

# 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. 920 Of 2007 Order Sheet No. 25

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

*M/s. Prime Products Ltd.* <sup>VS</sup>

29  
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 Prime Products Ltd, O.P. herein, came into occupation of KoPT's godown space measuring about 103.773 sqm being Compartment no. 9 situated on the ground floor of KoPT's Import Warehouse (South), on the west side of Strand Road, Thana- NPPS, in the Presidency Town of Kolkata, comprised under occupation Nos. JS-20/9 & SF-175, being the Public Premises in question, as a monthly (short term) lessee, on certain terms and conditions, and the O.P. violated the conditions of such tenancy by defaulting in payment of rent and taxes, encroaching into the Trustees' property, and parting with possession of the property in favour of rank outsiders. It is the case of KoPT that since the land was required by the Port for implementation of the land use plan, a Notice to Quit dated 05.04.1990 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 notice under Section 4 of the Act (for adjudication of the prayer for issuance of Order of Eviction) dated 21.05.2015.

It is seen from record that O.P. contested the matter through its Ld Advocate and a Written Statement came to be filed on behalf of O.P. on 16.03.2016. KoPT also filed its Rejoinder against the submissions of the O.P. Subsequently, KoPT filed an inspection report dated



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04.04.2018 which was challenged by O.P. by filing a Written Objection on 11.05.2018. In terms of the direction of this Forum, a joint inspection of the public premises was held on 28.05.2018, report of which was filed before this Forum by KoPT. The matter was finally heard on 07.09.2018 when final order was reserved, with an opportunity to the parties to file their respective Written Notes of Arguments. O.P. took the opportunity and filed Written Notes on 26.09.2018.

I have carefully gone through the contentions made by the parties against each other. It is seen from record that an offer for grant of monthly lease was communicated by KoPT vide letter dated 18.03.1971 which was accepted by O.P. vide letter dated 22.03.1971. Thereafter, a registered lease deed was entered into between the parties on 15.12.1976. Be that as it may, so far as KoPT's contention regarding encroachment is concerned, I find that no evidence whatsoever has been led by KoPT before this Forum. A number of inspections (at the instance of KoPT and also joint inspection) of the public premises took place but no evidence of any encroachment ever came out. Similarly, regarding the contention of requirement of implementation of "land use plan", I find that KoPT has not been able to produce a single piece of paper before this Forum.

In like manner, in my view, KoPT's contention of unauthorized parting of possession also has no legs to stand, when the joint inspection held on 28.05.2018 revealed that O.P. was very much present and functional at the public premises and no evidence whatsoever of any induction of any stranger was noticed. Moreover, I find that a number of documents (such as municipal licence, certificate of enlistment,

*(Signature)*

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trade receipts etc) were produced on behalf of O.P. at the time of joint inspection, all of which indicate the presence of the O.P. and nobody else at the subject premises. As such, I am not inclined to allow these charges against the O.P.

Now, the only allegation left for my consideration is whether the O.P. was a defaulter of rent or taxes, or not, at the time of determination of the lease. It is seen that KoPT vide letter dated 23.10.1989 took up the issue of default of rent and taxes with the O.P., requesting the O.P. to clear the same at the earliest. I have also gone through the statement of accounts produced on behalf of KoPT. In my view, such statements maintained by a statutory authority have definite evidenciary value and cannot be ignored. A plain reading of the statement (for occupation no. JS-20/9) show that the rental dues for the period of 31.10.1989 to 31.05.1990 (bill dates) was not satisfied by the O.P. within prescribed time. As per law, a monthly lease like the one granted to the O.P. stands automatically renewed when the landlord, in recognition of the tenancy, issues rent bill and the tenant satisfies such dues within the prescribed time and by the prescribed mode. The moment, the tenant defaults in payment of even a single rent bill, the tenancy stands automatically determined. In other words, a monthly lease is continued on the basis of the conduct of the parties and there is nothing wrong or illegal if the landlord refuses to recognize the occupant as a tenant if such an occupant defaults in payment of rent even for a single month. In the instant case, I find that the O.P. defaulted in payment of rent for quite some period and KoPT made its intention of determining the tenancy clear by issuing Notice to



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Quit dated 05.04.1990 on the O.P. In my view, there is no doubt or ambiguity in the action of the Port Authority. Moreover, I find that in the Written Statement as well as in the Written Notes of Arguments, I find that the O.P. has admitted that it may be in arrears. In fact, the statement of accounts as on 19.04.2016 show that O.P. has not been making any payment at all since the year 2011. In my view, this is a serious matter and O.P. cannot be allowed to carry on its business interest without paying anything to the landlord. I must say that the occupation of the O.P. deserves no protection even for the sake of natural justice, as it cannot be allowed to be flourished at the cost of the exchequer.

As such, in my view, the Notice to Quit dated 05.04.1990 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.
- 2) 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.
- 3) 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.
- 4) 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

*CS*

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- allowed to thrive at the cost of the public exchequer.
- 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 Notice to Quit dated 05.04.1990 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.
  - 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.

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  
(4<sup>th</sup> Floor)  
KOLKATA - 700 001  
\*\*\*\*\*

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

REASONED ORDER NO. 29 DT 28.09.2018  
PROCEEDINGS NO. 920 OF 2007

BOARD OF TRUSTEES OF THE PORT OF KOLKATA  
-Vs-  
**M/s Prime Products 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 Prime Products Ltd, of 20, Gariahat Road, Kolkata 700016, AND also of 38, Strand Road, Kolkata 700001** 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.
- 2) 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.
- 3) 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.
- 4) 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.
- 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 Notice to Quit dated 05.04.1990 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.
- 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.

**Please see on reverse**

A copy of the reasoned order No. 29 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 Prime Products Ltd, of 20, Gariahat Road, Kolkata 700016, AND also of 38, Strand Road, Kolkata 700001** 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 Prime Products Ltd, of 20, Gariahat Road, Kolkata 700016, AND also of 38, Strand Road, Kolkata 700001** 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

Compartment no. 9 msg. 103.773 sqm or thereabouts, situated in the Trustees asbestos shed godown known as Import Warehouse (South) which is situated on the west side of Strand Road, under the jurisdiction of the North Port Police Station within the presidency town of Kolkata.

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.**