

Judgment Sheet  
IN THE LAHORE HIGH COURT AT LAHORE  
JUDICIAL DEPARTMENT

WP No.10795 of 2015

Ch. Sabir Ali Vs City District Government, etc

**J U D G M E N T**

Date of Hearing	<b>20.12.2016.</b>
Petitioner By:	Petitioner in person. Mian Abdul Aziz, Mr. Talaat Farooq Sheikh, Mian Irfan Akram, Advocate for Petitioners in connected writ petitions and Ms. Noor Aitzaz, Advocate vice counsel for Petitioner in WP No.26939/2015.
Respondents By:	Ch. Sultan Mahmood, AAG. Mr. Salman Mansoor, Advocate for Respondent LDA. Ms. Lubna Altaf, Advocate for Lahore Parking Company Respondent No.8.

**Ayesha A. Malik J:** This single judgment decides upon the issues raised in the Writ Petitions detailed in Schedule “A” appended with this judgment as common question of law and facts are involved in these petitions.

2. The basic and common issue in all these petitions pertains to parking stands within the City of Lahore. The Petitioners are private contractors who run parking stands within or around commercial buildings and their case is that they cannot be regulated by the City District Government, Respondent No.1 or by the Lahore Parking Company, Respondent No.8.

**Facts**

3. The Petitioners before the Court are all contractors, who have been contracted to run a parking stand within private premises. The parking stands are located in commercial buildings such as Pace Mall, Hafeez Centre, Siddique Trade Centre, Chen One as well as Hospitals like Surgimed. The case of the Petitioners is that they manage the

parking stands within private premises, hence they are not obligated to pay the parking fee levied by the City District Government.

4. The issue is of immense importance and in the interest of the public at large. There is a large increase in the number of cars and motorbikes and a shortage of parking spaces be it public or private, within the city. Also parking is not properly regulated hence the problem of availability of parking, wrong parking and encroachments have multifolded.

The Arguments

5. The Petitioners are aggrieved by the notification dated 02.04.2014 issued by the City District Government, Lahore wherein they have notified the parking fee rates to be charged at the notified places. The case of the Petitioners is that they run private parking stands in private premises and therefore, cannot be regulated by the City District Government or Lahore Parking Company (“LPC”). It is also their case that the revised rates which have been fixed by the City District Government are not applicable to them. Learned counsel for the Petitioners argued that the Petitioners are all contractor, who have been given parking contracts in private areas. They have agreed upon an annual amount for the parking area they manage and are responsible for managing the parking stands and providing the required facilities within the parking stands. Therefore, the rates fixed by the City District Government are not applicable to the Petitioners. Hence they have filed the instant petitions.

6. Report and parawise comments have been filed by the City District Government. On behalf of the City District Government, it is argued that parking falls within the jurisdiction of City District Government under Section 115 of the Punjab Local Government Act, 2013 (“Act”). It is further argued that the owners of the buildings are required to maintain mandatory parking space for the public. Further they provided affidavits to the effect that the setback area is surrendered in favour of the Tehsil Municipal Administration, Town

Municipal Administration or City District Government, as the case may be, for the purposes of regulating the said space under the notification dated 02.10.2012. Learned counsel further argued that the rates are fixed for the benefit of public at large, hence all contractors whether they are running a private parking stand/place or public parking stand are required to apply the rates. He explained that parking is a serious issue in the metropolis and requires regulation. It is their case that the City District Government is fully empowered under the Ordinance to regulate parking and fix its rates.

7. Report and parawise comments on behalf of LPC have also been filed. It is their case that LPC is a public limited company established under the Companies Ordinance, 1984 wholly owned by the City District Government, Lahore. The basic purpose for establishing the company is to provide comprehensive management and operations of parking facilities in order to resolve parking problems in the city of Lahore and to ensure that parking arrangements are made available to the public for their benefit. It is also their case that they can collect the parking fee fixed by the City District Government and utilize amounts to improve parking in Lahore. It is their case that since they are a regulatory body, they are required to ensure that parking facilities are available to the public at large and to regulate all parking spaces whether public or private.

8. A report was called for from Chief Traffic Police Officer, Lahore on 03.06.2015. In terms of the report filed on 13.06.2015 it was pointed out that one of the core issues within the City of Lahore is of wrong parking and encroachment in pursuance thereof. The traffic police has taken action against wrong parking by issuing tickets and taking action against encroachers. However, with the unprecedented growth of motor vehicles in the Provincial Capital there is a lot to be done to monitor and supervise parking. In this regard as per the report, certain recommendations have been provided for matters which fall within the domain of the Traffic Police. However, the

recommendations do not relate to the authority of the City District Government to fix parking fee for parking stands. The report highlights the lack of coordination with the Traffic Police while earmarking parking spaces. Consequently wrong allocation of space as parking stands is a major factor contributing to heavy traffic in certain areas.

The Law

9. The basic issue involved in these Petitions is with respect to the powers of City District Government to regulate parking stands established within private premises. The relevant law on the subject is as follows:-

**Section 87 of the Act**

**87. Functions of Metropolitan and Municipal Corporations.-(1)**

The Metropolitan Corporation and a Municipal Corporation shall-

- (a) approve spatial plans, master plans, zoning, land use plans, including classification and reclassification of land, environment control, urban design, urban renewal and ecological balances;
- (b) implement rules and bye-laws governing land use, housing, markets, zoning, environment, roads, **traffic**, tax, infrastructure and public utilities;
- (c) approve proposals for public transport and mass transit systems, construction of express ways, fly-overs, bridges, roads, under passes, and inter-town streets;
- (g) exercise control over land-use, land subdivision, land development and zoning by public and private sectors for any purpose, including for agriculture, industry, commerce markets, shopping and other employment centers, residential, recreation, parks, entertainment, passenger and transport freight and transit station;
- (k) provide, manage, operate, maintain and improve the municipal infrastructure and services, including-
  - (v) roads and street;
  - (vi) traffic planning, engineering and management including traffic signaling systems, signs on roads, street markings, parking places, transport stations, stops, stands and terminals;
  - (t) approve taxes and fees;
  - (v) collect approved taxes, fees, rates, rents, tools, charges, fines and penalties;
- (2) The Metropolitan Corporation and a Municipal Corporation may entrust any of its functions to a person, an authority, agency or company through a contractual arrangement, on such terms and conditions as may be prescribed.

**Item 99 of Eighth Schedule (Section 148) of the Act:**

**Traffic control.** (1) A local government shall, by byelaws, makes such arrangements for the control and regulation of traffic as may be necessary to prevent danger to and ensure the safety, convenience and comfort of the public.

(2) All local government may provide for parking motors on such public places as may be determined by it.

**Section 148 of the Act.** Notwithstanding any specific provision of this Act, a local government shall perform its function conferred by or under this Act and exercise such powers and follow such procedure as are enumerated in Eighth Schedule.

**Section 115.** Taxes to be levied.-(1) Subject to this Act, a local government may, by notification in the official Gazette, levy and tax, fee, rate, rent, toll, charge or surcharge specified in Third Schedule.

(2) The Government shall vet the tax proposal prior to the approval of the tax by the local government in order to ensure that the proposal is reasonable and in accordance with law.

(3) The Government shall vet the tax proposal within thirty days from the date of receipt of the proposal failing which it shall be deemed to have been vetted by the Government.

(4) A local government shall not levy a tax without previous publication of the tax proposal and inviting and hearing public objections.

(5) A local government may, subject to provision of subsection (1) increase, reduce, suspend, abolish or exempt any tax.

### The Legal Frame Work

10. The power of the Local Government is provided for under Article 140-A of the Constitution of Islamic Republic of Pakistan, 1973, which is reproduced below:-

“140A. (1) Each Province shall, by law, establish a local government system and devolve political, administrative and financial responsibility and authority to the elected representatives of the local governments.

(2) Election to the local government shall be held by the Election Commission of Pakistan.”

In terms thereof, the local government is the competent constitutional system of government to provide for the effective delivery of services, including parking and traffic planning as provided under Section 87 of the **Act**. Over the years urban growth and development has moved at a fast pace due to the changed occupational pattern within communities. Resultantly, urbanization and urban population growth required planning and regulation at the local level so that citizens are facilitated and enjoy quality living. Parking is an essential component of the transportation system and with a rise in the number of vehicles it is

necessary to have a planned parking policy which aims to increase the capacity of public transport, reduce traffic levels especially at specified times of the day when traffic congestion is at its peak and finally encourage and develop the use of different modes of transportation. In this regard, public transport, traffic management and parking policy are interlinked and may serve the wider environment, social and economic objectives. Section 87 specifically provides that the metropolitan and municipal corporation shall make rules to regulate traffic and roads, to plan traffic and all related matters such as traffic signals, sign on the roads and parking places. Therefore, parking falls squarely within the ambit of the City District Government, Lahore.

11. The City District Government is also empowered to levy and revise the rate of parking fee. Therefore, not only it can allocate areas for parking purposes but it can also levy parking fees. Section 115 of the Act empowers a Local Government to impose taxes and fees specified in the third schedule. The third schedule Part-1 (11) provides for the power to levy parking fee. Therefore, the competent authority to levy parking fee is the City District Government.

12. Section 141 of the Act allows for the making of a legal entity to act as an agent of the Local Government for performance of any of its functions. In pursuance thereof the LPC Respondent No.8 was established in the year 2012 by the City District Government. As per the Memorandum of Association of the Company, its main objective is the development of parking for the benefit of people living within the territorial limits of Lahore City and to provide sustainable, efficient and affordable parking services for the citizens of Lahore. Essentially it is required to provide facilities which improve the existing parking system and related facilities. They have also been authorized to collect parking fees through tickets and other means so as to utilize the fees to improve parking spaces and facilities. In this regard the City District Government has transferred all its obligations and functions to the LPC for operating and collecting revenue from the parking sites in Lahore

vide agreement dated 19.12.2012. Whereafter the LPC has taken over all parking sites within Lahore city to achieve its objectives. In terms of the understanding between the City District Government and the LPC parking fee is to be collected against public parking and a list of public parking sites has been handed over to the LPC to regulate it. The City District Government delegated its function to collect parking fees to the LPC means that while the City District Government can notify the parking fees, the LPC can collect the fees from the users of the parking spaces and use the amounts to improve parking in the City of Lahore

### Decision

13. The question that has arisen in these petitions is whether private parking spaces can be regulated by LPC and whether the operators of private parking stands are bound to charge the parking fee at the notified rate of the City District Government. The Petitioners have impugned the notification dated 02.04.2014 issued by the City District Government challenging the levy of parking fee on the ground that it is not chargeable or payable by the Petitioners, who are private contractors running parking stands within private premises. Hence they argued that they are not required to pay parking fee nor can the LPC regulate them or private parking spaces. The first question that arises is whether the competent authority can regulate private parking stands and private contractors such as the Petitioners. Secondly whether the Petitioners are required to collect parking fee at the notified rate. *Public place* is defined under Section 2 (ss) of the Act to mean *any building, premise or place to which the public have access*. A bare reading of the definition of *public place* clarifies that it is a place to which the public has access, which will include a private place to which the public has regular and continuous access. Therefore any place where the public will have a right of access on a regular and continuous basis falls within the meaning of *public place*. Hence parking in public places falls within the scope of the City District

Government and LPC. Furthermore, a private parking stand operating in a public place is bound to collect parking rates notified by the City District Government and will be regulated by the LPC because they control and monitor parking in public places. In the instant cases, all the parking stands are located in public places as they are either shopping malls, business centers or hospitals. These are areas which are accessed by the public, regularly on a daily basis within which the facility of parking must be provided. Therefore the argument that the Petitioners are private contractors operating parking spaces within private premises is factually and legally incorrect. The test as per the Act is whether the parking space falls within the meaning of a *public place*. In the cases before the Court all the Petitioners are operating parking stands in public places, hence they are bound by the notifications of the City District Government to charge parking fees at the notified rate and are bound by the parking policy of the LPC.

14. In this regard it is also noted that the builders or owners of the commercial complex at the time of approval of site plans agreed to provide public parking within its premises. Counsel for the LDA submitted that this is a mandatory requirement for commercial buildings and within this parking space the owner of the building is required to provide free and accessible parking to the public. Furthermore, Notification No.SOV(LG)35-1/2003 dated 02.10.2004 issued by the Government of the Punjab, Local Government & Rural Development Department notifying the Local Government (Commercialization) Rules, 2004 (“**Rules**”) under Section 5 (2) provides that *the owner shall submit an affidavit to the effect that the area under setback stands surrendered in favour of the Tehsil Municipal Administration, Town Municipal Administration or City District Government, as the case may be*. Section 6 (3) of the Rules provides that *the respective Tehsil Administration, Town Municipal Administration and City District Government shall maintain a separate head of account and the income thus generated shall be*

*utilized exclusively for the development of parking sites and parking plazas in close proximity of the area mentioned in sub-Rule (1).* Therefore even under the provisions of these Rules the building owners are required to provide proper provision for parking within the building premises, and the setback area has been surrendered in favour of the City District Government for this purpose. Hence, under the Rules the setback area, if used for parking by the Petitioners will be regulated by the City District Government and the LPC. In the Petitions before the Court the parking stands are located within the building premises for public use and along the boundary walls and within the setback area. The owners of the buildings/plazas/hospital cannot use the land earmarked for parking in contravention to the approved building plans and so far as the setback area is concerned that falls within the regulatory control of the City District Government and therefore, the control of the LPC. It is noted that under the Fourth Schedule of the Act using the setback area for purposes not approved is an offence under the Act.

15. The LPC in its arguments before the Court has stated that due to lack of cooperation and clarity, they are only managing and regulating parking as per the list of public parking spaces given by the City District Government. They further explained that they have not devised any mechanism to register parking contractors to standardize their function nor do they have control over private contractors and private parking spaces. In this regard it is clear that LPC is to control and regulate parking in public places. Therefore, any contractor working within a public place is bound to conform to the requirements of the LPC. Given that the issue of parking and allocation of parking space is serious and in the public interest LPC must adopt a move vigorous and durable approach to parking within Lahore. Due to scarcity of parking spaces they must formulate a parking policy which addresses this issue and devise a mechanism to regulate contractors operating in public places. The report filed by the Chief Traffic Officer, Lahore outlines

the gravity of the problems and highlights the lack of coordination between the Traffic Police and the City District Government and LPC. As per the Report, parking stands in many areas have created serious hindrance to the smooth flow of traffic as they have been given space in congested areas where the flow of traffic and given amenities do not justify the operation of the parking stand. It was also pointed out that parking contractors often encroach upon public space, side walls, side roads, service areas and empty plots to allow parking, which is neither permitted nor conducive to the flow of traffic. The City District Government and LPC should contribute efforts with the traffic police and have regular meeting so as to stay abreast with the traffic issues.

16. World over parking is an issue which requires constant regulation and monitoring. There are *mobility plans* devised to appreciate the flow of traffic and people in terms of the mode of transport used and *parking policies* devised which regulate parking issues. Road side space is planned not only from the parking aspect but also based on other usages such as buses, taxies, plantation, public crossing etc. In the same way parking spaces are allocated based on traffic flows, area and other modes of transport in order to effectively regulate parking. Hence parking along road side spaces and in public places must be based on some mobility plan and parking policy. In the same way rationalizing parking based on area, usage and public need is vital so as to make available sufficient parking spaces within the city and thereafter to charge parking fee based on some pricing policy. In this regard parking rates at specified times of the day or days of the week for specified duration can vary for efficient parking management instead of aiming to simply generate revenue by prescribing a flat rate. These functions of planning and regulating fall within the scope of the City District Government under Section 87 of the Act which function has been delegated to the LPC. Moving forward LPC shall devise a parking policy and plan parking spaces within the city of Lahore, which policy must be robust and is not reactive in nature, but caters to

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the requirement of the City. The policy should change and evolve with the changing patterns in the usage of private and public vehicles and should consider the traffic issues of the city of Lahore. In this regard, the LPC shall work in close liaison with the traffic police so that parking spaces have the least impact on the flow of traffic.

17. In WP No.7550/2015 the grievance of the Petitioner is that the service road is being used for parking which has blocked the entire road and causes difficulties to access the buildings. With respect to the prayer in WP No.7550/2015 the City District Government should consider the grievance of the Petitioner in consultation with the traffic police and determine whether the parking stand is causing any hurdle in the flow of traffic. This petition is **disposed of** in the above terms.

18. In view of the aforesaid, WP Nos.10795, 7550, 12483, 26939, 13551, 11861, 11689 of 2015, 671 of 2016 and 1672 of 2014 are **dismissed** being devoid of merits.

(AYESHA A.MALIK)  
JUDGE

Announced in an open Court on 15.02.2017.

JUDGE

Approved for reporting.

JUDGE

**Schedule-A****Details of Writ Petitions mentioned in Judgment dated  
20.12.2016 passed in W.P No.10795/2015**

<b>Sr.No.</b>	<b>W.P Nos.</b>	<b>Parties Name</b>	<b>Counsel Name</b>
1	<b>10795/2015</b>	Ch. Sabir Ali v. City District Government, etc	Petitioner in person.
2	<b>7550/2015</b>	Wafi Associates (Pvt.) Ltd v. City District Government etc	Mian Muhammad Tahir, Advocate
3	<b>1672/2014</b>	Waqar Hussain v. Lahore Development Authority, etc	Mian Irfan Akram, Advocate
4	<b>12483/2015</b>	Kh. Muhammad Inam v. D.G LDA etc	Mr. Talaat Farooq Sheikh, Advocate
5	<b>671/2016</b>	Faqir Muhammad v. City District Government, etc	Mian Abdul Aziz, Advocate
6	<b>26939/2015</b>	Muhammad Nadeem Khan v. Province of Punjab, etc	Ms. Noor Aitzaz, Advocate vice counsel for the Petitioner
7	<b>13551/2015</b>	Muhammad Irshad Ahmad v. City District Government, etc	Nemo
8	<b>11861/2015</b>	Anwar ul Haq v. City District Government, etc	Nemo
9	<b>11689/2015</b>	Abdul Jabbar v. Province of Punjab, etc	Nemo

(AYESHA A. MALIK)  
JUDGE