

Delhi High Court

Rahul Kumar vs The East Delhi Municipal ... on 26 July, 2021

* IN THE HIGH COURT OF DELHI AT NEW DELHI
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+ W.P.(C) 3755/2021& CM. APPL. 11317/2021
RAHUL KUMAR

versus
THE EAST DELHI MUNICIPAL CORPORATION Respondent
Advocates who appeared in this case:
For the Petitioners: Mr. Mitthan Lal Gupta, Advocate

For the Respondent: Mr. Amit Sinha, Advocate.

CORAM: -
HON'BLE MR. JUSTICE SANJEEV SACHDEVA
JUDGMENT

SANJEEV SACHDEVA, J.

1. Petitioner seeks a writ of mandamus thereby directing the respondent to release the vehicle of the petitioner bearing registration no. DL-ILAA- 4046 (TATA 407).
2. As per the petitioner, the petitioner is the registered owner of the above referred vehicle, which is financed by HDFC Bank and petitioner is still to repay the loan amount to the bank. Petitioner uses the said vehicle for transporting goods on payment basis.

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3. It is contended that on 21.01.2021, said vehicle was parked in front of the house of the petitioner in an open park and some goods were lying; kept beside the vehicle. The officials of the respondent came and put a clamp on the wheel of the said vehicle and seized the goods.
4. It is alleged that petitioner approached the Officers of the respondent for removal of the clamp and release of the goods. A challan of Rs. 11,400/- was issued which was paid on 22.01.2021. No explanation was given as to why the vehicle was clamped but petitioner was advised to visit the office of the respondent to get his vehicle released.

5. It is contended that petitioner along with all the original documents of the said vehicle approached the respondent and requested to remove their clamp enabling him to use his vehicle but the Official of the respondent showed their inability to do the needful stating that there was a strike and the concerned staff was not present in the office and the petitioner had to return empty handed.

6. It is submitted that because of the pandemic, the financial condition of the petitioner was not good and he could not timely service the loan of HDFC bank. Accordingly, on 26.01.2021, the Officers of the Bank visited the petitioner and seized the vehicle of the petitioner and took it away. Thereafter the petitioner made Digitally Signed Signature Not Verified By:JUSTICE SANJEEV Digitally Signed By:KUNAL SACHDEVA MAGGU Signing Date:26.07.2021 Signing Date:26.07.2021 22:06:21 19:04 This file is digitally signed by PS to HMJ Sanjeev Sachdeva.

arrangement of funds on interest and got the vehicle released from the bank.

7. Thereafter, once again on 12.02.2021, when the vehicle of the petitioner was parked in front of his house in an open park, the Officers of the Respondent lifted the vehicle and took it away.

8. It is submitted that Petitioner thereafter had approached the respondent for release of the vehicle several times but the Officers of the respondent demanded exorbitant amount for release of the vehicle.

9. It is contended that Petitioner thereafter filed a suit for mandatory injunction before the court of senior civil judge but he has been advised to file the present petition and accordingly he has approached this court.

10. Respondent has filed its counter affidavit contending that a complaint was received from various agencies regarding illegal parking and carrying out of commercial activity in the public land in front of Shamshan Ghat at Geeta Colony, Delhi. It is alleged that Petitioner carries out the commercial activity of loading-unloading of goods in the public place.

11. It is alleged that the Licensing Inspectors of the Respondent conducted a raid on 21.01.2021 and five vehicles were seized with help of clamps and 12 goods bundles/ganth were also seized.

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12. It is alleged that Petitioner visited the office of the respondent on 22.01.2021 for release of the 12 goods bundles/ganth. Further, on 23.01.2021 the licensing inspector visited the area again and he

noticed that four out of the five seized vehicles had been removed from the spot along with the clamps and only the vehicle of the petitioner was left behind with a broken clamp. A complaint was lodged with the police. However, on 29.01.2021, the licensing inspector found that even the vehicle of the petitioner was also not available at the spot.

13. It is alleged that subsequently on 12.02.2021, vehicle of the petitioner was found parked at the same spot i.e. in the land opposite the Shamshan Ghat at Geeta Colony and with the help of the SHO Police Station, Geeta Colony, the vehicle has been seized.

14. It is alleged that when the petitioner approached the respondent for release of his vehicle, he was informed that he would have to pay penalty as per the extant guidelines of the Respondent.

15. Learned counsel for the Respondent submits that the action has been taken in accordance with Sections 321 and 322 of the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as the MCD Act) and Circular dated 19.02.1999 read with the subsequent revision of rates by Circular dated 20.06.2018.

16. As per the additional affidavit dated 03.06.2021, filed by the respondent pursuant to directions issued by this on 01.06.2021, petitioner is Digitally Signed Signature Not Verified By:JUSTICE SANJEEV Digitally Signed By:KUNAL SACHDEVA MAGGU Signing Date:26.07.2021 Signing Date:26.07.2021 22:06:21 19:04 This file is digitally signed by PS to HMJ Sanjeev Sachdeva.

liable to pay a sum of Rs. 11,99,830/- as penalty amount till 02.06.2021 as per the following computation:

PENALTY TILL DATE ON TRUCK

Date on which vehicle was towed	21.02.2021
A. Composition Fees	Rs. 10,000/-
B. Removal Charges	Rs. 2000/-
C. *Clamp Charge	Rs. 4130/-
D. Sid rage Charge (till 05.04.2021)	(till 4450 (approx in KG) x 7 from the d towed) x 2
E. Sid rage Charge	

till 4450 (approx. weight of the vehicle 02.06.2021 in KG) x 133 (No. of days lapsed from the date on which vehicle was towed) x 2 = Rs. 1183700/-

Total Penalty as on 02.06.2021 Rs. 11,99,830/- (A+B+C+E) * These are charges which were incurred by EDMC on procurement of the clamp which has been broken by owner of the vehicle.

17. It is contended by learned counsel for the Petitioner that the Petitioner was not carrying out any commercial activity and the vehicle was merely parked in a park near the house of the Petitioner and further that the Respondents have illegally seized the vehicle and do not have the power to levy any charges.

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18. To resolve the controversy it would be necessary to examine the scope of Section 321 and 322 of the MCD Act and the Circular relied upon by the Respondents.

19. Sections 321 and 322 of the MCD Act read as under:

"321. Prohibition of deposit, etc., of things in streets.--(1) No person shall, except with the permission of the Commissioner and on payment of such fee as he in each case thinks fit, place or deposit upon any street, or upon any open channel, drain or well in any street or upon any public place any stall, chair, bench, box, ladder, bale or other thing whatsoever so as to form an obstruction thereto or encroachment thereon.

(2) Nothing in sub-section (1) applies to building materials.

322. Power to remove anything deposited or exposed for sale in contravention of this Act.--The Commissioner may, without notice, cause to be removed--

(a) any stall, chair, bench, box, ladder, bale or other thing whatsoever, placed, deposited, projected, attached or suspended in, upon from or to any place in contravention of this Act;

(b) any article whatsoever hawked or exposed for sale on any public street or in other public place in contravention of this Act and vehicle, package, box or any other thing in or on which such article is placed."

20. Though learned counsel for the Respondent has relied upon Circular dated 19.02.1999 in the counter affidavit but, in the Digitally Signed Signature Not Verified By:JUSTICE SANJEEV Digitally Signed By:KUNAL SACHDEVA MAGGU Signing Date:26.07.2021 Signing Date:26.07.2021

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additional affidavit he has referred to Circular dated 20.06.2018. Circular dated 20.06.2018 is nearly identical in its language to Circular dated 19.02.1999 and only revises the rates prescribed. Accordingly, only Circular dated 20.06.2018 is being extracted herein. Said Circular dated 20.06.2018 reads as under:

"CIRCULAR The menace of encroachment on municipal land by various squatters, hawkers, shopkeeper rehriwala etc was reviewed at the Headquarter level and it was felt that various drives undertaken by the zonal authorities for the removal of such encroachments and unauthorized person from the municipal land do not yield any positive results. After considering all the factors on the subject, the competent authority has reviewed enhancement of the rates of Composition Fee, Removal & Storage Charges and the revised modified rates with immediate effect shall be as under:-

S.No. Composition Fee Revised Second time in Subsequent time Rates the same in the same calendar year calendar year

1. Hawkers & Squatters Rs. 600/-

2.	Shopkeeper	Rs. 1000/-
	i) Transport	
3.	Companies	Rs. 10000/-
	ii) Timbre Merchant	
	iii) Heavy Machinery Dealers	
4.	Workshop for repair of cars	Rs. 3000/-
5.	Unlicensed Rehris	Rs. 2500/-

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6.	Unlicensed rehris dealing in juice	Rs. 3000/-
7.	Water trolleys	Rs. 15000/-

Removal Charges:-

1.	For the load upto 40	Rs. 300/-
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Kgs .

2. For the load upto one Rs. 800/- Qtl.
3. For load above one Rs. 1000/- Qtl. and upto 5 Qtl.
4. For the load above 5 Rs. 2000/- Qtl. .

Storage Charges:-

1. Upto one Qtl. or less Rs. 100/- for 24 hours
2. Charges per Qtl. per Rs. 200/- day

The above revised rates will come into force with immediate effect.

Further, it has also been decided that the release of goods shall be done not below the rank of Assistant Commissioner or equivalent.

If the goods of same person is seized on second occasion or subsequent occasion in a same calendar year then, Composition fee/removal charges/storage charges shall be additional 25% and 50% of the above fees/charges respectively."

21. Section 321 of the MCD Act deals with prohibition of deposit etc. of things in streets and Section 322 deals with the power of the Digitally Signed Signature Not Verified By:JUSTICE SANJEEV Digitally Signed By:KUNAL SACHDEVA MAGGU Signing Date:26.07.2021 Signing Date:26.07.2021 22:06:21 19:04 This file is digitally signed by PS to HMJ Sanjeev Sachdeva.

Commissioner to remove anything deposited or exposed for sale in contravention of the Act.

22. Both, Section 321 and Section 322 are part of Chapter XV of the MCD Act which deals with "STREETS" and Section 321 and Section 322 are part of the group of sections under the sub-heading "Encroachments on streets".

23. The Supreme Court of India in Industrial Finance Corpn. of India Ltd. v. Cannanore Spg. and Wvg. Mills Ltd., (2002) 5 SCC 54 has held that "The heading of a Section also lends, though not normally a part of the statutory provision, assistance in interpreting the statutory intent since the heading always serves as a guide to depict the intention."

24. The Supreme Court of India in Tata Power Co. Ltd. v. Reliance Energy Ltd., (2009) 16 SCC 659 held as under:

"89. Chapter headings and the marginal notes are parts of the statute. They have also been enacted by Parliament. There cannot, thus, be any doubt that it can be used in aid of the construction. It is, however, well settled that if the wordings of the statutory provision are clear and unambiguous, construction of the statute with the aid of "chapter heading" and "marginal note" may not arise. It may be that heading and marginal note, however, are of a very limited use in interpretation because of its necessarily brief and inaccurate nature.

They are, however, not irrelevant. They certainly cannot Digitally Signed Signature Not Verified By:JUSTICE SANJEEV Digitally Signed By:KUNAL SACHDEVA MAGGU Signing Date:26.07.2021 Signing Date:26.07.2021 22:06:21 19:04 This file is digitally signed by PS to HMJ Sanjeev Sachdeva.

be taken into consideration if they differ from the material they describe.

93. Chapter heading, therefore, is a permitted tool of interpretation. It is considered to be a preamble of that section to which it pertains. It may be taken recourse to where an ambiguity exists. However, where there does not exist any ambiguity, it cannot be resorted to. Chapter heading and marginal note, however, can be resorted to for the purpose of resolving the doubts.

100. Thus, in a case where interpretation of a section vis-à-vis the scheme of the Act, the purport and object of the legislation, particularly having regard to the mischief it seeks to remedy, the chapter heading as also the marginal note, in our opinion, are relevant.

(Underlining supplied)

25. Section 321 of the MCD Act stipulates that no person except with the permission of the Commissioner and on payment of such fee as he in each case thinks fit shall place or deposit upon any street or upon any open channel, drain or well in any street or upon any public place any stall, chair, bench, box, ladder, bale or other thing so as to form an obstruction thereto or encroachment thereon.

26. Section 322 of the MCD Act empowers the Commissioner to cause to be removed any stall, chair, bench, box, ladder, bale or other Digitally Signed Signature Not Verified By:JUSTICE SANJEEV Digitally Signed By:KUNAL SACHDEVA MAGGU Signing Date:26.07.2021 Signing Date:26.07.2021 22:06:21 19:04 This file is digitally signed by PS to HMJ Sanjeev Sachdeva.

thing whatsoever, placed, deposited, projected, attached or suspended in, upon from or to any place in contravention of the Act and also empowers him to remove any article whatsoever hawked or exposed for sale on any public street or in other public place in contravention of the act and further to cause removed any vehicle, package, box or any other thing in or on which such article is placed.

27. The wording of Section 321 and Section 322 of the MCD Act when read in the light of the heading of the chapter and sub-heading of the sections in which the said two Sections are placed clearly indicate that they deal with "Streets and encroachment or obstruction of streets, open channels, drain or well and public places".

28. Section 321 of the MCD Act refers to stall, chair, bench, box, ladder, bale or other thing. There is no reference in Section 321 and Section 322 of any vehicle except in Section 322 sub section (b), wherein the reference of vehicle has been made in conjunction with package, box or any other thing in or on which such article is placed.

29. Bare reading of Section 322 (b) shows that the Commissioner has been empowered to cause the removal of a vehicle in which any article is hawked or exposed for sale on any public street or in any other public place in contravention of the MCD Act.

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30. Sections 321 and 322 do not empower the Commissioner to remove a vehicle from a public place unless such vehicle is used for hawking or exposing for sale on any public street or in other public place in contravention of the MCD Act.

31. In the present case as per the petitioner, the vehicle of the petitioner was parked in front of his house. The stand of the respondent is that the vehicle of the petitioner was parked in the public land in front of Shamshan Ghat at Geeta Colony.

32. Though the counter affidavit mentions that a complaint was received from various agencies regarding illegal parking and carrying out of commercial activity in the public land in front of Shamshan Ghat at Geeta Colony, it is not stated as to what was the commercial activity that the petitioner was carrying out in the public land.

33. The counter affidavit merely states that petitioner was carrying out commercial activity of loading - unloading of goods in public place.

34. The alleged commercial activity of loading and unloading goods in a public place by no stretch of imagination can be covered under the expression "hawked or exposed for sale" as used in section 322 of the MCD Act.

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35. It is not the case of the respondent that the vehicle of the petitioner was in any manner obstructing any free public passage or encroaching upon public land. The reason given by the respondent for seizing the vehicle is that the vehicle of the petitioner was illegally parked in front of Shamshan Ghat at Geeta Colony and the activity of loading and unloading goods in public place was being carried out by the petitioner.

36. No material has been placed on record by the Respondents to substantiate the allegations that even loading and unloading of goods was being carried out by the petitioner in the public place.

37. Even if assuming that the petitioner was loading and unloading the goods by illegally parking his vehicle, it would not satisfy the requirement of the expression "hawked or exposed for sale" as used in Section 322(b) of the MCD Act, which empowers the Commissioner to cause to be removed any vehicle in which such article is placed.

38. It is not even the case of the respondent that the vehicle of the petitioner was parked illegally in any public street.

39. The Circulars referred to by the petitioner, by their very wording, clearly shows that they are meant to deal with the "menace of encroachment on municipal land by various squatters, hawkers, Digitally Signed Signature Not Verified By:JUSTICE SANJEEV Digitally Signed By:KUNAL SACHDEVA MAGGU Signing Date:26.07.2021 Signing Date:26.07.2021 22:06:21 19:04 This file is digitally signed by PS to HMJ Sanjeev Sachdeva.

shopkeepers, rehriwalah" and has nothing to do with illegal parking of a vehicle on a public street or municipal land.

40. The wording of the Circular extracted hereinabove as well as the various heads under which impugned charges are sought to be recovered from the petitioner show that they deal with illegal encroachment by shopkeepers/hawkers who encroach upon public streets as well as municipal land for the purposes of hawking or exposing for sale as mentioned in Section 322 of the MCD Act and not to a case of alleged illegal parking in a public place.

41. Clearly the Circular as well as Sections 321 and 322 of the MCD Act do not apply to the case of the petitioner whose case at best would fall in illegal parking upon municipal land.

42. No circular has either been produced or relied upon by learned counsel for the respondent which deals with imposition of any charges for illegal parking on street/municipal land.

43. No other provision of the MCD Act or any Rules framed there under have been relied upon by learned counsel for the respondent to justify the removal of the vehicle of the petitioner from the place where it was parked i.e. public land in front of Shamshan Ghat at Geeta Colony.

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44. Further, admittedly no show cause notice has been given to the petitioner requiring him to remove his vehicle from the said public land or directing him not to park his vehicle in the said land. Petitioner has also not been informed of the consequences of the alleged illegal parking of the vehicle on the public land.

45. Since there is no justification of the respondent, in seizing the vehicle of the petitioner, respondent cannot demand any amount towards removal charges or storage charges of the vehicle.

46. Clearly, the action of the respondent in seizing the vehicle of the petitioner and raising the demand of approximately Rs. 12 lakhs on the petitioner, for the release of the his vehicle cannot be sustained.

47. In view of the above, the petition is allowed. Respondents are directed to forthwith release the vehicle of the Petitioner bearing registration No. DL-1LAA-4046 (TATA 407).

48. Copy of this Judgment be uploaded on the High Court website forthwith and be forwarded to learned counsel for the parties by the Court Master.

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