



**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 Room no. 43
of Kolkata Port Trust's
Subhash Bhavan (1st floor)
40, C.G.R. Road, Kolkata 700043.

REASONED ORDER NO. 10 DT 28.12.2018
PROCEEDINGS NO. 1647 of 2018.

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-
M/s N.P. Enterprise (O.P.)

F O R M - "B"

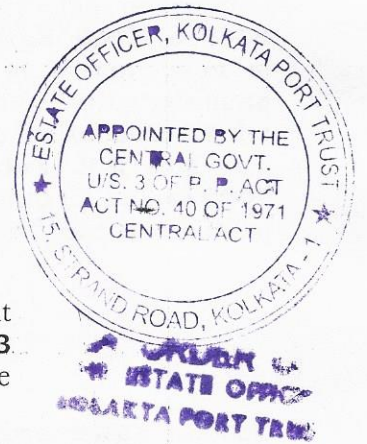
**ORDER UNDER SUB-SECTION (1) OF SECTION 5 OF THE PUBLIC
PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1971**

WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that **M/s N.P. Enterprise, of B/49/5/H/46, Karl Marx Sarani, Kolkata 700023** are in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

1. That O.P. had failed to make payment to the Port Authority, in accordance with the offer letter dated 24.06.2015;
2. That 02 Post-dated Cheques issued by the O.P. had been dishonoured and O.P. took no step to replenish the same to KoPT;
3. That O.P. was very much a defaulter at the time of expiry of the license on 29.02.2016;
4. That O.P. has failed to produce any evidence as to application for renewal of license made before 02 months from expiry;
5. That submission of O.P. as to excess payment to O.P. has no basis both in law and in fact;
6. That O.P. has failed to furnish any reason why the license should be treated as renewed for any further period;
7. That the license granted to O.P. has expired on 29.02.2016 without any doubt or confusion;
8. That O.P. has failed to bear any witness or adduce any evidence in support of its occupation into the public premises as 'authorized occupant';
9. That ejection notice dated 15.04.2016 as served upon O.P., demanding possession of the public premises by KoPT is valid, lawful and binding upon the parties;

Please see on reverse



Verified copy of the Order
issued by the Estate Officer
Kolkata Port Trust
Head Assistant
of the Ld. Estate Officer
Kolkata Port Trust

10. That occupation of O.P. beyond 29.02.2016 is unauthorized in view of Sec. 2 (g) of the Public Premises Act in question;

11. That O.P. is liable to pay damages for its unauthorized use and occupation of the public premises upto the date of handing over of clear, vacant and unencumbered possession to KoPT.

A copy of the reasoned order No. 10 DT 28.12.2018 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 N.P. Enterprise, of B/49/5/H/46, Karl Marx Sarani, Kolkata 700023** 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 N.P. Enterprise, of B/49/5/H/46, Karl Marx Sarani, Kolkata 700023** 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

Godown space msg. 334.58 sqm at KoPT's 8 No. Hoboken Shed, in the presidency town of Kolkata under Plate no. HS-41. It is bounded on the North by compartment of Trustees' Hoboken Shed no. 8 occupied by M/s Singh Trading Co., on the South by compartment of Trustees' Hoboken Shed no. 8 occupied by M/s Commercial Clearing Agency, on the East by the Trustees' road inside Hoboken Depot, on the West by the Trustees' open land.

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

Dated: 28.12.2018



Signature & Seal of the Estate Officer.

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



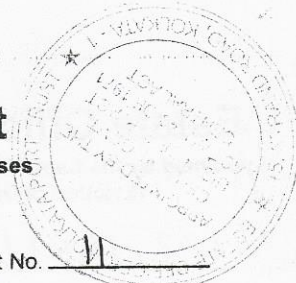
BY ORDER OF THE ESTATE OFFICER KOLKATA PORT TRUST

Verified copy of the Order issued by the Estate Officer, Kolkata Port Trust

11/2/19
[Signature]
Estate Officer
KOLKATA PORT TRUST

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. 1647, 1647/D Of 2018 Order Sheet No. 11

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S N. P. Enterprise
VS

09
04-07-2018

Present: M. Dutta, Asst. Estate Manager
R. Biswas, Resolution Officer (L)
For Kolkata Port Trust

D. Biswas, Advocate, for O.P.

An application is filed by Mr. Biswas, Advocate, with a copy to KoPT. It is submitted that KoPT in their application dated 26.06.2018 has not dealt with any of the 3 points required to be clarified in terms of the Order no. 7 dated 06.06.2018. My attention is drawn to paragraphs no. 2 and 9 of the application filed today.

It appears that there are sufficient materials on record to adjudicate the rights and liabilities of the parties and no fruitful purpose would be served by giving more hearing in the matter. Let the final Order be reserved. All concerned are directed to act accordingly.


ESTATE OFFICER

FINAL ORDER

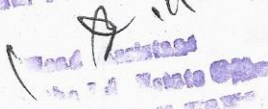
The matter is taken up for final disposal today. It is the case of Kolkata Port Trust (KoPT), the applicant herein, that godown space measuring about 334.58 sq. m. situated at KoPT's 8 No. Hoboken Shed, comprised under Plate no. HS-41, was allotted to M/s N. P. Enterprise, the O.P. herein, on certain terms and conditions, as short term licensee (11 months). It is the submission of KoPT that the last such license was granted to O.P. for a period of 11 months with effect from 01.04.2015 and O.P. defaulted in payment of license fees and taxes. An application dated 08.11.2016 was filed before this Forum of Law with the prayer to issue order of eviction against O.P. and for realization of dues etc. KoPT has



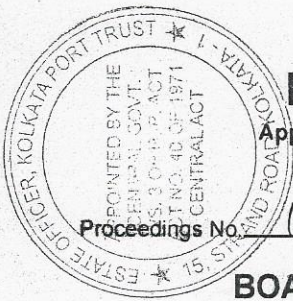
10
28-12-2018

ORDER BY
THE ESTATE OFFICER
KOLKATA PORT TRUST

Verified copy of the Order
issued by the Estate Office
Kolkata Port Trust

11/2/19

ESTATE OFFICER
KOLKATA PORT TRUST





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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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S ^{VS} N.P. Enterprise

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28-12-2018

made out that the O.P. has no authority to occupy the public premises after expiry of the period as mentioned in its Notice to Quit dated 15.04.2016 as issued upon the O.P.

This Forum of Law formed its opinion to proceed against O.P. under the relevant provisions of the P.P. Act and issued show cause notices under Sec. 4 & 7 of the Act both dated 28.03.2018 as per Rules made under the Act.

It reveals from record that O.P. contested the case through its Ld Advocate. On 20.04.2018, O.P. filed an application for disclosure of documents, which was allowed by the Forum. A Preliminary Reply to the Show Cause Notice/s came to be filed by the O.P. on 27.04.2018. O.P. also filed an application for dismissal of proceedings on 06.06.2018. In reply, KoPT filed an application dated 20.06.2018. Finally, on 04.07.2018 O.P. filed its Reply against the submissions of KoPT vide application dated 20.06.2018. On this day, this Forum reserved the final order after hearing the extensive arguments of both the parties.

I have carefully considered the documents on record and the submissions of the parties. The allegation of KoPT against the O.P. is basically non-payment of license fees and taxes. In order to decide this issue, the contractual relationship between the parties require to be examined in detail. It is seen that KoPT made an offer for grant of license, to O.P., on 24.06.2015. This offer was accepted by the O.P. vide its letter dated 14.08.2015. Now, as regards the offer, it is seen that KoPT had demanded the following amounts from the O.P. as consideration for grant of license:

- i) Ra 10,027/- being supplementary Security Deposit.
- ii) Rs 99,082/- being outstanding license fee in respect of preceding license



BY ORDER OF
THE ESTATE OFFICER,
KOLKATA PORT TRUST

Verified copy of the Order
issued by the Estate Officer
Kolkata Port Trust

11/12/19
Handwritten signature
of the Ld. Trustee
Kolkata Port Trust

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. 1647, 1647/1 Of 2018 Order Sheet No. 13

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S N.P. Enterprise ^{VS}

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- iii) Rs 97,658/- being monthly license fees and taxes for the period 01.04.2015 to 31.05.2015
- iv) 9 PDCs (Post Dated Cheques) of Rs 49,541/- each being licensee fee for the period 01.06.2015 to 29.02.2016.

In terms of the said offer, the above payments were required to be made by O.P. within 21 days from the date of the letter.

As against this, the O.P. communicated its unqualified acceptance of the offer vide its letter dated 14.08.2015, alongwith which O.P. forwarded the following payments:

- i) Pay Order for Rs 10,027/- towards Balance Security Deposit
- ii) Cheque no. 000008 dated 18.08.2015 for Rs 1,35,588/- towards license fee after deduction of TDS
- iii) 7 PDCs (Post Dated Cheques) for Rs 45,196/- each.

Now, there is no explanation as to why a cheque for Rs 1,35,588/- was submitted by O.P., when KoPT had demanded Rs 99,082/- and 97,658/- separately (totaling to Rs 1,96,740/-) as outstanding license fees. Equally surprising, there is no whisper or murmur about why O.P. chose to furnish 07 Post Dated Cheques instead of 09 Cheques. I do not find any submission from O.P. regarding any allegation of incorrectness of KoPT's offer letter. Thus, there is no doubt or confusion that O.P. chose to accept the offer but at the same time chose not to pay in terms of the offer. During course of hearing also, O.P. has not made a single submission as to why it chose to pay on its own terms (not according to the offer).

Be that as it may, it is also the specific submission of KoPT that out of these 07 PDCs, 02 have been dishonoured (proof of dishonour due to "Funds



ORDER OF THE ESTATE OFFICER, KOLKATA PORT TRUST
Certified copy of the Order passed by the Estate Officer, Kolkata Port Trust.
11/12/18
Head Assistant
Office of the Estate Officer, Kolkata Port Trust.



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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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S ^{VS} N.P. Enterprise.

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28.12.18

Insufficient" have been submitted to this Forum as well as served on the O.P. under acknowledgement). This, I must say, is a serious lapse on the part of the O.P. and adds to the breach of non-payment in terms of the offer. During course of hearing, O.P. has failed to come up with any single cogent explanation for this gross failure on its part. O.P. has also not claimed to have replenished this amount by some other means. Thus, it appears to me that O.P. is severely guilty of violating the terms and conditions of the offer. A defence has been taken by O.P. that it has made excess payment of Rs 1,68,354/- to KoPT. I find the said submission of O.P. bereft of any merit, as O.P. has tried to show off the entire Security Deposit as akin to license fees and taxes despite knowing fully well that Security Deposit cannot be treated as license fees and it (Security Deposit) is to be refunded without interest after O.P. vacates the premises in unencumbered condition provided there are no outstanding dues recoverable from the O.P. [Clause (i) of the terms and conditions of the offer dated 24.06.2015]. Thus, I am unable to entertain such plea of O.P. which is wholly based on passing off of Security Deposit as license fees and taxes by giving a complete go-by to the offer terms and conditions.

Discussions against the foregoing reveal that the O.P. was very much a defaulter of dues and failed to honour the contractual terms and conditions. The offer letter dated 24.06.2015 clearly mentions that the license is only for 11 months only from 01.04.2015 to 29.02.2016 and any further extension is governed by the terms mentioned in the said offer. Clause (xx) of the offer requires the O.P. to apply to the Estate Manager, KoPT at least 02 months in advance of expiry of the license, in case it is interested in grant of further license. It is also mentioned that it does not give the O.P. any

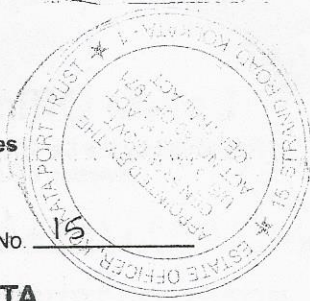


BY ORDER OF THE ESTATE OFFICER, KOLKATA PORT TRUST

Justified copy of the Order passed by the Estate Officer, Kolkata Port Trust
[Signature] 11/2/19
Head Assistant
Estate Officer, Kolkata Port Trust

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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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

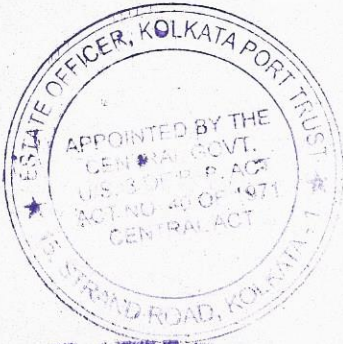
M/S N.P. Enterprise VS

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guarantee for further license and in case if license is granted, terms and conditions of license will be the sole prerogative of KoPT. During course of hearing, O.P. never submitted anything regarding application for extension of license. Even if it is argued (not a fact, though) that such an application had been preferred by O.P. in the manner and mode prescribed, then also a question arises how the Port Authority would have considered such an application positively when the O.P. was clearly a defaulter. In my view, O.P. has hopelessly failed to justify this Forum how it is entitled to occupy the public premises after 29.02.2016. In other words, the occupation of the O.P. beyond 29.02.2016 is nothing but "unauthorised occupation" within the meaning of the P.P. Act, 1971. As per Section 2 (g) of the said Act, the "unauthorised 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 reason whatsoever. In my view, the said provision is squarely attracted in the instant case and O.P. has failed to justify why it should be held otherwise.

A submission has been made by O.P. that substantial amount has been kept in suspense account by KoPT. O.P. has relied on a statement of suspense account provided by KoPT. Bare perusal of the said statement shows that most of the amounts mentioned therein are in respect of other occupations of the O.P. (not involved in the present proceedings). A few of the entries pertain to Plate no. HS-41 i.e. the subject public premises. Now, when the payment of the O.P. has been very



BY ORDER OF
THE ESTATE OFFICER
KOLKATA PORT TRUST

Modified copy of the Order
issued by the Estate Officer
Kolkata Port Trust

11/2/19
Sd/-
Asst. Secy. I.D. Estate Officer
KOLKATA PORT TRUST



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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irregular (ref. Payment of Rs 1,35,588/- without any basis or explanation, non-payment of 04 months license fees and taxes etc) I do not find any irregularity on the part of the Port Authority to keep some such amounts deposited in the suspense account pending cogent clarification/explanation from the O.P. I must mention that during the proceedings, O.P. also collected detailed statements of dues from the KoPT but still could not come up with logical explanation. That being so, it is very logical on the part of KoPT to keep such amounts deposited in the suspense account for the time being. Of course, said suspense deposits have to be accounted for while adjudicating the quantum of damages payable by O.P. for the period of its unauthorised occupation. As I have mentioned above, the O.P. appears to be in unauthorised occupation right after 29.02.2016, which is still continuing. In my view, it will be appropriate if separate proceedings is drawn up for assessment of damages u/s 7 (2) of the Act, after possession is recovered from the O.P. in accordance with law. As such, I am not inclined to assess the damages at this stage when possession of public premises is still with the O.P. The issue of quantification of interest can also be decided in such fresh proceedings for assessment of damages. As such, the Notice issued u/s 7 of the Act is hereby discharged.

In the backdrop as mentioned above, I have no hesitation to conclude that KoPT's Notice to Quit dated 15.04.2016 is valid, lawful and correctly issued and served on the O.P., in the facts and circumstances of the case. In my view, there will be no question of violation of natural justice if I now declare the possession of the O.P. as "unauthorized", and issue order of eviction against O.P. on the following reasons,



ORDER OF THE ESTATE OFFICER, KOLKATA PORT TRUST

Identified copy of the Order Passed by the Estate Officer, Kolkata Port Trust

28/12/18
Head Assistant
Officer of the Lt. Estate Officer
KOLKATA PORT TRUST

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. 1647, 1647/10 of 2018 Order Sheet No. 7

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S ^{VS} N.P. Enterprise

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28.12.18

1. That O.P. had failed to make payment to the Port Authority, in accordance with the offer letter dated 24.06.2015;
2. That 02 Post-dated Cheques issued by the O.P. had been dishonoured and O.P. took no step to replenish the same to KoPT;
3. That O.P. was very much a defaulter at the time of expiry of the license on 29.02.2016;
4. That O.P. has failed to produce any evidence as to application for renewal of license made before 02 months from expiry;
5. That submission of O.P. as to excess payment to O.P. has no basis both in law and in fact;
6. That O.P. has failed to furnish any reason why the license should be treated as renewed for any further period;
7. That the license granted to O.P. has expired on 29.02.2016 without any doubt or confusion;
8. That O.P. has failed to bear any witness or adduce any evidence in support of its occupation into the public premises as 'authorized occupant';
9. That ejection notice dated 15.04.2016 as served upon O.P., demanding possession of the public premises by KoPT is valid, lawful and binding upon the parties;
10. That occupation of O.P. beyond 29.02.2016 is unauthorized in view of Sec. 2 (g) of the Public Premises Act in question;
11. That O.P. is liable to pay damages for its unauthorized use and occupation of the public premises upto the date of handing over of clear, vacant and unencumbered possession to KoPT.

Accordingly, I sign the formal order of eviction under Sec. 5 of the Act as per Rules made thereunder, giving 15 days time to O.P. 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 as their occupation into the



OFFICE OF THE
ESTATE OFFICER
KOLKATA PORT TRUST

Verified copy of the Order
issued by the Estate Officer
Kolkata Port Trust

11/12/18
11/12/18
11/12/18



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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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S N.P. Enterprise VS

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28.12.18

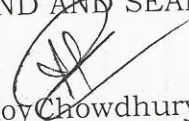
Public Premises is/are unauthorised in view of sec. 2(g) of the Act. KoPT is directed to submit a comprehensive status report of the Public Premises in question on inspection of the property after expiry of the 15 days as aforesaid so that necessary action could be taken for execution of the order of eviction u/s. 5 of the Act as per Rule made under the Act.

As already mentioned above, I am not inclined to assess the damages at this stage when possession of public premises is still with the O.P. KoPT is directed to submit a report regarding its claim on account of damages against O.P., indicating therein the details of computation of such damages with the rate of charges so claimed for the respective period (alongwith rates applicable for the relevant periods and the date of taking over of possession of the plot) for my consideration in order to assess the damages as per the Act and the Rules made thereunder by issuing fresh Notice u/s 7 of 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


(S. Roy Chowdhury)
ESTATE OFFICER

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

**IN ORDER ON
THE ESTATE OFFICER,
KOLKATA PORT TRUST**

Identified copy of the Order
forwarded by the Estate Officer,
Kolkata Port Trust

21/12/18
S. Roy Chowdhury
Estate Officer
Kolkata Port Trust

KOLKATA PORT TRUST

15, STRAND ROAD, KOLKATA