

M.C. MEHTA

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v.

UNION OF INDIA & ORS.

(Writ Petition (Civil) No. 13029 of 1985)

SEPTEMBER 02, 2019

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[ARUN MISHRA AND DEEPAK GUPTA, JJ.]

Urban Development:

Town planning - Problem of parking of motor vehicles - Held:

Parking problem has arisen as there is an abject failure on the part of the Government and the Authorities to provide adequate public transport - Proper parking policies will lead to less pollution, less crime and a better and more dignified life as envisaged u/Art. 21 of the Constitution - Adequate parking arrangements need to be made at Transport Hubs (i.e. bus depots, railway stations, metro-stations, airports, etc.), at Institutional areas (i.e. Universities, Hospitals, Government buildings, Courts, etc.), and at Commercial areas (i.e. malls, cinema halls, market places, corporate offices, vegetable markets, grain markets, etc.,) according to their specific requirements - There need to be a statutory regime wherein before giving permission to build and operate such Transport hubs, institutions and commercial areas, assessment for the next 25 years should be made - In the residential areas especially those where people belonging to middle class reside, the problem of parking is more - Though municipal authorities are alive to the problem, but the pace at which they are moving is very slow and there is lack of innovation in finding solutions - Environment Pollution (Prevention and Control) Authority (EPCA) in consultation with the South Delhi Municipal Corporation (SDMC) has earmarked the area of Lajpat Nagar to run a pilot project to ease the problem of parking - Transport Department of the NCT of Delhi has also notified the draft for Delhi Maintenance and Management of Parking Places Rules, 2019 in exercise of powers u/cl. 41 of s. 2 r/w. s. 117, sub-section (3) of s. 127 and cl. (e),(h) and (i) of sub-section (2) of s. 138 of Motor Vehicles Act, 1988 - Clause 11 of the policy deals with parking in residential streets and lanes - Parking lots can be of

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- A *various types and different modules of parking will be required in different areas viz. traditional method (i.e. parking in open space), multi-level parking (including automated multi-level parking and automated spiral parking), and stack parking - Modern technology like Radio Frequency Identification (RFID) tags must be used to ensure that parking spaces are utilised to the maximum - The Municipal Corporations of Delhi and the Delhi Cantonment Board are directed to ensure that all the pavements, in the residential areas are cleared from all encroachments - The encroachers are required to be given notice to remove the encroachment and on failure, Authorities to remove the same at the cost of the encroachers - The Authorities are also directed to consider framing of rules to discontinue municipal services to habitual encroachers - It is directed that draft rules of Delhi Maintenance and Management of Parking Places Rules, 2009 be notified and after its notification to ensure its enforcement in letter and spirit - Govt. of NCT is directed to ensure that while granting permission to build any structures, there is proper assessment of parking needs for the next 25 years - Govt. of NCT of Delhi, Municipal Authorities and EPCA are directed to consider the viability and effectiveness of introducing RFID tags, parking guidance and information systems and last mile connectivity from parking spaces to commercial areas, institutions etc - Matters adjourned to be listed after receipt of reports on pilot project.*

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 13029 of 1985.

(Under Article 32 of The Constitution of India)

- F Harish N. Salve, Ms. Aparajita Singh, Sr. Advs, A. D. N. Rao, Siddhartha Chowdhury, Advs. (A.Cs.),
- G Tushar Mehta, SG, A.N.S. Nadkarni, ASG, Balaji Srinivasan, AAG, S. Wasim A. Qadri, R. S. Suri, Dhruv Mehta, Sanjiv Sen, R. S. Grewal, Sr. Advs., Ms. Suhasini Sen, Ms. Archana P. Dave, Ms. Shraddha Deshmukh, Rajat Nair, D. L. Chidananda, R. B. Yadav, G. S. Makker, S. S. Rebello, Bhavanishankar V. Gadnis, Mrs. Snidha Mehra, B. V. Balram Das, S. Venkatesh, Varun Khanna, Vikas M., Sunil B., Ms. Nishtha Kumar, Chirag M. Shroff, Ms. Mahima C. Shroff, Balaji Srinivasan, Ms. Pallavi Sengupta, Ms. Garima Jain, Siddhanth Kohli,
- H Ms. Lakshmi Rao, Akash Chatterjee, Aishwarya Chowdhury, Ms. Anini

Debarman, Praveen Swarup, Ajay Bansal, Gaurva Yadava, Ms. Sayan Ray, Karmendra Pratap Singh, B. Vinodh Khanna, Mrs. Chitrakala G., B. K. Prasad, Sanjay Kr. Visen, Abhishek, Ms. Ruchi Kohli, B.V. Balramdas, Ms. Anil Katiyar (for M/s. S Narain and Co.), Ms. Garima Prashad, G. S. Oberoi, Mohit Kumar Bansal, Rajesh Katyal, Kuldip Singh, Hitesh Kumar Sharma, Ms. Meenakshi Khanna, Rohit K. Singh, Tarun Johri, Ritwik Dutta, Arvind Kumar Sharma, E. C. Agrawala, Talha Abdul Rahman, Ms. Sakya Singh Chaudhuri, Ms. Suruchi Aggarwal, Preshit Surshe, Rajiv Yadav, Guntur Prabhakar, Gaurav Shrivastava, Pradeep Misra, Advs. for the appearing parties.

The Order of the Court was passed by

DEEPAK GUPTA, J.

1. Modern conveniences bring with them their own problems. One of the most important conveniences of the industrial age is motor transport. This has brought with it many problems but we may highlight only two:- (1) pollution and (2) parking space. It is the problem of parking which we seek to address in this order.

2. A vehicle, whether be it a motor car, bus, three-wheeler, scooter or a small scooty, transports one or more individuals from one place to the other. Once passengers /occupants of the vehicles have been taken to their destination, the vehicle in question has to be parked. This requires a lot of space, a lot of planning, a lot of infrastructure and a lot of money. The tendency of individuals is to save as much money as possible and not pay anything for parking.

3. Till the late 1970s motor cars were the prerogative of the rich. Most people who could afford motor cars lived in houses with drive-ways and garages. But as the economy of the country has improved and the earning capacity of people has risen there are more and more vehicles on the road. At the same time due to paucity of space and the astronomical rise in land prices the size of dwelling houses has become smaller and smaller. The biggest casualty in this conflict between increasing number of cars and dwindling availability of land is "parking space" for vehicles. Even in those houses which had garages, these were converted to rooms utilised for other purposes. Then cars started getting parked in drive-ways but as the number of members of the households expanded, from drive-ways the cars have now spilled over

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- A to the roads outside the house. This is not the only problem. The municipal authorities, for reasons best known to them, without carrying out any study with regard to the carrying capacity of the colonies/areas/towns/cities/metropolises are permitting additional constructions including additional floors in these colonies. Setbacks are being decreased or abolished. The constructed area is rising vertically and horizontally.
 - B Resultantly where, about 50 years ago, there was a single storey house with one family and one car, there is now a four storey- structure, if not higher with may be 8 flats and 16 cars if not more. This has created many problems and one of the most serious problems is that of parking.
 - C 4. The Golden Rule is "Love thy neighbour". Today the social fabric of neighbourhoods is being torn asunder because of fights over this most petty issue of parking of vehicles. Therefore, we feel there is a need to pass a detailed order on a mundane issue like parking because this may impact town planning. Proper parking policies will also lead to less pollution, less crime and a better and more dignified
 - D life which every citizen is entitled to under Article 21 of the Constitution of India.
5. Before dealing with the issue of parking, we have to note that there is an abject failure on the part of the government and the authorities to provide adequate public transport to the citizens of the country.
- E Individual vehicles are owned by about 2% of the population. However, this 2% of the population wants to monopolise all the resources and infrastructure with regard to transportation. It is only in the last two decades that cities have moved towards introducing schemes for mass transportation but we still have a long way to go.
 - F 6. In this order we shall mainly deal with the issue of parking in residential areas but while dealing with the issue in a holistic manner we shall have to deal with the issue of parking in general. This is necessary because if adequate parking is not provided in transport hubs, institutional areas, commercial areas, etc., the spill-over will go to the residential areas.
 - G **Transport Hubs**
 - H 7. Wherever there are large transport hubs such as bus depots, railway stations, metro stations, airports, etc. where a large number of people come, there should be adequate facilities for parking. In most of the areas people just want to be dropped off. Therefore, emphasis

should be more on "drop and go" arrangements. This aspect should be encouraged by having a very low or no fees for drop-offs and heavy fees for parking vehicles. Parking facilities will have to be provided at transport hubs, especially when we talk of mass rapid transport systems where people will come from peripheral towns to a metropolis like Delhi. Today we have plans on the anvil to introduce Regional Rapid Transit Systems (RRTS) connecting the metropolises in the country with the peripheral towns. Two such RRTS are Delhi-Meerut and Delhi-Alwar. While planning these the authorities must ensure that adequate parking facilities are available at Alwar, Meerut and other intervening stations. People working in Delhi coming from the suburbs or peripheral towns would take their private transport to these hubs and therefore adequate planning for the same should be made.

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Institutional Areas

8. Institutional areas can be universities, hospitals, government buildings, courts, etc. When such buildings are planned very little attention is paid to the parking problem. Even when someone addresses these parking issues, normally only the needs of the officials and the employees are addressed. To give an example there are very few courts which have adequate facilities for parking of vehicles by litigants. Similarly, in hospitals almost no space is available for parking of vehicles of the patients or their attendants and the entire parking space is used by doctors, nurses and other hospital staff.

Commercial Areas

9. Commercial areas such as commercial malls, cinema halls, market places, corporate offices, vegetable markets, grain markets, etc. have different requirements. In markets where bulk items have to be transported like subji mandis, fruit mandis, etc. there has to be adequate provision for parking of transport vehicles like trucks, tempos, etc. In fact, it is not only parking but other facilities, such as CNG stations, petrol stations, electric charging points, etc. which should be made available within these areas.

10. Whether it be a transport hub, an institution or commercial area, each will have its own specific requirements and these have to be addressed by the planners and architects to ensure that adequate arrangement is made for parking of vehicles and the persons visiting these transport hubs, institutions, commercial areas are not forced to park on the roads or in spaces which are not meant for parking.

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- A 11. There should be in our view a statutory regime wherein before any person/authority is given permission to build and operate such transport systems, institutions and commercial areas assessment with regard to the needs of parking for the next 25 years at least should be made and parking space should be developed accordingly.
- B 12. Having said that we are not oblivious to the hard reality that in certain colonies and areas parking of some vehicles will have to be permitted on the roads because the number of vehicles is much more than those which can be parked inside the houses. In fact in some colonies, especially in colonies where people belonging to middle class and lower middle class reside there is virtually no space within the plots to park vehicles.
- C 13. It is not as if the municipal authorities and other authorities are not alive to the problem of parking. However, the pace at which they are moving is extremely slow. There is also total lack of innovation in finding solutions. Environment Pollution (Prevention and Control) Authority (EPCA) in consultation with the South Delhi Municipal Corporation (SDMC) has earmarked the area of Lajpat Nagar to run a pilot project to ease the problem of parking. Two other colonies, Kamla Nagar in North Delhi and Krishna Nagar in East Delhi have also been identified by the North Delhi Municipal Corporation (NDMC) and the East Delhi Municipal Corporation (EDMC) respectively for running such similar pilot projects. These are the colonies which probably face the highest problem of parking. If the pilot project is successful in these colonies we see no reason why such a project should not be followed in other areas too.
- D 14. If we take up the case of Lajpat Nagar itself, this is a colony which was inhabited initially by people who came as refugees from what is now called Pakistan. They were given small tenements and over a period of time the single storey constructions have become double and triple storeys. The plot sizes are by and large small though there are a few big houses. The Central Market in Lajpat Nagar is one of Delhi's most popular and crowded markets. It is almost impossible to find parking space during the market hours. In the last 1 or 2 years there has been some improvement after linking Lajpat Nagar with metro rail and also by making traffic move one way. However, the problem is so acute that a large number of visitors end up parking their vehicles in the residential areas which causes problems to the residents.

15. On the other hand these residential houses where the inhabitants were supposed to have only one vehicle now have 3-4 vehicles and as per the Report No. 98 of EPCA there are approximately 3.6 floors per plot and there are at least 2 cars per floor and the average plot area is 150 sq.metres, meaning thereby that there are about 7-8 cars per plot. The plot sizes are so small that 8 cars cannot be parked in a plot of that size. Resultantly, most of the cars if not all, are parked on the road which clogs up the roads and even ambulances, fire brigades, etc., cannot move. This situation cannot be allowed to go on.

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16. As noted by EPCA there is a huge gap between the available space for parking and the demand. EPCA has involved the Residents Welfare Associations (RWAs), and along with the RWAs has come up with certain suggestions for this pilot project. One of the suggestions is that parking permits can be issued to the residents whereby they will be issued stickers which would identify the cars of residents as the ones that can be parked in that area. EPCA has suggested that there should be monthly charges for the same but the Government of NCT has opposed the same and at this stage we are not passing any orders in this regard. However, it would not be unreasonable to expect the residents to at least share the burden of administrative costs to pay for the stickers, and hiring of security guards etc.

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17. The Transport Department of the NCT of Delhi has also notified the draft for Delhi Maintenance and Management of Parking Places Rules of 2019 in exercise of the powers conferred under Clause 41 of section 2 read with Section 117, sub-section (3) of Section 127 and clause (e), (h) and (i) of sub-section (2) of Section 138 of the Motor Vehicle Act, 1988 (59 of 1988). This policy envisages area parking plans to be notified within 4 months from the coming into force of these Rules. One heartening feature of this policy is that in its order of priority, it gives first priority to pedestrians/cyclists, secondly to mass public transport; thirdly to emergency vehicles, fourthly to vehicles for differently abled persons - their pick up and drop; then comes personal motor vehicle parking; short duration parking; on-street parking; overnight parking for transport vehicles etc. Another important aspect of this policy is that it lays down that parking arrangements must not impinge on the free movement of traffic. It has other rules relating to payment of parking fees etc.

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A 18. Clause 11 of the Policy deals with parking in residential streets and lanes. This reads as follows :-

- “11. Parking in residential streets and lanes -** (1) The Area Parking Plan made by civic agencies shall include, in their scope, parking arrangements within residential areas. The plan within such areas shall be made in consultation with the residents/ Resident Welfare Associations.
- (2) The civic agencies shall consider developing open areas, other than designated green areas / parks, near the colonies as parking lots on payment basis. Regular shuttle services may be prescribed as a part of parking facility, the charges for which shall be included in the parking fees.
- (3) Further, the owners of vacant plots in the residential colonies and commercial areas should be authorized for use of these plots as parking places against parking fees. Upon permission to use such vacant plot also as multi-level parking under building bye laws, such plots can be used as such for that purpose. Appropriate tax measures may be adopted by civic agencies to incentivize this process.
- (4) Parking on footpaths shall be strictly prohibited and civic agencies shall tow such illegally parked vehicles.
- (5) On all lanes and streets, a lane must be earmarked for unhindered movement of emergency vehicles like ambulances, fire tenders, police vehicles, etc. No parking shall be allowed on this lane.”
- F Therefore, this Policy envisages the preparation of area parking plans, the scope and ambit of such plans and the preparation of these plans in consultation with the residents or the RWAs. This Policy also encourages the use of open areas other than the designated green areas and parks near the colonies as parking lots on payment basis. Private parking is also encouraged where vacant land is owned by private parties. An important aspect of this Policy is that it envisages that the parking charges would include the cost of transporting the person from the place where his/her vehicle is parked to the market area by providing shuttle service. We direct that such facility should be by non-polluting vehicles such as electric or battery operated vehicles, golf-carts etc.
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19. This Clause also has two other very important aspects. A
Parking on footpaths is strictly prohibited. There can be no violation of
this and it cannot be permitted under any circumstances. Footpaths are
meant for pedestrians. Many houses encroach footpaths for many
reasons such as extending the garden, making security guard cabins
etc. All these are encroachments of public space. We direct that all
security guard cabins should be built within the plot area and not on
the footpaths. In any colony where the footpath is found to be
encroached upon, strict action should be taken against the owner and
the encroachment should be removed from the footpath. In case such
house owners after removal of the encroachment again encroach upon
the footpath then rules may be framed to discontinue municipal services
like water, electricity, sewage etc. to the residence of the encroachers.

20. The policy relating to residential areas also provides that a D
lane must be earmarked for unhindered movement of vehicles like
ambulances, fire tenders, police vehicles etc. This is very essential not
only to take care of medical emergencies, fire hazards etc., but also to
ensure that the law and order enforcement agencies can move without
any hinderance. This lane will also obviously be used by the residents.
This lane should be clearly earmarked on both sides by yellow
fluorescent paint or strips and not even an inch of space within the two
yellow lines should be permitted to be used for parking. This will prevent
perpendicular parking and encourage parallel parking.

21. EPCA has prepared a Report for pilot project for Lajpat F
Nagar-III but the same Report with minor variations can be utilised
for other two colonies also. Without expressing our opinion on the report
at this stage we *prima facie* feel that the pilot project should continue
in Lajpat Nagar as suggested by the EPCA for at least a period of 3
months, where after this Court would be in a better position to evaluate
both the short-comings and the benefits of the project. We are not at
this stage going into the details of the pilot project because we do not,
in any way, want to influence the working of the said project. At the
same time we would like to emphasise that what we have culled out
above from the parking policy must not be compromised and the draft
parking policy must be followed in letter and spirit.

22. The pilot project envisages a demand for parking of 3510
cars in Lajpat Nagar-III whereas the demarcated legal parking can only
accommodate 1830 cars. This means there is a gap of 1680 cars.

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- A EPCA has identified sufficient alternative space to accommodate these cars in various parking spaces available and through shared parking with hospitals and educational institutions. Institutions like hospitals, schools etc. do not require parking space once the working hours are over. Therefore, this idea of sharing the parking space is very good and could be extended to other areas too. However, in such event, the owners of such institutions may have to be monetarily compensated and we leave that question open for determination at a later stage.

23. Parking lots can be of various types and different modules of parking will be required in different areas. Traditionally, parking areas are open pieces of land where the parking areas are marked. A lot of area has to be left for the movement of vehicles. This is the least expensive but also the least efficient way of providing parking. However, this can be a solution in residential areas where the problem of parking is not so acute. If after identification of the requirements of parking as done in the case of Lajpat Nagar by EPCA, sufficient open land can be identified for accommodating all the vehicles. This traditional method may be the solution.

24. The second type of parking is multi-level parking which includes both underground and over ground parking. Underground parking though more expensive to construct, is sometimes better in the longer run especially when colonies are being developed because the land above the parking area can be used as a park. Parks and parking can be effectively combined. This is a concept used in various countries all over the world where there are 2 to 3 or even more levels of underground parking. As far as over-ground parking is concerned, it is definitely cheaper than underground parking to construct but care should be taken that the number of floors over the ground do not violate the building norms and multilevel parking does not become an eyesore. The problem of both multilevel and underground parking is that, though due to increase of levels more cars can be parked in the same area, a lot of space is wasted for providing access to the vehicles to move in and out of the parking areas. Spiral parking is another effective way of increasing parking space in the same area. The structure for the parking is circular in area and parking is done in concentric circles.

25. If automatic parking is introduced in these multilevel and spiral parkings then the amount of usable area becomes large and the number of vehicles which can be parked in the same area rises exponentially.

When automation takes place in spiral parking only the central hub of the parking area is used for the automated lift(s) and that will require at the best the space of two or three vehicles. A

26. Open parking or multi-level parking may be useful in residential areas but automated multi-level parking and automated spiral parking is the need of the hour for parking in institutions like hospitals, courts, transport hubs, etc. where the demand for parking of vehicles is very high. B

27. Another type of parking is stack parking. This requires no permanent construction. A frame-structure is raised and depending on the height of the structure, 2 or 3 cars are parked or 'stacked' one above the other by means of automated lifts. This type of parking is also useful in crowded areas and markets where availability of space is less and also where the alternative multi- level parking is being constructed but will take a lot of time to be built. C

28. Obviously these parking facilities come at a price. They are not cheap to erect and maintain. It is for the authorities to plan out how these parking facilities are to be financed. It is for the State to decide whether it will bear the cost or it wants the users to pay for the parking area. However, one thing is certain. It is the responsibility of the State to ensure that the roads are free and clear, free from parking and that there is reasonably large amount of parking space available to citizens in residential areas, commercial areas, institutional area, transport hubs etc. D

29. Modern technology must be used to ensure that parking spaces are utilised to the maximum and for that it is necessary to have Radio Frequency Identification (RFID) tags for all vehicles coupled with the parking guidance and information system in transport hubs, institutions and commercial areas. Parking charges, if any can be paid directly to the parking operator through the RFID tags which will reduce human intervention and corruption. One RFID tag can be used not only to pay parking charges but also at toll barriers etc., wherever vehicles have to pay charges for use of the road or parking space. Payment through RFID tags is automatic and speedy. Since there is no human intervention there is no dispute and the daily news of persons being beaten up at toll plazas would hopefully go down. For vehicles which are exempt from payment of such toll charges etc., the RFID tags can be programmed accordingly and these vehicles on the basis of RFID F G H

- A tag identification can go through these toll plazas without payment of fees. This will virtually do away with the need of having separate lanes for exempted category vehicles.
 - 30. In any parking facility where more than 100 cars can be parked parking guidance and information systems should be compulsorily used. The number of vacant parking spaces should be clearly identified and displayed prominently on signages outside the institutional/commercial areas as well as outside the parking. The parking guidance system should clearly indicate which entrance/route the motor vehicle users should use to reach the nearest vacant parking. This will help in making parking not only more efficient but also reduce the traffic jams outside the parking area.
 - 31. The pilot project of EPCA started in Lajpat Nagar from April, 2018 and we expect EPCA to give us a detailed report of the working of the pilot project in Lajpat Nagar by 30.12.2019. We request EPCA to prepare pilot project(s) for Krishna Nagar and Kamla Nagar within two weeks, immediately whereafter such pilot projects will be started there. With regard to the working of such pilot projects let the report be submitted by 30.12.2019.
- 32. In view of the above discussion we issue the following directions:-
 - E 1. We direct the New Delhi Municipal Corporation, North Delhi Municipal Corporation, South Delhi Municipal Corporation, East Delhi Municipal Corporation and Delhi Cantonment Board to ensure that all the pavements, in the residential areas are cleared from all encroachments and ensure that the pavements are made usable by pedestrians. The persons who have encroached upon the pavements shall be given notice of 15 days to remove the encroachment and in case they fail to do so the encroachment shall be removed by the municipal authority/authority concerned at the cost of the encroacher which shall be recovered as arrears of land revenue. The authorities may also consider framing rules to discontinue municipal services to repeat encroachers.
 - H 2. We direct that the draft rules of the Delhi Maintenance and Management of Parking Places Rules 2019 be notified at

the earliest and not later than 30.09.2019. List for A
compliance on 04.10.2019.

3. Once the rules are notified it shall be the duty of all concerned to ensure that the said rules are enforced in letter and spirit.
4. The Govt. of NCT is directed to ensure that while granting permission to build any structures, there is proper assessment of the parking needs for the next 25 years and requisite parking facilities are available. B
5. We direct EPCA and the municipal authorities to take into consideration what has been stated in the judgment while evaluating the feasibility and effectiveness of the pilot project. C
6. The Govt. of NCT of Delhi, the municipal authorities and EPCA are directed to consider the viability and effectiveness of introducing RIFD tags, parking guidance and information systems and last mile connectivity from parking spaces to commercial areas, institutions etc. and submit a report in this behalf by 30.09.2019 and for this purpose let the matter be listed in Court 04.10.2019. D
7. After the reports on the pilot project are received further directions shall be issued. E

33. List this matter on 13.01.2020.

Kalpana K. Tripathy

Directions Issued.