

**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. 43 DT 30.08.2018
PROCEEDINGS NO. 1378 OF 2012

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-
West Bengal Surface Transport Corporation
(represented by its Managing Director) (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 **West Bengal Surface Transport Corporation, of 37, Deshpran Sasmal Road, Kolkata 700040** is in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

- 1) That the license granted to the O.P. expired on 31.12.1995 in all sense of law.
- 2) That O.P. failed to secure any grant/tenancy from the landlord with effect from 01.01.1996.
- 3) That O.P. has failed to satisfy the dues of KoPT in full, despite numerous requests by KoPT.
- 4) That letter dated 06.04.2016 of O.P. is a clear admission of dues on the part of the O.P.
- 5) That O.P. has failed to make out any case in support of its 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 04.04.2002 as served upon O.P. by the Port Authority is valid, lawful and binding upon the parties and O.P.'s occupation, and that of any other occupant of the premises, has become unauthorised in view of Section 2(g) of the P.P Act.

Please see on reverse

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. 43 dated 30.08.2018 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 **West Bengal Surface Transport Corporation, of 37, Deshpran Sasmal Road, Kolkata 700040** 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 **West Bengal Surface Transport Corporation, of 37, Deshpran Sasmal Road, Kolkata 700040** 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 Pontoon & Jetty (Plate no. P-13) or thereabout, situated at the Trustees' Kolkata Jetty no. 4, at Kolkata, P.S. North Port Police Station within the Presidency town of Kolkata.

The land (Plate no. SB-565) measuring about 116 sqm or thereabouts used for access to the Jetty, situated on the West side of Circular Railway Track alongside River Hooghly under North Port Police Station within the presidency town of Kolkata.

The wooden goomty (Plate no. SB-566) measuring about 3.809 sqm or thereabouts, situated alongside River Hooghly, North Port Police Station, within the presidency town of Kolkata.

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

Dated: 30.08.2018


Signature & Seal of the
Estate Officer.

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

Estate Officer, Kolkata Port Trust

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

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FINAL ORDER

The matter is taken up today for final disposal. It is the case of Kolkata Port Trust (KoPT), applicant herein, that M/s West Bengal Surface Transport Corporation (represented by its Managing Director) (O.P. herein) came into occupation of KoPT's Pontoon & Jetty (under Plate no. P-13), land measuring about 116 sqm for access to the Jetty (under Plate no. SB-565), and wooden goomty measuring about 3.809 sqm used as Ticket Counter (under Plate no. SB-566), being the Public Premises in question, situated at Kolkata Jetty No. 4, Thana- N.P.P.S., Presidency Town of Kolkata, as a licensee, on certain terms and conditions, and O.P. violated the conditions of such license by defaulting in payment of license fees and taxes and also by way of non-repairing and non-maintenance of existing Pontoon and damage to the Trustee's Pontoon by parting in submerged condition in the River Hooghly. It is strongly argued on behalf of KoPT that the license expired on 31.12.1995 and was not renewed further due to these breaches. It is also submitted by KoPT that a notice to quit dated 04.04.2002 was also served on the O.P. but still no heed was paid by the O.P. It is claimed that the O.P. is liable to pay damages for wrongful use and occupation of the Port property upto the date of handing over of vacant possession of the same.



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This Forum issued Show Cause notice under Section 4 & 7 of the Act (for adjudication of the prayer for issuance of Order of Eviction, recovery of arrears of rent, etc.) both dated 10.07.2013.

It is seen from record that O.P. contested the matter and prayed for reconciliation of accounts. After much deliberation, a letter dated 13.07.2015 came to be filed by the Managing Director of the O.P. requesting for plate-wise and month-wise statement of dues for quick settlement of the dues. In terms of the Order of this Forum, reconciliation of accounts was held on 10.08.2015 and updated statement of accounts was prepared after consideration of all payments made by the O.P. Subsequently O.P. filed a letter dated 06.04.2016 indicating their acceptance of the dues and conveying their willingness to clear the dues in 10 equal monthly instalments. Taking cognizance of such submission of O.P., this Forum directed O.P. to pay the instalment amount of Rs 5,12,300/- in addition to the current monthly compensation charges. After the matter was assigned to me, I deemed it appropriate to hear all concerned once again, for the sake of natural justice. It was reported by KoPT that huge amount is still outstanding from O.P. However, despite numerous opportunities, none on behalf of O.P.



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turned up before this Forum. I have seen the acknowledgements on behalf of O.P. on the office-copies of the Orders placed in the file. It appears to me that O.P. is no longer interested in defending the instant case. As such, on 09.05.2018 I reserved the final order.

I have carefully gone through the contentions made by KoPT against the O.P. It is seen that KoPT vide letter dated 04.10.1995 extended the license upto 31.12.1995 with clear understanding that such license will come to an end on 31.12.1995. Para 10 of the terms and conditions of said offer letter reads as follows:

"Use of the gangway, Pontoon Jetty etc. will be purely on the temporary basis and WBSTC will have to stop operating from the above place on expiry 31.12.1995 without fail and vacate the site forthwith without making claim for any compensation whatsoever."

There is no option for any renewal/extension of the license whatsoever. Be that as it may, it is seen that the O.P. did not accept the said terms and conditions unconditionally. In its letter dated 6/8.11.1995, O.P. claimed that the lease agreement should remain valid beyond 31.12.1995 also and till alternative arrangement is made by the Corporation. The O.P. also

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sought a letter of consent on the propositions forwarded by it, but no such letter came to be issued by KoPT. As per law, the letter dated 6/8.11.1995 of O.P. is nothing but a counter-offer which was clearly not accepted by the landlord i.e. KoPT. In such a scenario, I must say that the offer of the Port Authority stood lapsed on expiry of 21 days from the date of the offer. However, it appears from the application (plaint) dated 03.01.2006 filed by KoPT that the KoPT has treated the O.P. as a licensee till 31.12.1995. It is the specific submission of KoPT that the license could not be renewed on and from 01.01.1996. In such an event, I have no doubt to accept that the license was valid till 31.12.1995. At the same time I must say that by no stretch of imagination can it be said that the grant was valid after 31.12.1995.

Now, as regards the breaches complained of by KoPT, it is seen that KoPT vide its letter dated 18.08.1997 claimed huge amount of dues from the O.P. and O.P. instead of clearing the said dues, forwarded its own calculations to KoPT vide letter dated 08/09.09.1997. KoPT vide its letter dated 11.12.1997 made clear in no uncertain terms that the calculations forwarded vide letter dated 18.08.1997 was correct and requires no modification. It was also made clear that until and unless the said dues are cleared,

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any request for renewal of license since 01.01.1996 can not be considered. The same stand was reiterated by KoPT in its letter dated 16.08.2001 as well. During course of hearing, as requested by the O.P., elaborate exercise of reconciliation of accounts was carried out to the satisfaction of the O.P., when huge amounts were found to be due. Letter dated 06.04.2016 of O.P. is a clear admission of dues on the part of the O.P. This being so, I am very much satisfied about the O.P. being a defaulter of license fees, at the time of expiry of the license on 31.12.1995.

Regarding the allegation of damage to pontoons etc, I find that KoPT has not placed on record anything apart from letters dated 19.04.2002 and 22.08.2002 whereby KoPT requested the O.P. to immediately repair the pontoons etc and also to restore the pontoon, jetty etc. to their original conditions. In the absence of any positive evidence of such damage, I am not willing to accept this submission of KoPT. However, in my view, even if this issue of damage/repair of pontoons is discarded, then also the occupation of O.P. satisfies the definition of "unauthorized occupation" as defined in Sec. 2 (g) of the P.P. Act, 1971, which states that the "unauthorized occupation", in relation to any public premises, means the

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occupation by any person of the public premises without authority for such occupation and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. In my view, said provision is squarely attracted in the instant case and O.P. has failed to justify why it should be held otherwise. In such a situation, I have no bar in accepting the submission of the Port Authority regarding expiry of license. Thus, I am inclined to hold that the Notice to Quit dated 04.04.2002 is valid, lawful and correctly served on the O.P. and the same is binding between the parties.

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 license granted to the O.P. expired on 31.12.1995 in all sense of law.
- 2) That O.P. failed to secure any grant/tenancy from the landlord with effect from 01.01.1996.
- 3) That O.P. has failed to satisfy the dues of KoPT in full, despite numerous requests by KoPT.

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- 4) That letter dated 06.04.2016 of O.P. is a clear admission of dues on the part of the O.P.
- 5) That O.P. has failed to make out any case in support of its 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 04.04.2002 as served upon O.P. by the Port Authority is valid, lawful and binding upon the parties and O.P's occupation, and that of any other occupant of the premises, has become unauthorised in view of 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 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 canons of Law till the date of unencumbered recovery of possession of the same.



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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 can 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 report regarding its claim on account of dues and damages against O.P., indicating there-in, the details of the computation of such dues and damages with the rate of charges so claimed for the respective periods (details of computation with rates applicable for the relevant periods, i.e. upto the date of taking over of possession) for my consideration in order to assess the damages as per the Act and the Rules made thereunder.

I make it clear that in the event of failure on the part of O.P. to comply with this order as aforesaid, KoPT 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 ***