

01e

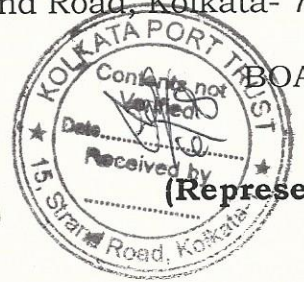


**REGISTERED POST WITH A/D.
HAND DELIVERY
AFFIXATION ON PROPERTY**

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
15, STRAND ROAD
(4th Floor)
KOLKATA - 700 001

Court Room At the 2nd Floor
of Kolkata Port Trust's
Head Office, Old Buildings
15, Strand Road, Kolkata- 700 001.

REASONED ORDER NO. 25 DT 03.08.2018
PROCEEDINGS NO. 320 OF 1999



BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-
Estate Kalobaran Kundu (O.P.)
(Represented by Asitbaran Kundu & Sushit Baran Kundu)

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 **Estate Kalobaran Kundu, of 67/22, Strand Road, Kolkata 700006** are in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

- 1) That the lease granted to Shri Kalobaran Kundu had expired on 31.08.2003, in all sense of law.
- 2) That Shri Kalobaran Kundu or his legal representatives/heirs have failed to obtain any fresh tenancy/license from the landlord i.e. KoPT.
- 3) That any prayer for renewal/grant of tenancy before this Forum cannot be entertained as the same is beyond the purview of this Forum under the P.P. Act, 1971.
- 4) That O.P.'s contention regarding requirement of six months' notice is wholly inapplicable in the instant case.
- 5) That O.P./any other person on behalf of O.P. have failed to make out any case in support of their occupation as "authorised occupation", inspite of sufficient chances being given.
- 6) That O.P. or any other person/s asserting any right through O.P. has failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation", inspite of sufficient chances being provided.

Please see on reverse

- 7) That the notice to quit dated 27.01.2005 as served upon Shri Kalobaran Kundu 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 Section 2(g) of the P.P Act.
- 8) That O.P. is liable to pay damages for wrongful use and occupation of the Public Premises upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

A copy of the reasoned order No. 25 dated 03.08.2018 is attached hereto which also forms a part of the reasons.

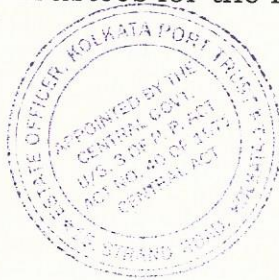
NOW, THEREFORE, in exercise of the powers conferred on me under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order the said **Estate Kalobaran Kundu, of 67/22, Strand Road, Kolkata 700006** and all persons who may be in occupation of the 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 **Estate Kalobaran Kundu, of 67/22, Strand Road, Kolkata 700006** 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. about 142.234 sqm or thereabouts situated on the West side of Strand Road between Cross Road no. 14 & 15, Nimtollah, in the presidency town of Kolkata. It is bounded on the North & West by Port Trust's land occupied by Bhagawan Das Bagla Raibahadur, on the East by Strand Road & on the South by the Port Trust's land occupied by Mimraj Jewaldut Bagla.

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

Dated: 03.08.2018




Signature & Seal of the
Estate Officer.

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

समाप्त दिना जाँज
Contents not Verified
दिना
Legal Department
कोलकाता पोर्ट ट्रस्ट
Kolkata Port Trust
8/8/18

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. 320 Of 1999 Order Sheet No. 21

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Estate Kalobaran Kundu ^{VS} *(Represented by Asit Baran Kundu)*

25
03-08-2018

FINAL ORDER

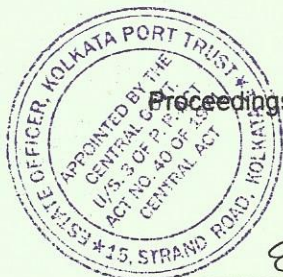
The matter is taken up today for final disposal. It is the case of Kolkata Port Trust (KoPT), Applicant herein, vide application dated 20.06.2007, that Shri Kalobaran Kundu came into occupation of the Public Premises in question, being land measuring about 142.234 sqm or thereabouts on the West Side of Strand Road (between Cross Road no. 14 & 15 at Nimtollah) (Occupation no. SB-209) on long term lease basis on certain terms and conditions and the said lease expired on 31.08.2003 without any further option of renewal. It is strongly argued on behalf of KoPT that Shri Kalobaran Kundu has lost its authority to occupy the Public Premises as mentioned under the schedule of the application dated 20.06.2007, right from the date of expiry of the lease, as mentioned in the notice to quit dated 27.01.2005 as served upon Shri Kalobaran Kundu by the Port Authority. It is also argued that Shri Kalobaran Kundu is liable to pay damages for wrongful use and enjoyment of the Port Property in question upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

This Forum of law formed its opinion to proceed against Shri Kalobaran Kundu and issued Show Cause Notice u/s 4 of the Act (for adjudication of the prayer for order of eviction etc.) dated 07.04.2016. It is seen from record that one Sushit Baran Kundu appeared before this Forum, claiming to be nephew of Shri Kalobaran Kundu. It was submitted by said Sushit Baran Kundu that Shri Kalobaran Kundu has expired on 16.04.2008. A copy of Death Certificate of Shri Kalobaran Kundu was also filed, in support of the

↩

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. 320 Of 1999 Order Sheet No. 22

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
Estate Kalobaran Kundu (Represented by Asit Baran Kundu)

25
03-08-2018

contention. Taking cognizance of the death of Shri Kalobaran Kundu, this Forum directed for amendment of the cause-title to "Estate Kalobaran Kundu" as the Opposite Party (O.P.) of the instant case. Subsequently an application dated 13.07.2016 was filed by one Asitbaran Kundu & one Sushit Baran Kundu, with request for renewal of the lease in question. An Affidavit allegedly sworn before Ld Metropolitan Magistrate on 20.02.2018 was also filed by said Asitbaran Kundu & Sushit Baran Kundu, claiming to be legal heirs/successors of Late Kalobaran Kundu. Be that as it may, another application dated 21.03.2018 came to be filed by said Asitbaran Kundu & Sushit Baran Kundu, with prayer for renewal of the lease. On 12.04.2018, an application was filed by KoPT, offering comments on the submission of Asitbaran Kundu & Sushit Baran Kundu. Thereafter, a Written Argument came to be filed by Asitbaran Kundu through his Ld Advocate. On 04.07.2018, KoPT filed its comments on the said Written Argument filed by Asitbaran Kundu. The matter was finally heard on 04.07.2018 when after hearing arguments of both sides, final order was reserved. Liberty was given to the parties to file their written notes of arguments within 15 days, which was complied with by said Asitbaran Kundu by filing Written Notes on 10.07.2018.

I have carefully gone through the materials on record, and the submissions of the parties. During course of proceedings, both the parties have referred to an order dated 28.06.2001 passed by the erstwhile Ld Estate Officer in a proceedings involving the O.P., and therefore for the sake of clarity I have gone through the said order. There is no doubt or dispute that originally,

CS

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. 370 Of 1999 Order Sheet No. 23

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Estate Kalobaran Kundu ^{VS} *(Represented by Axit Baran Kundu)*

25
03-08-2018.

a lease was entered into between KoPT and Shri Kalobaran Kundu on 30.01.1975, for holding the premises for a period of 10 (ten) years from 01.09.1973, with two options for renewal of 10 years each. It reveals from said order dated 28.06.2001 that the action of the KoPT in issuing Notice to Quit determining the relationship from 01.09.1993 was struck down by the Ld Estate Officer, as another option for 10 years lease from 01.09.1993 was still subsisting, as per the original lease entered into between the parties. The Ld Estate Officer also ordered KoPT to renew the lease for a further period of 10 years with effect from 01.09.1993. It is seen that KoPT, in due compliance to the said order, KoPT issued an offer (date illegible) signed by the then Land Manager of KoPT on 25.10.2002. As per the said offer letter, the lease was sought to be renewed for a period of 10 (ten) years from 01.09.1993 without any further option of renewal. Understandably, O.P. accepted the said offer and was allowed to enjoy the public premises on lease rent basis till 31.08.2003. Now, a question arises what is the status of the O.P. on and from 01.09.2003. The position of law is very much clear, that on expiry of valid period of grant, the occupation becomes unauthorized in nature. Such position is explicit in Sec. 2 (g) of the P.P. Act, 1971, as per which 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

↙



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. 320 Of 1999 Order Sheet No. 24

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Estate Kalobaran Kundu ^{VS} *(Represented by Ajeit Baran Kundu)*

25
03.08.2018.

reason whatsoever. In my view, said provision is squarely attracted in the instant case. I do not find any grant of fresh lease/licence from KoPT in favour of O.P., after the expiry of the lease on 31.08.2003. Rather, I find that by issuing Notice to Quit dated 27.01.2005, KoPT has made its stand clear that it does not recognize the O.P. as a tenant, after 31.08.2003. As such, I do not find any "consent" from KoPT, regarding the occupation of the O.P. beyond the authorized period of lease. I have gone through the said Notice to Quit. It clearly mentions that the lease has been determined by efflux of time on and from 31.08.2003. It is also seen that Shri Kalobaran Kundu vide his letter dated 09.02.2005 acknowledged receipt of the Notice to Quit, mentioning thereby that he has paid all the dues in time, and also requested to renew the lease for another 30 years. Here, I must say that timely payment of rental dues has got nothing to do in the matter, as the whole case is based on expiry of lease which, in my view, is already well-established. Regarding prayer for further renewal or grant of fresh lease, I must say that the same is the prerogative of the landlord (KoPT) and I do not find any obligation on the part of the KoPT to accept such prayer of Shri Kalobaran Kundu. In fact, this Forum has nothing to do if such prayer is not acceptable to the landlord. This Forum is functioning within the four corners of the P.P. Act and there is no scope to consider any prayer for grant/renewal of lease/license either on behalf of Shri Kalobaran Kundu or his legal representatives/heirs.

During course of hearing, it has been made out on behalf of the O.P. that the earlier P.P. Act proceeding

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. 320 Of 1999 Order Sheet No. 25

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Estate Kalobaran Kundu ^{VS} (Represented by *Axiti Baran Kundu*)

25
03.08.2018.

being no. 320 of 1999 is being continued, which is not possible in view of the order dated 28.06.2001 passed by the erstwhile Ld Estate Officer. I must say that such submission of the O.P. is very much misdirected. There is no doubt or confusion that the erstwhile proceedings bearing no. 320 of 1999 came to an end on 28.06.2001 by passing of the order dated 28.06.2001 on the said date. It was only on 20.06.2007 that KoPT filed a fresh application on fresh cause of action (expiry of lease on 31.08.2003, supported by Notice to Quit dated 27.01.2005) which culminated into the present proceedings. I find that the Department inadvertently numbered the said proceedings as 320 of 1999 although the same has no connection with the earlier proceedings of the same number and is an independent proceedings by itself. It is seen that the order no. 01 in the instant proceedings was passed on 16.11.2012 and finally Notice to Show Cause was issued to the O.P. vide Order no. 08 dated 13.01.2016. In my view, such wrong numbering of the proceedings is purely a clerical error, not prejudicing the O.P. in any manner whatsoever. The O.P. has appeared before this Forum and given sufficient chances for submission of defence on its behalf. As such, there is neither any question for violation of natural justice nor is the O.P. prejudiced in any manner by such wrong numbering of the proceedings by the Staff of this Forum.

During course of hearing, O.P. has referred to a clause in the offer letter dated 29.10.2002 whereby the Trustees of KoPT reserved the right to terminate the lease on six months' notice if the land is required for the purpose of the Port or any national interest. It is

cus

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. 320 Of 1999 Order Sheet No. 26

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Estate Kalobaran Kundu ^{VS} *(Represented by Arit Baram Kundu)*

25
03.08.2018.

the submission on behalf of O.P. that no such notice for six months' has been served on the O.P. Here again, I must say that the submission is misconstrued. The said notice for six months is essential when the lease is "terminated" or determined before its usual tenure of 10 years. The instant case is not at all a case of such termination or determination of lease but a case of expiry of lease due to efflux of time, which does not attract the said clause of the lease deed. Consequently, I do not find any requirement on the part of the Port Authority to serve such a Notice for six months, when the lease has expired by efflux of time. For the same reason, submission of O.P. as regards "purchase" of building is equally liable to be rejected.

Discussions against the foregoing paragraphs indicate that the Notice to Quit dated 27.01.2005 as served by the Port Authority is very much valid, lawful and binding upon the parties. In my view, the allegation of KoPT is sufficiently substantiated in the facts and circumstances of the case. As such, I find the action taken by the Port Authority logical and within the four corners of the law. I therefore uphold the validity of the Notice to Quit dated 27.01.2005 issued by KoPT on the O.P.

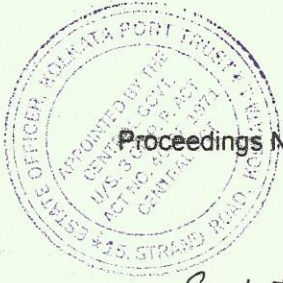
In view of the circumstances, and being satisfied as above, I am left with no other alternative but to issue the Order of Eviction against O.P., as prayed for on behalf of KoPT, on the following grounds/reasons:-

- 1) That the lease granted to Shri Kalobaran Kundu had expired on 31.08.2003, in all sense of law.

CS

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. 320 Of 1999 Order Sheet No. 27

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Estate Kalobaran Kundu ^{VS} *(Represented by Arjit Baran Kundu.)*

25
03.08.2018.

- 2) That Shri Kalobaran Kundu or his legal representatives/heirs have failed to obtain any fresh tenancy/license from the landlord i.e. KoPT.
- 3) That any prayer for renewal/grant of tenancy before this Forum cannot be entertained as the same is beyond the purview of this Forum under the P.P. Act, 1971.
- 4) That O.P.'s contention regarding requirement of six months' notice is wholly inapplicable in the instant case.
- 5) That O.P./any other person on behalf of O.P. have failed to make out any case in support of their occupation as "authorised occupation", inspite of sufficient chances being given.
- 6) That O.P. or any other person/s asserting any right through O.P. has failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation", inspite of sufficient chances being provided.
- 7) That the notice to quit dated 27.01.2005 as served upon Shri Kalobaran Kundu 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 Section 2(g) of the P.P Act.
- 8) That O.P. is liable to pay damages for wrongful use and occupation of the Public Premises upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

ACCORDINGLY, I 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



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. 320 Of 1999 Order Sheet No. 28

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Estate Kalobaran Kundu ^{VS} *(Represented by Aset Baran Kundu)*

25
03-08-2018.

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.

KoPT is further directed to submit a statement comprising details of its calculation of damages indicating there in the details of the rate of such charges together with the basis on which such charges are claimed against O.P. (upto the date of taking over of possession) 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

(G.MUKHOPADHYAY)

ESTATE OFFICER

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