

## Estate Litigation: Process, Progress and Prospects

The predominant reason behind prolonged unauthorized occupation of a huge number of plates of Kolkata Port Trust (KoPT) land is due to a very peculiar and infructuous litigation process in the Public Premises Court (PP Court), which commences once a tenant is declared unauthorized occupant for a plate or a group of plate(s), due to any one or more of the following reasons:

- a) Default in payment of rent for the tenanted premise.
- b) Parting of possession without permission/transfer of lease.
- c) Sub-letting without permission of the Port authorities.
- d) Encroachment beyond the land area allotted.
- e) Construction activity not authorized by the Port authorities.
- f) Using the tenanted premises for the purpose other than what was stipulated in the offer letter [in Licence and/or Lease Deed (in case of lease)].

If the Port authorities fail to come to reconciliation with a tenant, alleged to have committed any one or more of the aforesaid breaches, "Ejectment" or "Quit" Notice is served upon such tenant, asking the tenant to hand over possession of the licensed/leased property to the Port and pay any rent that might be outstanding till the notice. If the tenant does not vacate the premise in question, even after being served such Quit Notice, then the Port authorities take recourse to the Public Premises (PP) Act, 1971, for eviction by approaching the Estate Officer (EO), who presides over the Public Premises (PP) Court, with a formal plaint.

### **1.0 The Legal remedy against unauthorized occupation of Govt. land:**

The Public Premises (PP) Act, 1971 is the principal legal instrument for securing eviction of any entity, who might be in **unauthorized occupation** of a public premise, and to effect recovery of "Rent" or "Damage" from such entities. The PP Act, 1971 had originally been enacted in 1958. It is a unique act, enacted by the Government of India, to secure expeditious eviction of unauthorized tenants, without being encumbered by complex legal process. Prior to 1971, this Act had been moved between various High Courts and the Supreme Court. But, each time, the Government of the day had come back to strengthen its provisions, to make it more and more effective and expeditious to clear eviction.





Section 2(g) of the act defines an unauthorized occupation in very simple terms, i.e., "the occupation by any person of the public premises without authority for such occupation". The section goes on to add that the above definition includes those who might have been authorized in the past to occupy such land through a valid lease/license, but continue to occupy the same without authority even after the lease/license has expired or has been terminated by the landlord. The latter phrase is to emphasize the fact that it is not just "rank outsiders" or "trespassers" occupying a public premise who are to be deemed as "unauthorized", but even an occupying entity who might have had valid authority in the past, but not at present. The distinction between these two types becomes further evident from the way Section 11 – a section that criminalizes unauthorized occupation – treats them. This Section, which makes such illegal occupation punishable by fine or simple imprisonment up to a period of 6 months, makes an exception for the second category of unauthorized occupants, i.e., those who once had a valid authority for occupation by way of lease/license, but now is in occupation without authority. Thus, this section is a potent tool in the hands of any Government organization to deter encroachment of their premises by rank outsiders, by unleashing the criminal consequence envisioned under this section. The severity of this section got further amplified when Government of India introduced Section 11-A in 1984, by way of an amendment to the act, which now states that "*The Code of Criminal Procedure, 1973 shall apply to an offence under Section-11 as if it were a cognizable offence.*" Incidentally, long ago, KoPT had sought opinion from an eminent lawyer as to the most effective way to evict such kind of illegal occupants. The advice was to use the potency of this provision already ingrained in PP Act. Unfortunately, and for reasons not known, the deterrence of this provision has never been put into motion by KoPT, although eviction of unauthorized occupants remains one of the foremost problems faced by the Estate Division.

### **1.1. The special nature of PP Act:**

This Act had been enacted by the Parliament in 1971, primarily to effect eviction of unauthorized occupants from public premises, through a simple, quick and time-bound legal process, unhindered by the procedural legal complexity that usually mark Civil/Criminal proceedings in Courts of Law.



Such lack of complexity in proceedings under PP Act is actually deliberate on the part of its makers, keeping in view its basic objective, i.e., to determine whether or not a complain of unauthorized occupation lodged by a landlord is true, and if true, to order eviction and effect the same even by force, if needed. In fact, prior to 1971, the eviction process used to involve filing a full blown Civil Suit in a District Court, with its attendant complexities. Several distinguishing features of the Act, implying how stringent this Act is towards unauthorized tenants, are described here under:

- (i) It is a "summary process". The term "summary process" applies to a case that is settled and solved quickly, without the help of a Jury, indictments and a lengthy procedure. Such type of proceedings is normally allowed in various countries in the matter of tenancy disputes.
- (ii) Its proceedings are Quasi-judicial in nature, which means evidence required to prove unauthorized occupation need not meet the strict standard of evidence laid down by Indian Evidence Act of 1872. The elaborate process of examination and cross examination of witnesses and documents and multiple opportunities to defense side at various stages, which are mandatory in many other quasi-judicial proceedings (like the Disciplinary Action Rules in Government Department against accused employees), are not required to determine eviction under the Act.
- (iii) The Estate Officer (EO) of the PP Court can start eviction proceedings, not only on receipt of information from the landlord about unauthorized occupation, but also suo moto, against information received from any source.
- (iv) Once a Show Cause Notice is issued by an EO to an alleged unauthorized occupant, it is the occupant who has to show cause and advance evidence in support of such cause(s). In that sense, the burden of proof (that the accused is in "authorized occupation" of landlord's premise) immediately shifts to the tenant (the defendant) from the landlord.





- (v) The role of EO under PP Act is vastly different from a Judge of a Court, who is supposed to be an impartial observer and where truth is expected to be manifested from the arguments between prosecution and defense.
- (vi) The EO has been given sweeping power u/s 12 to cause production and discovery of any documents he wishes from either side, to discover truth. If the tenant does not vacate the premise after an order of eviction, he can appoint his own Officer to do the same.
- (vii) Most importantly, the very intent and essence of this Act is "speedy process". Accordingly, each phase of the litigation process has been made time bound. At every critical clause, a definite time limit has been prescribed. For instance, the time to issue a Notice by EO has been prescribed as 7 days after receipt of information of unauthorized occupation, either from a complaint from landlord or from EO's own knowledge. Similarly, only 7 days (without any relaxation) has been granted for the alleged-unauthorized occupant to reply to the Notice issued by EO. The Act urges EO to issue the Order (of eviction or otherwise) within 15 days of the Notice. If EO passes an order of eviction, the occupant has to vacate within 15 days, which, under compelling reasons to be recorded by EO, can be extended up to 30 days.
- (viii) Last, but not the least, the time period for appeal - against an order passed by the Estate Officer - is only 12 days u/s 9 of the Act. This time period needs to be compared with the period of appeal granted to an aggrieved entity under most judicial/quasi-judicial processes, which is 90 days. For instance, the period of appeal against the order passed by Disciplinary Authority in a Departmental Proceeding (which is a quasi-judicial process) is 60 days. The unmistakable trait emanating from the above features of P.P Court is that its provisions are attracted to achieve one and only one objective, i.e., to vacate an unauthorized tenant from Public Premises, in the most expeditious manner, by following stringent time to the intermediate processes, free from usual legal complexities and encumbrances.



The table below illustrates the time limit for various phases of P.P Court proceedings, as laid down in the P.P Act, 1971:

Event Sl. No.	Section	Event description	Time frame		Remarks
E1		Plaint by Landlord before Estate Officer(EO)/Information with EO regarding breach	0	E1	
E2	4(1)/4(1-A)	Issue of Eviction Notice by EO	7 (Max)	E1+7	
E3	4(2)(b)(i)	Reply by Tenant to Eviction Notice	14 (Max)	E2+7	Opposite Party (OP) to show cause, if any, against the proposed order and to appear before the EO on the date specified in the notice along with evidence which they intend to produce in support of the cause shown, and also for personal hearing, if such hearing is desired.
E4	5(1)	Hearing/Proceedings			<i>Provided that every order under this sub-section shall be made by the estate officer as expeditiously as possible and all endeavour shall be made by him to issue the order within fifteen days of the date specified in the notice under sub-section (1) or sub-section (1-A), as the case may be, of section 4.</i>
E5	5(1)	Issue of Eviction Order	21	E2+15	Time frame reduced from 30 days to 15 days in 1980.
E6	5(1)	Premise to be vacated	36 (Max)	E5+15	
E7	5(2)	Extension of eviction period	51	E6+15	Only if the EO is satisfied, for any compelling reason, which is to be recorded in writing.
E8	5(2)	Appointment of Authorized Officer (AO)	52	Failure of E6 & E7	AO may evict the unauthorized occupant from, and take possession of, the public premises and may, for that purpose, use such force as may be necessary.

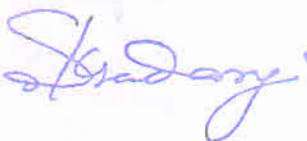


## 2.0 The process of eviction:

In KoPT, a proceeding under PP Court can start when the Port authorities notice a breach in the terms of lease/license accorded to a tenant and decide to file a "Plaint" before the EO of PP Court [EOs are Officers from KoPT's own cadre], praying for an order of eviction and recovery of rental arrears, if any. Following this, the EO of the PP Court issues an Eviction Notice u/s 4 of PP Act to the tenant - detailing various grounds for eviction - who now stands formally labelled as unauthorized, in accordance with Section-2(g) of PP Act. Often, along with the Eviction Notice, 2 (two) other notices are simultaneously sent u/s 7, asking for payment of rent and compensation dues. It is important to understand here that once an unauthorized tenant is served a Quit Notice, then he is not sent regular rent bills. Instead, a compensation bill is sent to him every month, or in whatever frequency bills are scheduled to be sent, carrying an amount, which is supposed to reflect the penal charges for occupying a Govt. land without any valid legal authority. Since after Ejectment Notice, a formal plaint is filed before the PP Court and an Eviction Order/Notice is issued subsequent to such plaint, it is, therefore, natural that during the aforesaid time, i.e., between Quit Notice and Eviction Order/Notice, some compensation charges must accrue to the unauthorized tenant, apart from regular rental bills, if unpaid.

The OP then replies to show cause with his own evidences for disproving the case against him and may be granted oral hearings, if the EO so wishes.

After conclusion of proceedings u/s 5 and issuance of Eviction Order, the Port Trust first tries to get the land vacated by approaching the unauthorized tenant. If the tenant does not vacate the land within the time stipulated in the PP Act, then the Port Trust approaches the EO for appointing an Authorized Officer (AO) to secure eviction. The said AO, appointed by PP Court, then tries to get the tenant evicted. In case the AO fails to do that, he/she has to file a Police Diary and then the Act empowers the AO to seek assistance of Police to evict the tenant by force. For seeking Police assistance, after filing the said Police Diary, the AO must intimate, by a report to the EO, about his/her failure to evict the tenant and need to pass an order for seeking Police assistance. With such an order, the AO can approach Police, seeking their help and get the unauthorized tenant evicted, against whom Section 4 & 5 orders have been passed by the PP Court Officer, by application of force.





### 3.0 The process for damage recovery:

The aim of PP Act, 1971 is not only to secure eviction of unauthorized tenant in an expeditious and hassle-free manner, but also to recover any amount outstanding as regular rent and any compensation charges that might be due towards such unauthorized tenant. An important aspect, as far as recovery of dues is concerned, is that while the rental bill stops the moment Quit Notice is served, the compensation bills continue to accumulate even afterwards. Such compensation bills would stop, if the EO presiding over the PP Court issues an order of eviction in favour of the landlord after the litigation process is over. But, that is not so, because there is another series of time steps to be undertaken, i.e., after the order of eviction by EO till the physical possession of the plate by the Port Trust, which may take time. Since there can be a time gap between order of eviction and actual vacation of the litigated plates and its possession by Port authorities, the compensation charges keep on accumulating in this period and does not stop at the eviction order stage. Therefore, to recover the full dues, the Port authorities must go back to the EO, once again, for initiating a proceeding under a separate provision, i.e., u/s 7, to recover the outstanding rental, compensation amount, including interest that might have accumulated throughout the said PP Court litigation process.

As per provisions of PP Court for recovery of dues, a separate notice is required to be issued to the now evicted unauthorized tenant and he is allowed to defend himself against payment of such dues, just as he had been allowed to defend the allegations levelled in the Eviction Notice u/s 5. After such proceedings u/s 7 culminate, an order for recovery for dues is passed by the EO. Armed with this order, the Port Trust is again required to approach the unauthorized tenant for asking him to pay the amount of outstanding dues, with interest (if any), so ordered by EO u/s 7.

Even after this, if the evicted tenant refuses to pay the outstanding amount, then the landlord (Port authorities) is expected to approach the Estate Officer for issuance of a "Certificate" of dues. Once such a "Certificate" is issued by the EO, the Port Authorities are then required to approach a different forum, i.e., Public Demand Recovery Forum, presided over by a Public Demand Recovery Officer, normally the Collector of the District where the litigated plate is located. At the time of approaching the Public Demand Recovery Forum, the Port is expected to inform the exact whereabouts of the evicted tenant and/or his legal





heirs, with a list of property/properties, which can potentially be attached by the Public Demand Recovery Officer, to realize the amount of dues mentioned in the "Certificate". Therefore, the Public Demand Recovery Act comes into play, with its full range of due process, after which a Decree is issued by the Public Demand Recovery Officer that can be executed to realize the outstanding dues for attaching the properties of the unauthorized tenant or his/her legal heirs.

It is pertinent to note here that u/s 9 of PP Act, the order of the EO is prone to be challenged by the Appellate Authority, who happens to be the District Court. The order of District Court can be challenged in the High Court, which, in turn, can go up to the Supreme Court. In other words, the P.P Court order, either for eviction u/s 5 or for recovery of dues u/s 7, has four stages of appeal before the Public Demand Recovery Officer is approached with a "Certificate of dues" from the EO. The question that arises in my mind here is supposing the unauthorized tenant does not challenge the Eviction Order or order for recovery of dues passed by EO up to the stage of issuance of "Certificate" and its enforcement in the Public Demand Recovery process. The unfortunate position is that even after the entire range of Public Demand Recovery Process, under the Public Demand Recovery Act, a Decree is passed for attachment of property of the unauthorized tenant or his/her legal heirs, such order is prone to appeals and challenges too.

While the process for getting an eviction order through PP Act is rather exceedingly rapid and simple and a reasoned order under Section 5 passed by EO is nearly unassailable to challenge at higher Courts, the process of recovery, covered under Section 7 of the Act, is not so. For recovery, KoPT has to come back to the EO, after actually evicting the tenant in question. There can be a long gap between serving of the Eviction Order by EO (under Section 4) and actual physical eviction for a variety of reasons, the most common of which is lack of co-operation from Police to drive out a belligerent unauthorized tenant. Eviction may be hindered if the tenant moves to different Courts as a parallel legal offensive and secures some kind of stay.

However, assuming that the tenant got evicted and KoPT approaches the EO for an order of recovery of any rental and/or compensation arrear, the EO issues one more Show Cause Notice - this time under Section 7 - to the tenant. With reply from the erstwhile tenant and through another round of hearings, the EO assesses the exact amount of dues that the





tenant must pay to KoPT and passes an appropriate order to that effect. If the tenant does not honour this Order, then Port has to once more approach EO for issuing what is known as a "Certificate". But, this "Certificate" is not a "Decree" and is rather the first step to unleash the process of another act called "Public Demand Recovery Act", to be administered by a "Certificate Officer", who happens to be the Collector of the District where the leased premise is located. This "Certificate Officer" issues Notice to the debtor-tenant, asking him why he should not pay the amount mentioned in the Certificate of EO. He then launches another legal process, with the aim of granting a "Decree" to the aggrieved landlord, which can be recovered from the debtor directly or in case of non-payment, by attaching and auctioning his/ his legal heir's property. For achieving this, KoPT has to provide a list of property and the identity of legal heir of the evicted tenant to the District Collector. It is also important to note that the Order of the District Collector is subject to appeal (at District Court) and revision at higher judicial forum.

#### 4.0 The ground reality:

##### 4.1. How much time elapses between Proceeding and Eviction Order?

Despite the Govt. of India enabling various Public authorities with stringent provisions in the P.P Act proceeding, to effect expeditious eviction through a simple summary legal process, where the burden of proof has been cast on the accused, the Statistical analysis of P.P Court orders passed during last 5 years in KoPT and their implementation has exactly been the opposite. **The analysis reveals that the average time taken for securing a final Eviction Order is an incredible 6 (six) years** [Ref.: Annexure – P1]. What is most pertinent to note here is that each day the process is delayed, financial benefit immediately accrues to the unauthorized tenant, since he may not pay any rent or compensation charge as long as such litigation runs. In addition, he incurs minimal legal expense in the P.P Court proceedings. If the litigation process in P.P Court would have been completed in a time bound manner and even if the unauthorized tenant would have moved to the Appellate Authority, he would have to incur much higher legal expenses compared to what he has to spend in P.P Court litigation.





The insight into each phase of the litigation process shows a complete lack of intent on the part of Port authority to enforce their right for timely completion of P.P Court proceedings. For instance, many cases have been noticed, where the Eviction Notice issued by the Estate Officer grants huge time to the unauthorized tenant for response, instead of the legally mandated 7 days.

The P.P Act does not envisage any interim order or adjournment. It rather implies almost day to day hearing, since the entire process is expected to be completed in a few weeks' time. Contrary to such provisions, in almost every case, multiple interim orders are seen to have been passed and numerous adjournments have been allowed, interestingly, in some cases even at the request by Port authority. During all these delays, it is to be noted that the unauthorized tenant - against whom huge outstanding amount continues to be accumulated in KoPT's books of accounts by way of compensation penal charges - enjoys the land freely and peacefully.

#### **4.2. How much time does appointment of Authorized Officer (AO) take?**

Even after securing an Eviction Order, after such prolonged and inexplicably delayed P.P Court process, little interest is taken by the Port authorities even to inform the EO about their failure to evict the tenant within a legally granted 15-day period, and request the EO for appointing an Authorized Officer (AO). Appointment of an Authorized Officer, following failure to implement an order of eviction within 15 days (extendable by another 15 days), is a very simple process. The concerned Tenancy Section Officer of KoPT has to simply apply to the Ld. EO of PP Act (both belonging to the Port Cadre itself). The process can be completed in a matter of a few days at best. Instead, analysis of pending eviction orders (collected for the first time by Vigilance Department, since no centralized Statistics - either computerized or manual - existed till date) show that **average time taken merely to appoint AO is an incredible 1,063 days, i.e., almost 3 (three) years** [Ref.: Annexure – P2]. The day to day proceeding conducted in some of the P.P Courts, running for decades, give an impression as if the manner in which they have been conducted are more complicated than what goes on in a legal case in Higher Bench of High Court and Supreme Court.





For instance, there was a case when after completion of the proceedings that ran for years, the EO reserved his judgement of significant 5 proceedings. Ultimately, the Ld. EO released his judgement after passage of 6 months. Even in one case, the Ld. EO of PP Court even gave a scope to KoPT to apply for modification of the said order, if required, which (such an order of EO) had later been set aside by the Hon'ble High Court.

The obvious conclusion from the analysis of PP Court proceedings and the activities that go on to secure merely the eviction of an unauthorized tenant is this:

On an average, the P.P Court proceedings can run up to 6 years. Even at the end of 6 years, if an Eviction Order is passed, it would take 3 more years to appoint an AO, who can seek Police help and take possibly a meaningful step for eviction of the belligerent unauthorized tenant. So, just up to appointing an AO and seeking Police help, a period of 9 years can elapse, while the tenant is free to enjoy the litigated land in question, without paying even single paisa. Thus, it is to be noted that this 9-year period is only up to the stage of appointing AO, and not the actual eviction. Let it not be forgotten that the entire work of recovery of dues, through Section-7 proceedings, will still have to wait. If the unauthorized occupant does not vacate the land and does not respond to Section-7 proceedings, the only legal recourse is to obtain a "Certificate" from the EO and to approach the Public Demand Recovery Officer with a list of attached properties of the unauthorized/evicted tenant. The 9 years does not include the time that might be taken for completion of recovery. In fact, never in the history of KoPT has any outstanding dues been recovered from a tenant who has been successfully evicted or who has voluntarily vacated a litigated plate, either during the P.P Court proceedings or after culmination. The above are the disturbing revelations that were found after interacting with the Officers of the P.P Court and from perusal of the Eviction Orders passed during the last 5 years. However, even more disturbing is the scenario (in some cases) where an order for recovery of rent and/or compensation, albeit for a limited period, had been passed by the EO at the time of issuing Eviction Order itself. In none of these cases, save and except one or two cases where the evicted





tenant voluntarily came up to give some outstanding dues, the Port has even attempted to undertake recovery of outstanding rent and/or compensation. After Eviction Orders had been passed, Port Authorities had neither attempted to enforce the same nor approached the EO for a "Certificate", failing their attempts (if any) to implement such Section-7(3) orders.

## **5.0 The Perverse Incentives:**

The above scenario clearly indicates existence of a massive perverse incentive for a litigated tenant, who gains substantially in financial terms because of intricate and prolonged litigation process, in violation of the provisions enshrined in the Act itself. It simply shows that any tenant, who secures short term license or long term lease, can commit a breach and go scot-free for at least 9 years and enjoy the said land without making any payment. Even after its 9 years of illegal occupation of Port land, without paying a single rupee, the worst outcome that can befall them is an actual eviction from the premises and not any financial recovery. No such enforcement of recovery of compensation charges has ever been made under relevant provision of P.P Act. No wonder when EDA of the Estate Division's Estate and BR Modules was done in the previous system improvement, it was found that tenants of nearly 496 plates have never paid single rupee and were still enjoying their land, in complete defiance to the monthly rental/compensation bills that have been sent to them since decades. It has also been found that such delay in PP Act case attracted attention of Hon'ble High Court, who had directed that PP Act cases involving public properties should not be dragged for years and should be completed in 60 days. Even thereafter, KoPT's PP Act Court did not finish the case within the said timeline.

The question of enforcing recovery of dues, which might have accumulated during the prolonged P.P Court proceedings u/ s7, and attempted recovery of dues, i.e., going up to the "Certificate" stage to recover unpaid dues, essentially requires that the Port has some details about the tenant's whereabouts or and a list of his or his legal heir's asset. It has been shown in previous System Improvement Reports that in hundreds of cases, even the correct address of the original tenant or his PAN are unavailable and dozens of cases have been unearthed where tenants have died long ago or have gone away after selling/parting possession to others.





Once the tenant gets a parcel land and stops paying to KoPT and the case enters the stage of P.P Court litigation, the perverse incentive embedded in the system allows him to enjoy the land free of cost for a period of 9 years. During this period, the Port continues to send compensation charges, resulting in ever increasing outstanding dues against such tenant. How strong this perverse incentive is can be assessed from the fact that from 2004 till 2016, even the compensation charges were the same as rental charges. In other words, there was no difference between the rent to be charged to an authorized tenant and the damage rent to be charged to an unauthorized tenant, once a Quit Notice is served and jural relationship between a tenant and the Port is severed. It is important to note that right from 2004, the Government of India, through the various land policies, have mandated that compensation charges at 3 times the Schedule of Rent are to be levied upon an unauthorized tenant, to dissuade against unauthorized occupation. However, KoPT had applied compensation charges at 3 times SoR rate only for a brief period of 3 months during 2012, in an extremely lenient gesture to such illegal occupants. Nevertheless, such leniency shown has never resulted in reciprocal gratitude from the huge number of unauthorized illegal occupants of Port land, having hundreds of Crores of outstanding dues.

#### **6.0 Widespread pessimism and reluctance to go after illegal/unauthorised tenants: The case of Mahindra and Mahindra**

The widespread pessimism prevalent in the minds of the Officers of the Estate Division in the capability of Port authority to reclaim unauthorizedly occupied leased/licensed land is starkly demonstrated in a classic case known as "Mahindra & Mahindra Case". In this case, a company called Mahindra & Mahindra had been awarded a 10-year long term lease in 1990, for several plots of land measuring nearly 22,000 m<sup>2</sup> area, at a location called Sonai, adjacent to the Dock area of KDS. When the said lease expired in the year 2000, the company declined to continue the lease and intimated their desire to surrender it to KoPT. However, their request for surrender was for only one of the occupied plates and not the entire leased area. The ensuing dispute saw the then Deputy Chairman, KoPT ordering to get the tenant evicted by serving "Ejectment Notice", which strangely was not sent to the company till 2002. At this point of time, a different entity called Shri T. Khan manifested and approached KoPT with a request that they be granted the tenancy on a monthly licence





basis against some paltry deposit amount that did not cover the outstanding dues left pending by Mahindra & Mahindra. The request letter of Shri T. Khan contained this classic paragraph

*"In this connection it is to be mentioned that the unauthorized encroachment in Sonai is extremely rampant and it is only due to our existence that the plots of land leased/licensed to M/s. Mahindra & Mahindra could not be encroached by others. If CPT decides to hand over lesser area we will have to vacate the remaining area in our possession now. In that case the likelihood of encroachment is very high. It is relevant to state that we are not the encroachers in the strict sense and actually were the handling agent of Mahindra & Mahindra by virtue of which we were safeguarding the lands licenced/leased to M/s. Mahindra & Mahindra at Sonai, in the right interest of the Port."*

Responding to the letter of Shri T. Khan, the then Deputy Land Manager of KoPT penned the following paragraph in a note that brings out the systemic pessimism and reluctance on the part of KoPT to go after the illegal occupants in no uncertain terms:

*"6. The alternative scenario vis-a-vis grant of transfer to M/s. T. Khan is initiation of proceedings in the P.P. Act against Mahindra & Mahindra. If KoPT succeeds in the proceedings Mahindra & Mahindra as well as M/s. T. Khan will automatically be evicted. But in that event, recovery of old dues will be mired in uncertainty as procedure to be followed for such realisation is through public demand recovery act which is extremely circuitous, complicated, difficult and long-drawn procedure. At the same time, if eviction order is passed, question of execution of the decree and taking over possession will come. Here also, police assistance will be required. But our past experience with the police is not encouraging. However, question of recovery of possession will only come if interested parties do not move to the Appeal Court i.e. District Court, Calcutta high Court and the Supreme Court in that order for stalling the proceeding. **My experience of working as an Estate Officer induces me to state that the incidence of recovery of possession through P.P. Act where eviction order is passed is not even 1%. It almost always results in Appeal which is synonymous with inordinate delay. Assuming that everything goes right for KoPT and it ultimately manages to get over possession, the land will remain vacant for***





**years together as has been happening in case not only Sonai lands but also other lands in KoPT. If we consider response in the tender as far as KoPT land is concerned for last few years it is far below expectation if not poor and abysmal.**

7. in the back drop of the circumstances mentioned hereinbefore, it is felt that the offer of M/s. T. Khan be better lapped up by KoPT. However, it will not be possible for us to waive the settlement fee as suggested by M/s. T. Khan though the offer he has dangled for payment of Rs. 5 lakhs at one stroke is extremely enticing and ensnaring especially for cash-strapped port gasping for revenue."

## **7.0 The history of Estate problems:**

While preparing the above series of analytical studies and system improvement reports, I have also had the occasion to discuss with retired Chairman, an Estate Manager and other officials to get greater insight into the historical roots of Estate related problems. From these discussions, I gathered that the only time the estate revenue registered significant growth on an Y-o-Y basis was during the period 2004-2006. The main reason they attributed for the same were (a) Introducing Compensation billing for defaulting tenants which did not exist earlier at all (b) eviction of several unauthorized occupants who were enjoying large areas of Port land without paying or with paltry payment and (c) a determined and concerted legal effort to win some important Court cases/litigations in High Court/Supreme Court where the unauthorized tenants had challenged the authority of Port on various counts, such as right of the Port to issue eviction notice, Orders passed by PP Court and even the amount of annual rent charged by the port as per the valid SoR.

After consideration of the entire spectrum of issues faced by Estate Wing of KDS, one feels that the only solution to realize the present outstanding dues of Rs. 2,772 Crores (as on 31.03.2019) and realize the real potential of land asset of KDS **is to mount a determined and massive legal counter attack on the unauthorized tenants who are occupying Port land unlawfully for years together with the best possible legal help and** throw the re-possessed plates to competitive bidding. The time, energy and cost for such legal effort will be more than justified, if Port is able to recover even a fraction of the outstanding dues, which is more than the entire earning of KoPT from all income streams.

**[N.B.:** The above Analytical Study refers to 2 (two) Annexures (P1 & P2)]





## SYSTEM IMPROVEMENT SUGGESTIONS

The specific suggestions for effecting improvement in various focus areas related to Estate litigation have been mentioned in italic font.

1.0. **Focus area:** For any kind of Land Management, a landlord (Port) must have the following 3 basic piece of information:

- (a) The exact geographic boundary of his land
- (b) The precise identity of the land user (lessee/licensee), and
- (c) The instrument that defines the jural relationship between the land owner and land user (Registered lease deed/Offer of license/Permission of Way leave).

The fact that dozens of cases of litigation dragging in PP Court for lack of authentic information on such simple matters as plate area, plate boundary, area under encroachment proves that comprehensive information on (a) is not available for all tenanted plates. Two case studies – the case of Manor Floatel, where several years were consumed in PP Court to ascertain an allegation of alleged encroachment of a few meters of land, and the case of Ram Murat Pandey, where 5 years have been spent in PP Court to ascertain area of a licensed plate – are testament to this fact.

The detection of hundreds of non-existent/ghost tenants, to whom even the monthly rental bills sent by KDS have not been reaching, proves the lack of authentic identity related information pertaining to all plates in the Port database. Vigilance found that the field meant for PAN & GST Number against a large number of tenants are missing from Estate Module. It is no secret that there are many plates where the original tenants have sold/resold/parted possession to other entities long back and nothing is known about their current whereabouts at all. Thus, information on (b) is not available for all plates.

Similarly, there is no clear information as to in how many out of the currently tenanted 3,000 odd plates under KDS, documents like offer of license and lease deeds are available. During Vigilance investigation, several Land Inspectors have frankly admitted that they never checked all the files and voiced apprehension that in substantial number of cases, these crucial documents could be missing. The existing database too does not even have the start date of lease/licensees for hundreds of tenanted plates. In other words, complete information on (c) too is lacking.





It needs to be appreciated that the above 3 basic information are essential to the success of any litigation against a disputing tenant either before PP Court or higher courts. Many a times, KoPT had been severely criticized by District Court/High Court for their inability to produce elementary information, even on litigations of huge financial implication running for decades.

**1.1. Suggestion for improvement:**

**Immediate physical verification of all Plates & Tenants:** A time bound drive by engaging mobile squads should be immediately undertaken to identify the entity/entities who are actually occupying/in possession of the 3,002 tenanted plates found in the Estate Module. This will reveal the exact number of plates under unauthorized occupation, the identity of tenants who are occupying them and how many of them are rank outsiders/trespassers. The benefits from such exercise can be two fold.

- (i) Estate Division can identify plates under occupation of rank outsiders/trespassers and stop infructuous billing to them and prevent avoidable outgo of GST.
- (ii) Unauthorized occupants who are rank outsiders and/or trespassers are liable to criminal prosecution under Section 11 of P.P Act, 1971. The legal process for evicting them is considerably shorter than an unauthorized tenant who had once been awarded the land parcel under a valid licence/lease, but continued to occupy it in breach or stayed beyond expiry of lease without permission of landlord. Moreover, detection of non-existent/dead/long vanished tenants will lead to immediate disposal of any dispute that might be continuing before PP Court or other judicial fora, thus bringing down the enormous legal workload (around 400 pending cases before PP Court and 700 before other Courts).

**2.0. Focus area:** To successfully defend a dispute in any court against an unauthorized tenant and recovering outstanding dues the existence of original jural instrument, i.e., offer of licence/registered lease deed/bid document used for tender-cum-auction are essential. During the system improvement study and interaction with various Estate Officials, it has been found that in a large number of cases, these documents are unavailable. Often, an entire Estate file goes missing at critical juncture, creating administrative and legal embarrassment to Port Administration.





## 2.1. Suggestion for improvement:

Verifying existence of Lease/License documents for a plate: An immediate census of Estate files should be undertaken, if required, by engaging additional manpower on a temporary basis, to identify the existence/non-existence of such documents for the 3,000 odd tenanted plates contained in the database. Any half-hearted approach here could have lethal consequence for success in litigation and recovery of pending dues, which have reached a level Rs 2,772 Crores by April 2019. It is to be further noted that no such effort - ongoing or contemplated - can be effective, if hard copy of these documents are not available for some plate(s). It is pertinent to note that way back in 2013, RBI had issued a specific circular asking Chairman of all Scheduled Banks to conduct a "Legal Audit and Verification of title documents of all credit exposure above Rs 5 Crores" to check their genuineness and prevent fraud. A similar exercise for all licensed/leased plates exceeding 100 m<sup>2</sup> area should be done. Such exercise can not only prevent an ongoing fraud, but also considerably increase chance of legal victory in future disputes.

3.0. **Focus area:** The information black hole that exists currently on various milestone events taking place in P.P Court/Civil Courts needs to be removed. At present, this is in a complete state of disarray, resulting in absence of any consolidated repository of information, either in manual or in computerized form. For instance, no one knows the implementation status of all eviction orders issued by P.P Court in past years, whether recovery proceedings u/s 7 of PP Act have been launched. Only piecemeal information is available with respective officials in individual files. The situation is so precarious that there could be an eviction order passed by PP Court against an unauthorized tenant long ago and yet be totally untraceable now. That is the reason why, in one case, a licensee named Indian Roadways Limited claimed to have returned a large piece of land 34 years ago, while the Port said they did not have the land in their possession and knew nothing about it, as they had been still sending monthly rental bills [See this Case Study titled "No Man's Land" in the earlier system improvement study circulated to Port]! While two computerized modules were created in 2003-04, for storing tenant and billing related information, there was no module to record data pertaining to litigation process, which starts after an ejection notice gets served on the unauthorized tenant. This missing link in computerization of Estate functions is the principal cause behind the emergence of an information black hole that impedes monitoring of pre-eviction and post-eviction process and makes the same virtually impossible. Elaborate discussion on these missing links had been appraised to Port Administration on 11-03-2018 through a Vigilance study titled "Inspection of the Lease Section".





### 3.1. Suggestion for improvement:

Create a database to store all litigation milestone events and link the same through the appropriate bridge-fields (like "Plate ID", "Tenant Code" & "EO's Order No") to the existing Estate Modules. This will enable quick retrieval of authentic information, which are essential for preparation of Quit Notice (by Estate Division), Eviction Notice (by EO) and Legal Brief for Legal Counsels engaged by Port.

3.1.1. **Connect Legal Database to Resolution Register:** CLO should ensure incorporation of a bridge column in their Legal database connecting the specific order passed by E.O, which might be under appeal for challenge in Civil Court/ High Court. At present, this data bridge does not exist, making the task of retrieving any challenge that might have been mounted by evicted tenant, after issuance of eviction order by E.O, very difficult.

3.1.2. **Ensure registration of all lease deeds:** It should be kept in mind that unless a lease is registered with appropriate Registering Authority of the State Govt., it does not have legal validity, if contested later under any dispute. Also, a full hard-bound register of lease deeds, which has gone missing, should be retrieved or reconstructed. This hard-bound register maintained by Lease Section contains reference to registration of hundreds of past lease deeds.

3.1.3. **Establish a procedure for hand over and take over for Estate Division:** Whenever any Tenancy officer or Land Inspector is transferred, a clear executive order should be issued, making it mandatory for them to leave a signed detailed hand over note for their successor. At present, there is no such system, which makes fixation of responsibility on any one virtually impossible in the case of loss of sensitive Estate files. The traceability of sensitive files in Estate Division and accountability of their custodians can be further bolstered by attaching RFID tags to each file within Estate Wing and controlling their movement through fixed RFID cover Electronic exit ways. This, in turn, will decrease preparation time for legal defence in PP Court.

4.0. **Focus area:** In the entire range of Estate Management functions, so far studied by Vigilance, the largest gap noticed is in the management of litigation process against unauthorized tenants before PP Court. **It is not an exaggeration to state that this is the "nerve centre" that controls the compliance behaviour of a tenant. If a tenant expects that Port would not**



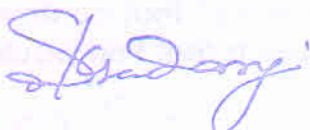


**win a litigation case or would take a long time to do so after he commits a breach (for instance not paying rent after getting a lease/license) he would rather do so instead of being law abiding tenant.** In other words, expectation of success or failure in Port's ability to evict a breaching tenant and recover dues determines the incentive for compliance.

The Public Premises Act, 1971, the primary legal instrument for securing eviction & recovery, specifies strict time limits for each phase of litigation process, starting from issuance of Show Cause Notice to alleged unauthorized tenant u/s 4 to issuance of eviction order u/s 5. Such strict time line is the very essence of this Act, which was created by Gol to prevent the menace of rampant unauthorized occupation of public premises by unscrupulous entities and trespassers. Non-adherence to such time limit by anyone - be it the litigating tenant (Opposite Party) or the KoPT or the Estate Officer - tantamount to violation of an Act. But, analysis of data made available to Vigilance shows that it takes **an average 6 years** to get an eviction order issued from the Estate Officers. Similarly, even after an eviction order gets passed by the E.O, directing the unauthorized tenant to surrender the litigated plate within time limit specified by PP Act (15 days extendable to a maximum of 30 days), most tenants simply defy such Court Order. In such cases, the suffering landlord can approach the Estate Officer of PP Court to get an Authorized Officer, who, in turn, can seek police assistance to get a defying tenant evicted. From the data made available to Vigilance, **the average period for simply getting an A.O appointed is found to be nearly 1,000 days instead of being a matter of a less than a week at worst.** Further, the P.P Act of 1971 does not envisage issuance of interim orders and granting of multiple adjournments, both of which have been found to be a ubiquitous feature in the currently prevalent litigation process. During the sensitization meet organized by Vigilance, several EOs informed that in many cases, the representatives of KoPT do not come prepared for the hearing and request for adjournments.

#### **4.1. Suggestion for improvement:**

- 4.1.1. The Show Cause Notice issued u/s 4 is the most vital part of a litigation process.** Before this is issued by E.O, it is the responsibility of concerned Tenancy Officer of Estate Division to supply relevant documents to substantiate the alleged breach(s) by an unauthorized tenant. Failure on this account should be viewed seriously by the higher authorities of Estate Division. Reserve utmost diligence for a Section 4 Notice. **Make available faultless data to PP Court, so that a Section-4 Notice issued by EO cannot be contested on factual merit.**





- 4.1.2. Verify identity of OP or his representative before litigation.** Before an unauthorized tenant or his representative is allowed to participate in the P.P Court process, the E.O must check the identity and their exact relation to the litigated plate/licence/lease. The detail procedure to do this had been suggested by Vigilance in an earlier System Improvement Study titled "Missing Tenants and Undelivered Bills" circulated in December 2018.
- 4.1.3. Beware of Burden of Proof Clause in PP Act.** The P.P Act, 1971 casts the first burden of proof on the Opposite Party to substantiate that they are not unauthorized tenant as alleged by Port Authority. A period of only 7 days have been stipulated in the Act for the unauthorized tenant to respond to an SCN issued by the EO u/s 4. This time limit was specially incorporated into the Act, through an amendment in 2015, in the interest of expeditious disposal of eviction cases in the country. But, it has been noticed that this provision of P.P Act is often violated by EOs by allowing unnecessary huge time to O.P to reply to SCN. If an unauthorized tenant fails to respond, EO has full liberty to pass an Order of Eviction. This aspect must be kept in mind by all those participating in the PP Court proceeding.
- 4.1.4. Ensure adherence to PP Act mandated time limits once the litigation process commences.** Their breach, especially if blatant, can weaken Port's capacity to fight back legal challenge by the unauthorized tenant before higher courts.
- 4.1.5.** Grant of any adjournment to litigating tenant on flimsy grounds by any EO should be immediately contested by those defending Port's interest.
- 4.1.6.** Ensure quick appointment of AO in less than a week in all cases where the unauthorized tenant refuses to vacate the litigated premise within the time limit specified in the eviction order. AO appointment must be aggressively monitored by the highest authority(ies) in charge of dispute resolution, since intentional/unintentional delay in this particular activity can subject the Port to adverse criticism from Court regarding their intention to ensure eviction. The appointed A.O must promptly establish written communication with police, requesting them to help on the scheduled date of eviction.





4.1.7. **Section 11 of PP Act makes unlawful occupation by a rank outsider (who never had a valid lease or license to begin with) a cognizable criminal offence punishable with simple imprisonment up to 6 months. The legal potential of this section must be explored for securing quick eviction of such category of unauthorized tenants.**

4.1.8. **Periodic review of resolution process : Monitoring P.P Court cases at the highest level in-charge of litigation and resolution process is required to prevent arbitrary and frivolous protraction of the P.P Court cases as has been found in numerous cases.** The Resolution Section under Estate Division must clearly have a detailed list of orders passed u/s 5 & 7 in a centralized Register, in a chronological order, assigning a Unique Identification Number to each case referred by a Tenancy Officer for eviction proceeding. The said register, which must contain all litigation milestone events and dates, should be reviewed by the highest authority in charge of recovery and resolution process every fortnight.

4.1.9. In a meeting organized by Vigilance on 25/03/2019, in Port Trust Guest House, all EOs, Resolution Officers, Estate Manger and Chief Law Officer were sensitized on all the above aspects. **More such seminars need to be held to further drill this aspect into the mind and habit of all those who participate in P.P Court proceedings.**

4.1.10. Port Management must immediately undertake a "Legal Audit of cases before PP Court & other courts", which should include analysis of pendency numbers & duration, case-outcome, counsel productivity vis-a-vis case allotment, legal fees vis-a-vis case value, etc. There exists adequate in-house capacity in KoPT to undertake such job.

5.0. **Focus area: The need to recover dues:** After a tenant gets physically evicted by Port Officials/AO, with or without Police assistance, the goal of Port is only half accomplished. The other half is to recover any outstanding dues towards rental/compensation charge that might have accumulated during the litigation-cum-eviction period under Section 7 of PP Act. It has been gathered that there has never been a single instance of successful recovery of outstanding dues from an evicted tenant, using the legal process prescribed for it in P.P Act. In almost all cases, even the procedural steps required to effect recovery, after the tenant gets evicted, have rarely been undertaken by Estate or Legal Wing. This could





be because of lack of optimism about prospect of recovery of dues, given the admittedly complex and circuitous legal process meant for it. But, that should not be the reason for abandoning the recovery process mandated in PP Act altogether.

**5.1. Suggestion for improvement:**

***Do not abandon recovery efforts u/s 7 of PP Act after eviction. The Port badly needs to set at least a few examples of unauthorized tenants being pursued till the very end of the legal processes, to not just evict an unauthorized tenant, but also recover their legitimate outstanding dues.***



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