



LEGISLATIVE ASSEMBLY
NATIONAL CAPITAL TERRITORY OF DELHI

COMMITTEE ON PETITIONS

SEVENTH REPORT OF THE SIXTH ASSEMBLY

SUBJECT: IN THE MATTER OF PARKING FEE BEING CHARGED
IN MALLS & HOSPITALS AND ILLEGAL ENCROACHMENT IN
SHEIKH SARAI PH II

PRESENTED ON 02ND DECEMBER, 2019

ADOPTED ON 3RD DECEMBER, 2019

Legislative Assembly, Old Secretariat, Delhi – 110054

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COMMITTEE ON PETITIONS

(2019-20)

COMPOSITION OF THE COMMITTEE

1. Sh. Saurabh Bhardwaj	CHAIRMAN
2. Sh. Pankaj Pushkar	MEMBER
3. Sh. Akhilesh Pati Tripathi	MEMBER
4. Ms. Bhavna Gaur	MEMBER
5. Ms. Bandana Kumari	MEMBER
6. Ch. Fateh Singh	MEMBER
7. Sh. Girish Soni	MEMBER
8. Sh. Raju Dhingan	MEMBER
9. Sh. Shri Dutt Sharma	MEMBER

Assembly Secretariat:

1. Shri C. Velmurugan	Secretary
2. Shri Sadanand Sah	Deputy Secretary
3. Shri Manjeet Singh	Deputy Secretary

PREFACE

1. I, the Chairman, Committee on Petitions, having been authorised by the Committee to present on their behalf, this Report on the petition received from Shri Mohd. Amir, H.No.161 C, Gali No.7 Dhir Pur Village, Delhi. The Petition was countersigned and presented to the Hon'ble Speaker, Delhi Legislative Assembly by Shri Nitin Tyagi, Hon'ble MLA, Laxmi Nagar and referred to the Committee on Petitions on 04.01.2019.
2. The Committee considered and adopted the Draft Report at their sitting held on 29.11.2019.
3. The observations / recommendations of the Committee on the above matter have been included in the Report.
4. I would like to thank all the Members of the Committee for their continued guidance.
5. The Committee places on record their profound appreciation for the valuable assistance rendered by Sh. Sadanand Sah, Deputy Secretary, Sh. Manjeet Singh, Deputy Secretary, Sh. Subhash Ranjan, Section Officer, Ms. Ilma Mirza, Associate Fellow, Delhi Assembly Research Centre (DARC) and other staff of the Delhi Assembly Secretariat in preparation of the report.



Date: 30.11.2019

Place: Delhi

(SAURABH BHARDWAJ)
CHAIRMAN
COMMITTEE ON PETITIONS

GENESIS

As per the provision in the Master Plan of Delhi 2021 and the sanctioned plans by the corporation and DDA, the area reserved for parking cannot be put to commercial use in any manner, as additional Floor Area Ratio (FAR) is provided to build parking for non-commercial purpose. The collection of parking fees is in violation of the law. It is to be noted that as per the Delhi Municipal Corporation Act, 1957 provision of the parking facility is a service to be provided and not for profiteering.

The Committee on Petitions also considered the order of the Hon'ble Delhi High Court on February 19, 2018, in the case of **Sanjay Puri v. South Delhi Municipal Corporation** WP(C) 9531/2017 which had made parking free at shopping malls, hospitals and other commercial establishments.

A Bench comprising of then **Chief Justice Gita Mittal** and **Justice C. Hari Shankar** was hearing a petition filed by a city resident seeking direction to the South Delhi Municipal Corporation (SDMC) to take appropriate legal steps against persons responsible for illegally charging parking fees from the general public.

The standing counsel for SDMC had drawn the attention of the court to the circular dated February 5, 2016, and the public notice issued on December 2, 2015, in respect of misuse of parking areas in the commercial complexes offices/shopping malls/hospitals. These Circulars pointed out that parking space in the commercial complexes/Malls/Hospitals has to be utilised free of any charges and cannot be put to commercial use by levying parking fees for the same.

On the basis of these judgments and the provisions of Master Plan of Delhi 2021, the Committee on Petitions carried out its proceedings on the received Petition.

INTRODUCTION

A petition was filed by Shri Mohd. Amir, H.No.161 C, Gali No.7 Dhir Pur Village, Delhi and was countersigned by Shri Nitin Tyagi, Hon'ble MLA, Laxmi Nagar. The petition was referred by Hon'ble Speaker to the Committee on Petitions on 04.01.2019, resonating two significant issues: 1) **the Parking charges in Hospitals, Malls and unauthorised parking under three MCDs** and 2) **Illegal Encroachment in Sheikh Sarai Phase II Market namely Shree Ram Sweets and Restaurant.**

The Petition highlighted the defrauding of Malls like Select City Walk and DLF Place in Saket by charging parking fee by the visitors which is illegal and against the provisions of Master Plan 2021 and the sanctioned plans of Corporation.

The Petition also alleged that there is an illegal encroachment of basement for years in the restaurant namely Shree Ram Sweets and Restaurant in Sheikh Sarai Phase II Market.

PROCEEDINGS

In order to ascertain the facts and investigate the allegations levelled in the said Petition, the Committee on Petitions conducted its meetings on 15.01.2019, 21.01.2019, 15.04.2019, 01.07.2019, 03.10.2019, 11.10.2019 and 22.11.2019 and deliberated the matter comprehensively with the officers of South Delhi Municipal Corporation (SDMC).

Issue 1: Parking charges in Hospitals, Malls and unauthorised parking under three MCDs

1. To examine the petition, the Committee on Petitions sent a letter addressing to the Commissioner, SDMC on 08.01.2019 seeking the information on the above-cited issue.

The letter aimed to gain the comments/information from SDMC on the following:

- i) Is it true that a large number of Hospitals and Malls has been provided with space for parking which cannot be used for commercial purpose and parking fee cannot be charged?
 - ii) Please provide the list of all Hospitals and Malls have been provided with space for parking which cannot be used of commercial purpose and parking fee cannot be charged.
 - iii) Please provide the list of Malls and Hospitals which are charging the illegal parking fee from the customers.
 - iv) Please elaborate about the actions taken by SDMC against these Malls and Hospitals which are charging the illegal parking fee from the customers. Please provide the entire files/noting/communication in this regard.
2. In the first meeting held on 15.01.2019 SDMC presented their submission in response to the letter, agreeing to the claim that there

are hospitals and malls with parking space which are charging parking fee, which cannot be charged. SDMC also submitted a list of Hospitals and Malls that fall under its jurisdiction which also mentioned the action taken by SDMC when the Hospitals and Malls were found to be at fault.

Besides, following supplementary information was provided:

- a) A public notice was issued by the Deputy Commissioner, Remunerative Project Cell, South DMC in the newspapers on 21.12.2015 vide. R.O. No. 88/DPI/SDMC/2015-16 thereby cautioning the Malls and Hospitals for not charging the parking fee. Collection of such fee amounts to a violation of sanctioned plan and action against the defaulters shall be initiated by SDMC.
- b) Aggrieved by the above said public notice, a petition was filed in the case titled “Vasant Kunj Commercial Complex Association Vs SDMC vide Writ Petition (Civil) No.12292/2015” for quashing the said public notice.
- c) The said petition was disposed of by the Hon’ble High Court of Delhi on 11.08.2016 thereby directing the petitioners to appear before the DC, South Zone on 16.08.2016 along with relevant papers. Thereafter, the respondent (DC/SZ) passed speaking order after hearing the petitioners. The order also reads *“Till the decision is taken by the competent authority on the representation of the petitioner, the petitioner will charge Rs. 20 per hour as parking fee and the money returned in that account shall be kept in a separate account for which a statement of account shall be placed before the respondent. This fee of Rs. 20 per hour would be charged qua the three malls i.e. DLF Emporia, DLF Promenade and DLF Ambiance Malls which are the subject matter of the petition”*
- d) Further, Deputy Commissioner, South Zone passed the speaking order vide No.601/DC/SZ/17 dated 10.08.2017 thereby justifying the Public

Notice dated 21.12.2015 as fully legal and not violating the statutory rules in any manner whatsoever.

- e) Aggrieved against the said speaking order dated 10.08.2017, the petitioners again filed a Writ Petition No.7943/2017 case titled “Vasant Kunj Commercial Complex Association Vs SDMC”. The case hearing is pending on 25.02.2020 in the Hon’ble High Court of Delhi.
- f) Apart from the above, another case titled “Sanjay Puri Vs. SDMC”, Writ Petition No.9531/2017 has been disposed of by the Hon’ble High Court of Delhi on 19.02.2018. The Hon’ble Court vide order dated 19.02.2018 had specifically mentioned in para 4,5 & 6 that *“it would appear MCD is conscious of its statutory duty and appears to have taken action against the violators of the law. In case any violation comes to the notice of the petitioner, the Hon’ble High Court grants liberty to him to approach the MCD with the same. The Corporation shall proceed to take action in accordance with the Law. “*
3. On 21.01.2019, SDMC provided the **“Report regarding Parking Charges in Hospitals, Malls and unauthorized Parking under three MCDs”**.

Details of the Hospitals charging Parking fee are given below:

S.No.	Zone	Total no. of Hospitals	Hospitals with SDMC	Hospitals with DDA	Remarks
1	Central	11	11	-	Free Parking – 8 hospitals Sub-judice before the Hon’ble High Court Parking sealed – 1 Reply to notice submitted notice - 1

2	South	8	6	2	Free Parking
3	West	5	5	-	Free Parking
4	Najafgarh	2	1	-	Free Parking
		26	23	03	

Details of the Malls charging Parking fee are given below:

S.No.	Zone	Total no. of Malls	Malls with SDMC	Malls with DDA	Remarks
1	Central	05	05	-	Free Parking
2	South	06	04	2	Parking fee being charged by 04 malls as per Hon'ble High Court orders
3	West	02	02	-	Free Parking
4	Najafgarh	01	1	-	Free Parking
		14	12	02	

4. After examining the report submitted by SDMC, the Committee enquired about the parking fee being charged by the South Delhi malls; Select City Walk, Saket and DLF Place, Saket which were found to be charging parking fee. The Committee on Petitions was versed by SDMC that these malls do not fall under the jurisdiction of SDMC as the land has been allotted by Delhi Development Authority (DDA) and SDMC is not a competent authority to issue notices to these malls.
5. Concerned about the submission, the Committee asked to verify their submission regarding DDA's jurisdiction in respect to the mentioned malls. Also, directed SDMC in the meeting held on 03.10.2019, to write a letter to DDA informing about the exorbitant charges being charged by the malls and requesting to take appropriate actions against them.
6. On 10.10.2019, the Committee on Petitions also issued a letter No.24(25)/Petitions(33)/2018-19/LAS-VI/Leg./5219-22 notifying DDA

about the unlawful collection of parking charges in Select City Walk mall and DLF Mall, Saket. Also, as per the discussion in the meeting of 03.10.2019, SDMC issued a letter No.D/2326/EE(B)-II/Bldg/SZ/2019 to the Director (Building), DDA dated on 10.10.2019 requesting the enforcement of free parking in the Select City Walk, DLF Place and Max Hospital in Saket as mandated under the Master Plan/Building Bye-Laws-2016. A copy of the letter is also submitted to the Committee on Petitions.

7. On 15.10.2019, SDMC issued another letter to DDA regarding enforcement of free parking in malls namely Select City Walk and DLF Place, Saket with the copies of receipts of parking fee.

Issue 2: Illegal Encroachment in Sheikh Sarai Phase II Market namely Shree Ram Sweets and Restaurant

1. To examine the issue, the Committee on Petitions sent a letter addressing to the Commissioner, SDMC on 08.01.2019 seeking the information/answers of the following:

- i) Is it true there is an illegal basement in Triveni Market, Sheikh Sarai Ph-II namely Shree Ram Sweets and Restaurant under the jurisdiction of SDMC?
- ii) Please elaborate about the action taken by SDMC in the above matter. Please provide the entire files/noting/communication in this regard.

2. During the proceedings of the meeting on 15.01.2019, it was established that the Shree Ram Sweets and Restaurants (Shop no. 44, 45, and 46) was notified by SDMC due to Illegal encroachment of basement as per the **Section 133 of Delhi Municipal Corporation Act, 1957** which reads:

“Section 133. Assessment in case of amalgamation of premises.—
If any land or building, bearing two or more municipal numbers, or

portions thereof, be amalgamated into one or more new premises, the Commissioner shall on such amalgamation assign to them one or more numbers and assess them to property taxes accordingly: Provided that the total assessment on amalgamation shall not be greater than the sum of the previous assessments of the several premises except when there is any re-valuation of any of the said premises.”

3. As the examination of the petition proceeded, on 21.01.2019, Shri Dev Kumar, former Assistant Engineer from SDMC briefed the members of the Committee that the property where Shri Ram Sweets and Restaurant is running, had been booked for unauthorised construction in the year 2016. Then after hearings in the matter, the protection was granted to the property. He also mentioned that the construction or encroachment before 07.02.2007 was given protection under the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011.
4. After much deliberations, the Shop no. 44, 45 and 46 namely Shri Ram Sweets and Restaurant, had been booked and demolition and sealing orders were passed under Section 343,344 and 345-A of DMC Act of 1957 by SDMC.
5. On 29.01.2019 while proceeding of sealing was initiated, the appellant appeared before Hon’ble Appellate Tribunal and stay was granted. Against the stay orders passed by the Hon’ble Appellate Tribunal, MCD an application was moved by SDMC for vacation of stay before the District Judge, Saket which happens to be Appellate Court to the Appellate Tribunal, MCD.
6. SDMC submitted to the Committee on 11.10.2019 that the hearing in the court of District Judge Saket is in the process.
7. On 13.11.2019, SDMC also submitted a copy of complete case file containing order passed dated 13.11.2019 by Hon’ble Appellate Tribunal, MCD, which also stated that on 15.07.2019, the owners of the shop has been granted permission for amalgamation of the three shops and interim order will continue till the next date.

OBSERVATIONS & FINDINGS

1. The Committee expresses its discontentment about this “fleecing of public” by the Malls and Hospital, which is also in violation of the order dated 19.02.2018, Hon’ble High Court of Delhi in WP(C) No.9531/2017 titled **Sanjay Puri v. South Delhi Municipal Corporation** which emphasised that parking is free at shopping malls, hospitals and other commercial establishments in lieu of additional FAR for non-commercial use.

2. The Committee feels highly displeased observing the delay SDMC has displayed in communicating to DDA about the Parking fee being charged by the Malls and Hospitals under DDA’s jurisdiction, even when it was a sheer violation of the orders of Hon’ble High Court of Delhi. This was established in the initial meetings; 15.01.2019 and 21.01.2019 but it took approximately 09 months to SDMC to issue a letter to the DDA dated on 10.10.2019 seeking for the enforcement of free parking. It was only when the Committee expressed its displeasure over no action being taken, SDMC committed to coordinate with DDA to take appropriate action.

3. a) Details of the Hospitals where SDMC has taken the actions to curb the inconvenience faced by the general public due to parking charges are given below:

S.No.	Name of Hospital	Parking fee	Action Taken	Remarks
1	Moolchand Hospital, Moolchand, Lajpat Nagar	Rs 50 for four-wheelers and Rs 20 for two-wheelers	Sealing proceeding u/s 345A of DMC Act has been initiated vide no. D/03/DC/Bldg-I/CNZ/2018/MUC /Parking dated 18.10.2018	At present no parking fee is charged

2	Jiwan Hospital, Sunlight Colony, Bhogal	Rs 50 for four-wheelers and Rs. 20 for two-wheelers	Sealing proceeding u/s 345A of DMC Act has been initiated vide dispatch no. D/01/DC/Bldg-I/CNZ/2018/MUC/Parking dated 18.10.2019	An undertaking has been given provided by the Hospital stating that Jeevan Hospital is not taking any parking charges at present and will not be taking in future. These submissions have also been got verified during the action on 17.12.2018 by the concerned field staff.
3	Hamdard Majeedia Hospital			Sealed the parking on 17.12.2018
4	Indraprastha Medical Corporation Limited (Apollo Hospital)			The applicant challenged action initiated by SDMC by filing WP(C) No.6659/2018. The office filed its report and affidavit in the said matter. The matter is subjudice before Hon'ble High Court.
5	Holy Family Hospital, New Friends Colony			The action has been taken on 11.10.2019.

b) Details of the Malls where SDMC has taken the actions to curb the inconvenience faced by the general public due to parking charges are given below:

S.No.	Name of Mall	Parking fee	Action Taken	Remarks

1	Ansal Plaza, Andrews Ganj	50 Rs for four- wheelers and Rs 30 for two- wheelers	Sealing proceeding u/s 345-A of DMC Act has been initiated vide dispatch No. D/02/DC/Bldg- I/CNZ/2018/MUC /Parking dated 18.10.2018	As per representation received by Mall, at present no parking fee is being charged. Same has been verified by the field staff on 17.12.2018.
2	TDI Mall Lajpat Nagar II		Earlier parking space was sealed on account of misuse. Later on the same was de-sealed after the approval of Addl. Comm.	At present no parking fee is being charged. Same has been verified by the field staff on 17.12.2018.
3	DLF Promenade, Vasant Kunj	Rs 20 per hour		*As per order of High Court
4	DLF Emporia, Vasant Kunj	Rs 20 per hour		*As per order of High Court
5	Vasant Square, Vasant Kunj		Notice was issued	Earlier they used to charge as per the report submitted on 21.01.2019, but the status is updated and as per the submission on 11.10.2019, the Mall does not charge parking fee in the present.
6	Ambience Mall, Vasant Kunj	Rs 20 per hour		*As per order of High Court

**Annexure I – A Copy of High Court Order in WP(C)12292/2015 Vasant Kunj Commercial Complex Vs SDMC*

4. Examining the Report submitted by SDMC on 21.01.2019 and 11.10.2019 respectively, the Committee on Petitions has observed the change in the

status of one of the malls of Vasant Kunj; Vasant Square Mall. In the previous report, it was mentioned that Vasant Square Mall was charging Rs. 20 per hour as per high court order. But the Hon'ble High Court Order in WP(C)12292/2015 mentioned three malls i.e. DLF Emporia, DLF Promenade and DLF Ambiance Malls which were the subject matter of the petition. The report submitted on 11.10.2019 by SDMC, mentioned that Vasant Square Mall, Vasant Kunj is not charging a parking fee, which raises the concern whether the Mall was manipulating the orders of Hon'ble High Court and collecting Parking Fee.

5. Considering the submission on record by SDMC in the meeting held on 15.01.2019, there were total 6 properties where amalgamation was found. But the action has been taken in respect of three shops; no.44, 45 and 46, which leads to ambiguity in this manner. No submission has been received in this respect too by the Committee on Petitions.

6. Referring to the SDMC report, the owners of the shops have approached the Hon'ble Appellate Tribunal of MCDs and the stay has been granted in the matter.

7. The Committee has observed that unless and until the matter was brought into the notice by the Committee on Petitions, SDMC did not take action regarding illegal encroachments in the Sheikh Sarai Ph II Market.

8. The Vice Chairperson of DDA did not reply to any of the communication of SDMC and Committee about illegal parking fee being charged by Malls and Hospitals under their jurisdiction.

RECOMMENDATIONS

1. The Commissioners of the Three MCDs and the Vice Chairperson, DDA should ensure that no parking fee is being charged by any Malls, Hospital and shopping complexes who have been granted extra Floor Area Ratio (FAR) for non-commercial purpose.
2. The Committee recommends that monthly inspections should be conducted by the Deputy Commissioners of Zones, MCDs in the Malls, Hospitals and shopping complexes to avoid fleecing of public and any parking mafia in existence.
3. The Committee is of a view that there can be Malls, Hospitals or shopping complexes that can misinterpret the orders of Hon'ble High Court to suit their vested interest. Therefore, it is the duty of MCDs to ensure that these Malls, Hospitals and shopping complexes are in the complete compliance to the Hon'ble High Court orders and the general public should be informed about the same.
4. The Committee also recommends that MCDs and DDA should inspect all the shops/complexes under its jurisdiction to ensure no illegal encroachment and all the shops/complexes are in compliance of their approved layout plans. MCDs should develop a mechanism to keep a check on the illegal encroachment or construction. It is better to cease any such violation at the initial stage rather than letting it.
5. The Committee recommends that the Commissioners of the MCDs and Vice Chairperson DDA should ensure that the **Metal Boards** should be installed at the entrance of all such parking places declaring that the said parking is "Free" as per the MCDs and DDA's orders. The Dimension of the board should be **4 feet x 6 feet**, which should be visible to all the vehicles while they enter and exit from Parking area. For the same, Action Taken Report should be submitted by three Commissioners, MCDs and DDA within two weeks from the date of adoption of this report by Delhi Legislative Assembly.

6. Deputy Commissioners of MCDs should ensure that these boards are not taken away and should not to be removed, by physically visiting these parking spaces every three months.
7. The Worthy Chief Secretary should follow up with officers of DDA to ensure that Malls under jurisdiction of DDA should provide free parking.
8. Appropriate Hon'ble Court should review the functioning of Hon'ble Appellate Tribunal of MCDs & NDMC to ensure that violators do not use this platform as delaying tactics in cases of serious violations which are threat to safety of citizens.
9. The Committee requests Worthy Chief Secretary, Govt. of NCT Delhi to submit Action Taken Report on the recommendation of the Committee to Delhi Legislative Assembly in 30 days.



Date: 30.11.2019

Place: Delhi

(SAURABH BHARDWAJ)

CHAIRMAN

COMMITTEE ON PETITIONS

ANNEXURE – I

S~17

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 12292/2015 & C.M. No.32566/2015
VASANTKUNJ COMMERCIAL COMPLEX ASSOCIATION

..... Petitioner

Through Mr. B. B. Gupta, Senior Advocate
with Mr. Ankit Rajgarhia and Mr.
M.Raghav, Advocate

versus

SOUTH DELHI MUNICIPAL CORPORATION

..... Respondent

Through Mr. Sanjay Poddar, Senior Advocate
with Mr. Mukesh Gupta, Advocate

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **11.08.2016**

Learned senior counsel appearing for the petitioner under instructions submits that the respondent has not afforded personal hearing to the petitioner. Accordingly, this writ petition be treated as representation of the petitioner.

Petitioner will appear before the DC (South Zone) SDMC, Zonal Building, Green Park, Delhi on 16.08.2016 at 3.00pm. Needless to state that if any other documents are required to be filed and sought for from the petitioner, the petitioner shall fully co-operate with the respondent. Respondent will thereafter pass a speaking order after hearing the petitioner.

Needless to further state that the respondent will dispose of the

representation of the petitioner within an outer limit of 3 weeks after conclusion of hearing and if required, hearing may be taken up on a day to day basis.

Till the decision is taken by the competent authority on the representation of the petitioner, the petitioner will charge Rs. 20 per hour as parking fee and the money returned in that account shall be kept in a separate account for which a statement of account shall be placed before the respondent. This fee of Rs. 20 per hour would be charged qua the three malls i.e. DLF Emporia, DLF Promenade and DLF Ambiance Malls which are the subject matter of the petition.

If either party is aggrieved by the order passed by the competent authority (on the representation of the petitioner), they may approach the Court. Till then no coercive steps will be taken by the respondent.

Petition disposed of in the above terms.

Order dasti under signatures of Court Master

INDERMEET KAUR, J

AUGUST 11, 2016

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