

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. 1302 / 1302/D Of 2012 Order Sheet No. 17

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Ram Krishna Pure oil Mill.

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28-09-2018

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 Ram Krishna Pure Oil Mill, O.P. herein, came into occupation of KoPT's land measuring about 340.397 sqm situated on the West side of Strand Bank Road, Pathuria Ghat, Thana-NPPS, in the Presidency Town of Kolkata, comprised under occupation No. SB-277/A, being the Public Premises in question, as a long term lessee (30 years), on certain terms and conditions, and said tenancy came to an end on 28.02.2001. It is the case of KoPT that O.P. not only continued to occupy the public premises after expiration of the lease, but also carried out unauthorized constructions and also parted with possession of the premises to unauthorized persons/entities. KoPT has submitted that vide Notice to Quit dated 18.08.2005, O.P. was requested to vacate the premises on 30.09.2005 which O.P. failed to comply. It is therefore the submission of KoPT that O.P. has no authority under law to occupy the public premises and that it 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.

This Forum issued Show Cause notices under Section 4 & 7 of the Act (for adjudication of the prayer for issuance of Order of Eviction, assessment of damages etc.) both dated 16.11.2017.

It is seen from record that O.P. contested the matter through its Ld Advocate and a Written Objection came to be filed on behalf of O.P. on 14.03.2018.

CS

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Another application was filed on behalf of O.P. on 12.09.2018 enclosing certain documents. KoPT also filed its Rejoinder against the submissions of the O.P. On 14.09.2018, O.P. filed its Written Notes of Arguments and the Forum, after hearing the arguments of the parties, reserved the final order.

I have carefully gone through the contentions made by the parties against each other. At the outset, I must say that no registered or executed lease deed has been produced before me by either of the parties. However, both parties having agreed to the existence of 30 years lease, I am not inclined to dispute the same. Be that as it may, so far as KoPT's allegations of unauthorized construction and unauthorized parting of possession if concerned, I must say that no positive or substantial evidence has been led by KoPT whereas O.P. has strongly countered these allegations, producing copies of municipal sanction plan etc. In my view, it would be travesty of justice if these allegations are allowed against O.P. Likewise, I am not inclined to go through the issue of non-payment of dues in relation to the public premises, as such a breach do not find any mention in KoPT's original application dated 27.03.2006 or in KoPT's Notice to Quit dated 18.08.2005.

In my view, the crux of the matter revolves around the question whether the 30-year lease can be said to be subsisting or is the same expired. As per records produced before me, it appears that KoPT made an offer for grant of 30-year lease to O.P. vide its letter dated 25.03.1971, the terms of which were accepted by O.P. vide its letter dated 06.08.1971.

(Signature)

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The said offer letter is specific about the initiation of the lease on 01.03.1971. That being so, there cannot be any doubt or confusion that the lease was slated to expire on 28.02.2001. I have gone through KoPT's letter dated 01.09.2004 and Notice to Quit dated 18.08.2005 both of which specifically mention about expiry of the lease. I have also gone through O.P.'s letter dated 06.12.2004 (in response to KoPT's letter dated 01.09.2004) from which it is apparent that expiry of the lease was very much within the knowledge of the O.P. It is correct that O.P. apparently made a number of requests for renewal of the lease (after expiry) but it is also correct that O.P. has failed to show how KoPT was liable/bound to renew the lease. Moreover, O.P. has failed to produce any document signifying its intention for renewal, submitted before expiry of the lease. In my view, renewal of a long term lease cannot be claimed as a matter of right, unless and until such right is embodied in the terms and conditions governing such lease. Furthermore, I find that O.P. has not at all denied receipt of the Notice to Quit dated 18.08.2005. That being so, the occupation of the O.P. on and from 01.03.2001 can only be said to be "unauthorized" within the meaning of the P.P. Act, 1971. I must say that the KoPT has been consistent in its approach and issued bills for "compensation/damages" upon the O.P. after expiry of the lease-hold period which has been admitted by the O.P. also. Any bill for "compensation/damages" suggests that the landlord does not accept the occupier as a tenant any longer. I find that KoPT has made its intention clear by not issuing any "rent"



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bills for the period of occupation beyond 28.02.2001. In fact, O.P.'s letters dated 17.07.2006, 03.05.2007 etc makes it ample clear that O.P. was being charged "compensation/damages" for occupation of the land and not "rent". In my view, there is a clear distinction between 'rent' and 'damages'. So long both the parties admit their relationship as landlord and tenant, the question of paying damages does not arise. In other words, if the tenant is asked to pay rent by the landlord, the element of authorized occupation could be inferred but in case of demand for damages, there is element of unauthorized use and enjoyment of the property (1996) 5 SCC 54 (Shangrila Food Products Ltd. & Anr vs Life Insurance Corporation of India & Another). As such, I am not inspired by the submission of the O.P. that it is not liable to pay "compensation/damages" after expiry of the lease. I also do not find merit in the submission of O.P. that KoPT has by its conduct accepted the O.P. as a tenant. "Damages" are like "mesne profit" that is to say the profit arising out of wrongful use and occupation of the property in question. I have no hesitation in mind to say that after expiry of the lease-hold period, O.P. has lost its authority to occupy the public premises, on the evaluation of factual aspect involved in this matter and O.P. is definitely liable to pay damages for such unauthorized use and occupation. To come into such conclusion, I am fortified by the decision/observation of the Hon'ble Supreme Court in Civil Appeal No.7988 of 2004, decided on 10th December 2004, reported (2005)1 SCC 705, para-11 of the said judgment reads as follows.

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Para:11-“ under the general law, and in cases where the tenancy is governed only by the provisions of the Transfer of Property Act 1882, once the tenancy comes to an end by determination of lease u/s.111 of the Transfer of Property Act, the right of the tenant to continue in possession of the premises comes to an end and for any period thereafter, for which he continues to occupy the premises, he becomes liable to pay damages for use and occupation at the rate at which the landlord would have let out the premises on being vacated by the tenant. ”

Thus, mere receipt of compensation from the O.P. cannot tantamount to intention to treat the O.P. as a tenant.

In my firm belief, this Forum has granted sufficient opportunities to all concerned to come up with their evidence, within the four corners of the P.P. Act, 1971, and there cannot be any question of violation of natural justice to anybody if I proceed to deliver the final order. As I find, KoPT has been fair and consistent in its approach and its actions are well within the ambit of the law of the land. As such, 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 long term lease granted to O.P. expired on 28.02.2001 without any provision for renewal.
- 2) That O.P. has failed to justify how it is entitled or authorised to occupy the public premises after expiry of its lease-hold right.

CS

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- 3) That O.P. has failed to produce any document to prove that it had approached the Port Authority for renewal of the lease, prior to its expiry.
- 4) That contention of O.P. regarding automatic renewal/deemed renewal of the lease, has no basis in the eye of law.
- 5) That O.P. has failed to prove any conduct or intention on the part of the Port Authority, accepting it as a tenant, after expiry of the lease.
- 6) That O.P. has failed to make out any case in support of its occupation as "authorised occupation", inspite of sufficient chances being given.
- 7) 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.
- 8) That Notice to Quit dated 18.08.2005 as served upon O.P., demanding possession of the public premises by KoPT 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.
- 9) 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



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canons of Law till the date of unencumbered 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 can be taken for execution of the order of eviction u/s 5 of the Act, as per Rule made under the Act.

Since the Notice u/s 7 had been issued only for a particular period, whereas O.P. is liable to pay damages till handing over of vacant possession, I am not declined to assess the damages at this stage. KoPT is directed to submit a report regarding its claim on account of damages against O.P., indicating there-in, the details of the computation of such 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 afresh 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, 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 ***

**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. 15 DT 28.09.2018
PROCEEDINGS NO. 1302 OF 2012

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-

M/s Ram Krishna Pure Oil Mill (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 Ram Krishna Pure Oil Mill, of P-56/1, Strand Bank Road, Kolkata 700006** is in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

- 1) That the long term lease granted to O.P. expired on 28.02.2001 without any provision for renewal.
- 2) That O.P. has failed to justify how it is entitled or authorised to occupy the public premises after expiry of its lease-hold right.
- 3) That O.P. has failed to produce any document to prove that it had approached the Port Authority for renewal of the lease, prior to its expiry.
- 4) That contention of O.P. regarding automatic renewal/deemed renewal of the lease, has no basis in the eye of law.
- 5) That O.P. has failed to prove any conduct or intention on the part of the Port Authority, accepting it as a tenant, after expiry of the lease.
- 6) That O.P. has failed to make out any case in support of its occupation as "authorised occupation", inspite of sufficient chances being given.
- 7) 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.
- 8) That Notice to Quit dated 18.08.2005 as served upon O.P., demanding possession of the public premises by KoPT 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

- 9) 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. 15 dated 28.09.2018 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 **M/s Ram Krishna Pure Oil Mill, of P-56/1, Strand Bank 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 **M/s Ram Krishna Pure Oil Mill, of P-56/1, Strand Bank 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 Trustees' piece and parcel of land msg. 340.397 sqm or thereabouts, situated on the West side of Strand Bank Road at Pathuriaghat, in the presidency town of Kolkata. It is bounded on the North by the Trustees' passage, on the East by the Trustees' land occupied by Ramkrishna Pure oil Mill, on the South by the Trustees' land occupied by Shree Rama Trading Co., and on the West by the Trustees' open land beyond which lies river Hooghly.

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

Dated: 28.09.2018


Signature & Seal of the
Estate Officer.

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