

SCAN

**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
6, Fairley Place (1st Floor)
KOLKATA - 700 001

Court Room At the 1st Floor.

of Kolkata Port Trust's

Fairlie Warehouse

6, Fairley Place, Kolkata- 700 001.

REASONED ORDER NO.15 DT 14.11.2019
PROCEEDINGS NO. 1287 OF 2012

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-

M/s Roy Coal Concern (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 Roy Coal Concern, 41, Chetla Railway Siding, Kolkata -700027 AND ALSO OF 16/2, Shibtala Lane, Kolkata-700016** is in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

1. That O.P. has failed to file reply to the Show Cause Notice/s inspite of sufficient chances and as such, there is nothing to disbelieve KoPT's contention regarding service of Quit notice to O.P., demanding possession dated 03.08.2010.
2. That O.P. has violated the conditions of tenancy by defaulting in payment of monthly rent and taxes and the accrued interest thereon, by unauthorisedly parting with the possession of the premises to the rank outsiders, by unauthorisedly encroaching upon KoPT's property measuring about 28 sqm and by erecting unauthorised construction on KoPT's land without having any authority under law.
3. That O.P. has failed to bear any witness or adduce any evidence in support of their occupation as "Authorized Occupation" despite sufficient chances.
4. That the Quit notice dated 03.08.2010 as served upon O.P. by the Port authority is valid, lawful and binding upon the parties and O.P's occupation into the Public Premises has become unauthorised in view of Sec.2(g) of the P.P. Act.

Please see on reverse

(2)

5. That O.P. is liable to pay damages for wrongful enjoyment of the Port Property in question upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

A copy of the reasoned order No. 15 dated 14.11.2019 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 Roy Coal Concern, 41, Chetla Railway Siding, Kolkata -700027 AND ALSO OF 16/2, Shibtala Lane, 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 Roy Coal Concern, 41, Chetla Railway Siding, Kolkata -700027 AND ALSO OF 16/2, Shibtala Lane, 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

The said piece or parcel of land msg.205.037 sq.m or thereabouts is situate at Chetla Station Yard, Thana- Chetla, Dist: 24Parganas, Registration District-Alipore. It is bounded on the North by the Trustees' Nikashi Drain, on the East by the Trustees' leased out land, on the South by the Trustees roadway and on the West by the Trustees' to M/s. Coal Concern.

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

Date-

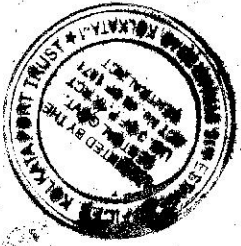
18/11/19



Signature & Seal of the
Estate Officer.

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

18/11/19



**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 Warehouse,
Kolkata-700001

Court Room At the 1st Floor
6, Fairlie Place Warehouse

Form "E"

PROCEEDINGS NO.1287/R OF 2012
ORDER NO. 15 DATED: 14.11.2019
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 Roy Coal Concern,
41, Chetla Railway Siding,
Kolkata -700027
AND ALSO OF
16/2, Shibhala Lane,
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 23.03.2018 you were called upon to show cause on/or before 19.04.2018 why an order requiring you to pay a sum of Rs 4,18,839/- (Rupees Four Lakh Eighteen Thousand Eight Hundred Thirty Nine only.) being the rent payable together with compound interest in respect of the said premises should not be made;

And whereas you have failed to represent the instant proceedings inspite of repeated chances being given to you. Even Paper Publication of the Notice yield no fruitful result and therefore no evidence have been produced by you in support of your case.

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 4,18,839/- (Rupees Four Lakh Eighteen Thousand Eight Hundred Thirty Nine only.) for the period 01.10.1994 to 31.08.2010 (both days inclusive) to Kolkata Port Trust by 27.11.2019.

PLEASE SEE ON REVERSE

: 2 :

In exercise of the powers conferred by Sub-section (2A) of Section 7 of the said Act, I also hereby require you to pay compound interest at the rate of 15% per annum upto 18.09.1996 and thereafter @18% per annum upto 06.04.2011 and thereafter at the rate of 14.25% per annum on the above sum from the date of incurrence of liability till its final payment in accordance with Kolkata Port Trust's Notification published in Official Gazette/s.

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

The said piece or parcel of land msg.205.037 sq.m or thereabouts is situate at Chetla Station Yard, Thana- Chetla, Dist: 24Parganas, Registration District-Alipore. It is bounded on the North by the Trustees' Nikashi Drain, on the East by the Trustees' leased out land, on the South by the Trustees roadway and on the West by the Trustees' to M/s. Coal Concern.

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

Dated: 18/11/19




Signature and seal of the
Estate Officer

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


KOLKATA PORT TRUST



Estate Officer, Kolkata Port Trust

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

Proceedings No. 1287, 1287/R, 1287/D of 2012 Order Sheet No. 10

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
M/s Roy Coal Concern

FINAL ORDER

15

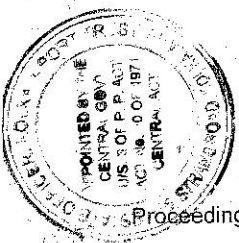
14.11.2019

The instant proceedings No. 1287, 1287/R and 1287/D of 2012 arises out of the application bearing No. Lnd.3184/129/II/10/2952 dated 03.12.2010 filed by the Kolkata Port Trust (KoPT), the applicant herein, praying for an order of eviction and recovery of dues, compensation/damages and other charges etc. along with accrued interest in respect of the public premises as defined under Schedule- 'A' of said application, against M/s Roy Coal Concern, the O.P herein, under relevant provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

The fact of the case in a nutshell is that the O.P. came into occupation as a month to month lessee of the port property measuring 205.037 sq.mtrs. or thereabout at Chetla (under Plate No. D 523/1/B) in the Presidency Town of Kolkata as a monthly Lessee, morefully described in the Schedule 'A' of the KoPT's application dated 03.12.2010. The allegations levelled by KoPT against the O.P is that the O.P has defaulted in payment of monthly rent and taxes and the accrued interest thereon, has unauthorisedly parted with the possession of the premises to the rank outsiders, has unauthorisedly encroached upon KoPT's property measuring about 28 sqm and have erected unauthorised construction on KoPT's land in gross violation of the terms and conditions of the tenancy. It is the case of KoPT that the tenancy with the O.P. was determined w.e.f. 31.08.2010 in terms of the Notice to Quit dated 03.08.2010 and the O.P. failed and

RECEIVED
OFFICE OF THE ESTATE OFFICER
KOLKATA PORT TRUST
14.11.2019

OFFICE OF THE ESTATE OFFICER
KOLKATA PORT TRUST



Estate Officer, Kolkata Port Trust

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

Proceedings No. 1287, 1287/R, 1287/D Of 2012 Order Sheet No. 11

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
M/s Roy Coal Concern

15

14.11.2019

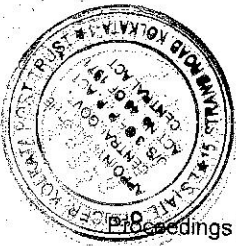
neglected to vacate/ hand over the possession of the premises after service of the said Notice to Quit.

Considering the submission advanced by KoPT and the documents on record, Notice/s to Show Cause all dated 23.03.2018 under section 4 and 7 of the Public Premises (Eviction of Unauthorized Occupation) Act, 1971 and the Rules made thereunder were issued by this forum to O.P. Be it mentioned here that Proceeding No1287 of 2012 has been inadvertently recorded as 287 of 2012 in the copy of Notice/s and copy of paper publications. The Notice/s were issued in terms of the said provisions of the Act calling upon the O.P. to appear before this forum in person or through authorized representative capable to answer all material questions in connection with the matter along with the evidence which the opposite party intends to produce in support of the Cause shown as to why an Order of eviction and/ or Order of payment of rent and /or Order requiring payment of damages together with interest should not be made.

The said notices were served through 'Speed Post' to the recorded addresses of O.P. at 41, Chetla Railway Siding, Kolkata - 700 027 and also at 16/2, Shibtala Lane, Kolkata- 700 016. It appears that the Notice/s sent to the above recorded addresses of O.P. were returned undelivered by the Postal Department with the remark 'not known'. The Notice/s were also sent to the occupation of O.P. at 41, Chetla Railway Siding, Kolkata - 700 027 by hand delivery and it appears

2 *18/11*

2



Estate Officer, Kolkata Port Trust

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

Proceedings No. 1287, 1287/R, 1287/D Of 2012 Order Sheet No. 12

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S Roy Coal ^{VS} Concern

15
14.11.2019

from the report of the Process Server dated 02.04.2018 that the O.P. was not found at the address. However, from the report of the Process Server dated 02.04.2018 it appears that copy of the Notice/s have been affixed on the said premises on 02.04.2018 at about 11.05 AM in terms of the provisions of the Act and the rules made thereunder. On the day fixed for appearance and filing of reply to the Show Cause by the O.P., none appeared on behalf of O.P. before this forum. Thereafter following the principles of natural justice, attempts have been made by this Forum to provide chances to the O.P. for their appearance and filing of reply vide this Forum's Order dated 19.04.2018 and 03.05.2018. The Order dated 03.05.2018 was again sent to the address of O.P. through 'Speed Post' in order to provide further chance to the O.P. for filing of reply to the Show Cause before this Forum. As none appeared before this Forum on behalf of O.P. or any other person interested in the property in spite of repeated Postal service and affixation of the Notice/orders on premises, a newspaper publication was made in the classified column of Kolkata edition of 'The Statesman' on 10.07.2018 fixing the penultimate date of O.P's appearance on 31.07.2018. Finally as the O.P failed to appear on 31.07.2018 the final Order was reserved in the matter.

Now, while passing the Final Order, I have carefully considered the documents on record and the submissions of KoPT. It is a settled question of law that a lessee like O.P. cannot claim any legal right to



Estate Officer, Kolkata Port Trust

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

Proceedings No. 1287, 1287/R, 1287/D of 2012 Order Sheet No. 13

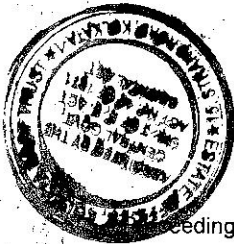
BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
M/s Roy Coal Concern

15
14.11.2019

hold the property after expiry of the period as mentioned in the Notice of Ejectment. None appears on behalf of O.P. to satisfy this Forum about any consent on the part of KoPT in occupying the public premises. Rather it is a case of KoPT that by notice dated 03.08.2010, O.P. was directed to hand over possession of the premises to KoPT. A letter /notice issued in official course of business has definitely got an evidentiary value unless there is material, sufficient to contradict the case of KoPT on the basis of such letter. Further, I am consciously of the view that KoPT never recognized O.P. as a lawful user/tenant in respect of the property in question after expiry of the period mentioned in the Notice to Quit dated 03.08.2010. As per Section 2 (g) of the P. P. Act 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. Further, as per the Transfer of Property Act, a lease of immovable property determines either by efflux of time limited thereby or by implied surrender or on expiration of notice to determine the lease or to quit or of intention to quit, the property leased, duly given by one party to another. It is a settled question of law that O.P. cannot claim any legal right

2



Estate Officer, Kolkata Port Trust

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

Proceedings No. 1287, 1287/R, 1287/D Of 2012 Order Sheet No. 14

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

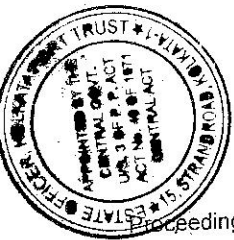
M/s Roy Coal ^{VS} Concern

15

14.11.2019

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CERTIFIED TRUE COPY
PASSED BY THE
KOLKATA
18/11
DIRECTOR OF PUBLIC UTILITIES
KOLKATA



Estate Officer, Kolkata Port Trust

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

Proceedings No. 1287, 1287/R, 1287/D of 2012 Order Sheet No. 15

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
M/s Roy Coal Concern

15

14.11.2019

to hold the property after expiry of the period mentioned in the Notice to Quit dated 03.08.2010, without any valid grant or allotment from KoPT's side.

Further, as there is no reply to the Show Cause notice issued u/s 4 and u/s 7 of the Act inspite of sufficient chances provided to the O.P., I am left with no other alternative but to issue order of eviction u/s 5 of the Act against O.P. on the following grounds/reasons :-

1. That O.P. has failed to file reply to the Show Cause Notice/s inspite of sufficient chances and as such, there is nothing to disbelieve KoPT's contention regarding service of Quit notice to O.P., demanding possession dated 03.08.2010.
2. That O.P. has violated the conditions of tenancy by defaulting in payment of monthly rent and taxes and the accrued interest thereon, by unauthorisedly parting with the possession of the premises to the rank outsiders, by unauthorisedly encroaching upon KoPT's property measuring about 28 sqm and by erecting unauthorised construction on KoPT's land without having any authority under law.
3. That O.P. has failed to bear any witness or adduce any evidence in support of their

[Signature]



Estate Officer, Kolkata Port Trust

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

Case No. 1287, 1287/R, 1287/D Of 2012 Order Sheet No. 16

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s Roy Coal **VS** *Concern*

15

14.11.2019

occupation as "Authorized Occupation" despite sufficient chances.

4. That the Quit notice dated 03.08.2010 as served upon O.P. by the Port authority is valid, lawful and binding upon the parties and O.P's occupation into the Public Premises has become unauthorised in view of Sec.2(g) of the P.P. Act.
5. That O.P. is liable to pay damages for wrongful enjoyment of the Port Property in question upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

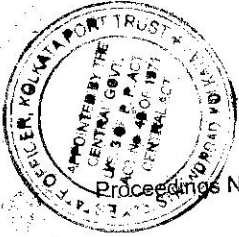
ACCORDINGLY, formal order of eviction u/s 5 of the Act as per Rule made there-under, is drawn giving 15 days' time to O.P. and any person/s whoever may be in occupation, to vacate the premises. I make it clear that all person/s, whoever may be in occupation, are liable to be evicted by this order and the Port Authority is entitled to claim damages for unauthorized use and enjoyment of the property against O.P. in accordance with the Law, up to the date of recovery of unencumbered 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.

By Order of:
THE ESTATE OFFICER
KOLKATA PORT TRUST

CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
KOLKATA PORT TRUST

(Signature)
OFFICE OF THE ESTATE OFFICER
KOLKATA PORT TRUST



Estate Officer, Kolkata Port Trust

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

Proceedings No. 1287, 1287/R, 1287/P of 2012 Order Sheet No. 17

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
M/S Roy Coal Concern

15

14.11.2019

Regarding payment of rental dues to KoPT, I must say that Rs. 4,18,839/- as claimed by the Port Authority in relation to the Plate in question, is correctly payable by O.P. for the period 01.10.1994 to 31.08.2010 (both days inclusive) and it is hereby ordered that O.P. shall make payment of the aforesaid sum to KoPT by 15.10.2019. O.P. shall be liable to pay simple interest @ 15% per annum upto 18.09.1996 and thereafter @ 18% per annum till 06.04.2011 and thereafter @14.25% per annum on the above sum from the date of incurrence of liability till its final payment in accordance with the relevant notification/s published in Official Gazette. The formal order u/s 7 of the Act is signed accordingly.

During the course of hearing, I find that KoPT has made out an arguable claim against O.P., founded with sound reasoning, regarding the damages/compensation to be paid for unauthorised occupation. I make it clear that KoPT is entitled to claim damages against O.P. for unauthorized use and occupation of the public premises right upto the date of recovery of clear, vacant and unencumbered possession of the same in accordance with Law, and as such I am not inclined to assess the damages at this stage when possession of the premises is still with the O.P. KoPT is directed to submit a statement comprising details of its calculation of damages indicating there-in, the details of the rate of such charges, and the period of the damages (i.e. till the date of taking over of possession) together with the basis on which such charges are claimed against

By Order of:
THE ESTATE OFFICER
KOLKATA PORT TRUST

CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
KOLKATA PORT TRUST

DEPUTY ESTATE OFFICER
KOLKATA PORT TRUST



Estate Officer, Kolkata Port Trust

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

Proceedings No. 1287, 1287/R, 1287/D Of 2012 Order Sheet No. 18

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

M/s Roy Coal concern

15

14.11.2019

O.P., for my consideration for the purpose of assessment of damages as per Rule made under the Act.

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 recovery of possession in accordance with law.

All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL

(A.K. SARKAR)
ESTATE OFFICER

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

18/11

