

*Dd* 06 16.06.2023

**FMA 986 of 2019**  
with  
**I.A No: CAN 5 of 2023**  
  
**The Board of Trustees for  
the Port of Kolkata & Anr.**  
**Vs.**  
**Sri Sajan Kumar Agarwal & Ors.**

Mr. P. K. Mukherjee,  
Mr. Snehashis Sen, Advocates  
... .. For the Appellants

Mr. Amitava Mitra,  
Ms. Sumita Shaw, Advocates  
... .. For the State

In re : I.A No: CAN 5 of 2023

Application for restoration is considered on merits. Considering the averments made in the application for restoration and the affidavit and for the ends of justice, we deem it appropriate to allow the application for restoration.

I.A No: CAN 5 of 2023 is disposed of.

Appeal is restored to its file and number.

In Re : FMA 986 of 2019

Learned advocates are requested to address the Court on merits of the appeal.

Learned advocate appearing for the appellants submits that, the appeal is directed against the order dated July 31, 2018 passed in the writ petition. He submits that, an order of eviction was passed against

the private respondents under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. Such order of eviction remained unchallenged. The Calcutta Port Trust Authorities initiated eviction proceedings of the private respondents from land belonging to the Kolkata Port Trust. The private respondents thereafter, approached the writ Court without assailing the order passed under the Act of 1971.

Learned advocate appearing for the appellants submits that, the writ Court issued directions as contained therein which, he submits, are de hors the provisions of the Act of 1971. The private respondents, who suffered an order of eviction under the Act of 1971 cannot be elevated to a status of a regular tenant as done by the impugned order. The directions that the private respondents should be allowed to participate in the ensuing tender-cum-auction process was also not called for.

Learned advocate appearing for the private respondents submits that, since, the proceedings for eviction were initiated and concluded without any notice to the private respondents, they were unaware of such proceedings. When, the private respondents became aware of the order of eviction passed under the Act of 1971, they approached the writ Court by way of the writ petition in which the impugned order was passed. She submits that, since the provision of appeal under Act of 1971 was not available to the writ petitioner in view of the limitation prescribed under the Act of 1971, the writ petitioner availed of the writ remedy.

The admitted facts are that, a proceeding under the Act of 1971 was initiated for the purpose of evicting the private respondents from the property concerned.

An order of eviction was passed. According to the private respondents, they were not aware of the order of eviction to carry the appeal therefrom.

An order of eviction passed under the Act of 1971 is appealable. The private respondents did not approach the appeal Court prescribed under the Act of 1971, even after becoming aware of the order of eviction passed under the Act of 1971. No law is placed before us to suggest that, provisions of the Section 5 of the Limitation Act, 1973 is not attracted to an appeal under the Act of 1971.

In the facts of the present case, the private respondents, allowed the statutory remedy available to it under the Act of 1971 to elapse. It chose not to avail of such remedy even after becoming aware of the order of eviction passed under the Act of 1971. In our view, the writ Court need not come in aid to a person, who is lax to avail of his statutory remedy and, in fact, voluntarily gives up his remedy under the Act of 1971.

Directions contained in the impugned order passed by the writ Court tantamount to setting aside an order of eviction passed under the Act of 1971. This action, is accentuated on the factual matrix that the private respondents, despite being aware of the order of eviction chose not to avail of the remedies under the Act of 1971 in preferring an appeal from the order of eviction. Moreover, the impugned order directs an Article 12 authority to allow the private respondents to participate in the tender-cum-auction process with a right of first refusal to the private respondents. In our view, a tenant suffering an order of eviction under the Act of 1971 and not preferring an appeal therefrom, is not entitled to the indulgence shown by the learned trial Judge.

In such circumstances, the impugned order dated July 31, 2018 is set aside.

FMA 986 of 2019 is allowed. All connected applications stand disposed of.

**(Debangsu Basak, J.)**

**(Md. Shabbar Rashidi, J.)**