

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

**ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT, KOLKATA
(erstwhile 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. 21 DT 24.03.2021
PROCEEDINGS NO. 1707 OF 2019

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-
M/S Motiram Agarwal & Co. (P) Ltd (O.P.)

By Order of:
**THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT**
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
28.03.2021
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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 Motiram Agarwal & Co. (P) Ltd of Compt. No 4/A, Pathurighat
Warehouse, 67/28, Strand Road, Kolkata-700007 AND ALSO OF 137,
Biplabi Rash Behari Basu Road, Kolkata-700001** is in unauthorized
occupation of the Public Premises specified in the Schedule below :

REASONS

1. That this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrear dues/damages etc. as prayed for on behalf of KoPT.
2. That the Show Cause Notice/s as issued by this Forum to O.P are valid binding and lawful.
3. That O.P has parted with possession of the public premises without any authority of law, in facts and circumstances of the case.
4. The O.P or any other person/occupant has failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation".
5. That the notice to quit dated 23.02.2016 as served upon O.P. by the Port Authority is valid, lawful and binding upon the parties and O.P.'s occupation and that of any other's occupation of the 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 use and occupation of the public premises up to the date of handing over the clear, vacant and unencumbered possession to the port authority.

PLEASE SEE ON REVERSE

Sub



(2)

A copy of the reasoned order No. 29 dated 24.03.2021 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 Motiram Agarwal & Co. (P) Ltd of Compt. No 4/A, Pathurighat Warehouse, 67/28, Strand Road, Kolkata-700007 AND ALSO OF 137, Biplabi Rash Behari Basu Road, Kolkata-700001** 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 Motiram Agarwal & Co. (P) Ltd of Compt. No 4/A, Pathurighat Warehouse, 67/28, Strand Road, Kolkata-700007 AND ALSO OF 137, Biplabi Rash Behari Basu Road, Kolkata-700001** and all other persons concerned are liable to be evicted from the said premises, need be, by the use of such force as may be necessary.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
ISSUED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
26.03.2021
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

SCHEDULE

Plate No. CG-70 & CG-70/1

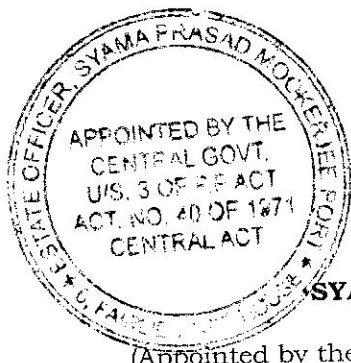
Compartment No.4/A, Msg.423.08 Sq.m at Pathuriaghat Warehouse, in the Presidency town of Kolkata. It is bounded on the North partly by the passage used as road and partly by the Trustees' verandah of Compartment No.4/A licensed to M/S Motiram Agarwal & Co. Pvt. Ltd, on the South by the Trustees' verandah space alongside Trustees' land used as passage, on the East partly by the Trustees' Compartment of Pathriaghat Warehouse occupied by M/S Continental Transport Agency and partly by the Trustees' Compartment occupied by M/S Moongipa Roadways and on the West by the Trustees' Compartment No.4 occupied by M/s Gillanders Arbuthhot Co. Ltd.

A space Msg. 7.43 Sq.m of Northern veranda at Pathuriaghat Warehouse, in the Presidency town of Kolkata. It is bounded on the North by the Trustees' land used as passage, On the South by the Trustees' Compartment No.4A, leased to M/S Motiram Agarwal & Co Pvt. Ltd and on the East & West by the Trustees' land used as verandah.

Trustees' means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata).

Date- 26.03.2021

Signature & Seal of the
Estate Officer.



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

ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT, KOLKATA
(erstwhile KOLKATA PORT TRUST)

(Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-Central Act)
Public Premises (Eviction of Unauthorised Occupants) Act 1971
OFFICE OF THE ESTATE OFFICER
6, Fairlie Place (1st FLOOR) KOLKATA-700001

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

PROCEEDINGS NO. 1707/D OF 2019
ORDER NO. 91 DATED : 24.03.2021.

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 Motiram Agarwal & Co.(P) Ltd
Compt.No4/A,
Pathurighat Warehouse
67/28, Strand Road,
Kolkata-700007.
AND ALSO OF
137, Biplabi Rash Behari Basu Road,
Kolkata-700001

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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 18.07.2019 you are called upon to show cause on or before 19.08.2019 why an order requiring you to pay damages of **Rs. 20,57,206/-** (Rupees Twenty Lakhs Fifty Seven Thousand Two Hundred Six only) for Plate No.CG-70 and **Rs.29,507/-** (Rupees Twenty Nine Thousand Five Hundred Seven Only) for the Plate No.CG-70/1 together with [compound interest] for unauthorised use and occupation of the said premises, should not be made;

AND WHEREAS I have considered your objections and/or the evidence produced by you;

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. 20,57,206/-** (Rupees Twenty Lakhs Fifty Seven Thousand Two Hundred Six only) for Plate No.CG-70 and **Rs.29,507/-**(Rupees Twenty Nine Thousand Five Hundred Seven Only) for Plate No.CG-70/1 assessed by me as damages on account of your unauthorised occupation of the premises both for the period from 01.04.2016 to 02.07.2019 (both days inclusive) to SMP, Kolkata by 12.04.2021.

PLEASE SEE ON REVERSE

Sud



: 2 :

In exercise of the powers conferred by Sub-section (2A) of Section 7 of the said Act, I also hereby require you to pay compound interest @ 6.20 % 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 through the Collector.

SCHEDULE

Plate No. CG-70 & CG-70/1

Compartment No.4/A, Msg.423.08 Sq.m at Pathuriaghat Warehouse, in the Presidency town of Kolkata. It is bounded on the North partly by the passage used as road and partly by the Trustees' verandah of Compartment No.4/A licensed to M/S Motiram Agarwal & Co. Pvt. Ltd, on the South by the Trustees' verandah space alongside Trustees' land used as passage, on the East partly by the Trustees' Compartment of Pathriaghat Warehouse occupied by M/S Continental Transport Agency and partly by the Trustees' Compartment occupied by M/S Moongipa Roadways and on the West by the Trustees' Compartment No.4 occupied by M/s Gillanders Arbuthhot Co. Ltd.

A space Msg. 7.43 Sq.m of Northern veranda at Pathuriaghat Warehouse, in the Presidency town of Kolkata. It is bounded on the North by the Trustees' land used as passage, On the South by the Trustees' Compartment No.4A, leased to M/S Motiram Agarwal & Co Pvt. Ltd and on the East & West by the Trustees' land used as verandah.

Trustees' means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata).

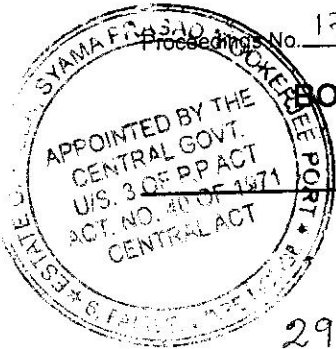
Date - 26.03.2021.

Signature & Seal of the
Estate Officer.

COPY FORWARDED TO THE ESTATE MANAGER, SMP, KOLKATA FOR INFORMATION.

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. 1707 A/1707/D Of 2019 Order Sheet No. 28

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S. Motiram Agarwal & Co. (P) Ltd. VS

FINAL ORDER

The matter is taken up today for final disposal. It is the case of Syama Prasad Mookerjee Port, Kolkata [erstwhile Kolkata Port Trust], hereinafter referred to as SMP, Kolkata, Applicant herein, that a month to month lease in respect of Compartment No.4/A measuring about 423.08 Sq.m and a month to month licence in respect of Northern Verandah space measuring about 7.43 Sq.m were granted to M/S Motiram Agarwal & Co(P) Ltd (O.P), on certain terms and conditions and both the abovementioned public premises are situated at Pathuriaghat Warehouse, Kolkata, comprised under Plates No.CG-70 and CG-70/1 respectively and O.P violated the condition of such tenancy by way of not making the payment of outstanding dues. It is also the case of SMP, Kolkata that O.P has parted with possession of the said public premises in question without having any authority under law. It is argued that O.P has no authority under law to occupy the said public premises after expiry of the period as mentioned in the notice to quit dated 23.02.2016 and O.P is liable to pay damages for unauthorised enjoyment of the Port property in question.

This Forum of Law formed its opinion to proceed against O.P under the relevant provisions of the Act and issued Show Cause Notice U/S 4 of the Act (for adjudication of the prayer for order of eviction etc.) and Show Cause Notice U/S-7(for adjudication of the prayer for recovery of arrear damages etc.) both dated 18.07.2019 (vide Order No. 11 dated 18.07.2019 as per rule made under the Act.

Be that as it may, such notice/s could not be served upon all the recorded address of O.P both by Speed Post as well as hand delivery. The Postal communications were returned back as undelivered with an endorsement "Left" as well as "insufficient address". However, the Report of the Process Server dated 25.07.2019 revealed that such Show Cause Notice/s u/s 4 & 7 were affixed on the subject premises on 25.07.2019 at about 2.30 P.M. as per the mandate of P.P Act. Despite repeated attempt on the part of this Forum as none appeared on behalf of O.P or any other person interested in the property and as there was no reply to the Show Cause

29

24.03.2021.

By Order of :

THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

CERTIFIED COPY OF THE ORDER
ISSUED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

J. Q. 26.03.2021.
Head Assistant

OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

Sud



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. 1707 A/1707/D Of 2019 Order Sheet No. 29

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S. Motiram Agarwal & Co. (P) Ltd. VS

29

24-03-2021

By Order of:
THE ESTATE OFFICER,
SYAMA PRASAD MOOKERJEE
CERTIFIED COPY OF THE
PASSED BY THE ESTATE OFFICER,
SYAMA PRASAD MOOKERJEE
OFFICE OF THE LD. ESTATE OFFICER,
SYAMA PRASAD MOOKERJEE PORT

Notice/s both u/s 4 & 7 of the Act, a publication had been made in the classified column of Times of India (Kolkata) on 04.10.2019 fixing the ultimate date of O.P's appearance on 21.10.2019. Finally on 21.10.2019 one Smt. Indra Nath claiming herself as a representative of O.P appeared before the Forum. She by producing her authorisation before the Forum, made a verbal submission on the fact of O.P's absence due to some medical issue. Thereafter on 18.11.2019, O.P entered appearance through their Ld' advocate and filed on 18.11.2019 an application for dismissal of said application along with a prayer for disclosure of some documents on which SMP, Kolkata has relied upon however, on 02.12.2019 without filing any comment upon O.P's application, SMP, Kolkata made some verbal submission on that point. Thereafter, this Forum had directed O.P to file an effective reply to the Show Cause. On 06.01.2020 Ld' Advocate of O.P filed their effective Reply/Written Objections duly signed by their Authorised signatory, followed by Letter/Petition dated 17.12.2020, 21.01.2021 and written notes of arguments filed on 28.01.2021. SMP, Kolkata vide their application dated 10.02.2020 informed the Forum about a Writ Petition (being No.74 of 2019) which was preferred by them in the Hon'ble High Court at Calcutta thereafter. SMP, Kolkata filed their rejoinder to such reply on 03.12.2020 when such Writ Petition was allowed by the High Court vide Judgement dated 10.08.2020. I have duly considered the applications of such O.P as filed on 18.11.2019, 06.01.2020, 17.12.2020, 21.01.2021 and written notes of arguments dated 28.01.2021. After due consideration of the submissions /arguments made on behalf of the parties, I find that following issues have come up for my adjudication/decision:-

- I. Whether the petition of SMP, Kolkata is maintainable or not;
- II. Whether the Show Cause Notice issued upon O.P. under P.P Act is valid and lawful or not;
- III. Whether the present proceeding is maintainable in view of the Gazette Notification dated 29th January 2019 as published by the State of W.B under West Bengal Escheats and Forfeiture Act-2012 or not;

Sud

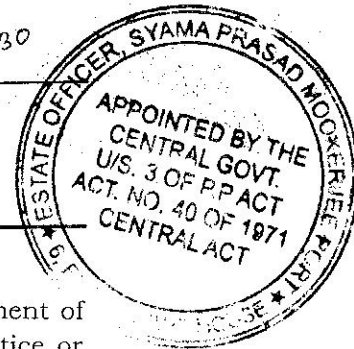
Estate Officer, Kolkata Port Trust

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

Proceedings No. 1707 x 1707/D of 2019 Order Sheet No. 30

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Motiram Agarwal & Co. (P) Ltd.



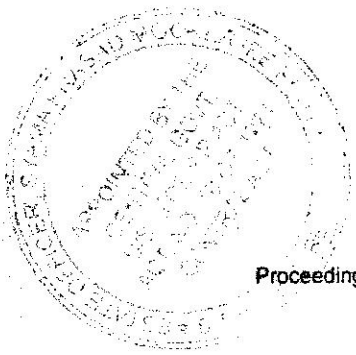
29
24.03.2021

- IV. Whether O.P. has defaulted in making payment of rental dues at the time of issuing Quit Notice or not;
- V. Whether O.P. has parted with possession unauthorisedly, or not;
- VI. Whether the Notice to Quit as issued by SMP, Kolkata to O.P. dated 23.02.2016 is valid and lawful or not;
- VII. Whether O.P.'s occupation could be termed as "unauthorised occupation" in view of Sec.2 (g) of the P.P. Act and whether O.P. is liable to pay damages to SMP, Kolkata during the period of its unauthorised occupation or not;

The issue no I, II and III are taken up together, as the issues are related with each other, I must say that the properties owned and controlled by the Port Authority has been declared as "public premises" by the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and Section-15 of the Act puts a complete bar on Court's jurisdiction to entertain any matter relating to eviction of unauthorized occupants from the public premises and recovery of rental dues and/or damages, etc. SMP, Kolkata has come up with an application for declaration of representatives of O.P's status as unauthorized occupant into the public premises with the prayer for order of eviction, recovery of compensation etc against O.P. on the ground of termination of authority to occupy the premises as earlier granted to O.P. in respect of the premises in question. So long the property of the Port Authority is coming under the purview of "public premises" as defined under the Act, adjudication process by serving Show Cause Notice/s u/s 4 & 7 of the Act is very much maintainable and there cannot be any question about the maintainability of proceedings before this Forum of Law. In fact, proceedings before this Forum of Law is not statutorily barred unless there is any specific order of stay of such proceedings by any competent court of law. Moreover, the O.P cannot claim any legal right after determination of such monthly term lease by way of a quit notice dated 23.02.2016. Therefore, the issues are decided accordingly in favour of SMP, Kolkata.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
26.03.2021
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

Sub



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. 1707 & 1707/D Of 2019 Order Sheet No. 31

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S. Motiram Agarwal & Co. (P) Ltd. **VS**

29
24-03-2021

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
TRUST
24-03-2021
THE ASSISTANT
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

As regards the issue of vesting, I must say that the Gazette Notification as issued by the State of W.B dated 29th January 2019 under West Bengal Escheats and Forfeiture Act-2012 is not relevant today because being aggrieved by the said Notification dated 29.01.2019, SMP, Kolkata has preferred a Writ Petition being W.P. No. 74 of 2019 before the Hon'ble Calcutta High Court and Hon'ble High Court has already vide its Judgement dated 10.08.2020 allowed such W.P. No 74 of 2019 by setting aside such Notification dated 29th January 2019 with the following observations:-

..... A) that the original notice dated 25th October, 2018 was both subject and purpose specific.

B) That the contents of the original notice dated 25th October, 2018 had the effect of enticing the Board to take a legal position qua Municipal Premises number 68 and 69 comprising in all 12 Bighas and 7 Cottahs of land.

C) In a well thought out manoeuvre by the State respondents the Board was allowed to hold on its position over a Lot A, while, simultaneously unleashing the provisions of the 2012 Act declaring the surprise Board to be a persona non grata qua Lots B1 and B2.

D) Finding itself outmanoeuvred, the Board has pressed this action by claiming title also in respect of several properties in Lots B1 and B2 in respect of which neither the KMC has measured nor declared the Municipal Premises No. to fulfill the conditions precedent of an inquiry inherent in the 2012 Act.

E) The KMC decided to aid the arbitrary state action by failing to identify and/or correlate the Municipal Premises Nos. of the property in issue with its corresponding area/ boundary.

In the backdrop of the above discussion, this Court is persuaded to interdict the passage of the Royal Horse. This Court finds the action impugned of the Respondents to be foundationally flawed and accordingly sets it aside....."

Therefore, I am firm in holding that this Forum being empowered under P.P Act has every jurisdiction to deal

Govd

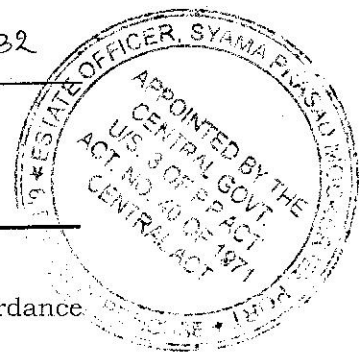
Estate Officer, Kolkata Port Trust

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

Proceedings No. 1707 & 1707/D Of 2019 Order Sheet No. 32

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S. Motiram Agarwal & Co. (P) Ltd.



29
24.03.2021

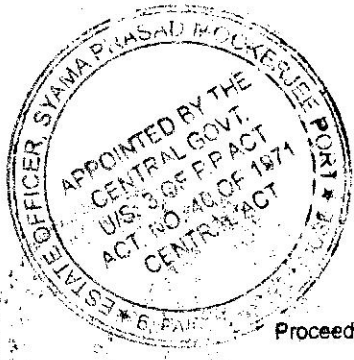
ESTATE OFFICER
SYAMA PRASAD MUKHERJEE PORT
TRUST, KOLKATA
CERTIFICATE COPY OF THE ORDER
ISSUED BY THE ESTATE OFFICER
SYAMA PRASAD MUKHERJEE PORT
TRUST, KOLKATA
26.03.2021

with and dispose of this instant matter in accordance with Law.

As regards the issue No. IV, I must say that as the Application dated 03.12.2020 and 02.07.2019 as filed by SMP, Kolkata shows that there is no rental dues at present I do not find any reason to deal with that issue however, as regards the compensation charges, I must say that SMP, Kolkata's allegation is justifiable because the Statement of Accounts as generated on 02.07.2019 and 02.12.2020 shows that O.P is still liable to pay such dues for unauthorized use & occupation of the subject public premises in question. In my view, such statement maintained by the statutory authority in the usual course of business has definite evidentiary value, unless challenged by any of the concerned/interested parties with fortified documents /evidences etc, ready to bear the test of legal scrutiny. In this present case in hand no other documents have been placed by O.P which may be in contradiction with the Statements produced by SMP, Kolkata Authorities. In my view, the conduct of the O.P. does not inspire any confidence and I am not at all inclined to protect O.P. even for the sake of natural justice. In my considered view, the Port Authority has a definite legitimate claim to get its revenue involved into the Port Property in question as per the SMP, Kolkata's Schedule of Rent Charges for the relevant period and O.P. cannot deny such payment of requisite charges as mentioned in the Schedule of Rent Charges. Further it can be added that O.P's plea as regards the exorbitant rate of compensation charges is not relevant because enhancement and/or imposition of monthly charges for occupation into the Port Property is governed by the provisions of the Major Port Trusts Act, 1963 on the basis of schedule of rent charges as time to time notified in the Official Gazette under Authority of Law and O.P. must have constructive notice in respect of publication of such notification as per law like all tenant/occupier of Port Premises. In fact nobody can deny the existence and enforceability of such notification under law.

SMP, Kolkata's claim on account of interest is required to be adjudicated seriously as the issue involves mixed question of fact and law as well. It is my considered view that payment of interest is a natural fall out and one must have to pay interest in case of default in making payment

Sub



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. 1707 & 1707/D Of 2019 Order Sheet No. 33

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Motiram Agarwal & Co. (P) Ltd. **VS**

29

24.03.2021

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE COPY
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
24/03/2021

of the principal amount due to be payable. For occupation and enjoyment of Port property, the charges leviable upon the tenants/occupiers are based on the Schedule of Rent Charges as applicable for a tenant/occupier in respect of respective zone as indicated in such Schedule of Rent Charges. Here in this instant matter O.P cannot deny such liability of payment of interest as he has failed to pay the principal amount due to be payable by him. As such, I have no hesitation to decide the issue in favour of SMP, Kolkata and I have no bar to accept the claim of SMP, Kolkata on account of Interest accrued for delayed payment.

As regards the issue No. V, i.e. on unauthorized parting with possession, mere claim on behalf of O.P that they have never allotted exclusive possession of any area under the said premises in favour of third party against consideration or over all possession and control of the said premises is all along with O.P etc, are in my view not sufficient to defend this type of serious allegation such as unauthorized parting with possession. The O.P could have very well produced documents related to their trade or business from that premises but O.P chose to produce nothing. Even O.P did not produce any single photographic evidence to counter the allegation of SMP, Kolkata. As such it is very difficult to accept the mere claim of the O.P which is bereft of any cogent reason. Moreover, induction of a third party without the approval of SMP, Kolkata is also against the spirit of tenancy.

Issue No. VI and VII, are also taken up together, as the issues are related with each other. O.P contended in their reply that the Notice to quit dated 23.02.2016 issued by SMP, Kolkata is infructuous as because such Notice was issued without any specific allegation of non payment of rent. Well I accept the O.P's contention but at the same time I cannot disregard the breach of unauthorised parting with possession which is also a ground of eviction. Therefore, it cannot be an accepted proposition that the notice to quit is infructuous by any sense of law. I must say that Quit notice dated 23.02.2016 as issued by SMP, Kolkata is very much valid, enforceable and in accordance with law. As per Sec 2(g) of the P.P Act, 1971, the "unauthorized occupation" in relation to any public premises, means the occupation by any person of the

Sud

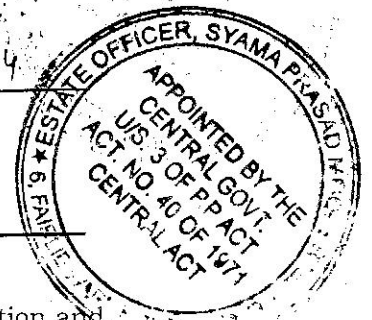
Estate Officer, Kolkata Port Trust

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

Proceedings No. 1707 & 1707/D of 2019 Order Sheet No. 34

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Motiram Agorwal & Co. (P) Ltd. VS



29
24.03.2021

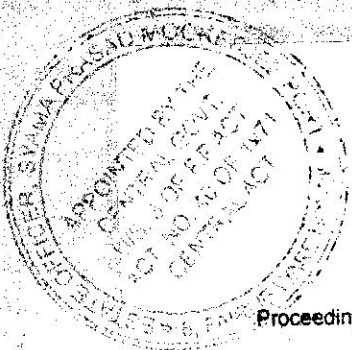
public premises without authority for such occupation and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. In my view said provision is squarely attracted in this matter.

Further O.P's objection as to the determination of lease and licence by same Quit Notice is seem to me unacceptable because as per Easement Act-1882, Licensee always holds a very inferior quality of right to occupy the premises that is to say not like a lessee. Institution of proceedings/suit is sufficient to express the intention of the landlord and no notice for revocation of licence is always necessary to evict a licensee. The licence shall be deemed to have been revoked even when there is no existence of formal notice for revocation of licence. Therefore, I don't find any wrong in determination such lease and licence both by same Quit Notice. In view of the discussions above, the issues are decided in favour of SMP, Kolkata. I find that this is a fit case for passing order of eviction against O.P and hence, being satisfied as above I hereby, passing Order of eviction under Section 5 of the Act on following grounds:

1. That this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrear dues/damages etc. as prayed for on behalf of SMP, Kolkata.
2. That the Show Cause Notice/s as issued by this Forum to O.P are valid binding and lawful.
3. That O.P has parted with possession of the public premises without any authority of law, in facts and circumstances of the case.
4. The O.P or any other person/occupant has failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation".
5. That the notice to quit dated 23.02.2016 as served upon O.P. by the Port Authority is valid, lawful and binding upon the parties and O.P.'s occupation and that of any other's occupation of the premises has

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
J. P. 26.03.2021
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

Sud



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. 1707 & 1707/D Of 2019 Order Sheet No. 35

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S. Motiram Agarwal & Co. (P) Ltd. **VS**

29
24-03-2021

become unauthorised in view of Sec.2 (g) of the P.P. Act.

- 6. That O.P. is liable to pay damages for wrongful use and occupation of the public premises up to the date of handing over the clear, vacant and unencumbered possession to the port authority.

ACCORDINGLY, I sign the 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 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. SMP, Kolkata 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.

It is my considered view that a sum of Rs.20,57, 206/- (Rupees Twenty Lakhs Fifty Seven Thousand Two Hundred Six only) for the Plate No.CG-70 and Rs.29,507/- (Rupees Twenty Nine Thousand Five Hundred Seven Only) for the Plate No.CG-70/1 both for the period 01.04.2016 to 02.07.2019 (both days inclusive) are due and recoverable from O.P. by the Port authority on account of damages and O.P. must have to pay such dues to SMP, Kolkata on or before Such dues attract compound interest @ 5.20 % 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 incurrance 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 SMP, Kolkata's books of accounts.

I make it clear that SMP, Kolkata 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 the liability of O.P. to pay damages extends beyond 02.07.2019 as well, till such time the possession of the premises

BY ORDER OF THE ESTATE OFFICER
SMP, KOLKATA
CERTIFIED TRUE COPY
PARTED BY THE CLERK OF
SMP, KOLKATA
OFFICE OF THE ESTATE OFFICER
SMP, KOLKATA
24-03-2021

Sud

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. 17 of 1707/D Of 2019 Order Sheet No. 36

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
M/S. Motiram Agarwal & Co. (P) Ltd.

29
24-03-2021

continues to be under the unauthorized occupation with the O.P. SMP, Kolkata is directed to submit a statement comprising details of its calculation of damages after 02.07.2019, 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



(Sourav Mira)
ESTATE OFFICER

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
24-03-2021
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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