

\$~12

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

% Judgment delivered on: 03.03.2022

+ **W.P.(C) 2178/2022**

SMT. SUNITA BHALLA

..... Petitioner

versus

SOUTH DELHI MUNICIPAL CORPORATION....Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Ishan Sanghi, Advocate.

For the Respondent: Mr. Vikrant N. Goyal, Advocate for SDMC

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner seeks a direction to respondent to release vehicle No. DL1VC-0201 (RTV mini bus), which is in the name of late husband of the petitioner, Mr. Ashwani Kumar Bhalla.

2. Learned counsel for the petitioner submits that petitioner is a widow, whose husband has expired recently on 24.07.2021 and the petition has been filed through legal aid.

3. It is contended in the petition that late husband of the petitioner was the registered owner of the said vehicle, RTV mini bus and after the demise of her husband, the vehicle was parked in the authorized parking lot of Metro Station, Dwarka, Sector -14.

4. It is stated that petitioner and her family members went to their parents' house in Chhattisgarh for performing last rites of late Mr. Ashwani Kumar Bhalla. When petitioner returned after performing the last rites of her husband, she came to know that the vehicle had been removed from the parking lot by the officials of the respondent.

5. It is contended that on 14.10.2021, she visited the office of the respondent alongwith her son seeking release of the vehicle. However, respondent demanded a huge amount as charges for release of the vehicle and since she had lost her husband, she could not deposit the same. It is further contended that demand of charges is illegal and contrary to law.

6. Thereafter, it is contended that Petitioner had repeatedly visited the office of the respondent but the vehicle has not been released and the demand is in several lakhs of rupees.

7. Learned counsel for the petitioner submits that the husband of the petitioner had availed of a loan facility and petitioner is unable to discharge the loan because the vehicle is seized by the respondents.

8. Learned counsel for the petitioner relies on the decision of this Court dated 26.07.2021 in W.P. (C) 3755/2021, titled *Rahul Kumar Vs. East Delhi Municipal Corporation of Delhi*.

9. Learned counsel appearing for the respondent/Corporation submits that the parking site was an authorized parking lot. However, the contractor on 04.09.2020 surrendered the parking site on account of lack of business. It is submitted that the parking site remained a free parking from 04.09.2020 till 30.09.2021.

10. Respondent started operating the parking on the said site with effect from 01.10.2021.

11. Learned counsel further submits that since the vehicle was an abandoned vehicle, respondent/Corporation in terms of the directions issued by judgment dated 25.09.2019 in W.P. (C) 2029/2018, titled *Umesh Sharma Vs. Government of NCT of Delhi* was authorized to remove the said abandoned vehicle from the public place and consequently, the said vehicle was removed.

12. Learned counsel for respondent submits that charges levied for unauthorized parking and for return of the vehicle after removal are in accordance with the circular dated 29.08.2018.

13. Learned counsel submits that as on date the petitioner has to pay approximately Rs.15 lakhs for return of the said vehicle.

14. Learned counsel for respondents submits that a Letters Patent Appeal has been filed against the judgment in *Rahul Kumar (supra)* being LPA No.382/2021. He, however, concedes that there is no interim stay of the judgment by the Division Bench.

15. It may be noticed that the petitioner has placed on record a parking slip to show that the vehicle was being parking in the said parking lot on monthly basis.

16. The admitted case of the parties is that the place where the vehicle was parked is an authorized parking lot and not a public street or an abandoned place.

17. The case of the respondent as emanating from the counter affidavit is that the earlier contractor had surrendered the parking lot and thereafter, the parking remained free from 04.09.2020 till 30.09.2021 and, respondent started operating fastag parking with effect from 01.10.2021.

18. The contention of the respondent that the vehicle was abandoned and as such they are covered by the judgment of the Division Bench of this Court in *Umesh Sharma (supra)* is contradicted by the counter affidavit itself.

19. In the counter affidavit it is contended that verbal communication was made to the owners, who had parked their

vehicles without authorized parking slips and were conveyed to remove the vehicle from the site.

20. With regard to the petitioner, it is specifically stated that petitioner was also conveyed to remove the vehicle which was parked on the said site since a long time and whose fitness had also expired on 25.08.2021 and was left abandoned in the parking area without any authorized parking slip.

21. Case of the respondent is that they had conveyed to the petitioner to remove the subject vehicle. However, the date when petitioner was communicated to remove the vehicle and the manner in which such information was conveyed is not borne out from the affidavit.

22. Further, the fact that the respondents were aware as to who is the owner of the vehicle, shows that the vehicle was not a vehicle abandoned in a public place so as to be covered by the judgment in *Umesh Sharma (supra)*.

23. Petitioner has specifically stated that her husband, who was the owner of the vehicle, had expired on 24.07.2021 and she had gone to perform the last rites of her husband in her home town.

24. Further, it is noticed that as per the affidavit of respondents, the parking site remained a free parking from 04.09.2020 till 30.09.2021.

There is no material placed on record by the respondent to show that any public notice was placed in the parking lot or any communication issued to the petitioner that the parking lot was no longer a free parking place and charges would be levied for such parking.

25. As per the respondents, the vehicle was towed on 08.10.2021. The case of the petitioner is that the petitioner had visited the office of the respondent for release of the vehicle on 14.10.2021, which is within six days from the vehicle being towed, however, the vehicle was not released.

26. Insofar demand of approximately of Rs.15 lakhs as charges are concerned, the same are sought to be claimed in terms of circular dated 29.08.2018.

27. The said issue is squarely covered by the judgment of this Court dated 26.07.2021 in *Rahul Kumar (supra)*, wherein a similar circular issued by East Delhi Municipal Corporation was considered by this Court.

28. This Court has held that the said circular would be applicable only in case there is menace of encroachment on municipal land by various squatters, hawkers, shopkeepers, rehriwala and does not have any application insofar illegal parking of a vehicle on a public street or municipal land is concerned.

29. As held in *Rahul Kumar (supra)*, the wording of the Circular relied upon by the Respondents 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.

30. 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.

31. Further, admittedly no show cause notice has been given to the petitioner requiring her to remove the vehicle from the said parking lot.

32. The case of the petitioner is squarely covered by the judgment in the case of *Rahul Kumar (supra)*. Though it is mentioned that a Letters Patent Appeal has been filed against the judgment in *Rahul Kumar (supra)*, however there is no stay of the said judgment by the Division Bench.

33. Further, the contention of the respondent that vehicle had been abandoned since the fitness had expired does not hold any merit for the reason that Government of NCT of Delhi had by way of a general

notification extended validity of all documents whose validity was expiring during the period of lockdown. Consequently, the validity of fitness certificate would also stand extended in terms of the notification of the Government of NCT of Delhi.

34. Clearly, in view of the above, the action of the respondent in seizing the vehicle of the petitioner and raising a demand of about Rs.15 lakhs on the petitioner for release of the vehicle cannot be sustained.

35. In view of the above, the petition is allowed. The respondents are directed to forthwith release the vehicle bearing registration number DL1VC-0201 (RTV mini bus).

36. Petition is allowed in the above terms. In the facts and circumstances of the case, there shall be no order as to costs.

SANJEEV SACHDEVA, J

MARCH 03, 2022
NA