

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Uday Kumar

FMAT No. 62 of 2025
+
CAN 1 of 2025

Clean Kolkata Welfare Society and another
-vs-
The Municipal Commissioner and others

For the appellants : Mr. Tapas Dey,
Mr. Prosenjit Saha.

For the respondent/KMC : Mr. Alok Kumar Ghosh,
Mr. Gopal Chandra Das,
Ms. Ananya Das.

Heard on : March 10, 2025.

Judgment on : March 10, 2025.

Sabyasachi Bhattacharyya, J.:

1. On the prayer of learned counsel for the appellants, leave is granted to the learned Advocate-on-record for the appellants to incorporate the necessary amendments inserting the name

of the learned Trial Judge in the preamble of the Memorandum of Appeal during the course of the day.

2. We admit the appeal because both questions of fact and law are involved in this appeal.
3. The appeal itself and the connected application are now taken up for hearing for final disposal on consent of the parties.
4. The learned Trial Judge refused the ad interim injunction at the *ex parte* stage on the suit of the appellants claiming that the appellants are running a ‘Sulabh Complex’ by virtue of licence given by the Kolkata Municipal Corporation.
5. The learned Trial Judge observed that apparently no payment has been made after the first quarter of 2023 but in the same breath observed that a letter of request was submitted by the appellants and a receipt for security deposit showing payment of royalty up to the first quarter of 2023 for user of the Sulabh Complex were furnished by the appellants.
6. Learned counsel for the respondent-Kolkata Municipal Corporation submits that the appellants had been continuing for a period to run the Sulabh Complex under permission from the Kolkata Municipal Corporation. However, the said licence was for a limited period. Thereafter, upon expiry of the same, a fresh tender was floated, where the appellants participated

and were unsuccessful. It is submitted that as such, the Kolkata Municipal Corporation is entitled and duty-bound to give such licence to the successful tenderer.

7. It is vociferously submitted on behalf of the Kolkata Municipal Corporation that the appellants are guilty of suppression of such material facts before the learned Trial Judge.
8. Upon consideration of the documents sought to be relied on by the Kolkata Municipal Corporation, we are of the opinion that a strong *prima facie* case to oppose the injunction application has been made out by the Kolkata Municipal Corporation. However, fact remains that at the stage of grant of *ex parte* ad interim order, it is the averments made in the application for injunction which are to be taken as sacrosanct for the purpose of considering whether on the basis of the said pleadings such injunction could be granted.
9. Since the learned Trial Judge held that there is proof of receipts of payment of security deposit and royalty up to the first quarter of 2023, in the absence of the documents now sought to be relied on by the Kolkata Municipal Corporation before the trial Court, the learned Trial Judge could not have been in a position to refuse ad interim injunction on the basis

of such documents. It is well-settled that even an illegal occupant cannot be evicted without due process of law.

10. Be that as it may, since the Corporation has also got documents which strongly indicate that certain relevant facts might have been suppressed by the appellants in the court below, we direct the respondents herein to file their written objection(s) annexing all relevant documents to the temporary injunction application at the earliest, positively within a fortnight from date.
11. Upon such objection being filed, the learned Trial Judge shall conclude the hearing of the temporary injunction application itself and dispose of the same within four weeks from date.
12. However, in the meantime, the respondents shall remain restrained by an order of injunction from evicting the plaintiffs/appellants from the suit property without due process of law in any manner whatsoever, for a period of five weeks from date or until further order, as passed by the learned Trial Judge, whichever is earlier.
13. It is made clear that nothing in this order or any observations made herein shall influence the learned Trial

Judge in deciding the temporary injunction application independently on its own merits.

14. It is also clarified that the present order of interim protection is being granted to the appellants without going into the merits of the matter at length, only on the basis of the averments made in the application for injunction, and it will be open for the respondents to take all points, including the questions of suppression of material facts, before the learned Trial Judge at the time of hearing of the injunction application.
15. FMAT No. 62 of 2025 is accordingly disposed of along with CAN 1 of 2025 in terms of and in the light of the above observations, without any order as to costs.
16. Urgent photostat certified copy of the order, if applied for, be supplied to the parties at an early date.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)