

REGISTERED POST WITH A/D. HAND DELIVERY AFFIXATION ON PROPERTY

THE ESTATE OFFICER, KOLKATA PORT TRUST

(Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-Central Act) Public Premises (Eviction of Unauthorized Occupant) Act 1971

OFFICE OF THE ESTATE OFFICER

Strand Warehouse 6. Fairlie Place, 1st Floor KOLKATA - 700 001

Court Room At the 'Strand Warehouse', 6, Fairlie Place, 1st Floor, KOLKATA - 700 001

Dated NO. 89 ORDER REASONED 03.05.2019

PROCEEDINGS NO. 672 OF 2005

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

-Vs-

M/s Ravi Auto Ltd. (as O.P.)

F O R M - "B"

ORDER UNDER SUB-SECTION (1) OF SECTION 5 OF THE PUBLIC PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1971

WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that M/s Ravi Auto Ltd., of 103 Park Street, Kolkata-700016 is in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

- 1. That the long-term lease granted to O.P. has expired on 29.03.2000 without any provision for renewal.
- 2. That O.P. has violated the conditions of the lease by way of defaulting in payment of rental dues and taxes and erecting unauthorized construction/s.
- 3. That despite providing opportunity for the sake of natural justice, O.P. has failed to obtain any valid grant from the Port Authority.
- 4. That O.P. has failed to make out any case in support of its occupation as "authorised occupation".
- 5. That O.P. or any other persons asserting any right through O.P. has failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation".
- 6. That the notice to quit dated 11.04.2003 as served upon O.P. by the Port authority is valid, lawful and binding upon the parties and O.P.'s occupation and that of any other occupant of the premises has become unauthorised in view of Sec.2 (g) of the P.P. Act.
- 7. That O.P. is liable to pay damages for wrongful use and occupation of the public premises up to the date of handing over the clear, vacant and unencumbered possession to the port authority.

Please see on reverse

A copy of the reasoned order No.89 dated 03.05.2019 is attached hereto which also forms a part of the reasons.

NOW, THEREFORE, in exercise of the powers conferred on me under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order the said M/s Ravi Auto Ltd., of 103 Park Street, Kolkata-700016 and all persons who may be in occupation of the said premises or any part thereof to vacate the said premises within 15 days of the date of publication of this order. In the event of refusal or failure to comply with this order within the period specified above the said M/s Ravi Auto Ltd., of 103 Park Street, Kolkata-700016 and all other persons concerned are liable to be evicted from the said premises, if need be, by the use of such force as may be necessary.

SCHEDULE

Land msg. 10,178.359 sq.mt

It is bounded on the North by the Trustees' open land and partly by the Trustees' land occupied by ACC Pvt. Ltd., on the east by the Trustees' strip of land and partly by the Trustees' land occupied by ACC Pvt. Ltd., on the South by the Trustees' strip of open land, on the west by the Trustees' open land.

Structure measuring 201.21 sqm

It is bounded on the east, west, north and south by the Trustees' land occupied by O.P..

Trustees' means the Board of Trustees of the Port of Kolkata.

Dated: 03.05.2019

(Kausik Kumar Manna) Signature & Seal of the Estate Officer.

COPY FORWARDED TO THE ESTATE MANAGER/CHIEF LAW OFFICER, KOLKATA PORT TRUST FOR INFORMATION.

REGISTERED POST WITH A/D. HAND DELIVERY AFFIXATION ON PROPERTY

THE ESTATE OFFICER, KOLKATA PORT TRUST
(Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-Central Act)
Public Premises (Eviction of Unauthorized Occupant) Act 1971

1st Floor, 6, Fairlie Place (Fairlie Warehouse),

Kolkata-700001 *******

Court Room At the 1st Floor 6, Fairlie Place Warehouse Kolkata- 700 001.

REASONED ORDER NO. 89 DT 03.05.2019 PROCEEDINGS NO. 672/R OF 2005

Form "E"

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-VsM/s. Ravi Auto Ltd. (as O.P.)

Form of order under Sub-section (1) and (2A) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act,1971

To M/s Ravi Auto Ltd., 103 Park Street, Kolkata- 700016.

WHEREAS you are in occupation of the public premises described in the Schedule below. (Please see on reverse).

AND WHEREAS, by written notice dated 15.03.2005 you were called upon to show cause on/or before 04.04.2005 why an order requiring you to pay a sum of Rs. 4,06,011/- (Rupees Four Lakhs Six Thousand and Eleven only) being the rent payable together with simple interest in respect of the said premises should not be made;

And whereas I have considered the documents/evidence as produced by you or on your behalf before this Forum.

NOW, THEREFORE, in exercise of the powers conferred by sub-section (1) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971, I hereby require you to pay the sum of Rs. 4,06,011/- (Rupees Four Lakhs Six Thousand and Eleven only) for the period 29.09.1981 to 29.03.2000 (both days inclusive) to Kolkata Port Trust by 31.05.2019.

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PLEASE SEE ON REVERSE

In exercise of the powers conferred by Sub-section (2A) of Section 7 of the said Act, I also hereby require you to pay simple interest at the rate of 7.35% per annum on the above sum till its final payment being the current rate of interest as per the Interest Act, 1978.

In case the said sum is not paid within the said period or in the said manner, it will be recovered as arrears of land revenue through the Collector.

SCHEDULE

Land msg. 10,178.359 sq.mt

It is bounded on the North by the Trustees' open land and partly by the Trustees' land occupied by ACC Pvt. Ltd., on the east by the Trustees' strip of land and partly by the Trustees' land occupied by ACC Pvt. Ltd., on the South by the Trustees' strip of open land, on the west by the Trustees' open land.

Structure measuring 201.21 sqm

It is bounded on the east, west, north and south by the Trustees' land occupied by O.P..

Trustees' means the Board of Trustees of the Port of Kolkata.

Dated: 03.05.2019

Signature and seal of the

Estate Officer

Appointed by the Central Govt. Under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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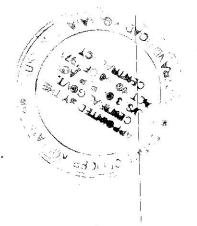
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Final Order

The matter is taken up for final disposal today. It is the case of Kolkata Port Trust (hereinafter referred to as 'KoPT'), the applicant herein, vide the application dated 24.05.2004 that M/s Ravi Auto Ltd. (hereinafter referred to as the 'O.P.') came into occupation of the subject Port property measuring about 10,178.359 sq.m of land and 201.21 sq.m of structures situated at Transport Depot Road under occupation number D 273/5/1 and DB 162/A/1 as the purchaser through auction process of the unexpired portion of lease of one M/s Bertrams-Scott (I) Ltd. from the Official Liquidator, High Court Calcutta w.e.f 29.09.1981. It is the case of KoPT that the said lease expired on 29.03. 2000 and the O.P. was found to have committed breaches like nonunauthorized taxes, and rent payment of construction and sub-letting without any permission of the KoPT Authority. KoPT has further submitted that because of these breaches, a notice dated 11.04.2003 to vacate the premises was served upon ().P. By filing the instant proceedings, KoPT has prayed for eviction of the O.P. from the public premises as also for recovery of the dues, taxes and interest etc.

This forum of law formed its opinion to proceed against the O.P. under the relevant provisions of the Public Premises Act, 1971 (hereinafter referred to as 'the Act') and issued Show Cause Notice/s under Sections 4 and 7 of the Act, both dated 15.03.2005, as per the Rules made under the Act. Thereafter, as a mistake had apparently crept in while describing the property under the Schedule of the Show Cause under section 4, the same was rectified and a fresh Notice was issued under Section 4 of the Act to the O.P. on 06.04.2005.

From records it appears that the O.P. contested the case and filed several applications. It appears that O.P. denied the allegations of KoPT vide application



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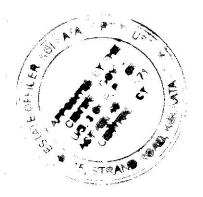
Appointed by the Central Govt. Under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971

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dated 22.07.2005 and several arguments have been forwarded on behalf of O.P. subsequently. O.P. also filed a detailed petition on 16.03.2010 requesting the forum to adjudicate the rental dues etc. A joint inspection of the public premises thereafter took place on 28.02.2014, and it was followed by the application of the O.P. on 22.04.2014 claiming no knowledge of the demolition of the structures (although such demolition is established through the joint inspection). Thereafter, vide order dated 27.05.2014, this Forum referred the matter back to the Estate Manager, KoPT for active consideration of O.P.'s prayer for settlement of disputes. Discussions thereafter apparently continued between KoPT and O.P. and a copy of KoPT's letter dated 04.10.2017 addressed to O.P. has been placed before this Forum. It is seen from the same that as yet, there is no settlement between the parties and KoPT has requested O.P. to liquidate the entire dues for taking up the matter for consideration but O.P. is apparently contesting KoPT's claim and hence chose not to go by said letter of KoPT. O.P. again filed an application before this Forum on 23.10.2017, primarily praying for regularization. A joint inspection was again held on 01.12.2017 when the godowns/rooms under occupation of O.P. were found to be closed (under lock and key). At the insistence of KoPT, the joint inspection was rescheduled again and finally held on 12.12.2017 some unauthorised constructions detected. An intention was expressed on behalf of O.P. to regularise such breach and accordingly KoPT was directed to produce the applicable charges for regularisation. It appears from record that such calculation was provided by KoPT and O.P. has also claimed to have paid said amount to KoPT which is not yet confirmed by KoPT Authority. KoPT has submitted nothing regarding remedy of the breach. The matter was finally heard on 08.02.2019 when after extensive hearing, liberty was provided to the parties to file their respective written notes of

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arguments, if any. Such written notes came to be filed on behalf of the O.P. on 22.02.2019.

Now, while passing the final order, I have carefully considered the documents on record and the submissions of the parties. The allegations of KoPT against the O.P., as per KoPT's application dated 24.05.2004 read with vacation notice dated 11.04.2003, are expiry of lease of O.P. without any option of renewal, non-payment of rent and taxes. unauthorized construction and unauthorized subletting without taking prior approval of KoPT. It is seen from record that two registered leases for 30 years (one each for the land and the structure in question) was entered into between KoPT and M/s Bertrams-Scott (I) Ltd. and the said lessee having gone into liquidation, the O.P. herein purchased the right to the unexpired portion of the lease vide an Order of the Hon'ble High Court, Calcutta. No copy of such Order has been produced before me by either of the parties. But as such submission of KoPT is not contradicted by O.P. and vice-versa, I have no difficulty in proceeding with the matter based on the submissions of the parties. It reveals from the registered lease/s in question, that there was no option for renewal of the lease. Apparently, the O.P. approached KoPT on numerous occasions for mutation of its name in place of erstwhile lessee, particularly vide its letter dated 02.12.1992. In response, KoPT vide its letter dated 30.08.1995 intimated that the mutation has been allowed by the KoPT in favour of the O.P. on and from 29.09.1981, thereby O.P. stepped into the shoes of the erstwhile lessee from such date. The O.P. continued to enjoy the property as valid lease holder till 29.03.2000 when the lease expired by efflux of time. The O.P. has claimed to have written to KoPT praying for renewal of lease but KoPT has always cited the breaches committed by O.P. for refusing to allow any renewal of lease and finally, on 11.04.2003, KoPT made its intention quite clear to O.P. by issuing the vacation notice. Now the question arises whether the

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said vacation notice can be said to be in order. In order to do so, I have meticulously gone through the allegation of each and every breach. As regards unauthorized construction, it has been borne out through from joint inspection held on 12.12.2017, particularly through the photographs and Plan enclosed therewith, that O.P. is occupying the premises and there are certain structures which are 'unauthorised' as the O.P. has erected the same without taking prior approval from KoPT. The O.P. has countered such statement with the submission that the structures specified by the KoPT as 'unauthorised' are used by the O.P. for loading and unloading of materials and toilet for the use of their employees. It has been submitted by O.P. that O.P. has knowledge about a resolution of KoPT, which excludes toilet to be treated as unauthorised construction. O.P. was given opportunity to produce such resolution, if there be any, excluding 'toilet' as unauthorized structures but O.P. could not produce the same. It appears that during the course of hearing on 19.01.2018 the representative of O.P. submitted that Management of O.P. was about to decide their stand with regard to regularisation or demolition of the said structures. KoPT in the meantime has filed an application dated 19.01.2018 intimating the amount of Rs. 47,304/- as indicative charges for regularisation of the said unauthorised structures. It further appears that the O.P. has apparently deposited the said amount vide a Demand Draft to KoPT. KoPT was directed to intimate as to whether the amount deposited by O.P. towards regularisation of unauthorized construction is as per the communication issued by KoPT and whether on receipt of payment from O.P. of the requisite amount, the construction has been regularised or not. However, no communication has been made by KoPT signifying its decision to regularize the unauthorized constructions. This is a clear indication that KoPT is not at all inclined to waive the breach committed by the O.P. I take note of the fact that O.P. has failed to come up with any

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evidence to establish the said constructions as "authorized" constructions and consequently, I must decide this against the O.P. Similarly, the contention of demolition of KoPT's structure/s also cannot be brushed aside as O.P. neither denied the physical demolition nor produced any evidence to establish that such structure was non-existent at the time of its taking over of possession, which is very much expected from a purchaser of a leasehold right like O.P..

The issue of non-payment of rent also requires elaborate discussions. It reveals from the detailed statement of accounts filed by KoPT during course of hearing, that the O.P. never used to make timely payments of the dues month by month. The various communications of the O.P. addressed to this Forum from time to time goes on to show that it never denied being a defaulter, although the quantum of dues has been questioned in a few communications. Record also reveals that as per direction of this Forum (without prejudice to the parties) opportunity was given to the O.P. to liquidate the occupational charges (as per eagerness expressed by the O.P. from time to time), and O.P. did make certain payments from time to time albeit irregularly and inconsistently. I may mention here that it was the O.P. itself who had prayed for easy instalments on several occasions for liquidation of KoPT's dues/ charges on the ground of unfavourable business condition etc. In my humble view, had O.P. not been guilty of non-payment of rent and taxes, it would definitely not have come forward to liquidate even a part of the ongoing occupational charges. The very conduct of the O.P. establishes that the contention of KoPT is not without any basis. During course of hearings, although KoPT has come up with its detailed statement of accounts but O.P. has chosen to come up with a similar statement (highlighting each and every payment made by it since the inception of its occupation i.e. 29.09.1981) to contradict the claim of Port Authority. It appears

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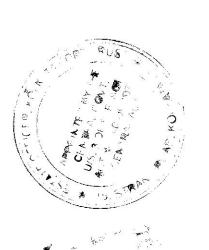
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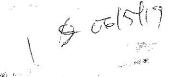
BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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to me that the O.P. is primarily aggrieved with one payment of Rs 5 lakhs to KoPT vide cheque dated 21.02.1995, which is claimed to be not reflected in the records of KoPT. I am unable to agree with such contention of the O.P. It is clear from KoPT's letter bearing no. Lnd. 4582/II dated 30.08.1995 that the said sum of Rs 5 lakhs was received by KoPT and adjusted against the dues of the previous lessee as agreed by the O.P. vide its letter dated 02.12.1992. Thus, O.P.'s contention that the said sum of Rs 5 lakhs is altogether absent from KoPT's records, is not acceptable at all and consequently I must hold that the contention of KoPT on this issue is also in order as I find no major infirmity in the claim of the KoPT.

As regards the contention of KoPT of unauthorized sub-letting by O.P., it is found that neither party has produced any evidence whatsoever and as such it is very difficult to decide such issue against O.P. However, at the same time I must say that I find no reason to protect O.P.'s occupation from being Act. the "unauthorized" under declared as Discussions against the foregoing paragraphs reveals that the lease in question undoubtedly expired on 29.03.2000 and O.P. has also accepted and admitted such expiry without any demur or murmur. As per law, it is not at all mandatory on the part of the lessor to issue any ejectment notice upon the lessee where the lease expires by efflux of time, but in the instant case, KoPT by serving such ejectment notice dated 11.04.2003 has not only made its intention very clear but also requested for immediate vacation of the premises which O.P. failed to comply. In fact, filing of the instant proceedings against the O.P. is clear manifestation of KoPT's intent that it does not recognise the O.P. as a valid tenant any longer and consequently there is no room of any reasonable expectation of renewal in the mind of the O.P. Moreover, there was no provision for "renewal" in the registered lease deed in question and extension/renewal of lease, in such a scenario,

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is entirely the prerogative of the landlord and this Forum has nothing to consider in this regard. This Forum takes note of the fact that extension/renewal was not granted by the landlord, understandably due to existence of multifarious breaches (which I find to be duly merited) and hence there is no scope but to declare the O.P.'s occupation as "unauthorised" under the Act. As per Section 2 (g) of the P.P. Act, 1971, the "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. In my view, said provision is squarely attracted in the instant case. Even if for the sake of simplicity I choose to ignore all the breaches committed by the O.P. (not admitting though) then also the status of O.P.'s occupation after 29.03.2000 remains as "unauthorized". During course of hearings, for the sake of natural justice a lot of opportunity has been given to O.P. to settle its dispute/s with the KoPT but the O.P. has failed to resolve the dispute/s and obtain a valid grant from the Port Authority. As such, there is no alternative but to proceed to pass the order of eviction against O.P. in terms of the mandate of the P.P. Act, 1971.

Being satisfied as above, I hereby pass order of eviction against O.P., as prayed for on behalf of KoPT, on the following ground/ reasons:

- 1. That the long-term lease granted to O.P. has expired on 29.03.2000 without any provision for renewal.
- That O.P. has violated the conditions of the lease by way of defaulting in payment of rental dues and taxes and erecting unauthorized construction/s.

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3. That despite providing opportunity for the sake of natural justice, O.P. has failed to obtain any valid grant from the Port Authority.

4. That O.P. has failed to make out any case in support of its occupation as "authorised occupation".

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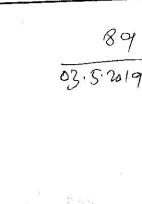
 That O.P. or any other persons asserting any right through O.P. has failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation".

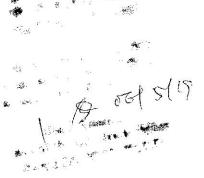
6. That the notice to quit dated 11.04.2003 as served upon O.P. by the Port authority is valid, lawful and binding upon the parties and O.P.'s occupation and that of any other occupant of the premises has become unauthorised in view of Sec.2 (g) of the P.P. Act.

7. That O.P. is liable to pay damages for wrongful use and occupation of the public premises up to the date of handing over the clear, vacant and unencumbered possession to the port authority.

ACCORDINGLY, I hereby sign the formal order of eviction u/s 5 of the Act as per Rule made there under, giving 15 days time to O.P. and any person/s whoever may be in occupation to vacate the premises. I make it clear that all person/s whoever may be in occupation are liable to be evicted by this order and the Port Authority is entitled to claim damages for unauthorized use and enjoyment of the property against O.P. in accordance with Law up to the date of recovery of possession of the same. KoPT is directed to submit a comprehensive status report of the Public Premises in question on inspection of the property after expiry of the 15 days as aforesaid so that necessary action could be taken for execution of the order of eviction u/s. 5 of the Act as per Rule made under the Act.

I take note of the fact that all payments made by O.P. during course of the proceedings are provisionally accepted by KoPT as damages/compensation for continuous use and





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occupation of the public premises as part-payment thereof and hence it is my considered view that a sum of Rs. 4,06,011/- for the period 29.09.81 to 29.03.2000 (both days inclusive) is due and recoverable from O.P. by the Port authority on account of rental dues and O.P. must have to pay the rental dues to KoPT on or before 31.05.2019. In terms of Section 7 (2-A) of the PP Act, 1971, such dues attract simple interest @ 7.35 % per annum, which is the current rate of interest as per the Interest Act, 1978 (as gathered by me from the official website of the State Bank of India) from the date of incurrence of liability, till the liquidation of the same, as per the adjustment of payments, made so far by O.P., in terms of KoPT's books of accounts. I hereby sign the formal order u/s 7 (2) & (2-A) of the Act.

I am not inclined to assess the damages at this stage as no Notice u/s 7(2) was issued by my predecessor Estate Officer and as such, the damages are to be assessed later, upon issuance of fresh Notice u/s 7(2) of the Act by this Forum, at the appropriate time upon recovery of possession from the O.P. The issues raised by O.P. such as justification of compensation at 3-times the normal rate etc. are also to be decided at that stage. I make it clear that O.P. is liable to pay damages for unauthorized use and enjoyment of the property right upto the date of handing over of possession of the public premises to KoPT Authority. KoPT is thus directed to submit a report regarding its claim on account of damages against O.P., indicating therein, the details of the computation of such damages with the rate of charges so claimed for the respective periods (upto the date of taking over of possession) for my consideration in order to assess the damages as per the Act and the Rules made thereunder.

During course of hearings, certain payments have been made by O.P. to KoPT as provisional regularization charges towards unauthorized construction/s and demolition/s of KoPT's

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structures, but KoPT has nowhere confirmed if such payments have been encashed by them or otherwise accepted as regularisation of the breaches in question. In my view, there is no scope for partregularisation of breaches in the facts and circumstances of the instant case, and accordingly I am of the view that in case such payments have been encashed by KoPT, the same should be the damages/compensation against adjusted payable by the O.P. and in case the payment instruments are yet to be encashed, the same should be returned to O.P. forthwith.

I make it clear that in the event of failure on the part of O.P. to comply with this Order, Port Authority is entitled to proceed further for execution of this Order in accordance with law.

All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL

(Kausik Kumar Manna) ESTATE OFFICER

*** ALL EXHIBITS AND DOCUMENTS ARE REQUIRED TO BE TAKEN BACK WITHIN ONE MONTH FROM THE DATE OF PASSING OF THIS ORDER ***