



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.

1787

Of

2020

Order Sheet No.

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Bhikaw ^{VS} Chowdhury

FINAL ORDER

08 08
20.07.2020

The matter is taken up today for final disposal. Relevant facts are required to be put forward in a nutshell in order to understand the chain of events leading to the proceedings. It is the case of Kolkata Port Trust (KoPT), applicant, herein, that land msg. 15 Sq.m. situate at Strand Bank Road, near Jagannath Ghat, passing underneath the Jagannath Ghat 'A' Shed Warehouse Thana- North Port Police Station, was allotted to Bikaw Chowdhury (O.P.) as a licensee for the purpose of Flower shop w.e.f. 27.01.2012. It is the case of KoPT that O.P. undertook to vacate the said 15 sq.m area at the need of port Trust at anytime in terms of letter of O.P. dated 04.01.2012. It appears from the application of KoPT filed on 04.06.2020 as well as the Notice of Kolkata municipal Corporation (KMC) issued under section 411(1) of Kolkata Municipal Corporation Act, 1980 that a major fire broke out on 08.06.2019 at the subject premises and consequently a huge portion of the subject premises under 'A' shed Jagannath Ghat was gutted down by fire. It appears that major portion of the roof of the Warehouse had collapsed and several cracks had developed in the said Warehouse. It appears that the fire and the resulting collapse of the roof have severely damaged the entire Warehouse and made the same structurally unstable. It appears that the warehouse has become unsafe and is not safe for use or occupation in any manner. It also appears that there is a high chance of the entire structure collapsing at any time. Considering the precarious condition of the building caused by the aforementioned fire incident, KMC has issued statutory notice to KoPT. The said notice issued under Section 411(1) of Kolkata Municipal Corporation Act, 1980 as addressed to the Secretary, Kolkata Port

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Trust directed KoPT to 1) demolish and removal of debris from the 1st Floor, 2) to demolish dangerous portion at ground floor. It further states that all the above works should be done under the supervision of the ESE & LBS of the empanelled list of KMC. The said notice also states that "Failing to comply with the above requisitions steps will be taken by the Municipal Commissioner under Section 558 to execute the works required, subject to the provisions of Rule 6 of Schedule XVII of the Act....."

It appears that KoPT on 06.08.2019 served a notice for termination of licence with the O.P. with immediate effect. The said notice was served upon the O.P. and the same was received by O.P. under his signature.

It is the case of KoPT that the License with the O.P. was determined in terms of the Notice to Quit dated 06.08.2019 and the O.P. failed and neglected to vacate/ hand over the possession of the premises after service of the said Notice. KoPT has made out a case that O.P. has no right to occupy the premises after revocation of the License in question upon service of a quit notice dated 06.08.2019.

The instant proceedings No. 1787 of 2020 arise out of the application filed by the Kolkata Port Trust (KoPT) under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as 'the Act') praying for an order of eviction and recovery of dues, damages and other charges etc. in respect of the said premises, against the O.P.

Accordingly, this Forum of Law formed its opinion to proceed against O.P. under the relevant provisions of the Public Premises Act, 1971 and issued show cause notices



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under Sec. 4 of the Act dated 17.06.2020 (vide Order No. 04 dated 17.06.2020) as per the Rules made under the Act.

The O.P. contested the case through his Ld' Advocate who has filed Vakalatnama on 25.06.2020. It appears that O.P. has filed reply to the Show Cause on 30.06.2020 and other applications such as applications filed on 25.06.2020, 16.07.2020.

The matter was heard on several occasions and finally on 16.07.2020 the matter was reserved for passing the Final Order.

Now, while passing the Final Order, I have carefully considered the documents on record and the submissions advanced before me. The main contentions of the O.P. can be summarised as follows:

1. The Notice issued by KoPT for termination of the License is without any proper grounds of alleged termination. The Notice to Show Cause issued by this Forum is illegal, void, arbitrary etc. and liable to be set aside.
2. No portion in occupation of O.P. was ever gutted into fire as alleged by KoPT. The portion in which fire broke out has no connection with the portion occupied by the O.P. The O.P. was carrying on business in the southern side of the ground which is at a clearing from the main premises. Inspection of the premises would reveal that occupation of the O.P. is completely detached from the shed. Hence there is no apprehension for declaring the portion in occupation of O.P. as unsafe.
3. No report of Fire Service Department was communicated and/or placed before this Forum.



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4. Notice of demolition issued by KMC u/s 411 (1) of KMC Act was not communicated to the O.P. initially and the same was emailed by KoPT during the continuance of hearing before this Forum. The area mentioned in the KMC Notice has no linkage with the portion occupied by the O.P.
5. There has been no whisper of any notice of the Kolkata Municipal Corporation in the Notice to Show Cause issued by the Estate Office.
6. Suitable direction be given to KoPT to receive the rental dues if any on the part of O.P.

I have deeply gone into the submissions/arguments made on behalf of the parties in course of hearing. The properties of the Port Trust are coming under the purview of "public premises" as defined under the Act. Now the question arises how a person become unauthorized occupant into such public premises. As per Section 2 (g) of the 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. The licence granted to O.P. was undoubtedly revoked by the Port Authority by due service of notice for revocation of licence and institution of proceedings against O.P. by KoPT is a clear manifestation of Port Authority's intention to get back possession of the premises.

It is settled position in Law that a licensee like O.P. is bound to comply with all the terms and conditions for grant of licence and failure on the part of O.P. to comply



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with the fundamental condition for grant of such licence that is to say vacation of the plot of land at the requirement of KoPT is definitely entitled the Port Authority to exercise its right to revoke the licence by due notice to O.P. In my view, Licensee like O.P. is holding a very inferior quality of right to occupy the premises that is to say not like a lessee. As per law, a licence is a mere right to do something in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful. Revocation of such licence can be either express or implied (Sec 61 of Indian Easement Act, 1882). In my understanding, there is no bar in expiry/revocation of the licence involved in the instant proceedings, in terms of Sec. 60 of the said Act. As such, I am firm in holding that the "authority" of the O.P. came to an end with the termination of the licence vide KoPT's Notice to Quit dated 06.08.2019 and O.P. cannot claim its occupation as "authorised" in the absence of any fresh grant from the grantor. It has been held by the Hon'ble Apex Court of India that a person continuing in possession of the premises after termination, withdrawal or revocation of license continues to occupy it as a trespasser or as a person who has no semblance of any right to continue in occupation of the premises. Such person by no stretch of imagination can be called a licensee.

It is a settled law that offer for grant of license together with the governing terms and conditions always flows from the side of the licensor and never originates from the licensee. A license is a mere right to do something in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful. Such a right can never originate from the licensee. A licensee is very much bound not only to

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accept the offer but also faithfully obey all the terms and conditions so long as it enjoys the right.

In view of the foregoing paragraphs, I have no hesitation in mind to say that after expiry of the period as mentioned in the said notice to Quit dated 06.08.2019, O.P. has lost its authority to occupy the public premises.

More so, it is the admitted position in this case that a huge portion of the 'A' Shed, Jagannath Ghat Warehouse has been gutted down by fire on 08.06.2019. It appears from records that major portion of the roof of the Warehouse had collapsed and several cracks had developed in the said Warehouse. It further appears that the fire and the resulting collapse of the roof have severely damaged the entire Warehouse and made the same structurally unstable. The warehouse has become unsafe and is not safe for use or occupation in any manner. It also appears that there is a high chance of the entire structure collapsing at any time. It appears that KMC has issued statutory notice to KoPT. The said notice issued under Section 411(1) of Kolkata Municipal Corporation Act, 1980 directed KoPT to 1) demolish and removal of debris from the 1st Floor, 2) to demolish dangerous portion at ground floor. The Notice states that all the above works should be done under the supervision of the ESE & LBS of the empanelled list of KMC. The said notice also states that "Failing to comply with the above requisitions steps will be taken by the Municipal Commissioner under Section 558 to execute the works required, subject to the provisions of Rule 6 of Schedule XVII of the Act....". During the course of hearing it is brought to my Notice that the demolition work could not be initiated due to the present occupancy of O.P. and other tenants/ licensees at the subject premises. The Notice of KMC as well as the application of



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KoPT clearly indicates that the structural stability of the premises is not suitable of human occupation in or around the premises. KoPT shall take steps to demolish the Warehouse in accordance with the notice of KMC as soon the premises is evacuated. It appears that the structure standing for more than year does not guarantee that the same would sustain for days to come moroso, after the super cyclone 'Amphan' which may have caused more damage to the Warehouse and this Forum would not take any responsibility of loss of life and property of the people occupying the premises in case the building collapses. The report of inspection dated 15.07.2020 would not be taken into account as the representative of KoPT was not made a party to such inspection work. It is the admitted position in the case that O.P. has undertaken to vacate the premises at the need of KoPT at any time. Thus, such a clause written by O.P. himself in such clear terms and conditions vide his letter praying for grant licence of Port Property, I do not think there is any scope or possibility of any confusion and the intent of the licensor is very much evident. Discussions against the foregoing reveal that there is sufficient merit behind the revocation of License of the O.P. by the Port Authority and consequently, I have no alternative but to declare the occupation of the O.P. and all other occupants as "unauthorised", under Sec. 2 (g) of the P.P. Act, 1971.

In the aforementioned circumstances, being satisfied as above, I am inclined to issue the order of eviction against O.P. on the following grounds :-

- 1) The building was gutted by fire on 08.06.2019 and thereafter it has become structurally unstable for use. KoPT shall take steps to demolish the



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Warehouse in accordance with the notice of KMC as soon the premises is evacuated.

- 2) As the building has become structurally unstable because of the collapse of roof, there is potential threat of loss of life or property of the people occupying the premises in case the building collapses. The premises needs to be immediately evacuated.
- 3) That the license granted to O.P. has been revoked in all sense of law.
- 4) 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.
- 5) That no case has been made out on behalf of O.P. as to how its occupation in the Public Premises could be termed as "authorised occupation" after revocation of licence in question.
- 6) That O.P. has failed to produce anything regarding his authorization to occupy the premises after issuance of the Notice to quit dated 06.08.2019.
- 7) 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'.
- 8) The inspection report of O.P. cannot be taken into account as the representatives of KoPT were not present at the time of inspection i.e. it was not a joint inspection.
- 9) O.P. while taking the property on licence had undertaken to vacate the premises at the need of Port Trust anytime. Thus, such a clause has been written by O.P. himself in such clear terms and conditions vide his letter praying for grant licence of Port Property, hence there is any scope or

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possibility of any confusion and the intent of the licensor KoPT is very much evident.

10) That the occupation of the O.P. deserves no protection, even for the sake of natural justice.

11) That occupation of O.P. beyond the period of the ejectment notice is unauthorized in view of Sec. 2 (g) of the Public Premises Act in question;

12) That right from date of termination of licence, O.P. has lost his authority to occupy the Public Premises and O.P. is liable to pay damages for wrongful use and enjoyment of the Port Property upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

Accordingly, I sign the formal order of eviction under Sec. 5 of the Act as per Rules made there-under, giving 15 days time to O.P. to vacate the premises. I make it clear that all person/s whoever maybe 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 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, 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, indicating there-in, the details of

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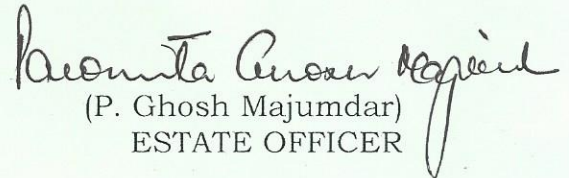
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the rate of such charges, and the period of the damages (i.e. till the date of taking over of possession) together with the basis on which such charges are claimed against O.P., for my consideration for the purpose of assessment of such damages as 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


(P. Ghosh Majumdar)
ESTATE OFFICER

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

**REGISTERED POST WITH A/D.
HAND DELIVERY
AFFIXATION ON PROPERTY**

THE ESTATE OFFICER, KOLKATA PORT TRUST
(Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-Central Act)
Public Premises (Eviction of Unauthorized Occupant) Act 1971
OFFICE OF THE ESTATE OFFICER
15, STRAND ROAD
(4th Floor)
KOLKATA - 700 001

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

REASONED ORDER NO. 08 DT 20.07.2020
PROCEEDINGS NO.1787 of 2020

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

-Vs-

Bikaw Chowdhury

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 Bikaw Chowdhury of 17, Strand Bank Road, Kolkata - 700 007 is in unauthorized occupation of the Public Premises specified in the Schedule below:

R E A S O N S

- 1) The building was gutted by fire on 08.06.2019 and thereafter it has become structurally unstable for use. KoPT shall take steps to demolish the Warehouse in accordance with the notice of KMC as soon the premises is evacuated.
- 2) As the building has become structurally unstable because of the collapse of roof, there is potential threat of loss of life or property of the people occupying the premises in case the building collapses. The premises needs to be immediately evacuated.
- 3) That the license granted to O.P. has been revoked in all sense of law.
- 4) That the ejectment notice as served upon O.P., demanding possession of the public premises by KoPT is valid, lawful and binding upon the parties.
- 5) That no case has been made out on behalf of O.P. as to how its occupation in the Public Premises could be termed as "authorised occupation" after revocation of licence in question.
- 6) That O.P. has failed to produce anything regarding his authorization to occupy the premises after issuance of the Notice to quit dated 06.08.2019.
- 7) 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'.
- 8) The inspection report of O.P. cannot be taken into account as the representatives of KoPT were not present at the time of inspection i.e. it was not a joint inspection.
- 9) O.P. while taking the property on licence had undertaken to vacate the premises at the need of Port Trust anytime. Thus, such a clause has been written by O.P. himself in such clear terms and conditions vide his letter praying for grant licence of Port Property, hence there is any scope or possibility of any confusion and the intent of the licensor KoPT is very much evident.

- 10) That the occupation of the O.P. deserves no protection, even for the sake of natural justice.
- 11) That occupation of O.P. beyond the period of the ejection notice is unauthorized in view of Sec. 2 (g) of the Public Premises Act in question;
- 12) That right from date of termination of licence, O.P. has lost his authority to occupy the Public Premises and O.P. is liable to pay damages for wrongful use and enjoyment of the Port Property upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

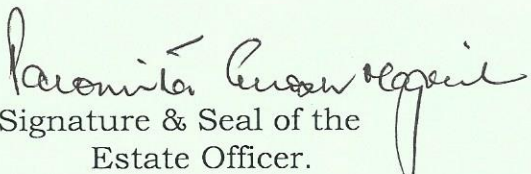
A copy of the reasoned order No. 08 dated 20.07.2020 is attached hereto which also forms a part of the reasons.

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 **Bikaw Chowdhury of 17, Strand Bank Road, Kolkata - 700 007** 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 **Bikaw Chowdhury of 17, Strand Bank Road, Kolkata - 700 007** 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

Land/ structure msg 15 sqm at Strand Bank Road, near Jagganath Ghat (under Plate No. A Shed or thereabouts within the Presidency town of Kolkata under North Port Police Station butted and bounded by the Strand Road in the North, by Trustees' land used as a platform in the East, by the Strand Bank Road in the south and by Strand Bank Road alongside 'A' shed Jagganath Ghat in the west. Trustees' means the Board of Trustees for the Port of Kolkata.

Dated: 20.07.2020


Signature & Seal of the
Estate Officer.

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