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

+ **TR.P.(C.) 80/2022**

M/S YOUNG MEN S TENNIS CLUB Petitioner

Through: Mr. R.Y. Kalia, Advocate.
versus

NDMC Respondent

Through: Mr. Sanjeev Sabharwal, Standing
counsel.

+ **TR.P.(C.) 81/2022**

M/S RADHEY MOHAN CLUB (ATCHISON CLUB) Petitioner

Through: Mr. R.Y. Kalia, Advocate.
versus

NORTH DMC Respondent

Through: Mr. Sanjeev Sabharwal, Standing
counsel.

+ **TR.P.(C.) 82/2022**

M/S UNION CLUB Petitioner

Through: Mr. R.Y. Kalia, Advocate.
versus

NDMC Respondent

Through: Mr. Sanjeev Sabharwal, Standing
Counsel.

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Date of Decision: 14th October, 2022.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

TR.P.(C.) 80/2022

TR.P.(C.) 81/2022, TR.P.(C.) 82/2022

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DINESH KUMAR SHARMA, J. (Oral)

1. Present matters have been re-listed at the Court's direction on office noting.
2. In the present case vide order dated 10th October, 2022, following order was passed in transfer petitions bearing TR.P.C.80/2022, TR.P.C.81/2022 and TR.P.C.82/2022;

1. Present matters have been placed before this Court in pursuance to the communication dated 23.09.2022 received from the Officiating Principal District & Sessions Judge (Hqs.), Delhi. These are the appeals under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. The present appeals were taken up for hearing by the learned Principal District & Sessions Judge (Hqs.), Delhi. During the course of hearing, vide order dated 22.12.2021, the learned Principal District & Sessions Judge (Hqs.), Delhi passed the following order:-

"22.12.2021

*Present: Sh. R.Y. Kalia, counsel for appellant
Sh. Ashutosh Gupta, counsel for respondent*

After last adjournment, appellant filed an application dated 09.12.2021 under Section 151 CPC. Copy supplied.

At this stage, due to certain uncharitable remarks, I consider it appropriate that this appeal be dealt with by some other court. Under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, this appeal can be heard either by this court or by such other Judicial Officer in Central district of not less than 10 years standing as this court may designate.

Therefore, this appeal is transferred to the court of Sh. Mukesh Kumar Gupta, learned ADJ (Central), Tis Hazari Courts, Delhi for proceeding further in accordance with law.

Parties to appear before the learned transferee court today itself i.e. 22.12.2021 at.03:00 pm.

File be sent immediately to the learned transferee court.

(GIRISH KATHPALIA)

*PRINCIPAL DISTRICT & SESSIONS JUDGE (HQs)
DELHI/22.12.2021”*

2. In view of this order, the matter was transferred to the learned ADJ-11 (Central), Tis Hazari Courts, Delhi. Subsequently, Sh. Mukesh Kumar Gupta, the learned Judge presiding over the Court of ADJ, Central Delhi was transferred and Sh. Praveen Singh joined as learned ADJ-11 (Central), Tis Hazari Courts, Delhi.

3. On 21.09.2022, the learned counsel for the petitioner raised an objection that in view of Section 9 of the PP Act, the present appeal can be heard either by the District Judge or by a judicial officer in that district having not less than 10 years service as Additional District Judge.

*4. Order dated 21.09.2022 reads as under:-
“21.09.2022*

Present: Sh. R.Y Kalia, Id. Counsel for appellant.

*Sh. Abhinav Shokeen, Ld. Counsel for
respondent/MCD.*

It is submitted by Id. Counsel for appellant that in view of section 9 of the PP Act, the present appeal can be heard either by the District Judge or by a judicial officer in that district having not less than 10 years service as Addl. District Judge.

Considering this submission, this court has no powers to hear the present appeal. In these circumstances, the file be placed before Ld. Principal District & Sessions Judge, Central District with a request to assign this case to some other court of competent jurisdiction. Parties are directed to appear before Ld. Principal District & Sessions Judge, Central District on 22.09.2022. Ahlmad is directed to send the file complete in all respects to the court of Ld. District & Sessions Judge.

*(Parveen Singh)
ADJ-11/Central/THC
Delhi/21.09.2022”*

5. Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 reads as under:-

“9. Appeals.—

(1) An appeal shall lie from every order of the estate officer made in respect of any public premises under [section 5 or section 5B] [or section 5C]] or section 7 to an appellate officer who shall be the district judge of the district in which the public premises are situate or such other judicial officer in that district of not less than ten years’ standing as the district judge may designate in this behalf.

(2) An appeal under sub-section (1) shall be preferred,—

*(a) in the case of an appeal from an order under section 5. [within twelve days] from the date of publication of the order under sub-section (1) of that section;³⁰ [***]*

(b) in the case of an appeal from an order 5[under section 5B or section 7, within twelve days] from the date on which the order is communicated to the appellant;³¹ [and]

³¹ [(c) in the case of an appeal from an order under section 5C, within twelve days from the date of such order:] Provided that the appellate officer may entertain the appeal after the expiry of the ³² [said period], if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time,

(3) Where an appeal is preferred from an order of the estate officer, the appellate officer may stay the enforcement of that order for such period and on such conditions as he deems fit: [Provided that where the construction or erection of any building or other structure or fixture or execution of any other work was not completed on the day on which an order was made under section 5B for the demolition or removal of such building or other structure or fixture, the appellate officer shall not make any order for the stay of enforcement of such order, unless such security, as may be sufficient in the opinion of the appellate officer, has been given by the appellant for not proceeding with such construction, erection or work pending the disposal of the appeal;]

(4) Every appeal under this section shall be disposed of by the appellate officer as expeditiously as possible.

(5) The costs of any appeal under this section shall be in the discretion of the appellate officer.

(6) For the purposes of this section, a presidency-town shall be deemed to be a district and the chief judge or the principal judge of the city civil court therein shall be deemed to be the district judge of the district.

6. The bare perusal of Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 provides that the Appellate Officer shall be the District Judge of the district in which the public premises is situated or such other judicial officer in that district of not less than 10 years standing. Reading of this provision nowhere provides that a judicial officer to be competent

to hear the appeal must have a standing of 10 years or more than 10 years in service as an Additional District Judge. Similarly, there is nothing as such in the provision that states that the judicial officer should have a service of 10 years or more than 10 years in the Higher Judicial Service. Had the legislature intended so, it could have mentioned it in the provision itself.

7. Thus, the appeals are relegated back to the Court of Sh. Praveen Singh joined as learned ADJ-11 (Central), Tis Hazari Courts, Delhi with a direction to entertain and dispose of the same as expeditiously as possible in accordance with law.

8. Accordingly, the present petitions stand disposed of.”

9. However, re-perusal of Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (the Act) made it clear that the appeal under the Act has to be heard by the District Judge of the District in which the public premises are situated or such other Judicial Officer in that District of not less than 10 years standing as the District Judge. Thus the order passed by this Court dated 10th October, 2022 seems to have been passed by oversight and needs to be recalled. The order dated 10th October, 2022 is recalled.

10. In view of the report received from the office of the learned Principal, District & Sessions Judge, Head Quarter, the appeals are withdrawn from the Court of the learned Principal District & Sessions Judge, HQ and assigned to the Court of the learned Principal District & Sessions Judge (West) for deciding the same in accordance with law.

11. In view of the aforesaid, the order/judgment bearing TR.P.(C.) 80/2022 titled as M/S Young Men S Tennis Club v. NDMC dated 10th October, 2022 is recalled and the Registrar (IT) of this Court is requested to

delete the order/judgment bearing TR.P.(C.) 80/2022 titled as M/S Young Men S Tennis Club v. NDMC dated 10th October, 2022 from the website of the Delhi High Court.

12. Complete record of the matters, be sent to the Court of the learned Principal District & Sessions Judge (West) from the Court of the learned Principal District & Sessions Judge (Hqs.), Delhi.

13. Parties are directed to appear before the Court of the learned Principal District & Sessions Judge (West) on 27th October, 2022.

14. The learned Principal District & Sessions Judge (West) is requested to dispose of the matter as expeditiously as possible.

15. Copy of this order be sent to the learned Principal District & Sessions Judge (Hqs.), Delhi and the learned Principal District & Sessions Judge (West).

16. Accordingly, the present petitions stand disposed of.

DINESH KUMAR SHARMA, J

OCTOBER 14, 2022

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