

(2021) 07 DEL CK 0153

In the Delhi High Court

Case No : Civil Writ Petition No. 3755 Of 2021, Civil Miscellaneous Application
No. 11317 Of 2021

Rahul Kumar

APPELLANT

Vs

East Delhi Municipal Corporation

RESPONDENT

Date of Decision : 26-07-2021

Acts Referred:

Delhi Municipal Corporation Act, 1957 — Section 321, 322, 322(b)

Citation : (2021) 07 DEL CK 0153

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Mitthan Lal Gupta, Amit Sinha

Final Decision : Allowed

Judgement

Date on which vehicle was towed, 21.02.2021,,,

A. Composition Fees, "Rs. 10,000/- fixed",,,

B. Removal Charges, Rs. 2000/- fixed,,,

C. *Clamp Charge, Rs. 4130/-,,,

D. Sid rage Charge (till 05.04.2021), "4450 (approx. weight of the vehicle in KG)
x 75 (No.

of days lapsed from the date on which vehicle was

towed) x 2 = Rs. 6,67,500/-",,,

E. Sid rage Charge till 02.06.2021, "4450 (approx. weight of the vehicle in KG) x
133 (No.

of days lapsed from the date on which vehicle was

towed) x 2 = Rs. 1183700/-",,,

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

1.,Hawkers & Squatters,Rs. 600/-,,

2.,Shopkeeper,Rs. 1000/-,,

3., "i) Transport Companies

ii) Timbre Merchant

iii) Heavy Machinery Dealers",Rs. 10000/-,,

4.,Workshop for repair of cars,Rs. 3000/-,,

5.,Unlicensed Rehris,Rs. 2500/-,,

6., "Unlicensed rehris dealing in

juice",Rs. 3000/-, "By 25% additional

on revised rates.", "By 50% additional on

revised rates.

7.,Water trolleys,Rs. 15000/-,,

Removal Charges:-,,,,

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

,,,,

,,,,

2.,For the load upto one Qtl.,Rs. 800/-,,

3., "For load above one Qtl. and

upto 5 Qtl.",Rs. 1000/-,,

4.,For the load above 5 Qtl. .,Rs. 2000/-,,

Storage Charges:-,,,,

1., "Upto one Qtl. or less for 24

hours",Rs. 100/-,,

2.,Charges per Qtl. per day,Rs. 200/-,,

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,,,,

â??hawked or exposed for saleâ?? as used in section 322 of the MCD Act.,,,,

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 â??hawked or exposed for saleâ? 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 â??menace of encroachment",,,,

on municipal land by various squatters, hawkers, shopkeepers, rehriwalahâ? 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.,,,,

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.,,,,