

5/2

**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
1st Floor, 6, Fairlie Place Warehouse,
Kolkata-700001

Court Room At the 1st Floor
6, Fairlie Place Warehouse
Kolkata- 700 001.

REASONED ORDER NO. 16 DT 19.09.2019
PROCEEDINGS NO.1447 OF 2014

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-
M/s. Khandelwal Brothers Ltd.

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. Khandelwal Brothers Ltd., OF 24, Netaji Subhas Road, Kolkata-700001 AND Also at PTR Siding No. 3, Shalimar, Howrah-711102** is in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

1. That O.P. failed to submit its reply to the Show Cause Notice/s u/s.4 and 7 of the Act in spite of repeated chances.
2. That O.P. failed to bear any witness or adduce any evidence in support of its occupation into the public premises in spite of repeated chances.
3. That in gross violation of the condition of tenancy as granted by the Port Authority, O.P. failed and neglected to pay the rental dues to KoPT.
4. That O.P. has violated the condition of tenancy under lease as granted by the Port authority by way of unauthorised parting with possession to rank outsiders and erection of unauthorised construction at the subject Public Premises.
5. That O.P. parted with possession of the public premises unauthorisedly without having any authority under law.
6. That O.P. has erected unauthorised construction/structure msg. more or less about ASBR- 8.361 sq. mt. and RTR-42.921 sq. mt. as is evident from the Plan bearing Sketch No. 8626-H

Q

7. That the Notice to quit dated 14.08.2013, demanding possession from O.P. as issued by the Port Authority is valid, lawful and binding upon the parties.
8. That O.P's occupation has become unauthorised in view of Sec.2(g) of the P.P. Act and O.P. is liable to pay damages for wrongful use and enjoyment of the Port Property in question upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.
9. That O.P's occupation into the public premises is wrongful on and from 02.09.2013 and O.P. is liable to pay damages/compensation for such unauthorized use and occupation of the public premises upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

A copy of the reasoned order No. 16 dated 19.09.2019 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. Khandelwal Brothers Ltd., OF 24, Netaji Subhas Road, Kolkata-700001 AND Also at PTR Siding No. 3, Shalimar, Howrah-711102** 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. Khandelwal Brothers Ltd., OF 24, Netaji Subhas Road, Kolkata-700001 AND Also at PTR Siding No. 3, Shalimar, Howrah-711102** 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

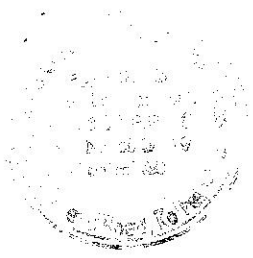
The said piece or parcel of land Msg. about 232.72 sqm or thereabouts situate at P.T.R. Siding No. 3, Shalimar, Howrah, P.S. Shibpur, District and Registration District- Howrah under Plate No. HL-482. It is bounded on the North by the Trustees' passage, on the East by the Trustees Land occupied by Sri Satya Narayan Mishra, On the South by the strip of open land used as Railway Margin of Safety alongside Railway Track and on the West by the Trustees' strip of open land.

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

Dated: 19.09.2019


Signature & Seal of the
Estate Officer.

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



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THE ESTATE OFFICER, KOLKATA PORT TRUST
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1st Floor, 6, Fairlie Place Warehouse,
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Court Room At the 1st Floor
6, Fairlie Place Warehouse
Kolkata-700001.

Form "E"

PROCEEDINGS NO.1447/R OF 2014
ORDER NO. 16 DATED: 19.09.2019

Form of order under Sub-section (1) and (2A) of Section 7 of the Public
Premises (Eviction of Unauthorised Occupants) Act, 1971

To
M/s. Khandelwal Brothers Ltd.,
24, Netaji Subhas Road,
Kolkata-700001
AND Also at
PTR Siding No. 3,
Shalimar, Howrah-711102.

WHEREAS you are in occupation of the public premises described in the
Schedule below. (Please see on reverse).

AND WHEREAS, by written notice dated 13.09.2017 you were called upon
to show cause on/or before 09.10.2017 why an order requiring you to pay a
sum of Rs. 2,25,682.00/- (Rupees Two Lakhs Twenty Five Thousand Six
Hundred Eighty Two Only.) for Plate No. HL-482 being the rent payable
together with compound interest in respect of the said premises should not be
made;

And whereas you have failed to represent the instant proceedings inspite
of repeated chances being given to you and no evidence have been produced by
you in support of your case.

NOW, THEREFORE, in exercise of the powers conferred by sub-section (1)
of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act
1971, I hereby require you to pay the sum of Rs. 2,25,682.00/- (Rupees Two
Lakhs Twenty Five Thousand Six Hundred Eighty Two Only.) for the period
01.09.2004 to 01.09.2013 (both days inclusive) to Kolkata Port Trust by
01.10.2019

PLEASE SEE ON REVERSE

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 @ 7 % per annum, which is the current rate of interest as per the Interest Act, 1978 (as gathered by me from the official website of the State Bank of India) payable from the date of incurrance of liability, on the above sum till its final payment being the current rate of interest as per the Interest Act, 1978.


In case the said sum is not paid within the said period or in the said manner, it will be recovered as arrears of land revenue through the Collector.

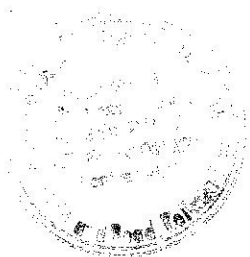
SCHEDULE

The said piece or parcel of land Msg. about 232.72 sqm or thereabouts situate at P.T.R. Siding No. 3, Shalimar, Howrah, P.S. Shibpur, District and Registration District- Howrah. It is bounded on the North by the Trustees' passage, on the East by the Trustees Land occupied by Sri Satya Narayan Mishra, On the South by the strip of open land used as Railway Margin of Safety alongside Railway Track and on the West by the Trustees' strip of open land.

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

Dated: 19.09.2019


Signature and seal of the
Estate Officer



REGISTERED POST WITH A/D.
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THE ESTATE OFFICER, KOLKATA PORT TRUST
(Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-Central Act)
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1st Floor, 6, Fairlie Place Warehouse,
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Form G

Court Room At the 1st Floor
6, Fairlie Place Warehouse
Kolkata- 700 001.

PROCEEDINGS NO.1447/D OF 2014
ORDER NO. 16 DATED: 19.09.2019

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-
M/s. Khandelwal Brothers Ltd.

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. Khandelwal Brothers Ltd.,
24, Netaji Subhas Road,
Kolkata-700001
AND Also at
PTR Siding No. 3,
Shalimar, Howrah-711102.

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

And whereas by written notice dated 13.09.2017 you were called upon to
show cause on/or before 09.10.2017 why an order requiring you to pay
damages of sum of Rs. 2,67,680/- (Rupees Two Lakhs Sixty Seven Thousand
Six Hundred and Eighty only.) for Plate No. HL-482 together with compound
interest for unauthorised use and occupation of the said premises, should not
be made.

And whereas you have failed to represent the instant proceedings inspite of
repeated chances being given to you.

PLEASE SEE ON REVERSE

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 2,67,680/-/- (Rupees Two Lakhs Sixty Seven Thousand Six Hundred and Eighty only.) for Plate No. HL-482 for the period 02.09.2013 to 12.07.2017 assessed by me as damages on account of your unauthorised occupation of the premises 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 @ 7% per annum on the above sum till its final payment being the current rate of interest as per the Interest Act, 1978.


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 232.72 sqm or thereabouts situate at P.T.R. Siding No. 3, Shalimar, Howrah, P.S. Shibpur, District and Registration District- Howrah. It is bounded on the North by the Trustees' passage, on the East by the Trustees Land occupied by Sri Satya Narayan Mishra, On the South by the strip of open land used as Railway Margin of Safety alongside Railway Track and on the West by the Trustees' strip of open land.

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

Dated: 19.09.2019


Signature and seal of the
Estate Officer



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. 1447, 1447/R, 1447/D Of 2014 Order Sheet No. -17-

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s Khandelwal Brothers Ltd. ^{VS}

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19.09.2019

FINAL ORDER

The matter is taken-up today for Final Disposal. It is the case of Kolkata Port Trust (KoPT) that M/s. Khandelwal Brothers Ltd. (O.P herein) came into occupation of the Port Property in question being land Msg. 232.72 Sq.m., situated at P.T.R. Siding No. 3, Shalimar Howrah under Plate No. HL-482 as monthly lessee and thereafter violated the condition of the lease in question by way of not paying rental dues to KoPT. It is also the case of KoPT that O.P. has unauthorisedly parted with possession to rank outsiders and also erected unauthorised construction upon the Trustees' land and therefore, O.P. is liable to pay damages for wrongful use and occupation of the Public Premises after expiry of the period as mentioned in the notice to quit dated 14.08.2013 w.e.f 02.09.2013. It is argued that O.P. has lost its authority to occupy the Public Premises on and from 02.09.2013. This Forum of Law formed its opinion to proceed against O.P. and issued Show Cause Notice u/s 4 of the Act (for adjudication of the prayer for issuing order of eviction etc.), Show Cause Notice u/s 7(1) of the Act (for adjudication of the prayer for recovery of arrear rental dues etc.) and Show Cause Notice u/s 7(2) of the Act (for adjudication of the prayer for recovery of damages etc.) all dated 13.09.2017 as per Rule made under the Act. The Postal Acknowledgement returned with the remark 'Refused'. Perused the report of the Process Server dated 25.09.2017 regarding affixation of Show Cause notice/s on the property. The Notice/s was also received by one Sri Binod Yadav who signed on behalf of O.P. herein. I am satisfied with the service of notice to all concerned.

No one appears on behalf of O.P. with proper authority despite duly service of the Notice/s in the prescribed form laid down under the PP Act and rules framed thereunder.

As no reply to the Show Cause Notice/s u/s 4 and 7 of the Act has been filed on behalf of O.P. inspite of repeated chances, I have no other alternative but to



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

(Plate no. HL-482)

M/s Khandelwal Brothers Ltd.

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19.09.2019

issue order of eviction against O.P. on the basis of the following grounds/reasons :

1. That O.P. failed to submit its reply to the Show Cause Notice/s u/s.4 and 7 of the Act in spite of repeated chances.
2. That O.P. failed to bear any witness or adduce any evidence in support of its occupation into the public premises in spite of repeated chances.
3. That O.P. has violated the condition of tenancy under lease as granted by the Port authority by way of unauthorised parting with possession to rank outsiders and erection of unauthorised construction at the subject Public Premises.
4. That in gross violation of the condition of tenancy as granted by the Port Authority, O.P. failed and neglected to pay the rental dues to KoPT.
5. That O.P. parted with possession of the public premises unauthorisedly without having any authority under law.
6. That O.P. has erected unauthorised construction/structure msg. more or less about ASBR- 8.361 sq. mt. and RTR-42.921 sq. mt.
7. That the Notice to quit dated 14.08.2013, demanding possession from O.P. as issued by the Port Authority is valid, lawful and binding upon the parties.
8. That O.P's occupation has become unauthorised in view of Sec.2(g) of the P.P. Act and O.P. is liable to pay damages for wrongful use and 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.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



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. 1447, 1447/R, 1447/D of 2014 Order Sheet No. -19-

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s Khandelwal Brothers VS Ltd

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order and the Port Authority is entitled to claim damages for unauthorized use and enjoyment of the property against O.P. in accordance with Law up to 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 could be taken for execution of the order of eviction u/s 5 of the Act as per Rule made under the Act.

Department is also directed to draw formal order for rent u/s.7 of the Act for Rs. 2,25,682/- (Rupees Two Lakhs Twenty Five Thousand Six Hundred Eighty Two Only) for Plate No. HL-482 for the period 01.09.2004 to 01.09.2013 (both days inclusive), directing O.P. to pay the amount on or before 01.10.2019 and it is hereby ordered that O.P. shall make payment of the aforesaid sum to KoPT, by 01.10.2019. In terms of Section 7 (2-A) of the PP Act, 1971, such dues attract simple interest @ 7 % per annum, which is the current rate of interest as per the Interest Act, 1978 (as gathered by me from the official website of the State Bank of India) from the date of incurrence of liability, till the liquidation of the same, as per the adjustment of payments, if any made so far by O.P., in terms of KoPT's books of accounts. I sign the formal order u/s 7 (1) & (2-A) of the Act. I make it clear that in the event of failure on the part of O.P. to pay the amount to KoPT as aforesaid, Port Authority is entitled to proceed further for recovery of its claim in accordance with law.

In my opinion KoPT's claim for damages for Rs. 2,67,680/- against Plate No. HL-482 (excluding interest for delayed payment) upto 12.07.2017 for wrongful occupation may be payable by O.P. as it is gathered in course of hearing that the charges so claimed by KoPT is on the basis of the Schedule of Rent Charges published under the Authority of Law as per provisions of the Major Port Trusts Act 1963. In course of hearing, I find that KoPT has made out an arguable claim against O.P., founded with sound reasoning. I make it clear that Kolkata Port Trust is entitled to claim damages against O.P. for unauthorized use and occupation of the public



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

(Plate no. HL-482)

VS

M/s Khandelwal Brothers Ltd.

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19.09.2019

premises upto the date of recovery of clear, vacant and unencumbered possession of the same in accordance with Law and KoPT is entitled to claim interest upon dues/charges right from the date of incurrence of liability by O.P. as per KoPT's Rule.

NOW THEREFORE, I hereby assess the damages payable by the O.P. for wrongful and unauthorised occupation of the public premises in question, for the period 02.09.2013 to 12.07.2017 as Rs 2,67,680/- (principal amount). In terms of Section 7 (2-A) of the PP Act, 1971, such dues attract simple interest @ 7 % per annum, which is the current rate of interest as per the Interest Act, 1978 (as gathered by me from the official website of the State Bank of India) from the date of incurrence of liability, till the liquidation of the same, as per the adjustment of payments, if any made so far by O.P., in terms of KoPT's books of accounts. I sign the formal order u/s 7 (1) & (2-A) of the Act. I make it clear that in the event of failure on the part of O.P. to pay the amount to KoPT as aforesaid, Port Authority is entitled to proceed further for recovery of its claim in accordance with 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***