



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

% *Reserved on: 20th February, 2024*
Pronounced on: 08th May, 2024

+ **CS (COMM) 1073/2018**

EAST DELHI MUNICIPAL CORPORATION

Through its Commissioner

419, Udyog Sadan,

Patparganj, Industrial Area,

New Delhi-110092

..... Plaintiff

Through: Ms. Sakshi Popli, Standing Counsel.

versus

BALAJI & SONS

Through its Sole Proprietor

Sh. Bisheshwar Jha

C-386 B, Street No. 27,

Khajuri Khas, Delhi-110094

.....Defendant

Through: None.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present suit for recovery of Rs.3,81,13,194/- along with interest @ 18% per annum has been filed on behalf of the plaintiff.
2. **The facts is brief are that** the plaintiff has come into existence in the year 2012, after the trifurcation of the erstwhile MCD, which is a statutory body established under the Delhi Municipal Corporation Act 1957, into three statutory bodies, viz. North Delhi Municipal Corporation, South Delhi



Municipal Corporation and East Delhi Municipal Corporation. The plaintiff i.e. the East Delhi Municipal Corporation, maintains various parking sites under its jurisdiction and issued Notice inviting Tender bearing No. AO (RP Cell)/EDMC/2013/D-582 dated 28.03.2013 (hereinafter referred to as 'NIT') for running of various identified parking sites which included car/scooter/tempo/truck/bus/motorcycle parking in its jurisdiction on Monthly License Fee (hereinafter referred to as 'MLF') basis.

3. The defendant was declared as the highest bidder for the parking site at Preet Vihar Commercial Complex and accordingly, Provisional Offer Letter No. AO (RP Cell)/EDMC/2013/D-111 dated 20.05.2013 was issued to the defendant-Contractor accepting the offer of the defendant-contactor for a period of two years, with the condition that the same shall be renewed after the satisfactory expiry of the first year and the MLF shall also be enhanced by 10%. The same was accepted by the defendant *vide* his letter dated 03.06.2013.

4. However, the defendant from the very beginning failed to fulfil the formalities. A Notice dated 13.06.2013 was sent to the defendant, wherein it was stated that the amounts deposited by the defendant were short of Rs. 9,75,375/- and last opportunity was granted to the defendant to deposit the said amount so that possession of the site could be handed over to it.

5. It is asserted that despite the aforesaid final Notice being sent, the defendant did not fulfil its obligations and thus, another Notice dated 07.08.2013 was sent to the defendant for taking possession of the parking site in question.

6. Subsequently, an Agreement dated 07.09.2013 was entered into between the parties where in the parking site was allotted to the defendant



on the MLF of Rs. 3,25,125/- + TCS @ 2.244% per month for the period of one year w.e.f. 07.09.2013 to 06.09.2014 which was extendable for the second year with enhancement of the MLF by 10% in the next year.

7. However, afterwards, the DDA intimated to the plaintiff that the part of the land of the parking site in question had been allotted for the development of a Community Centre. The construction of the said parking site in question started w.e.f. 01.10.2014.

8. It is asserted that the Contractor was irregular in payments towards MLF since the inception of the contract and thus, Demand Notices dated 29.10.2013, 19.12.2013, 05.02.2014, 24.02.2014, 03.03.2014, and 03.03.2014 were issued asking the defendant to pay outstanding dues. Despite the issuance of these demand Notices, the defendant continued running the parking site without making the requisite payments. Consequently, the plaintiff cancelled the Contract with the defendant for the parking site *vide* Letter No. D-56 dated 05.05.2014.

9. The defendant made various representations regarding cancellation of the Contract and also sought remission, since part of the land of the parking site was under construction. The plaintiff informed the defendant *vide* Letter No. D-211 dated 23.06.2014 that the matter shall be forwarded to the Zonal Remission Committee for consideration of the grievances of the defendant. The defendant was informed later that the parking site had been restored by the Competent Authority and the parking site which had been cancelled earlier *vide* Letter dated 05.05.2014, was restored *vide* Letter dated 22.06.2014.

10. Regarding the claim of the defendant Contractor pertaining to the construction in the parking site, a Committee had been constituted by the



Commissioner, EDMC to inspect the parking sites. The Committee had clearly stated that it was not in favour of recommending any relaxation in the MLF to the contractor. Further, upon another Survey being conducted by the department on 20.05.2014, it was found that the parking site in question was fully in operation and that the construction of the Community Hall was not being carried out in the area allotted to the defendant. A letter dated 21.05.2014 was issued to the defendant by the RP Cell, EDMC in this regard.

11. However, the Zonal Committee in its meeting held on 07.07.2014, approved the remission of 9.4% in MLF sought by the defendant for reduced area due to the construction by DDA. The MLF was accordingly reduced from Rs. 2,94,463/- w.e.f. 30.12.2013.

12. It is asserted by the plaintiff that after the meeting of the Zonal Committee on 07.07.2014, the plaintiff asked the defendant for the outstanding amount of Rs.16,94,914/- vide letter dated 04.08.2014. However, the defendant denied that more amount was due and claimed that it was in fact entitled to more remissions.

13. Thereafter, a suit bearing No. CS(OS) 2730/2014 titled as "*Bisheshwar Jha v. East Delhi Municipal Corporation & Anr.*" (hereinafter referred to as the 'erstwhile suit') for Declaration and Permanent Injunction was filed by the defendant before this Court seeking a Declaration that the Letter dated 04.08.2014 was illegal and arbitrary and also a decree of Permanent Injunction restraining EDMC from cancelling the parking site in question. In this earlier suit, this Court vide Order dated 09.09.2014 directed the plaintiff to maintain *status quo* in regard to the parking site subject to the payment of dues amounting to Rs.16,94,914/-, within the week of the Order.



The defendant duly complied with the Order and deposited the said amount on 11.09.2014.

14. It is asserted that the plaintiff herein had filed an application for vacation of the Interim Order dated 09.09.2014. When the application was taken up for hearing on 29.10.2014, the plaintiff apprised this Court that the defendant had not deposited further amounts towards MLF accruing for the period from 07.09.2014 to 06.03.2015 amounting to Rs. 19,87,740/-. Vide Order dated 29.10.2014, this Court directed the defendant to deposit the outstanding amount due for the period of 07.09.2014 to 06.03.2015 and further directed that the *status quo Order* shall continue during the pendency of the suit. It was also stated that the plaintiff shall renew the contract of the defendant. The matter was consequently referred to the Remission Committee of the plaintiff, which was directed to pass appropriate Orders after hearing the defendant.

15. Accordingly, the Zonal Remission Committee held a meeting on 23.02.2015 and considered the representation of the defendant dated 17.11.2014 that the parking site in question had remained cancelled from 05.05.2014 to 22.06.2014 and also heard Sh. Bisheshwar Jha and Sh. Atinder Pal, Authorized Representatives of the Contractor in person. The Zonal Remission Committee, keeping in mind that the remission of 9.4% in MLF for reduced area due to the construction by DDA had already been granted w.e.f. 30.12.2013, recommended further remission of Rs. 4,72,568/- for the period of 49 days during which the parking site remained cancelled w.e.f. 05.05.2014 to 22.06.2014. This decision was approved by the Commissioner as well.



16. The defendant Contractor continued to operate the parking site; however, it defaulted in the payment of MLF and also failed to deposit the MLF due as per direction of the Court on 29.10.2014. On the date of hearing on 25.05.2015, the Court was apprised of this fact, and the defendant submitted that an amount of Rs 3,00,000/- was deposited and the rest would be deposited within a week. The defendant deposited the balance amount of Rs.15,15,175/- with the plaintiff on 16.06.2015 for the period from 07.03.2015 to 06.09.2015, after deducting the remission amount of Rs. 4,72,568/-

17. The contract period of two years from 06.09.2013 expired on 06.09.2015 till which period the defendant duly deposited the MLF under the directions of this Court. However, the defendant continued to operate the parking site even after the expiry of the said period on 06.09.2015 in view of the status quo Order of this Court dated 29.10.2014 in the Injunction Suit.

18. It is asserted that in the meantime, the plaintiff passed the Resolution No. 252, Item No.38 dated 25.02.2015 for “*Decongestion and improvement of the parking situation in Delhi by changes in the existing parking policy*”, as per which, the parking rates for vehicles were recommended to be increased.

19. *Vide* Letter dated 25.11.2014, the Commissioner EDMC, constituted a Committee for revision of MLF for existing parking sites and Minimum Reserve Price (MRP) of NIT placed parking sites. The Committee, in its meeting held on 28.11.2014, recommended an increase of 4 times on the existing MLF and the MRP for parking sites in EDMC area. Pursuant to this, the plaintiff, vide Letter dated 31.07.2015, informed the parking Contractors of the increase in the MLF w.e.f. 01.08.2015. Accordingly, the MLF of the



Preet Vihar, parking site in question also increased from Rs. 2,94,563/- to Rs. 12,96,076/- w.e.f 01.08.2015. However, even though the defendant continued to operate the parking site under the garb of the status quo Order but failed to pay the license fee/MLF which now stood enhanced.

20. The plaintiff sent various reminders and demand Notices dated 24.09.2015, 03.12.2015, 18.07.2016, 27.09.2016, 25.05.2017, 08.09.2017 and 18.10.2017 to the defendant for deposit of the outstanding MLF due, but to no avail. It is asserted that the defendant neither surrendered the parking site nor deposited the MLF.

21. The plaintiff moved an Application for clarification/modification of the Order dated 29.10.2014 seeking clarification that the status quo Order shall only continue till the pendency of the contract as per Allotment Letter dated 06.09.2013. The learned ADJ vide its Order dated 29.11.2017 vacated the Interim Order dated 29.10.2014 in view of the defendant not paying the MLF despite operating the same continuously. The Court also directed the defendant to handover the parking site within a week of the Order and stated that the plaintiff shall take over the possession of the parking site with the aid of the police in case the defendant failed to hand over the same. The plaintiff was also granted liberty to file a suit for recovery of its dues.

22. Accordingly, the plaintiff took possession of the parking site in question with the assistance of the police on 07.12.2017. In light of the fact that the contract was not renewed by the plaintiff after its expiry on 06.09.2015, and that the possession was taken over by the plaintiff, the suit No. CS(OS) 2730/2014 of the defendant was disposed of by Ld. ADJ, Delhi on 22.12.2017 with the observation that the suit had become infructuous.



23. The plaintiff has claimed that after the disposal of the erstwhile suit, it had sent a Show Cause Notice dated 22.12.2017 to the defendant, via email and Speed Post, as to why a recovery suit should not be filed against it. However, no reply was received from the defendant. The plaintiff on 08.01.2018 also issued a Warrant of Distress bearing No. Tax/HQ/A&C/EDMC/2017-18/D-043 against the Show Cause Notice dated 22.12.2017 for attachment of the outstanding sum of Rs.3,81,13,194/- from all Bank Accounts, Securities and Deposits of the defendant in Syndicate Bank, Mori Gate Branch, Delhi. Subsequently, the Bank vide Letter dated 08.01.2018 intimated the plaintiff of one Bank Account in the Bank with a balance of Rs, 5,732.73/- which had been blocked. The said amount was made available to the plaintiff by the Bank through Demand Draft No. 915630 dated 08.01.2018.

24. Hence, the present suit for recovery of outstanding MLF due amounting to Rs.3,81,13,194/- for the period of 07.09.2015 to 06.12.2017 during which the defendant continued to operate the parking site along with interest @18%, has been filed.

25. **The defendant did not appear** despite service and was proceeded *ex-parte* vide Order dated 11.02.2020.

26. **Mr. Anil Kumar, Assistant Commissioner, RP Cell, EDMC appeared as PW-1** and filed his evidence by way of affidavit. He deposed in support of the case of the plaintiff and reiterated the assertions as made in the plaint.

27. He proved various documents namely, the Notice inviting Tender bearing No. AO (RP Cell)/EDMC/2013/D-582 dated 28.03.2013 which is Ex. PW1/1, Ex. PW1/2 is the Provisional Offer Letter No. AO (RP



Cell)/EDMC/2013/D-111 dated 20.05.2013, Acceptance Letter dated 03.06.2013 which is Ex. PW 1/3, Copy of Final Notice dated 13.06.2013 as Ex. PW1/4, Copy of Final Notice dated 07.08.2013 as Ex. PW1/5, Copy of Possession Letter dated 06.09.2013 as Ex. PW1/6, Agreement dated 07.09.2013 i.e. Ex. PW1/7, Copies of Demand Notices dated 29.10.2013, 19.12.2013, 05.02.2014, 24.02.2014, 03.05.2014 as Ex. PW1/8 (Colly.), Copy of Cancellation Letter dated 05.05.2014 as Ex. PW1/9, Copy of Letter dated 23.06.2014 as Ex. PW1/10, Copy of Letter dated 21.05.2014 as Ex. PW1/11, Copy of Minutes of Meeting dated 07.07.2014 as Ex. PW1/12, Copy of Letter dated 04.08.2014 as Ex. PW1/13, Copy of the suit for Declaration and Permanent Injunction bearing No. CS(OS) 2730/2014 titled as "*Bisheshwar Jha v. East Delhi Municipal Corporation & Anr.*" as Ex. PW1/14, Copy of Order dated 09.09.2014 in the suit bearing No. CS(OS) 2730/2014 as Ex. PW1/15, Copy of Order dated 29.10.2014 in the suit bearing No. CS(OS) 2730/2014 as Ex. PW1/16, Copy of representation dated 17.11.2014 as Ex. PW1/17, Copy of Minutes of Meeting dated 23.02.2015 as Ex. PW1/18, Copy of Minutes of Meeting of Zonal Remission Committee dated 23.02.2015 as Ex. PW1/19, Copy of order dated 25.05.2015 of this Court as Ex. PW1/20, Copy of letter dated 08.07.2015 as Ex. PW1/21, Copy of order dated 16.02.2016 of this Court as Ex. PW1/22, Copy of Resolution No. 252 Item No. 38 dated 25.02.2015 as Ex. PW1/23, Copy of letter dated 31.07.2015 as Ex. PW1/24, Copies of Demand Notices dated 24.09.2015, 03.12.2015, 18.07.2016, 27.09.2016, 26.05.2017, 08.09.2017 and 18.10.2017 as Ex. PW1/25, Copy of the order dated 29.11.2017 of this Court as Ex. PW1/26, Copy of order dated 22.12.2017 of Ld. District Court Karkardooma Courts, Delhi as Ex. PW1/27, Copy of



Show Cause Notice dated 22.12.2017 as Ex. PW1/28, Copy of Warrant of Distress dated 08.01.2018 as Ex. PW1/29, Copy of letter dated 08.01.2018 by Syndicate Bank as Ex.PW1/30.

28. Submissions heard and the record perused.

29. The present suit is for Recovery of Rs. 3,81,13,194/- as the License Fee for the period 07.09.2015 to 06.12.2017 during which period the defendant has been in occupation of the parking site at Preet Vihar Commercial Complex.

30. The unrebutted and unchallenged testimony led on behalf of the plaintiff proves that the defendant was granted a Tender for the Preet Vihar Parking site vide Agreement dated 07.09.2013 on the MLF of Rs.3,25,125/- + TCS @ 2.244% per month w.e.f 07.09.2013 to 06.09.2014 extendable for the second year with enhancement of MLF by 10% in the next year. It is further proved from the affidavit of evidence of PW1 that part of the parking site had been handed over for construction of a Community Centre and eventually the Zonal Remission Committee considered the representation of the defendant and approved the remission of 9.4% in MLF in its meeting held on 07.07.2014. The MLF was accordingly, reduced from Rs.2,94,463/- w.e.f 30.12.2013.

31. It is further established that the outstanding amount of Rs.16,94.917/- was demanded by the plaintiff vide letter dated 04.08.2014 Ex.PW1/13, but the defendant denied its liability to pay the claimed amount and a suit for Declaration and Permanent Injunction bearing CS(OS) No.2730/2014 titled '*Bisheshwar Jha v. East Delhi Municipal Corporation & Anr.*' was filed by the defendant challenging the termination of his Contract vide letter dated 04.08.2014 and also for restraining the plaintiff herein for cancelling the



parking site in question. The *status quo orders* were granted in the said suit vide Order dated 29.10.2014 which is Ex.PW1/16. Eventually, the learned ADJ vide its Order dated 29.11.2017 Ex.PW1/26 vacated the interim order dated 29.10.2014 in view of the fact that defendant had not been paying MLF despite being in possession and continuously using it. The Order stated that the plaintiff shall take back the possession of the parking site within a week for which, if required, the assistance of the police may also be taken. The possession was accordingly taken on 07.12.2017; however, there were outstanding claims in the sum of Rs.3,81,13,194/- from 07.09.2015 to 06.12.2017 which remained outstanding against the defendant. A Notice claiming the said amount dated 22.12.2017 Ex.PW1/26 was duly served upon the defendant, despite which the outstanding amount has not been paid till date.

32. The plaintiff has explained that despite the Agreement having expired on 06.09.2015, for which the entire amount had been paid by the defendant, it continued to be in possession of the site under the garb of the interim *status quo* Order dated 29.10.2014 that had been granted in the suit. He, however, failed to pay the MLF charges for the entire period till he got evicted on 07.12.2017.

33. The defendant having used the parking area from 07.09.2015 to 06.12.2017 is liable to pay the MLF charged calculated at Rs.3,81,13,194/-, after making an adjustment of Rs.5,732.73, which the plaintiff has realized through the attachment of one bank account of the defendant with the Syndicate Bank.

Relief:



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34. It is thus held that the plaintiff is entitled to recover a sum of Rs.3,81,07,461.3 i.e. Three Crore Eighty-One Lacs Seven Thousand Four Hundred Sixty-One Rupees and Three Paise (Rs.3,81,13,194 - Rs.5,732.73). The plaintiff is also entitled to interest @ 6% per annum from the date of institution of the suit till the date of recovery.

35. Plaintiff is also held entitled to costs.

36. Decree sheet be prepared.

(NEENA BANSAL KRISHNA)
JUDGE

MAY 08, 2024

va/nk