

CRR No. 3838 of 2008

In the matter of : Shome Nath De

Mr. Jayanta Narayan Chatterjee
Mr. Anirban Dutta ...for the petitioner

Affidavit of service filed in Court today is kept with the records.

It appears that the postal articles have come back with the endorsement “refused” from the opposite party no. 2.

A complaint was filed by the petitioner under Section 11(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as “the Act of 1971”) against the opposite party no. 2. On the said complaint, learned Chief Judicial Magistrate at Howrah took cognizance on July 28, 2008. Thereafter the complaint was transferred to the learned Judicial Magistrate, 4th Court, Howrah.

By the order impugned the learned Magistrate declined to issue process on the ground that cognizance taken by the Chief Judicial Magistrate, Howrah was barred under Section 15 of the Act of 1971.

In my view the order impugned is ex facie illegal. Section 15 of the Act of 1971 bars the jurisdiction of Civil Court only to entertain any suit or proceedings in respect of eviction of any person who is in unauthorised occupation of public premises within the meaning of the Act of 1971.

Section 11A of the Act of 1971 makes it clear that the offence under Section 11 of the Act of 1971 is cognizable. Therefore, there was no illegality in taking cognizance of the case by the learned Chief Judicial Magistrate, Howrah.

Accordingly, the order dated July 31, 2008, passed by the learned Judicial Magistrate, 4th Court, Howrah is set aside. The learned Judicial Magistrate, 4th Court, Howrah shall proceed with the complaint case from the stage of taking cognizance in accordance with law.

Accordingly, CRR No. 3838 of 2008 is disposed of.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties.

(Kausik Chanda,J)