

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. 1372 Of 2012 Order Sheet No. 35

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Ishan Chandra ^{VS} Chatterjee & Sons (Pvt.) Ltd.

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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 Ishan Ch. Chatterjee & Sons (Pvt) Ltd, O.P. herein, came into occupation of KoPT's land measuring about 141.956 sqm situated on the North side of Cross Road no. 10, Kulpighat, in the Presidency Town of Kolkata, comprised under occupation No. SB-189, being the Public Premises in question, as a short term (monthly) lessee, on certain terms and conditions, and the O.P. violated the conditions of such tenancy by defaulting in payment of rent and taxes, carrying out unauthorized construction and parting with possession of the property in favour of rank outsiders. It is the case of KoPT that a Notice to Quit dated 02.05.2005 was served on the O.P. but O.P. paid no heed and did not comply with the same. 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, arrears of rent, interest etc) dated 13.11.2013.

It is seen from record that O.P. contested the matter through its Ld Advocate and an application styled as a letter dated 02.01.2014 came to be filed on behalf of O.P. O.P. also filed a petition on 04.06.2014 with prayer for allowing liquidation of the dues in 36



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installments etc. Considering the submissions of the parties, direction for joint inspection was passed by the Forum which was held on 13.11.2014. Subsequently, on 21.02.2018 a petition was filed by O.P. On 23.04.2018 a "Reply to Show Cause" and a prayer for regularization of tenancy were filed on behalf of O.P. This Forum granted considerable opportunity to the parties to come to an amicable solution but no such settlement came into being. KoPT vide letter dated 12.09.2018 communicated the penalty amount to be paid for regularization of unauthorized construction, but O.P. instead of accepting the same preferred to file application for reduction of the penalty amount. I must say that this Forum has no jurisdiction to entertain any plea for regularization of tenancy, in terms of the P.P. Act, 1971. Still, for the sake of natural justice, I have given opportunity to the parties to settle the disputes but O.P., instead of utilizing the opportunity, chose to "bargain" the penalty amount which is not acceptable in all sense. As such, finding no other opportunity, since pleadings on behalf of both parties is complete, this Forum reserved the final order.

I have carefully gone through the contentions made by the parties against each other. Regarding the contention of parting with possession I do not find any substantial evidence being led by KoPT. As such, I am not in a position to appreciate such contention of KoPT against O.P. However, the matters of non-payment of rent and erection of unauthorized construction/structures require serious discussion. It is seen from record that KoPT

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wrote numerous communications to the O.P., such as letters dated 09.03.2000, 24.08.2000, 28.02.2001, 16.08.2002, 01.06.2004 etc whereby KoPT repeatedly requested the O.P. to clear the rental dues. KoPT has also produced the computerized statement of accounts maintained by the statutory authority which carries definite evidentiary value in the eye of law. From the various applications filed by the O.P., it is seen that O.P. has admitted rental dues on its part, for a prolonged period. O.P. has attributed such default to lack of business etc. but this Forum has nothing to consider with the same. This Forum is mandated to act according to the P.P. Act, 1971, and not otherwise, and hence there is no scope to entertain any such plea on the part of the O.P. It is correct that O.P. liquidated part of the dues during the course of the proceedings but it is also correct that such payments were made by O.P. with the clear understanding that the same are provisional and without prejudice to the rights of the parties. As such, in my view, the issue of default of rent is sufficiently proved and requires no further elaboration.

Now, as regards unauthorized construction, it came out through joint inspection held on 13.11.2014 that such type of construction was subsisting on the public premises in question. KoPT also filed detailed sketch map elaborating the unauthorized constructions. O.P. never denied or disputed the unauthorized nature of such constructions. Rather, O.P.'s offer for settlement of the breach by way of paying penalty is nothing but implied acceptance of

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unauthorized construction on its part. Thus, in my humble view, this issue is also very much proved against the O.P.

Discussions against the foregoing reveal that the Notice to Quit dated 02.05.2005 of KoPT is validly issued and served on the O.P., in the facts and circumstances of the case, and the same is lawful, valid and binding on the parties. 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 O.P. was in default of rent and taxes, at the time of determination of the monthly lease by the Port Authority. Such default has been admitted by O.P. in clear terms.
- 2) That construction of unauthorised nature in the public premises in question has been sufficiently proved, in the facts and circumstances of the case.
- 3) That O.P. has failed to justify how it is entitled or authorised to occupy the public premises after determination of its lease-hold right.
- 4) That O.P. has failed to prove any conduct or intention on the part of the Port Authority, accepting it as a tenant, after determination of the lease.
- 5) That occupation of O.P. does not deserve any protection even for the sake of natural justice, as a commercial activity by an occupant having no valid and lawful grant from the landlord, cannot be allowed to thrive at the cost of the public exchequer.
- 6) That O.P. has failed to settle the dispute with the landlord inspite of sufficient opportunity by this Forum.
- 7) That O.P. has failed to make out any case in support of its occupation as "authorised



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- occupation", inspite of sufficient chances being given.
- 8) 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.
- 9) That Notice to Quit dated 02.05.2005 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.
- 10) 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.

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.



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KoPT is further 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. 40 DT 28.09.2018
PROCEEDINGS NO. 1372 OF 2012

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-
M/s Ishan Chandra Chatterjee & Sons (Pvt.) Ltd (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 Ishan Chandra Chatterjee & Sons (Pvt.) Ltd, of 67/41 Strand Road (Cross Road no. 10) Kolkata 700006, AND also of 46, Kalikrishna Tagore Street, Kolkata 700007, AND also of 20, Maharshi Debendra Road, Kolkata 700007** is in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

- 1) That O.P. was in default of rent and taxes, at the time of determination of the monthly lease by the Port Authority. Such default has been admitted by O.P. in clear terms.
- 2) That construction of unauthorised nature in the public premises in question has been sufficiently proved, in the facts and circumstances of the case.
- 3) That O.P. has failed to justify how it is entitled or authorised to occupy the public premises after determination of its lease-hold right.
- 4) That O.P. has failed to prove any conduct or intention on the part of the Port Authority, accepting it as a tenant, after determination of the lease.
- 5) That occupation of O.P. does not deserve any protection even for the sake of natural justice, as a commercial activity by an occupant having no valid and lawful grant from the landlord, cannot be allowed to thrive at the cost of the public exchequer.
- 6) That O.P. has failed to settle the dispute with the landlord inspite of sufficient opportunity by this Forum.
- 7) That O.P. has failed to make out any case in support of its occupation as “authorised occupation”, inspite of sufficient chances being given.

Please see on reverse

- 8) 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.
- 9) That Notice to Quit dated 02.05.2005 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.
- 10) 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. 40 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 Ishan Chandra Chatterjee & Sons (Pvt.) Ltd, of 67/41 Strand Road (Cross Road no. 10) Kolkata 700006, AND also of 46, Kalikrishna Tagore Street, Kolkata 700007, AND also of 20, Maharshi Debendra Road, Kolkata 700007** 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 Ishan Chandra Chatterjee & Sons (Pvt.) Ltd, of 67/41 Strand Road (Cross Road no. 10) Kolkata 700006, AND also of 46, Kalikrishna Tagore Street, Kolkata 700007, AND also of 20, Maharshi Debendra Road, Kolkata 700007** 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 141.956 sqm or thereabouts, situated on the North side of Cross Road no. 10 at Kulpighat in the presidency town of Kolkata. It is bounded on the North by the Trustees' land occupied by Gourangini dey, on the East by the Trustees' land occupied by Krishna Ch. Sadhukhan & others, on the South by the Trustees' Cross Road no. 10 and on the West by the Trustees' land partly occupied by Shri Provash Ch. Nandy and others and partly by Gourangini Dey.

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.**