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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
6, Fairley Place (1st Floor)
KOLKATA - 700 001

Court Room At the 1st Floor
of Kolkata Port Trust's
Fairlie Warehouse
6, Fairley Place, Kolkata- 700 001.

REASONED ORDER NO. 12 DT 16.09.2019
PROCEEDINGS NO. 1661,1661/D OF 2018

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-

M/s. K.M. Sadhukhan & Sons(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. K.M. Sadhukhan & Sons 67/42, Strand Road, Kulpighat,
Kolkata - 700 006 And ALSO OF P-75, Strand Bank Road,
Kolkata is in unauthorized occupation of the Public Premises specified in the
Schedule below:

REASONS

1. That O.P. has failed to file reply to the Show Cause Notice/s inspite of sufficient chances and as such, there is nothing to disbelieve KoPT's contention regarding service of Quit notice to O.P., demanding possession dated 17.04.1970.
2. That O.P. has violated the condition of tenancy by way making unauthorized construction.
3. That O.P. has parted with possession of the Public Premises in question without having any authority under law .
4. That O.P. has failed to bear any witness or adduce any evidence in support of their occupation as "Authorized Occupation" despite sufficient chances.
5. That the Quit notice dated 17.04.1970 as served upon O.P. by the Port authority is valid, lawful and binding upon the parties and O.P's occupation into the Public Premises has become unauthorised in view of Sec.2(g) of the P.P. Act.
6. That O.P. is liable to pay damages for wrongful enjoyment of the Port Property in question upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

Handwritten signature and date: 13/9/19

Please see on Reverse

A copy of the reasoned order No. 12 dated 16.09.2019 is attached hereto which also forms a part of the reasons.

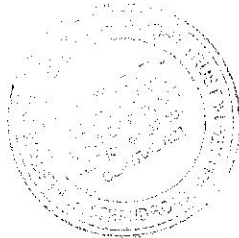
NOW, THEREFORE, in exercise of the powers conferred on me under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order the said **M/s. K.M. Sadhukhan & Sons 67/42, Strand Road, Kulpighat, Kolkata - 700 006 And ALSO OF P-75, Strand Bank Road, Kolkata** 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. K.M. Sadhukhan & Sons 67/42, Strand Road, Kulpighat, Kolkata - 700 006 And ALSO OF P-75, Strand Bank Road, Kolkata** 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 305.836 sq.m or thereabouts is situated on the South side of Cross Road No. 10 leading from Strand Road at Kulpighat within the presidency town of Kolkata. The said plot is bounded on the North by the Trustees' Cross Road, No. 10, On the East by Strand Road, On the South by the Trustees' Cross Road No. 9 and On the West by the Trustees' lease out land.

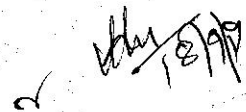
Trustees' means the Board to Trustees' of the Port of Kolkata.

Date- 18.9.19




Signature & Seal of the
Estate Officer.

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


18/9/19

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
6, Fairlie Place (1st Floor)
KOLKATA - 700 001

Court Room At the 1st Floor
of Kolkata Port Trust's
Fairlie Warehouse
6, Fairlie Place, Kolkata- 700 001.

PROCEEDINGS NO.1661,1661/D OF 2018
ORDER NO.12 DATED: 16.09.2019

Form- G

Form of order under Sub-section (2) and (2A) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act.1971

To
M/s. K.M. Sadhukhan & Sons
67/42, Strand Road, Kulpighat,
Kolkata - 700 006. And ALSO OF
P-75, Strand Bank Road,
Kolkata.

Whereas I, the undersigned, am satisfied that you are/were in unauthorised occupation of the public premises mentioned in the Schedule below:

And whereas by written notice dated 08.03.2019 you are/were called upon to show cause on/or before 25.03.2019 why an order requiring you to pay damages of Rs 52,50,537.89 (Rupees fifty two lakhs fifty thousand five hundred thirty seven and paise eighty nine only) for Plate No.SB-38 for unauthorised use and occupation of the said premises, should not be made.

And whereas you have not made any objections or produced any evidence before the said date.

Now, therefore, in exercise of the powers conferred on me by Sub-section (2) of Section 7 of the Public Premises(Eviction of Unauthorised Occupants) Act 1971, I hereby order you to pay the sum of Rs 52,50,537.89 (Rupees fifty two lakhs fifty thousand five hundred thirty seven and paise eighty nine only) for Plate No.SB-38 as damages on account of your unauthorised occupation of the premises for the period 01.07.1976 to 30.04.2016 to Kolkata Port Trust by 01.10.2019.

In exercise of the powers conferred by Sub-section (2A) of Section 7 of the said Act, I also hereby require you to pay simple interest @ 15% per annum upto 18.09.1996 and thereafter @ 18% per annum till 06.04.2011 and thereafter @14.25% per annum on the above sum from the date of incurrance of liability till its final payment in accordance with the relevant notification/s published in Official Gazette.

PLEASE SEE ON REVERSE

In the event of your refusal or failure to pay the damages within the said period or in the manner aforesaid, the amount will be recovered as an arrear of land revenue.

SCHEDULE

The said piece or parcel of land msg. about 305.836 sq.m. or thereabouts is situated on the South side of Cross Road No. 10 leading from Strand Road at Kulpighat within the presidency town of Kolkata. The said plot is bounded on the North by the Trustees' Cross Road, No. 10, On the East by Strand Road, On the South by the Trustees' Cross Road No. 9 and On the West by the Trustees' lease out land.

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

Date 18.9.19'



Mungar
Signature & Seal of the
Estate Officer.

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

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18/9/19



Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises
(Eviction of Unauthorized Occupants) Act 1971

Proceedings No. 1661, 1661/D Of 2018 Order Sheet No. 11

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
M/S K.M Sadhukhan & Sons

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16.09.2019

FINAL ORDER

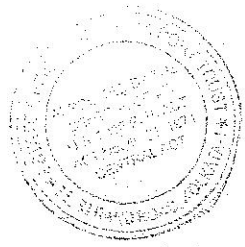
The instant proceedings No. 1661, 1661/D of 2018 arises out of the application bearing No. Lnd.3520/III/16/854 dated 01.06.2016 filed by the Kolkata Port Trust (KoPT), the applicant herein, praying for an order of eviction and recovery of dues, compensation/damages and other charges etc. along with accrued interest in respect of the public premises as defined under Schedule- 'A' of said application, against K.M Sadhukhan, the O.P herein, under relevant provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

The fact of the case in a nutshell is that the O.P. came into occupation of the port property measuring 305.836 sq.mtrs. or thereabout at Kulpighat (under Plate No.SB-38) in the Presidency Town of Kolkata as a monthly Lessee, morefully described in the Schedule 'A' of the KoPT's application dated 01.06.2016. The allegations levelled by KoPT against the O.P is that while in possession of Port property as Lessee, the O.P has defaulted in payment of Compensation/damages also accrued interest thereon the details of which has given in 'Schedule-B' of the KoPT's application dated 01.06.2016.

It is also the case of KoPT that O.P. made huge unauthorised construction in the subject premises and parted with the possession of the premises to the rank outsiders in clear violations of the terms and conditions of the lease in question and without taking

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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. 1661, 1661/D Of 2018 Order Sheet No. 12

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
M/S K.M. Sadhukhan & Sons

12
16.09.2019

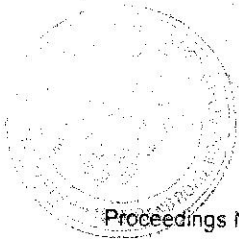
the prior approval of KoPT. It is also the case of KoPT that O.P. failed and neglected to remove the unauthorised parting with possession and the unauthorised construction upon the subject premises even after issuance of KoPT's letter dated 10.02.2012 upon them. It is further the case of KoPT that the tenancy with the O.P. was determined w.e.f. 01.07.1970 and the O.P. failed and neglected to vacate/ hand over the possession of the premises after service of the said Notice to Quit.

Considering the submission advanced by KoPT and the documents on record, Notice/s to Show Cause under section 4 and 7 of the Public Premises (Eviction of Unauthorized Occupation) Act, 1971 all dated 08.03.2019 were issued by this forum to O.P. The Notice/s were issued in terms of the said provisions of the Act calling upon the O.P. to appear before this forum in person or through authorized representative capable to answer all material questions in connection with the matter along with the evidence which the opposite party intends to produce in support of their ~~support case~~ ^{case}.

The said notices was served through Speed Post to the correct recorded addresses of O.P. one at 67/42 Strand Road, Kulpighat, Kolkata - 700 006 and also P-75, Strand ^{Bank} Road, Kolkata. It appears from records that the Notice/s sent to the address of O.P. at P-75, Strand ^{Bank} Road, Kolkata was returned back by the postal department due to possible insufficiency of the

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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. 1661, 16611D Of 2018 Order Sheet No. 13

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
M/S K.M. Sadhukhan & Sons

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16.09.2019

address. However the notice/s sent to the other address of O.P. at 67/42 Strand Road, Kulpighat, Kolkata - 700 006 did not return back to the office of the undersigned. The Notice/s have also been sent to the occupation of O.P. by hand delivery. It appears that one Sri Biswajit Banerjee expressing himself as the 'sitting occupant' received the notice on behalf of the O.P. on 19.03.2019. It further appears from the report of the Process Server dated 19.03.2019 that copy of the Notice/s have also been affixed on the property under schedule on 19.03.2019 at about 5 p.m. in compliance of the provisions of the Act. On the day fixed for appearance and filing of reply to the Show Cause by the O.P., none appeared on behalf of O.P. before this forum. Thereafter the attempts have been made by this Forum to provide chances to the O.P. for his appearance and filing of reply before this Forum following the principles of natural justice. The matter was adjourned by this Forum on 08.04.2019 and thereafter on 22.04.2019 to provide chances to the O.P. for appearance and filing of reply. The Order of this Forum fixing the next date of hearing was sent to the address of O.P. through Speed Post in order to provide chances to the O.P. for effective representation before this Forum.

As none appeared on behalf of O.P in spite of repeated chances and after effective service, affixation of the Notice/s on subject premises, the matter was finally reserved for passing Order on 13.05.2019.

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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. 1661, 1661/D Of 20/8 Order Sheet No. 14

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

MIS K.M. ^{VS} *Sadhuscham & Sons*

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16.09.2019

Now, while passing the Final Order, I have carefully considered the documents on record and the submissions of KoPT. It is a settled question of law that a lessee like O.P. cannot claim any legal right to hold the property after expiry of the period as mentioned in the notice of ejection, unless O.P. is succeeded in making a case of "Tenant Holding Over". None appears on behalf of O.P., no attempts has ever been made by the O.P. to satisfy this Forum of Law about any consent on the part of KoPT in occupying the public premises, unconditionally in order to fulfill the essential ingredient of holding over. Rather it is a case of KoPT that by notice dated 17.04.1970, "O.P." was directed to hand over possession of the premises to KoPT. A letter /notice issued in official course of business has definitely got an evidentiary value unless there is material, sufficient to contradict the case of KoPT on the basis of such letter. Further I am consciously of the view that KoPT never recognized O.P. as a lawful user/tenant in respect of the property in question after expiry of the lease in question. As per Section 2 (g) of the P. P. Act the "unauthorized 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.

[Signature]



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. 1661, 1661/D Of 2018 Order Sheet No. 15

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

M/s. K.M. Sadhukhan & Sons

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As per Transfer of Property Act, a lease of immovable property determines either by efflux of time limited thereby or by implied surrender or on expiration of notice to determine the lease or to quit or of intention to quit, the property leased, duly given by one party to another. It is a settled question of law that O.P. cannot claim any legal right to hold the property after expiry of the lease in question, without any valid grant or allotment from KoPT's side.

Further, as there is no reply to the Show Cause notice issued u/s 4 and u/s 7 of the Act inspite of sufficient chances provided to the O.P., I am left with no other alternative but to issue order of eviction u/s 5 of the Act against O.P. on the following grounds/reasons :-

1. That O.P. has failed to file reply to the Show Cause Notice/s inspite of sufficient chances and as such, there is nothing to disbelieve KoPT's contention regarding service of Quit notice to O.P., demanding possession dated 17.04.1970.
2. That O.P. has violated the condition of tenancy by way making unauthorized construction.
3. That O.P. has parted with possession of the Public Premises in question without having any authority under law.

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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.

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Of

2018

Order Sheet No.

16

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. K.M. ^{VS} Sadhukhan & Sons.

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4. That O.P. has failed to bear any witness or adduce any evidence in support of their occupation as "Authorized Occupation" despite sufficient chances.

5. That the Quit notice dated 17.04.1970 as served upon O.P. by the Port authority is valid, lawful and binding upon the parties and O.P's occupation into the Public Premises has become unauthorised in view of Sec.2(g) of the P.P. Act.

6. That O.P. is liable to pay damages for wrongful enjoyment of the Port Property in question upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

ACCORDINGLY, Department is directed to draw up formal order of eviction u/s.5 of the Act as per Rule made there under, giving 15 days time to O.Ps' 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.Ps' in accordance with Law up to the date of recovery of possession of the same.

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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. 1661, 1661/D Of 2018 Order Sheet No. 17

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

^{VS}
M/s. K. M. Sadhukhan & Sons.

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16.9.19

It is my considered view that a sum of Rs.52,50,537.89 for the period 01.07.1970 to 30.04.2016 is due and recoverable from O.P. by the Port authority on account of compensation / Damages dues and O.P. must have to pay such dues to KoPT on or before 01.10.2019. O.P. shall be liable to pay simple interest @ 15% per annum upto 18.09.1996 and thereafter @ 18% per annum till 06.04.2011 and thereafter @14.25% per annum on the above sum from the date of incurrance of liability till its final payment in accordance with the relevant notification/s published in Official Gazette. Department is directed to draw up formal order u/s 7 of the Act.

I make it clear that KoPT is entitled to claim further damages against O.P. for unauthorized use and occupation of the public premises right upto the date of recovery of clear, vacant and unencumbered possession of the same in accordance with Law, and as such I am not in a position to assess the damages which is payable by the O.P. in total at this stage when possession of the premises is still with the O.P. KoPT is directed to submit a statement comprising details of its calculation of damages indicating therein, the details of the 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 my consideration for the purpose of assessment of damages as per Rule made under the Act.

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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. 1661, 1661/D Of 2018 Order Sheet No. 18

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. K.M. Sadhukhan & Sons. ^{VS}

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16.9.19

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



(M.K. Das)

ESTATE OFFICER

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

THE
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OFFICE
18/9