



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. 1542, 1542/R, 1542/D Of 2017 Order Sheet No. 78

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s T.D. Kumar & Bros. (P) Ltd. ^{VS}

ORDER

Today the file is taken up for passing the order in compliance with the Order passed by the Hon'ble High Court, Calcutta on 23.05.2019 in connection with GA No. 1161 of 2019, APOT No. 39 of 2019 with W.P. No. 171 of 2019.

At the outset certain facts are required to be placed in a nutshell, before this Forum proceeds to deal with the matter in hand. Initially, an Application was filed before this Forum under the relevant provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 by Kolkata Port Trust (hereinafter referred to as 'KoPT') against M/s. T.D. Kumar & Bros. Ltd.. (hereinafter referred to as the 'Opposite Party'/ 'O.P.') for eviction, recovery of dues etc. in respect of the public premises situated at Shalimar PTR Siding no. 16, Howrah, Thana-Shibpur Police Station, comprised under Plate No.HL-391/1. On the basis of the said application the instant Proceedings being No. 1542, 1542/R, 1542/D of 2017 was initiated by this Forum. After more than 40 nos. of hearings over a span of 2 years, the Final Order was delivered by this Forum vide Order No 42 dated 07.05.2019. In the meantime Shri Madhu Kant Surelia stated to be the Power of Attorney holder of O.P., preferred a Writ application registered before the Hon'ble Calcutta High Court as W.P. No. 171 of 2019. The said Writ Petition alongwith another Writ Petition involving an adjoining property have been disposed of by the

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Hon'ble High Court vide a common Judgment dated 05.04.2019. Being aggrieved by the said Order, the said Shri Madhu Kant Surelia preferred an Appeal before the Hon'ble Division Bench of Calcutta High Court vide APOT No. 39 of 2019 alongwith GA No. 1161 of 2019. Ultimately the Appeal has been disposed of by the Hon'ble Division Bench of the Hon'ble High Court vide order dated 23.05.2019 passing certain directions on this Forum, particularly to hear the matter afresh on the basis of a fresh joint inspection report and conclude the proceedings by 05.07.2019.

In compliance with the direction of the Hon'ble Court, the case was taken up by this Forum on 11.06.2019, fixing 18.06.2019 as the date of hearing. As per an application dated 04.06.2019 filed by KoPT, the fresh Joint Inspection of the subject occupation was carried out by the parties on 31.05.2019 (after the amount as per the direction of the Hon'ble High Court was paid to KoPT) and a Report of such fresh Joint Inspection has been filed before this Forum alongwith the said application dated 04.06.2019. Thereafter, the case was taken up for hearing on 18.06.2019 and 25.06.2019 when the parties contested the case and filed several applications. It is noted that applications/representations/objections (such as Representation filed on 10.06.2019, application filed on 18.06.2019, Written Notes filed on 28.06.2019) were filed by the Ld Advocate of Shri Madhu Kant Surelia stated to be the Power of Attorney holder of O.P. No one else from the O.P. Company appeared



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before this Forum. The KoPT on the other hand filed an application dated 24.06.2019 containing their comments against the said applications. During course of hearing, the Ld. Advocate for Shri Madhu Kant Surelia, stated to be the Power of Attorney holder of O.P. Company, has placed detailed arguments citing several Judgements of the Hon'ble Supreme Court and Hon'ble High Courts. Special reliance has been placed upon the Judgement in New India Assurance Co. Ltd Vs Nusli Neville Wadia & Anr. [reported in 2008(3) SCC page 279]. The arguments placed by the respective parties were recorded in detail in the Orders dated 18.06.2019 and 25.06.2019 of this Forum. No adjournment was granted to the parties as per the direction of the Hon'ble High Court. After hearing the parties on 25.06.2019, it appeared to this Forum that no further hearing is required and hence the matter was posted for delivering this final order.

Now while passing this Order, I have carefully considered the documents on record and the submissions of the parties in terms of the directives passed by the Hon'ble Division bench of the High Court, Calcutta. Before proceeding to deal with the issues/arguments advanced by the parties, I must reiterate the scope of present adjudication as per the direction of the Hon'ble Calcutta High Court vide Judgment dated 23.05.2019 in connection with GA No. 1161 of 2019, APOT No. 39 of 2019 with W.P. No. 171 of 2019. It is clear that the Hon'ble Division Bench was pleased to direct this Forum to "..... *hear the matter afresh on the basis of the said joint inspection report and, if necessary, shall permit oral*



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examination of the witnesses of either of the parties and shall conclude such proceedings by 5th July 2019. It is needless to mention that the respective rights and liabilities of the parties with regard to the Public Premises in question have already been adjudicated upon by this Forum's Final Order dated 07.05.2019 and it reveals from the said directions that the Hon'ble Division Bench of the High Court has restricted the ambit of the present re-adjudication to the aspects that may reveal in the fresh Joint Inspection only. It requires mention here that the occupation was inspected several times, during the continuance of the proceeding as well as in terms of the directive of the Hon'ble High Court. This Forum recollects that on the first occasion Shri Madhu Kant Surelia along with his representatives refused to sign the Joint Report of the inspection on the plea that the Report was prepared subsequently in the office of KoPT. Instead, Shri Surelia chose to file an Application taking exception before this Forum, which was not entertained and aggrieved with such interim decision, the Writ Application being W.P. No 171 of 2019 came to be preferred by said Shri Surelia with a ground that no Minutes of the joint inspection was prepared on the spot. The Hon'ble Single Judge of the Hon'ble High Court was pleased to dispose of the said Writ application vide a Judgment dated 05.04.2019 holding that "*...the Respondent no.2/Estate Officer did grant the petitioners an opportunity to controvert the joint minutes by way of filing oral evidence. As discussed earlier, the Exception Application at the stage when the enquiry proceedings have begun, without*



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participating in the initial proceedings as required by law is itself exceptionable. It is trite that natural justice is not a strait jacket formula." Challenging the said Judgement dated 05.04.2019, Shri Surelia preferred an Appeal and an Application [numbered as GA No. 1161 of 2019, APOT No. 39 of 2019 with W.P. No. 171 of 2019] before the Hon'ble Division Bench of the High Court, Calcutta and against such backdrop, the Hon'ble Division Bench has been pleased to pass the Order dated 23.05.2019 directing to conduct a fresh Joint Inspection of the occupation by the parties on the ground that such inspection may be much instrumental in deciding the matter before this Forum regarding unauthorized occupation of O.P. I find no direction in the Order dated 23.05.2019 of the Hon'ble Division Bench requiring this Forum to hear the matter *de-novo* as regards all issues involved in the proceedings. To recollect, a number of charges had been brought by KoPT against the O.P. such as non-payment of rental dues, induction of unauthorized persons/strangers and also the issue of unauthorized construction. Whereas, the Writ Petition being no. 171 of 2019 was filed by the said Shri Surelia (claiming as Power of Attorney holder of O.P. Company) solely confined to the issue of unauthorized construction as revealed through joint inspection etc. The other issues such as non-payment of rental dues, induction of unauthorized persons/strangers etc. were never agitated before the Hon'ble Division Bench. I may also mention that the Final Order being no. 42 dated 07.05.2019 of this Forum was not challenged in its entirety in the



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W.P. no. 171 of 2019 or the Appeal arising therefrom, and consequently it is very difficult to accept the submission by the Ld Advocate on behalf of Shri Surelia during the course of hearing held on 18.06.2019 and 25.06.2019 that the entire proceedings must be conducted *de-novo* and all issues must be re-opened for fresh adjudication. In my firm view, the Hon'ble Division Bench has directed this Forum to hear the matter afresh on the basis of the said joint inspection report (as conducted afresh) and clearly, there is no scope to rake up all other issues which have no bearing or connection whatsoever with the fresh joint inspection report. I also find no scope to rake up new issues which had never been raised on behalf of the O.P. Company during the continuance of the proceedings till the final order was delivered on 07.05.2019. With such understanding, I am proceeding to deal with each and every submission on behalf of Shri Surelia during the course of the re-hearing.

As per the report of fresh joint inspection conducted on 31.05.2019, 4 nos. of KoPT officials and 3 persons stated to be representing M/s. T.D. Kumar & Bros. Ltd. (O.P), out of which one is Shri Madhu Kant Surelia, were present in the joint inspection and signed the report. Briefly, the Report mentions about some unauthorised constructions and encroachment of KoPT's land which were found during inspection of the premises and that the premises is being used for storage of different types of goods. The unauthorised constructions have been more clearly depicted in the accompanying sketch



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map bearing no. 9861-2-H dated 31.05.2019 (duly signed by all concerned). Some objections (without signature) have been recorded in the said Report stating that all the structures are temporary removal structures for the storage of goods and that no encroachment has been made by the O.P. Few photographs of the premises, taken on 31.05.2019, are also enclosed with the said Report.

On 10.06.2019, an elaborate Representation/Objection came to be filed by said Shri Madhu Kant Surelia through his Ld Advocate. Although the said Representation/Objection was filed beyond the specific period granted by the Hon'ble Division Bench for this purpose, for the sake of natural justice I have taken the same on record as well as considered the same during the course of the re-hearing. This Representation/Objection is of utmost importance as it lays down the prime objections of said Shri Surelia, which, in my view, must be considered before coming to a conclusion. I have carefully considered each and every prayer made therein in the light of the decision of the Hon'ble Supreme Court in New India Assurance Co. Ltd Vs Nusli Neville Wadia & Anr. [reported in 2008(3) SCC page 279] as also the other relevant judgments. Primarily, prayer has been made in the said Representation/Objection by said Shri Surelia for providing him certain documents, which, according to him, are required by him for compliance of the directions of the Hon'ble Division Bench. The documents sought, and my observation against each such prayer, are as below:



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- i) Prayer to direct KoPT to provide the document of lease executed after commencement of the P.P. Act, 1971 – The original Offer letter being No. 3348/2 dated 20.06.1935 and the letter of acceptance of O.P. dated 21.06.1935 along with the possession certificate dated 01.07.1935 was produced by KoPT during the hearing held on 20.07.2018. Such being the case, when documents forming the contract are already on record, question of directing KoPT to produce any further lease deed does not arise. An argument has been advanced by Shri Surelia that the P.P. Act, 1971 has no applicability upon the premises which were let out prior to 16.09.1958. As I have already observed above, this re-hearing must be confined to the issues of unauthorised construction as revealed through joint inspection as per direction of the Hon'ble Division Bench and moreover, this issue of applicability of the P.P. Act, 1971 is being raised by Shri Surelia for the first time. As such, I am not at all inclined to allow his submissions on this count.
- ii) Prayer to direct KoPT to provide documents pertaining to 51% of paid up share capital held by Central Government of India in M/s. T.D. Kumar & Bros. Ltd.. – I find no substance in such prayer of Shri Surelia. There is no doubt or confusion that the Kolkata Port Trust (KoPT) is a statutory body under the Major Port Trusts Act, 1963.



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number of observations of this Forum are recorded in the said order dated 07.05.2019 whereby this Forum came to such conclusion. Such observations were not under challenge in the GA No. 1161 of 2019, APOT No. 39 of 2019 with W.P. No. 171 of 2019 and the Hon'ble Division Bench also did not direct this Forum to re-hear the issue of unauthorised parting with possession in favour of outsiders. As such, the earlier observations of this Forum vide Order dated 07.05.2019 stands as on date, unless it is set aside by any Court of Law.

- vii) Prayer to direct KoPT to provide the date and source of information to the Estate Officer pertaining to unauthorised occupation - This is continuation of the prayer at (vi) above, and hence my observations are the same.
- viii) Prayer to direct KoPT to provide the map or plan of "authorised construction" so as to determine unauthorised construction - It was re-submitted by KoPT during the course of hearing that only a "a plot of land" with no structure standing thereon had been handed over to the O.P. Company as lessee. In support of their contention, KoPT has relied on a Certificate of Possession dated 01.07.1935 (already on record) whereby the possession was handed over to O.P. Company by the Port Authority. It is also the specific submission of KoPT that no permission or sanction for any



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(presently) and the premises owned by it is covered as "public premises" u/s 2 (e) of the P.P. Act, 1971. The issue of "shareholding" of the Central Government is absolutely irrelevant and hence I have no option but to discard the prayer.

- iii) Prayer to direct KoPT to provide the details along with specific dates of default in payment of monthly rent – Again, Shri Surelia has raised an issue over which the Hon'ble Division Bench has not directed for a re-hearing. Hence, I cannot consider the prayer.
- iv) Prayer to direct KoPT to provide "Monthly Rent Payment Statement of O.P." – My observations are the same as recorded in (iii) above. I may add that such statements had been exchanged between the parties before the final order was delivered on 07.05.2019.
- v) Prayer to direct KoPT to provide the details of rent increased by KoPT - My observations are the same as recorded in (iii) above.
- vi) Prayer to direct KoPT to provide the name of so called "Rank Outsiders" – At the cost of re-iteration, I must say that again and again Shri Surelia has attempted to re-open all the issues involved in the proceeding. It was categorically decided by this Forum on 07.05.2019 that Shri Madhu Kant Surelia is a rank outsider/stranger on the public premises, having no present connection whatsoever with the O.P. Company. A



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construction whatsoever was obtained by the O.P. Company from KoPT at any point of time, and consequently no map or plan of any "authorised construction" could be possible. In my humble view, against such submission of the KoPT, nothing debars the O.P. Company/Shri Madhu Kant Surelia to come up with the sanctioned plans of construction if such sanctioned plans exist. But very surprisingly the O.P. Company/Shri Madhu Kant Surelia chooses not to produce anything but simply prays that KoPT should produce such map or plan. I am in complete disagreement with the prayer of Shri Surelia. Where any construction has been approved by the Port Authority and/or the Municipal Authorities, and the beneficiary of such construction intends to protect its occupation relying upon such sanction/approval, it is the duty of such beneficiary to produce the sanction/approval before the Forum of Law to prove its innocence. In my view, such a burden cannot be shifted to the complainant i.e. KoPT in the instant case. I take note of the fact that during hearing held on 18.06.2019 and 25.06.2019, Shri Surelia could not produce a single scrap of paper containing the sanction/approval of the Port Authority or the Municipal Authority as regards the construction standing on the land. I will discuss about the nature of the construction later.



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- ix) Prayer to direct KoPT to provide the date of specific lease deed – The original Offer letter being No. 3348/2 dated 20.06.1935 and the letter of acceptance of O.P. dated 21.06.1935 along with the possession certificate dated 01.07.1935 was produced by KoPT during the hearing held on 20.07.2018, copy of which were available with the Ld Advocate of Shri Surelia.
- x) Prayer to direct KoPT to provide the specific date of service of Notice to Quit/name of the receiver of the Notice to Quit/copy of proof of service of such Notice to Quit – All such prayers are completely irrelevant to decide the issue of unauthorised construction as per the direction of the Hon'ble Division Bench.
- xi) Prayer to direct KoPT to provide the specific date etc. of default of rent – My observations are same as at (x) above.
- xii) Prayer to direct KoPT to provide the details of damage upto 05.08.2014 on yearly basis etc – My observations are same as at (x) above.
- xiii) Prayer to direct KoPT to provide the proof alongwith name of unauthorised occupant at the premises – Again, I have to re-iterate that this has nothing to do with unauthorised construction in the premises.
- xiv) Prayer to direct KoPT to provide the specific Date of such unauthorised construction – It is commonly known that all unauthorised activities are carried out clandestinely and



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without any declaration/outcry. In the facts and circumstances of the case, an unauthorised construction is standing on the land in question (against which Shri Surelia could not produce any sanction or approval) and to expect the KoPT to know the exact date of such construction is not only unjust but also outrightly ludicrous. I take note of the fact that when such specific date was asked from Shri Surelia/his Ld Advocate during the hearing held on 18.06.2019, no answer could be produced by them.

A careful perusal of the above clearly portrays that there is not a single significant document which is required to be handed over to Shri Surelia or the O.P. Company to enable them to lead evidence in terms of the directions of the Hon'ble Division Bench. During course of hearing held on 18.06.2019 and 25.06.2019 not a single evidence was produced by or on behalf of Shri Surelia, be it documentary, oral or otherwise, as regards the issue of unauthorised construction. During the hearing, much emphasis was laid on behalf of Shri Surelia on the judgment of Hon'ble Supreme Court in the Nusli Neville Wadia case but strangely, no attempt whatsoever was made to lead any evidence of any nature. I am not satisfied with mere filing of applications by Shri Surelia when he is not ready to produce any evidence on the issue of unauthorised construction. It is true that the Hon'ble Division Bench had directed this Forum to permit oral examination of the witnesses of either of the parties,



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if necessary, but when there is no effort to lead any evidence (oral/documentary) on behalf of Shri Surelia there is little scope to go ahead with any sort of oral examination. Instead of leading evidence on the issue of unauthorised construction (as was the direction of the Hon'ble Division Bench of the Calcutta High Court) Shri Surelia instead chose to rake up different and distinct issues such as applicability and jurisdictional validity of the P.P. Act of 1971, applicability of the Limitation Act, 1963, claim of arbitrary enhancement of rent etc even though there is no real "evidence" that he wants to produce or lead before this Forum on the issue of unauthorised construction. In my humble view, such raising of the way new/fresh issues (which have no bearing or connection whatsoever with the unauthorised constructions) by and on behalf of Shri Surelia are not in consonance with the direction of the Hon'ble Division Bench of the Calcutta High Court. In due compliance to the direction of the Hon'ble Division Bench, this Forum has tried to explore all facets of natural justice and never denied any opportunity to Shri Surelia during the course of the re-hearing. Shri Surelia and/or his Ld Advocate has been heard at length on 18.06.2019 and 25.06.2019 and were allowed to file applications as and when they desired. An opportunity to file written notes was also granted after conclusion of the hearing on 25.06.2019 as an opportunity to Shri Surelia to come back with any further evidence if it so chooses. The opportunity was taken and written notes came to be filed by the Ld Advocate of Shri Surelia on 28.06.2019 but again bereft of any



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evidence whatsoever. Again, for the sake of natural justice I am not inclined to consider the allegation of KoPT as regards "encroachment" as mentioned in the fresh Joint Inspection report dated 31.05.2019 inasmuch as such an allegation had never been brought by KoPT earlier. Be that as it may, this Forum is bound to conclude the re-hearing in the manner as directed by the Hon'ble Division Bench, and within the available time-frame, a lot of opportunities has been granted to Shri Surelia to disprove the contention of KoPT as regards unauthorised construction but I must say that Shri Surelia has failed to disprove such allegations. As I have mentioned above, Shri Surelia could not produce any sanctioned plan of the construction and could not mention anything about the period of construction. Coming to the nature of construction, a feeble attempt has been made by Shri Surelia to portray the construction as a "temporary removal structure" whereas the ground realities are entirely different. It reveals from the fresh joint inspection dated 31.05.2019, read with attached sketch map bearing no. 9861-2-H dated 31.05.2019, that the constructions are of the nature of R.C.C. structures measuring 502.48 sqm and C.I.R structures measuring 251.24 sqm and C.I.R godown measuring 293.19 sqm. It has been explained by KoPT in its comments dated 24.06.2019 that such huge R.C.C. (Reinforcement cement concrete) and C.I.R. (corrugated iron shaded room) structures are ipso-facto evidentiary of permanent nature of construction. In my view, the nature of the constructions suggest that they are intended to be



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used for a prolonged period of time and the suggestion of Shri Surelia that they are "temporary removal structures" is far from the truth. The very photographs of the exterior/interior of the structure as taken on 31.05.2019 (and submitted vide KoPT's application dated 04.06.2018) reveal that it is a construction intended for long-term beneficial use and I have no hesitation that it is neither a temporary nor a removable structure in any sense. A temporary structure for storage of goods implies a basic shed with bamboo or other similar material which is the subject matter of natural decay. The way, cement and concrete has been used to build a huge structure implies that it is not intended for mere temporary use but is intended for long term commercial use. In view of all these, I am not at all agreeable to the suggestion of Shri Surelia and consequently, I hereby re-affirm my earlier view that the O.P. Company is definitely guilty of having carried out unauthorised constructions without any approval of the Port Authority or the Municipal Authority which is a clear violation of the terms and conditions of the offer and acceptance of the lease in question, viz. Clause (4) of the offer letter which casts a duty upon the O.P. Company to submit plans in triplicate together with site plans of any structure that O.P. Company proposes to erect on the demised land. Particularly, it was mentioned that O.P. Company will not be allowed to commence construction until the plans are sanctioned. The matter therefore, as it emerges, is that the allegation of unauthorised construction again stands proved against the O.P. Company after the re-

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hearing as per direction of the Hon'ble Division Bench. Now, as I have mentioned in the preceding paragraphs, there are other breaches which were also decided against the O.P. Company vide the final order dated 07.05.2019 of this Forum and such observations are still valid, as on date. Most significantly, it had been decided in the order dated 07.05.2019 that O.P. Company has abandoned the public premises in favour of a rank outsider, namely, Madhu Kant Surelia alias Madhu Surelia alias Madhu Kant Sharma, which observation again holds good as on date. Consequent thereto, there is no alternative before this Forum but to re-affirm the order of eviction passed against the O.P. Company and all other occupants of the public premises including Shri Madhu Kant Surelia.

ACCORDINGLY, in terms of Sec. 5(1) of the P.P. Act, 1971, I hereby grant 15 days time to O.P. Company 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, including Madhu Kant Surelia alias Madhu Surelia alias Madhu Kant Sharma, are liable to be evicted by this order read with the order dated 07.05.2019 and the "Form-B" issued thereunder and the Port Authority is entitled to claim damages for unauthorized use and occupation of the property against O.P. Company in accordance with Law up to the date of recovery of possession of the same.

KoPT shall have the liberty to submit a statement comprising details of its calculation of damages after the period already assessed vide order dated 07.05.2019, indicating there-in, the details of the



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rate of such charges, and the period of the damages (i.e. till the date of taking over of possession) together with the basis on which such charges are claimed against O.P., for appropriate consideration of this Forum for the purpose of assessment of such damages as per Rule made under the Act.

This order is passed on 05.07.2019 in due obedience to the Order dated 23.05.2019 passed by the Hon'ble Division Bench of the Hon'ble High Court, Calcutta in GA No. 1161 of 2019, APOT No. 39 of 2019 with W.P. No. 171 of 2019. Needless to mention, therefore, this order shall abide by the further directions, if any, of the Hon'ble High Court, Calcutta or any other competent Court of Law.

GIVEN UNDER MY HAND AND SEAL


(SATYABRATA SINHA)
ESTATE OFFICER

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