

Item- 24-09-2025
13.

sg Ct. 1

FMAT 92 of 2025
CAN 1 of 2025

M/s. Gosto Behari Dey
Versus
M/s. Kolkata Port Trust & Ors.

Mr. Narayan Ch. Ghosh

...for the appellant

Mr. Subhankar Nag

Mr. Abhishek Banerjee

...for the respondent nos.1-3

1. The appeal is arising out of an order dated 15th February, 2025 passed by the learned Judge, 8th Bench at City Civil Court at Calcutta, allowing an application of the Kolkata Port Trust by rejection of a plaint filed in Title Suit No. 937 of 2018 in view of Section 15 of Public Premises (Eviction of Unauthorised Occupants) Act, 1971.
2. We have heard the learned Counsel for the parties.
3. The learned Counsel for the plaintiff has submitted that the plaintiff was a lessee under the Kolkata Port Trust (in short KoPT) under unregistered lease and although the plaintiff had performed its duties and obligations even after expiry of the period of lease, the KoPT had arbitrarily enhanced the lease rent/occupational charge and had threatened to evict the appellant. It is submitted that the leave was obtained prior to filing of the suit and having regard to the fact that Section 80 of the Code of Civil Procedure is *pari materia* to Section 120 of the Major Port Trust Act, the suit was maintainable.
4. The suit was filed before the eviction proceeding was concluded. The bar under Section 15 of the Act of 1971

would not operate in the instant case as the suit was filed before the conclusion of the proceeding.

5. The learned Counsel for the KoPT has submitted that in paragraph 19 of the plaint it has been clearly stated that eviction proceeding has been initiated by the Estate Officer in the year 2014 and presently against the order passed by the Estate Officer and the appeal is pending before the learned Chief Judge, City Civil Court.
6. In order to appreciate the arguments made on behalf of the parties, it is necessary to refer to Section 15 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, which reads as under:

15 Bar of jurisdiction – *No court shall have jurisdiction to entertain any suit or proceeding in respect of:*

(a) the eviction of any person who is in unauthorized occupation of any public premises, or

(b) the removal of any building, structure or fixture or goods, cattle or other animal from any public premises under section 5A, or

(c) the demolition of any building or other structure made, or ordered to be made, under section 5B, or

(cc) the sealing of any erection or work or of any public premises under section 5C, or

(d) the arrears of rent payable under sub-section (1) of section 7 or damages payable under sub-section (2), or interest payable under sub-section (2A), of that section, or

(e) the recovery of:

(i) costs of removal of any building, structure or fixture or goods, cattle or other animal under section 5A, or

(ii) expenses of demolition under section 5B, or

(iii) costs awarded to the Central Government or statutory authority under sub-section (5) of

section 9, or

(iv) any portion of such rent, damages, costs of removal, expenses of demolition or costs awarded to the Central Government or the statutory authority.

7. We have read the suit carefully in order to find out whether the suit was filed to circumvent the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971. A suit may be maintainable where none of the situations mentioned in Section 15 of the Act of 1971 had commenced. It may be that any situation when the plaintiff claimed tenancy right under an agreement, the suit for either specific performance or a declaration may be maintainable.
8. However, once a proceeding under Section 15 of the Act, 1971 is commenced, the learned Civil Court may decline to pass any order of injunction restraining the Estate Officer from exercising any jurisdiction in relation to matters covered under Section 15 of the said Act of 1971.
9. The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 is a statute by itself dealing with the matters relating to eviction of unauthorized occupants from public premises and for certain incidental matters. Undoubtedly, the premises in question is a public premises within the meaning of Section 2(e) of said Act of 1971. Definition of unauthorized occupation is stated in section 2(g) of the aforesaid Act which reads as under:

2(g). “unauthorized occupation”, in relation to any public premises, means the occupation by any person of the public premises without authority for

such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.”

10. In the instant case, the lease had expired and upon expiry of lease, a proceeding has already been initiated under Section 5 of the Act of 1971. The order of Estate Officer is presently under challenge.
11. The suit was filed primarily for a declaration that the demand notices issued for the period from 1st June, 2018 to 31st June, 2018 are bad in law. The said notices are as a consequence of alleged unauthorized occupation beyond 2014. Other reliefs are also primarily directed for a restraint order upon the Kolkata Port Trust not to disturb the peaceful possession of the plaintiff.
12. In fact, the KoPT has taken step for eviction of the appellant in accordance with law meaning thereby in terms of the provisions of the Act of 1971. Although an impression is sought to be created that the suit is a declaratory suit and the reliefs have been couched in that manner, the primary relief sought for permanent injunction which would certainly defeat the object of Section 15 of the Act of 1971, which clearly provides that no Court shall have jurisdiction to entertain in the suit or proceeding in respect of the eviction of a person who is in unauthorized occupation of any public premises.
13. The learned Counsel for the respondent has relied upon

the decisions of the learned Single Judge in *Birla Corporation Limited vs. Life Insurance Corporation of India* reported in (2001) 2 CHN 21 and CO 3659 of 2019 with CAN 1 of 2020 [The Divisional Manager, Life Insurance Corporation of India vs. Adi Puja Committee, Lal Bungalow (Malancha Road) and another] decided on 16th August, 2021 in which the Hon'ble Court held that even if it is disputed whether the occupation is authorized or unauthorized, the decision of the learned Civil Court would be barred under Section 15 read with Clause (a) of the 1971 Act and by reason of the aims and object of the said Act, the Court will not allow to reopen it in a circuitous manner. Moreover, we find that the appeal is pending in which all the points urged in the plaint are under consideration before the learned Chief Judge, City Civil Court.

14. In view thereof, we do not find any reason to interfere with the order passed by the learned Trial Judge.
15. We make it clear that since the learned Trial Judge as well as this Court has not gone into the merits of the matter, it shall not prevent the appellant from taking any defence in the proceeding or from agitating its right if he has any, under the Act of 1971.
16. With the aforesaid observations, the appeal and the application are disposed of. However, there shall be no order as to costs.
17. Urgent photostat certified copy of this, if applied for, be supplied to the parties upon compliance of all requisite formalities.

[Soumen Sen, C.J. (Acting)]

(Apurba Sinha Ray, J.)