

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. 10 DT 27.09.2019
PROCEEDINGS NO.1581 of 2017

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-
M/s. Deep Services Pvt. 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. Deep Services Pvt. Ltd. OF C-1, Hide Road, Kolkata-700043 is in
unauthorized occupation of the Public Premises specified in the Schedule
below:

REASONS

1. That O.P. Company has failed to contest the matter before this Forum through duly authorized representative.
2. That O.P. Company has failed to explain about dishonor of cheques submitted by it vis-a-vis non-payment of license fees and taxes.
3. That modification/addition and alteration of the Trustees' property has been revealed through joint inspection.
4. That the license granted to the O.P. Company has expired in all sense of law and O.P. has failed to obtain any fresh grant from the Port Authority.
5. That O.P. has no right to claim for renewal as a matter of right, much less automatic or deemed renewal.
6. 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'.
7. That the ejection notice as served upon O.P., demanding possession of the public premises by KoPT is valid, lawful and binding upon the parties.

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PLEASE SEE ON REVERSE

:2:

- 8. That occupation of O.P. beyond the period of expiry of license is unauthorized in view of Sec. 2 (g) of the Public Premises Act in question;
- 9. 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.

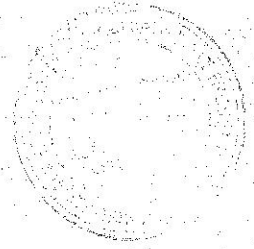
A copy of the reasoned order No. 10 dated 27.09.2019 is attached hereto which also forms a part of the reasons.

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. Deep Services Pvt. Ltd. OF C-1, Hide Road, Kolkata-700043** 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. Deep Services Pvt. Ltd. OF C-1, Hide Road, Kolkata-700043** 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

KoPT structure Msg. about 1550.92 sqm. and appurtenant land msg. 2277.81 sq. mt appurtenant develop land msg. 310 sq. mtrs. At Hide Road in the Presidency Town of Kolkata under Plate No. D-804. It is bounded on the North by Sonai Road, on the South partly by the Trustees' vacant land and partly by the Trustees' open land, on the East by Hide Road and on the West by the Trustees' land occupied by Sunil Investment.
The Trustees' means the Board of Trustees of the Port of Kolkata.

Dated: 9-10-19



[Handwritten Signature]
Signature & Seal of the Estate Officer.

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

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9/10/19

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)
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1st floor, 6, Fairlie Place Warehouse,
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Form G

Court Room At the 1st Floor
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REASONED ORDER NO. 10 DT 27.09.2019
PROCEEDINGS NO.1581/D OF 2017.

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-
M/s. Deep Services Pvt. Ltd.

Handwritten signature and date: 9/10

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. Deep Services Pvt. Ltd.,
C-1, Hide Road,
Kolkata- 700043.

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

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And whereas by written notice dated 18.01.2019 you were
called upon to show cause on/or before 19.02.2019 why an order
requiring you to pay damages of Rs. 4,31,35,122/- for Plate No. D-
804 (Rupees Four Crores Thirty One Lakhs Thirty Five Thousand
One Hundred and Twenty Two only.) together with compound
interest 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 with proper authority 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. 4,31,35,122/- (Rupees Four Crores Thirty One Lakhs

Thirty Five Thousand One Hundred and Twenty Two only.) for the period 17.05.2014 to 31.03.2018 assessed by me as damages on account of your unauthorised occupation of the premises to Kolkata Port Trust by 11.10.2019.

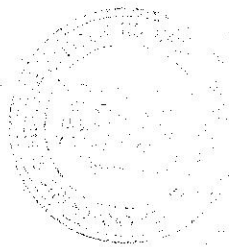
In exercise of the powers conferred by Sub-section (2A) of Section 7 of the said Act, I also hereby require you to pay simple interest @ 14.25% till its final payment from the date of incurrance of liability in accordance with Kolkata Port Trust's Notification Published in Calcutta Gazette/s as per Kolkata Port Trust's Rule.

SCHEDULE

KoPT structure msg. about 1550.92 sqm. and appurtenant land msg. 2277.81 sq. mt appurtenant develop land msg. 310 sq. mtrs. At Hide Road in the Presidency Town of Kolkata under Plate No. D-804. It is bounded on the North by Sonai Road, on the South partly by the Trustees' vacant land and partly by the Trustees' open land, on the East by Hide Road and on the West by the Trustees' land occupied by Sunil Investment.

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

Dated: 9.10.19



Signature and seal of the

[Handwritten Signature]
Estate Officer

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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



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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

^{VS}
M/S Deep Services (Pvt) Ltd.

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27.09.19

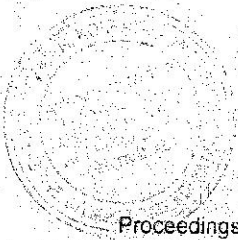
FINAL ORDER

The matter is taken up for final disposal today. It is the case of Kolkata Port Trust (KoPT), the applicant herein, vide application bearing No. Lnd.5547/15/1601 dated 17.08.2015 filed under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as 'the Act') that M/s Deep Services Pvt. Ltd. (hereinafter referred to as O.P.) came into the Port Property in question, being KoPT Structure measuring 1550.92 sqm alongwith the appurtenant land measuring 2277.81 sqm, appurtenant developed land measuring 310 sqm at the Hide Road, in the presidency town of Kolkata, P.S. - West Port Police Station, under plate No. D-804, as a 11-month licensee through KoPT's Tender process. It is the case of KoPT that O.P. had defaulted in payment of License fees and taxes, demolished Trustees' structure/s, made addition, alteration and also changed the nature of some structure/s in clear and gross violation of the terms and conditions of license. KoPT has made out a case that O.P. has no right to occupy the premises on the ground of violation of conditions of license and therefore the occupation of the O.P. is unauthorised upon expiry of the 11-month license which was not renewed by KoPT due to existence of so many breaches. It is the specific submission of KoPT that after service of the notice of revocation of license dated 13.11.2014, O.P. has no right at all to continue to occupy the public premises in question.

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 18.01.2019 as per Rules made under the Act.

or *Abh*
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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. 1581, 1581/D Of 2017 Order Sheet No. 15

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
M/S Deep Services (Pvt) Ltd.

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27.09.19

On the day fixed for filing reply to the Show Cause Notice/s (i.e. on 19.02.2019) one Mr. Sujit Sarkar expressing himself as the accountant of O.P. appeared before this Forum without any sort of Authorization on his behalf. It further appears that an application dated 18.02.2019 had been filed under the letter-head of O.P. company. On a perusal of the said application it appears that the signatory (whose name is not mentioned) of the same has intimated that O.P. has neither demolished the Trustees' structure nor made any addition, alteration or change in the nature of the Trustees' structure. It is also claimed that O.P. has not parted with possession of the premises or defaulted in payment of License fees. The intimation goes further stating that the structures of the Licensed premises are in damaged condition and O.P. has incurred huge expenditure in repairing the structures. A Joint inspection and reconciliation of accounts have been prayed for, in the said intimation. Although there are questions as to whether a Private Limited Co. can correspond without following the mandate stated in the Companies Act, 2013 as to the CIN (Corporate Identity Number) of the company, Phone No, Fax No. etc which are missing in the said intimation, for the sake of natural justice and for better clarity of my understanding a Joint Inspection of the Premises was ordered on 19.02.2019 in order to ascertain the present status of the Premises. It appears that the inspection of the Premises was carried out on the appointed date (27.02.2019) and a report of such Joint Inspection was filed before this Forum under the cover of KoPT's application dated 05.03.2019. Be that as it may, on 19.03.2019 the said Shri Sujit Sarkar appeared again without any authorisation on his behalf when the O.P. was directed to file comprehensive Reply to the Show Cause Notice/s issued by this Forum, particularly how it is authorised to enjoy the Public Premises

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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

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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27.07.19

after expiry/ determination of the license in question. The Authorised signatory of the O.P. executing the replies were directed to file proof of competence to appear before this Forum such as Board Resolution of the Company along with the Photo Identity Card such as PAN, Voter Card etc. without which the replies, even if filed, will not be taken into consideration at all. Thereafter, on 09.04.2019 said Shri Sarkar again appeared without any document or authorisation and prayed for an adjournment vide a written application dated 09.04.2019 on the letter-head of the O.P. As no reply/ photo identity came to be filed in terms of the earlier Orders of this Forum, O.P. was directed to file the documents positively on 23.04.2019 without allowing further time/ opportunity. On the next date of hearing i.e. on 23.04.2019 none appeared on behalf of O.P. It is noted that Shri Sarkar had the knowledge of the next date of hearing on 23.04.2019 as he was present during the course of hearing on 09.04.2019 and his presence has found place in the 'Hearing Notice' signed by him on 09.04.2019. On 23.04.2019 as no documents came to be filed before this Forum the hearing was concluded and the matter was reserved for passing Final Order.

Now, while passing the Final Order, I have carefully considered the documents on record and the submissions of the parties. It appears that the allegations of the Port Authority against the O.P. are that the O.P. has defaulted in payment of License fees and taxes, demolished some Trustees' structure, made addition, alteration and also changed the nature of some structure in clear and gross violation of the terms and conditions of license which had expired on 16.05.2014 and thereafter not renewed by the KoPT. An additional ground of unauthorised parting of possession also features in the Show Cause Notice u/s 4 issued on 18.01.2019. Now, the first and foremost question

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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

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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MIS Deep Services (Pvt) Ltd.

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27.09.19

is, whether O.P. Company can be said to be duly represented before this Forum. I find that during course of hearing the only person who appeared claiming to be representative of O.P. is one Shri Sujit Sarkar, who represented himself to be the accountant of the O.P. Company. No Photo Identity proof/ Board Resolution could ever be produced by Shri Sarkar inspite of repeated opportunities given to him by this Forum on 19.03.2019, 09.04.2019 and 23.04.2019. A few applications addressed to this Forum came to be filed on the letter-head of O.P. Company which is bereft of any CIN number or communicable details. Moreover, all such applications are signed by unknown persons who claim to be authorized signatories without revealing their identity or authority. In such a situation, it is very difficult to believe such communications to be emanating from the O.P. Company. In my view, in such a situation, it will not be unjust to conclude that O.P. Company has been absent before this Forum and that Shri Sarkar can be said to be contesting the instant case solely in his personal capacity.

Be that as it may, for the sake of natural justice, I am inclined to deal with each and every contention of KoPT against the O.P. Company. Regarding demolition/addition and alteration of the Trustees' structures, it is revealed through joint inspection that there is demolition of Trustees' structure measuring about 13.5 sqm and modification of the Trustees' structure and furthermore, functioning of some entities other than the O.P. Company over the Premises were found. The observations of KoPT have been attempted to be refuted by Sri N.C. Bhattacharya (expressing himself as the Sr. Consultant of the O.P. Company, again without any authority or proof of identity) as his comments were recorded stating that the structures measuring about 13.5 sqm had naturally fallen down due to its dilapidated condition, no new

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By Order of:

THE ESTATE OFFICER

KOLKATA PORT TRUST

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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. 1581, 1581/D Of 2017 Order Sheet No. 18

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
M/s Deep Services (Pvt) Ltd.

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27.9.19

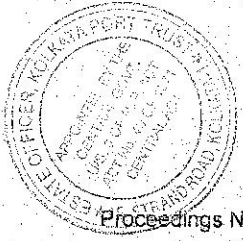
construction was made in the mentioned area and modification of the Structures had been carried out due to dilapidated conditions of the roof so as to protect storage of materials. Thus, there is sufficient admission as regards carrying out of modification by or on behalf of the O.P. Company, only that such activity has been attributed to "dilapidated condition" of the structures. If examined against the conditions of tender which were duly agreed upon by the O.P. Company, permission from KoPT is very much essential for carrying out even any repair works. In the case in hand, the appearing persons have failed to produce any such permission from the Port Authority. Regarding natural decay/destruction of certain structures, as has been claimed, I must mention that no such information had been provided by the O.P. Company to KoPT earlier. I must condemn such conduct on the part of the O.P. Company, who is duty bound to take due care of the licensed property and further duty bound to atleast inform the landlord in case of any such decay/destruction, which O.P. Company has failed to perform.

This apart, I take serious note of the fact that KoPT has produced evidence of dishonour of Post-dated cheques submitted by the O.P. Company but the appearing persons have failed to deny such allegation by producing any relevant evidence. KoPT has also produced the statement of accounts maintained in official course of business which clearly depicts the dues on the part of the O.P. Company. As such, I am inclined to decide these issues in favour of the KoPT.

The last but probably the most important question revolves around the issue, whether the license can be said to have expired and whether there was any right on the part of the O.P. to claim automatic renewal. Upon going through the conditions of the tender and the agreement entered into by and

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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. 1581, 1581/D Of 2017 Order Sheet No. 19

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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between the parties, I find that the license was valid for a period of 11 months only and there was no scope for further extension. No right had been conferred upon the O.P. to pray for further renewal. Furthermore, in the presence of so many breaches, right, if any (not admitted though), of O.P. to claim for renewal must be held to be extinguished. Thus, it is a clear case of expiry of license. As per law, a licensee has no authority to occupy the premises beyond the contractual period of license. Since the license in question had expired in all sense of law, I have no hesitation to hold the occupation of the O.P. Company as "unauthorised" under Section 2(g) of the P.P. Act, 1971 and consequently, I am inclined to issue order of eviction against O.P. on the following grounds,

1. That O.P. Company has failed to contest the matter before this Forum through duly authorized representative.
2. That O.P. Company has failed to explain about dishonor of cheques submitted by it vis-à-vis non-payment of license fees and taxes.
3. That modification/addition and alteration of the Trustees' property has been revealed through joint inspection.
4. That the license granted to the O.P. Company has expired in all sense of law and O.P. has failed to obtain any fresh grant from the Port Authority.
5. That O.P. has no right to claim for renewal as a matter of right, much less automatic or deemed renewal.
6. 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'.
7. That the ejection notice as served upon O.P., demanding possession of the public premises

8/ *[Signature]*
27/10

[Signature]



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

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27.09.19

by KoPT is valid, lawful and binding upon the parties.

8. That occupation of O.P. beyond the period of expiry of license is unauthorized in view of Sec. 2 (g) of the Public Premises Act in question;
9. 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. Company 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 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.

I find that KoPT has made out an arguable claim against O.P., founded with sound reasoning, regarding the damages/compensation to be paid for unauthorised occupation. As such, I must say that Rs. 4,31,35,122.00/- as claimed by the Port Authority as damages, is correctly payable by O.P. for the period 17.05.2014 to 31.03.2018 (both days inclusive) for the Plate in question and it is hereby ordered that O.P. shall make payment of the aforesaid sum to KoPT by 11.10.2019. The said damages shall carry simple interest @ 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

By Order of:

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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

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

^{VS}
M/s Deep Services (Pvt) Ltd

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27.09.19

published in Official Gazette. The formal order u/s 7 of the Act is signed accordingly.

I make it clear that KoPT is entitled to claim 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 liability of O.P. to pay damages extends beyond 31.03.2018 as well, as the possession of the premises is still lying unauthorisedly with the O.P.. KoPT is directed to submit a statement comprising details of its calculation of damages after 31.03.2018, indicating there-in, 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 such damages as per Rule made under 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 execution of this order in accordance with law. All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL


(N. Biswas)

ESTATE OFFICER

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