

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. 1218

Of 2011

Order Sheet No. 07

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Burdwan Vegetable Stores ^{VS} [Proprietor: Kali Prasad Pathak]

07
29.03.2019

It is placed on record that Paper Publication was made in compliance of the order no. 06 dated 08.03.2017 in the classified columns in local Hindi daily 'Sanmarg' (Kolkata edition) and English Newspaper 'Times of India' (Kolkata edition) on 21.03.2019 for concern to all persons including the O.P. interested in the subject property to appear on the hearing or to file reply to Show cause on 29.03.2019 at the Office of the undersigned failing which there would be no option but to adjudicate the matter 'ex-parte'.

None appears today on behalf of O.P. or any interested person on the subject property despite 3rd call today, nether the reply to Show Cause or any application on behalf of O.P. has been filed.

The Final Order in the matter is reserved. All concerned are directed to act accordingly.



(K.K.Manna)
ESTATE OFFICER

08
19.04.2019

FINAL ORDER

The instant proceedings nos. 1218 of 2011 arises out of the application filed on 01.11.2004 by the Kolkata Port Trust (KoPT), Applicant herein, praying for an order of eviction and recovery of dues and other charges etc. along with accrued interest against M/s Burdwan Vegetable Stores (Proprietor: Kali Prasad Pathak), the O.P. herein, under the relevant provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

The fact of the case in nutshell is that the O.P. came into occupation of the port property measuring 33.445 sqm or thereabout situated at Western end of Taratala Staff Colony at Taratala Road, Thana - Taratala, Registration District : Alipore having Occupation No. D-377/7/1 (morefully described in Schedule 'A' of the KoPT's application filed on 01.11.2004) as a monthly lessee and had defaulted in making payment of rent and taxes which is a statutory obligation under the terms of tenancy.



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It is the case of KoPT that the O.P. was asked to vacate the premises on the expiry of the month of February, 2003 in terms of the Quit Notice dated 31.01.2003, served as per statute upon the O.P. by registered post with acknowledgement due requesting the O.P. to quit, vacate and deliver up the vacant and peaceful possession of the premises on the expiry of the month of February, 2003. The said notice has been duly acknowledged by one Sri Brahmadeo Pathak on behalf of Kali Prasad Pathak, the Proprietor of M/s Burdwan Vegetable Stores. The said notice was also simultaneously sent by KoPT authority to the O.P. Under Certificate of Posting to the correct address of the O.P. Another copy of the notice was personally served by the KoPT's Land Inspector by handing over to the representative of the O.P. It is further the case of KoPT that inspite of Ejectment Notice, the O.P. failed and neglected to quit, vacate and deliver up vacant and peaceful possession of the said premises on the expiry of the month of February, 2003 and failed and neglected to hand over the public premises to KoPT.

Considering the submission and materials on record as submitted by KoPT, Notice to Show Cause dated 30.01.2019, U/s 4 of the Public Premises Act, 1971 was issued to the O.P. as well as any other person interested on the subject property, as to why an order of eviction should not be made against the O.P. The O.P. as well as any other person interested was also called upon to appear before this Forum in person or through their duly authorized representative capable to answer all material questions connected with the matter along with evidence which the O.P. or such other interested person intends to produce in support of their case. The Notice was served upon the address of O.P. by 'Speed Post' in KoPT's usual course of business as well as by Hand Delivery through Process Server of this Office. I may add here that KoPT did not file any application detailing the computation of damages/compensation etc. as directed by my Order dated 30.01.2019 and consequently Notice/s u/s 7 of the Act were not issued by this Forum.

It appears from the records that one Sri Ramchandra Rajak received the Notice, along with the KoPT's original application, sent through



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personal service upon the subject property on 11.02.2019. Further, as per the Report dated 11.02.2019 of the Process Server, the notice was also affixed upon the subject Premises on the same very date, for Notice to all concerned. It requires mention here that the Notice served through 'Speed Post' has not been returned back to this Forum raising a presumption that the Notice has duly been served upon the O.P.

On 15.02.2019, i.e. the day fixed under the Notice u/s 4 of the Act for appearance of O.P. for answering all material questions connected with the matter alongwith the evidence which they intend to produce in support of the Cause Shown, one Sri Brahmadeo Pathak representing himself as the son of the said Kali Prosad Pathak (proprietor of Burdwan Vegetable Store) appeared in person before this Forum and stated that Sri Kali Prosad Pathak is alive and resides in his native village. An adjournment was sought by said Sri Brahmadeo Pathak for submitting the Reply to Show Cause issued by this Forum. Apparently, this Sri Brahmadeo Pathak is the same Brahmadeo Pathak who received the Notice to Quit dated 31.01.2003 issued by the KoPT. Be that as it may, vide this Forum's Order dated 15.02.2019, Sri Brahmadeo Pathak was directed to produce some evidence showing that he is the representative/son of Sri Kali Prosad Pathak such as Voter Identity card or Aadhar Card etc. on the next date of hearing, i.e. on 22.02.2019 and to file Reply to the Show Cause Notice issued u/s 4 of the Act. On 22.02.2019 none appeared on behalf of O.P. despite knowledge that the date was fixed for filing Reply to the Show cause, production of documents/ evidence and personal hearing. No reply/ documents/ evidence have reached this Forum. Following the principles of Natural Justice, opportunity was given to the O.P. by fixing the next date on 08.03.2019 to appear, file reply to the Show cause, to produce documents/ evidence in support. The order dated 22.02.2019 fixing the next date of hearing on 08.03.2019 was served personally upon the property of O.P. through Process Server and Sri Ramchandra Rajak received the certified copy of the Order under acknowledgement, as before. On 08.03.2019 none appeared on behalf of the O.P., nor any reply / documents / evidence was filed before this Forum.

[Signature]

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Buddham Vegetable Stores ^{VS} Proprietor: Kali Prasad Pattnaik

08
19.04.2019.

Finally, as none appeared on behalf of O.P. or shown any interest in filing Reply to show cause or to answer or to produce evidence on the ground of Show Cause as to why an Order of eviction should not be made against the O.P. or filed any application seeking adjournments, Paper Publication was made by this Forum vide order no. 06 dated 08.03.2019 in the classified columns in local Hindi daily 'Sanmarg' (Kolkata edition) and English Newspaper 'Times of India' (Kolkata edition) on 21.03.2019 for wide publication to all concerned including the O.P., to appear on the hearing or to file Reply to Show cause on 29.03.2019 before this Forum failing which there would be no option but to adjudicate the matter 'ex-parte'. The O.P. or his representative in interest still remained absent following the newspaper publication nor any interested person turned up nor any application has been filed related to the proceeding. Consequently, being satisfied with service of notice upon all concerned as per the mandate of the Act, the Final Order was reserved by this Forum.

I have carefully gone through the submissions of KoPT. It is noted that KoPT vide their original application filed on 01.11.2004 and subsequently vide detailed statement of accounts has drawn my attention to the fact that huge amount is lying outstanding from the O.P. I have also gone through the numerous communications of the Port Authority addressed to the O.P., such as letters dated 28.03.1990, 21.03.1996 etc whereby the O.P. was repeatedly requested to liquidate the dues but apparently no heed was paid by the O.P. Even the Notice to Quit dated 31.01.2003 clearly mentions that the O.P. was in huge arrears of rent. As such, after perusal of all these evidence produced by KoPT, there is no doubt of confusion in my mind that the monthly lease of the O.P. was rightly determined by the Port Authority vide Notice to Quit dated 31.01.2003. I think that the breach of non-payment of rent by O.P. as claimed by the KoPT is very much established against the O.P. and consequently I have no hesitation to hold that the Notice to Quit dated 31.01.2003 had been validly issued and served on the O.P. and the same is binding on the parties.

In view of the circumstances, as there is no reply to the Show Cause Notice under Section 4 of the Act,



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OS
19.04.2019

either on behalf of O.P or on behalf of any other person/s interested in the property in question, inspite of sufficient chances, 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 or any person interested on the subject property has failed to appear before this Forum and has failed to file Reply to the Show Cause Notice under Sec. 4 of the Act inspite of sufficient chances.
- 2) That O.P has violated the condition of tenancy under monthly term lease as granted by the Port Authority by way of not making payment of rental dues to KoPT without any authority of law.
- 3) That O.P. has failed to make out any case in support of its occupation as "authorised occupation", inspite of sufficient chances.
- 4) That O.P. has failed to bear any witness or adduce any evidence in support of their occupation as "authorised occupation", inspite of sufficient chances.
- 5) That the notice to quit dated 31.01.2003 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.
- 6) 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



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Bwidwan Vegetable Stores ^{VS} Proprietor: Kali Prasad Pathak

DS
19.04.2019.

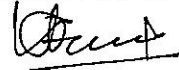
damages for unauthorized use and enjoyment of the property against O.P., in accordance with the Law upto the date of recovery of possession of the same. KoPT is directed to submit a comprehensive status report of the Public Premises in question on inspection of the property after expiry of the 15 days 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.

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, till the date of taking over of possession) for my consideration in order to assess the dues/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, the Port Authority is entitled to proceed further for execution of this Order in accordance with law.

All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL



(K.K. Manna)
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
Strand Warehouse
6, Fairlie Place, 1st Floor
KOLKATA – 700 001

Court Room At the 'Strand Warehouse', 6, Fairlie Place, 1st Floor, KOLKATA – 700 001 **REASONED ORDER NO. 08 Dated 19.04.2019**
PROCEEDINGS NO.1218 OF 2011

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-

M/s Burdwan Vegetable Stores [Proprietor: Kali Prosad Pathak] (as 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 Burdwan Vegetable Stores [Proprietor: Kali Prosad Pathak], of Shop No. 22, Taratala Staff Colony (West), Kolkata- 700088** is in unauthorized occupation of the Public Premises specified in the Schedule below:

R E A S O N S

- 1) That O.P or any person interested on the subject property has failed to appear before this Forum and has failed to file Reply to the Show Cause Notice under Sec. 4 of the Act inspite of sufficient chances.
- 2) That O.P has violated the condition of tenancy under monthly term lease as granted by the Port Authority by way of not making payment of rental dues to KoPT without any authority of law.
- 3) That O.P. has failed to make out any case in support of its occupation as “authorised occupation”, inspite of sufficient chances.
- 4) That O.P. has failed to bear any witness or adduce any evidence in support of their occupation as “authorised occupation”, inspite of sufficient chances.
- 5) That the notice to quit dated 31.01.2003 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.
- 6) 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

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A copy of the reasoned order No.08 dated 19.04.2019 is attached hereto which also forms a part of the reasons.

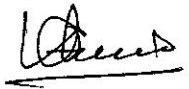
NOW, THEREFORE, in exercise of the powers conferred on me under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order the said **M/s Burdwan Vegetable Stores [Proprietor: Kali Prosad Pathak], of Shop No. 22, Taratala Staff Colony (West), Kolkata- 700088** 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 Burdwan Vegetable Stores [Proprietor: Kali Prosad Pathak], of Shop No. 22, Taratala Staff Colony (West), Kolkata- 700088** 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

Plate No: D-377/7/1

The piece and parcel of land measuring 33.445 sq. m or thereabouts situated at the western end of the Trustees' Taratala Staff Colony at Taratala Road, PS Taratala, District: 24 Paraganas (S), Registration District : Alipore. It is bounded on the North and West by the Trustees' open land, on the East by the Trustees' land leased to the lessee and on the South by the said Trustees' roadway Trustees' means the Board of Trustees for the Port of Kolkata.

Dated:19.04.2019



(K.K. Manna)
Signature & Seal of the
Estate Officer.

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