. It is undisputable that the petitioner has not honoured clause (3) of the decision taken in the meeting held on 27th April 2022 between the representative of the petitioner and that of respondent no. 2.

8. Once the petitioner itself is in breach of the terms of the minutes of meeting dated 27th April 2022, he cannot claim any right of extension of the term of licence and the principle of promissory estoppel will not operate in case the petitioner has defaulted by not adhering to the decision taken in the meeting held on 27th April 2022.

9. It has also been argued by the learned counsel for the respondent that on 31st October 2023, the petitioner was in default of non-payment of outstanding amount of Rs.4,28,957/-. Some explanation is sought to be given by the learned counsel for the petitioner by stating that the said amount has been cleared, however, even if it is presumed that no outstanding amount remained to be paid by the petitioner, for want of adherence to clause (3) of the decision taken in the meeting dated 27th April 2022, it cannot be held that the petitioner has any right seeking extension of the term of licence. It is indisputable that the licence agreement dated 8th April 2019 does not create any vested right in the petitioner to seek extension of licence, which, in fact, was extendable only on evaluation of the performance of the petitioner.

10. For all the aforesaid reasons, we are not inclined to entertain this writ petition, which is hereby dismissed, however, there will be no order as to costs.

11. In view of the above, the interim application does not survive and stands disposed of accordingly.

(ARIF S. DOCTOR, J.) **(CHIEF JUSTICE)**