

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

% **Date of decision: 5th July, 2018**

+ **W.P.(C) 90/2011 & CM No.160/2011 (for stay).**

MCD

..... Petitioner

Through: Ms. Mini Pushkarna, Standing
Counsel, Ms. Swagata Bhuvan and
Ms. Shiva Pandey, Advs.

versus

BENCH AND BAR ASSOCIATION

..... Respondent

Through: Mr. Rajiv Khosla with Ms. Prathistha
Dobhal, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This petition under Articles 226 and 227 of the Constitution of India impugns the order [dated 3rd November, 2010 in M-11/09 (Unique Case ID No.02401C1105652006) of the Court of Additional District Judge – 12 (Central), Delhi] allowing the appeal under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (PP Act) preferred by the respondent against the order dated 2nd June, 1992 of the Estate Officer of the appellant Municipal Corporation of Delhi (MCD) under Sections 4,5&7 of the Act, of eviction of the respondent from the premises known as Bench and Bar Association Club, Queens Road, Delhi (opposite Old Delhi Railway Station) and remanding the matter to the Estate Officer for fresh adjudication.

2. This petition came up first before this Court on 7th January, 2011 and vide subsequent order dated 11th January, 2011, notice thereof was ordered to be issued.

3. The Estate Officer of the appellant MCD, in pursuance to the impugned order, recommenced the proceedings before him but which were stayed vide order dated 11th January, 2011 in this petition.
4. Vide order dated 29th January, 2013 the present petition was disposed of observing that since fresh proceedings for eviction had been initiated by the Estate Officer of the appellant MCD for eviction of the respondent Club, the petition had become infructuous. The appellant MCD preferred LPA No.123/2013 against such disposal of the petition and which was allowed vide order dated 10th September, 2013 and this petition restored to its earlier position.
5. Thereafter, adjournments continued to be sought and granted.
6. The counsels have been heard.
7. The Estate Officer of the appellant MCD passed the order dated 2nd June, 1992 of eviction, recording (i) that a piece of land measuring 3822 sq. yds. located on the left hand entry towards Town Hall from S.P. Mukherji Marg, Opposite Old Delhi Railway Station, Delhi is a public premises and was in the year 1904 allotted to the respondent Club at a monthly rental basis of Rs.15/-, for the purpose of playing tennis by its members and the respondent was required to apply for continuation of the permission year by year; (ii) that the tenancy so continued to be renewed till 31st March, 1972 only and thereafter it was not renewed; (iii) that the respondent also had failed to apply for renewal thereafter and had not paid the monthly rent of Rs.15/- w.e.f. 1st April, 1972 and was liable to pay damages at Rs.75/- per month w.e.f. 1st April, 1972 to 28th February, 1987, of Rs.6,381/- per month w.e.f. 1st March, 1987 to 31st March, 1991 and thereafter at a rate of

Rs.12,761/- per month w.e.f. 1st April, 1991 till the date of vacation; (iv) that the respondent Club, on 26th December, 1913, had furnished an undertaking that it will vacate the land and remove the building, temporary or permanent, built thereon, immediately upon receipt of order from the municipality and will not claim compensation for loss sustained by the removal of such building; (v) that the subject land was required for road widening of S.P. Mukerji Marg and to construct a subway parking site, bus terminal and railway station; and, (vi) that the tenancy of the respondent Club had been terminated w.e.f. 31st July, 1990 vide notice dated 15th June, 1990.

8. Accordingly the order of eviction and of recovery of damages as stipulated was passed.

9. The learned Additional District Judge, on appeal by the respondent, has set aside the order aforesaid of the Estate Officer of the appellant MCD and remanded the proceedings to the Estate Officer for fresh adjudication, finding that notice under Section 4 of the PP Act was not served in accordance with law on the respondent.

10. The counsel for the respondent states that it was so conceded by the counsel for the appellant MCD also before the learned Additional District Judge.

11. Since joining the Delhi Bar Association, members whereof are members of the respondent Club, in the year 1982, I have not found the respondent Club to be functional; only the premises thereof were found to exist.

12. The counsel for the respondent Club, however states that the Club is functional. He however states that owing to the building at the premises

aforesaid of the respondent Club being in a dilapidated condition and there being no facility for parking of vehicles for the members of the respondent Club desirous of visiting the premises of the respondent Club, the respondent Club is not being used to the potential which it should have served. He further states that the respondent Club, for this reason, has applied to the appellant MCD as well as to the Hon'ble Lieutenant Governor, Delhi for allotment of an alternate site for the respondent Club but though assurances have been meted out from time to time, no decision has been taken thereon.

13. The counsel for the appellant MCD, under instructions, states that the respondent Club is non-functional and premises aforesaid thereof have been allowed by the office bearers of the Delhi Bar Association to be used for parking, by giving it to a private contractor and the office bearers of Delhi Bar Association are earning therefrom.

14. Needless to state, the counsel for the respondent controverts.

15. The counsel for the appellant MCD also states that the appellant MCD is not the land owning agency in Delhi and has no provision for making allotment of any alternate place to the respondent Club.

16. The counsel for the respondent controverts and cites example of Masonic Club, allotment in whose favour is stated to have been cancelled but subsequently restored.

17. What thus emerges is that according to the counsel for the respondent also, the premises subject matter of these proceedings are not being used to fulfill the purpose for which they were allotted.

18. The counsel for the respondent however states that the proceedings be adjourned by four months, to enable the respondent to pursue its representation for allotment of alternate land.

19. It appears that no decision on the said representation also is being taken for the reason of pendency of this petition.

20. No purpose is thus being served by keeping this petition pending. In fact it is felt, that even if this petition had been dismissed on the very first date when it came up before this Court in the year 2011, the same would have only resulted in the order of the Additional District Judge attaining finality and the proceedings before the Estate Officer reviving and which also would have been decided in the last seven years since when this petition is pending.

21. Otherwise, there is no dispute that the respondent has no title to the premises; that the premises are 'public premises' and without the appellant MCD agreeing the respondent has no right to continue in the premises. It is thus felt that no purpose will be served even if this petition were to be dismissed, allowing the Estate Officer to continue with the proceedings before him and which in the aforesaid state of affairs are bind to result in another order of eviction of the respondent Club. Till then, the consideration of the representation claimed to have been made by the respondent to the appellant MCD and to Hon'ble Lieutenant Governor, Delhi for allotment of another site will also remain in abeyance.

22. The counsel for the appellant MCD states that the finding of the Additional District Judge of the notice under Section 4 having not been served is contrary to record.

23. I have thus proposed that (i) this petition be allowed and the order of the Additional District Judge be set aside; (ii) resultantly the order dated 2nd June, 1992 of the Estate Officer of eviction of the respondent will remain; (iii) however in the aforesaid facts and circumstances, the order of the Estate Officer, insofar as levying damages on the respondent, be set aside; (iv) the respondent, if so desires, on or before 30th July, 2018, makes a fresh representation to the appellant [now North Delhi Municipal Corporation (NrDMC)] as well as to Hon'ble Lieutenant Governor, Delhi for allotment of alternate site to the respondent; and, (v) the order dated 2nd June, 1992 of eviction be not executed by the appellant MCD till the decision by the appellant NrDMC on the earlier representation and the fresh representation, if any so made by the respondent to the appellant NrDMC and also for a period of two months after the communication of the said order to the respondent, also through Delhi Bar Association and the counsel for the respondent appearing before this Court today. Needless to state, that if the decision of the appellant NrDMC, on the representation aforesaid is for allotment of alternate land, the demand of the respondent shall stand satisfied. However, if the decision is against the respondent also, the respondent will remain bound to vacate the premises aforesaid in terms of the order dated 2nd June, 1992 and this order but will have legal remedies available to it against the said decision.

24. The aforesaid is agreeable to the counsel for the respondent. He also points out that the appellant MCD has allotted a piece of land around Tis Hazari Complex to St. Stephen's College for sports and have renewed the said allotment and on that parity also the respondent Club is entitled to

allotment of alternate land by the appellant NrDMC, preferably in the vicinity of the Tis Hazari Court Complex.

25. Even otherwise, after having perused the record, I am satisfied that the order of the Additional District Judge impugned in the present petition is liable to be set aside.

26. Accordingly, the present petition is disposed of (i) by setting aside of the impugned order dated 3rd November, 2010; (ii) by setting aside the order dated 2nd June, 1992 of the Estate Officer of the appellant MCD, to the extent of levying penalty / damages on the respondent; (iii) making inexecutable the order dated 2nd June, 1992 of the Estate Officer of the appellant MCD, to the extent of eviction of the respondent from the premises aforesaid, till the decision by the appellant NrDMC on the representation of the respondent as aforesaid and for a period of two months thereafter; (iv) after expiry of two months from communication of decision of appellant NrDMC on representation of the respondent, whatsoever it may be, if the respondent does not of its own vacate the premises / land, the appellant MCD will be entitled to remove the respondent therefrom by use of reasonable force; and, (v) if the respondent is aggrieved from decision of appellant MCD on representation of respondent, the respondent shall have legal remedies, save to assert right to continue in occupation of subject land / property.

No costs.

Dasti under signatures of Court Master.

RAJIV SAHAI ENDLAW, J.

JULY 5, 2018/‘pp’..