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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 25.03.2021
PROCEEDINGS NO. 1593 OF 2017

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

-Vs-

M/S Bhagwandas Jhabarmull (O.P.)

F O R M - "B"

**ORDER UNDER SUB-SECTION (1) OF SECTION 5 OF THE PUBLIC
PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1971**

WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that **M/S Bhagwandas Jhabarmull, of 301, Netaji Subhas Road, Howrah-711101 AND 53/12/2, Bonbehari Bose Road, Seal Colony, Howrah-711101 AND ALSO AT 217, Panchanantolla Road, Howrah-711101** 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 carried out unauthorized construction in the public premises without any lawful authority.
4. That O.P has parted with possession of the public premises without any authority of law, in facts and circumstances of the case.
5. The O.P or any other person/occupant have failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation"
6. That the O.P cannot take the shield of principles of waiver, estoppels and acquiescence and also no suppression of facts have been made by KoPT.
7. That the notice to quit dated 27.01.1983 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 occupant of the premises has become unauthorised in view of Sec.2 (g) of the P.P. Act.
8. 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

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(2)

A copy of the reasoned order No. 21 dated 25.03.2021 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 Bhagwandas Jhabarmull, of 301, Netaji Subhas Road, Howrah-711101 AND 53/12/2, Bonbehari Bose Road, Seal Colony, Howrah-711101 AND ALSO AT 217, Panchanantolla Road, Howrah-711101** 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 Bhagwandas Jhabarmull, of 301, Netaji Subhas Road, Howrah-711101 AND 53/12/2, Bonbehari Bose Road, Seal Colony, Howrah-711101 AND ALSO AT 217, Panchanantolla Road, Howrah-711101** 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

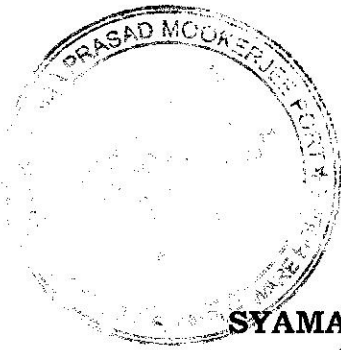
Plate No. HL-66

All that piece of parcel of land msg 654.687 sq.m or thereabouts is situated at Ramkristopur, Howrah, Thana- Howrah Police Station, Dist. And Registration Dist. Howrah. The said piece or parcel of land is bounded by on the North by the land occupied by M/S. Burn Standard & Co., on the East by the Trustees' land occupied by M/S Burn Standard Co., on the South by the Trustees open land then railway trucks and on the West partly occupied by C.S. Samanta & Ors.

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

Date- 25.03.2021


Signature & Seal of the
Estate Officer.



**REGISTERED POST WITH A/D.
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**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
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6, Fairlie Place, Kolkata- 700 001.

PROCEEDINGS NO. 1593/D OF 2017
ORDER NO. 21 DATED: 25.03.2021

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 Bhagwandas Jhabarmull.
301, Netaji Subhas Road, Howrah-711101 **AND**
53/12/2, Bonbehari Bose Road, Seal Colony,
Howrah-711101 **AND ALSO AT**
217, Panchanantolla Road, Howrah-711101.

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 19.02.2018 you are called upon to show cause on or before 23.03.2018 why an order requiring you to pay damages of Rs. 14,98,485.61 (Rupees Fourteen Lakhs Ninety Eight thousand Four hundred Eighty Five and paise Sixty One only) 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. 14,98,485.61 (Rupees Fourteen Lakhs Ninety Eight thousand Four hundred Eighty Five and paise Sixty One only) assessed by me as damages on account of your unauthorised occupation of the premises for the period from 01.04.1983 to 30.06.2017 (both days inclusive) to SMP, Kolkata by 08.04.2021

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 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.

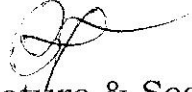
SCHEDULE

Plate No. HL-66

All that piece of parcel of land msg 654.687 sq.m or thereabouts is situated at Ramkristopur, Howrah, Thana- Howrah Police Station, Dist. And Registration Dist. Howrah. The said piece or parcel of land is bounded by on the North by the land occupied by M/S. Burn Standard & Co., on the East by the Trustees' land occupied by M/S Burn Standard Co., on the South by the Trustees open land then railway trucks and on the West partly occupied by C.S. Samanta & Ors.

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

Date 25.03.2021


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. 1593, 1593/D of 2017 Order Sheet No. 24

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s Bhagwandas Jhabarmull
VS

FINAL ORDER

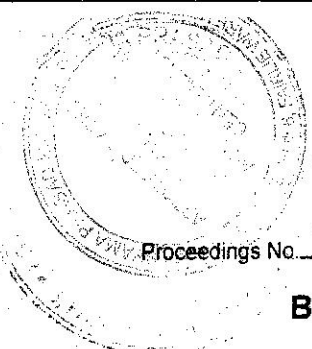
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25.03.2021

The matter is taken up today for final disposal. The factual aspect involved in this matter is required to be put forward in a nutshell in order to link up the chain of events leading to this proceedings. It is the case of Syama Prasad Mookerjee Port, Kolkata [erstwhile Kolkata Port Trust], hereinafter referred to as KoPT, Applicant herein, that land msg. 654.687 Sq.m or thereabouts situated at Ramkrishtipur, Thana: Howrah Police Station, Dist: And Registration Dist. Howrah, comprised under Plate No. HL-66 was allotted to M/s. Bhagwandas Jhabarmull., O.P. herein, on monthly term lease basis and O.P. prefers to continue in occupation without making payment of requisite charges for occupation inspite of demand for possession as per Notice to Quit dated 27.01.1983 read with vacation Notice dated 13.01.2014 bearing no. Lnd.3940/1/14/2884.

It is also the case of KoPT that O.P. has violated the condition of tenancy under lease by way of not making payment of rental dues, carrying out unauthorised construction and unauthorised parting with possession of the said premises to third party. It is argued that after expiry of the period as mentioned in the notice to quit, O.P. has no authority under law to occupy the Public Premises. It is contended on behalf of KoPT that O.P. is liable to pay damages for wrongful use and enjoyment of the Port Property upto the date of handing over of vacant possession to KoPT.

By Order
S.D.
26.03.2021
SYAMA PRASAD MOOKERJEE PORT TRUST

Handwritten signature/initials



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. 1593, 1593/D Of 2017 Order Sheet No. 25

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s Bhagwandas Thabarmull ^{VS}

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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 order of eviction etc.) and Show Notice u/s 7 of the Act (for adjudication of the prayer for recovery of damages etc.) both dated 19.02.2018.

The said notice/s were sent to the recorded addresses of O.P. both by Speed Post and hand delivery. It appears that One of such Notice/s which had been sent to 301, Netaji Subhas Road, Howrah-711101 was returned back to this Forum by the Postal Department with the endorsement "Left". However, the Notice/s sent to other two addresses were not return back hence, it can be presumed that the same has been delivered to the correct addresses of O.P. The Report of the Process Server dated 27.02.2018 also depicts that said Notice/s have also been received by a representative of O.P on 27.02.2018 and due affixation of the said Notice/s have also been made on the subject premises on the same day at about 11:15 A.M. as per the mandate of the P.P. Act.

On 11.05.2018 One Pradip Kumar Agarwal claiming himself as grandson of O.P. entered appearance through his Ld' Advocate and intimated the Forum about a pending First Appeal (being FAT No.3387 of 1991) which was arisen out of the Title Suit (bearing No.60 of 1984) Whereby the Hon'ble High Court (Calcutta) was pleased to pass an Order of stay on all proceedings in the Court below by Order dated 10.10.1991. However, on 30.01.2019 KoPT vide their comments/application later on intimated the forum that as per their available records no order of stay was in force and O.P also failed to produce any Certified

By Order of:
THE ESTATE OFFICER
KOLKATA PORT TRUST
f s-de
26.03.2021



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. 1593, 1593/D of 2017 Order Sheet No. 26

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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^{VS}

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Copy of the said stay order till date. The answering O.P. contested the matter by filing reply and effective reply to the Show Cause Notice/s on 26.09.2018 and 28.03.2019. I have duly considered the applications of O.P. as filed on 06.04.2018, 11.05.2018, 09.07.2018, 01.08.2018, 26.09.2018, 04.02.2019, 18.02.2019, 11.03.2019, 28.03.2019 and written notes of arguments on 11.04.2019. 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 :

1. Whether this Forum of Law is competent to adjudicate upon the matter or not;
2. Whether the Show Cause Notice issued upon O.P. under P.P Act is valid and lawful or not;
3. Whether KoPT has any locus standi to file and maintain the instant proceeding or not;
4. Whether the instant proceeding is bad for misjoinder and non joinder of necessary or proper parties or not;
5. Whether O.P. has defaulted in making payment of rental dues to KoPT or not.
6. Whether O.P. has carried out unauthorised construction on the Public Premises or not.
7. Whether O.P. has parted with possession of the Public Premises unauthorisedly or not.
8. Whether the instant proceeding is hit by the principles of waiver, estoppels, acquiescence and suppression of material facts or not;

By Order of:
THE ESTATE OFFICER
KOLKATA PORT TRUST
26.03.2021
F.S.D.

ESTATE OFFICER
KOLKATA PORT TRUST



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. 1593, 1593/D Of 2017 Order Sheet No. 27

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s Bhagwandas Thabarmull ^{VS}

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25.03.2021

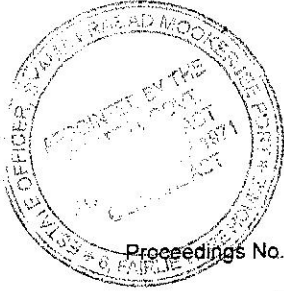
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9. Whether O.P's occupation has become unauthorised in terms of Sec.2(g) of the P.P. Act and whether O.P. is liable to pay damages for wrongful occupation and enjoyment of the Port Property to KoPT or not;

Now upon considering the application of KoPT dated 30.01.2019 wherein they have specifically stated that there is no Order of stay subsisting in connection with the pending First Appeal (bearing No. FAT No.3387 of 1991) that barring this Forum to adjudicate upon, I ~~now~~ go up to deliberate upon the issues framed herein above.

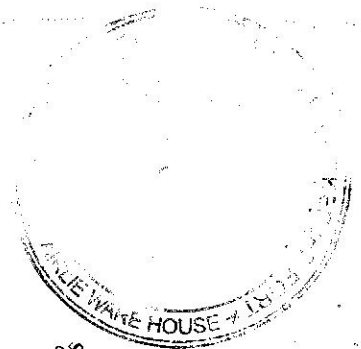
Issue No.1, 2 and 3 are taken up together, as the issues are related with each other. I must say that the properties owned and controlled by the Port Authority has been declared as "public premises" by the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and Section-15 of the Act puts a 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. KoPT has come up with an application for declaration of representatives of O.P's status as unauthorized occupant in to 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

By Order of:
THE ESTATE OFFICER
KOLKATA PORT TRUST
S.D.C.
25.03.2021
[Signature]



Estate Officer, Kolkata Port Trust

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(Eviction of Unauthorised Occupants) Act 1971



Proceedings No. 1593, 1593/D of 2017 Order Sheet No. 28

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S Bhagwandas Thabazmull ^{VS}

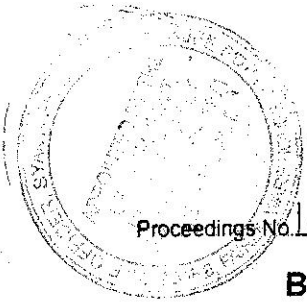
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about the maintainability of proceedings before this Forum of Law. In fact, proceedings before this Forum of Law is not statutorily barred unless there is any specific order of stay of such proceedings by any competent court of law. To take this view, I am fortified by an unreported judgment of the Hon'ble High Court, Calcutta delivered by Hon'ble Mr. Justice Jyotirmay Bhattacharya on 11.03.2010 in Civil Revisional Jurisdiction (Appellate Side) being C.O. No. 3690 of 2009 (M/s Reform Flour Mills Pvt. Ltd. -Vs- Board of Trustees' of the Port of Calcutta) wherein it has been observed specifically that the Estate Officer shall have jurisdiction to proceed with the matter on merit even there is an interim order of status-quo of any nature in respect of possession of any public premises in favour of anybody by the Writ Court. Relevant portion of the said order is reproduced below:

"In essence the jurisdiction of the Estate Officer in initiating the said proceedings and/or continuance thereof is under challenge. **In fact, the jurisdiction of the Estate Officer either to initiate such proceedings or to continue the same is not statutorily barred.** As such, the proceedings cannot be held to be vitiated due to inherent lack of jurisdiction of the Estate Officer. The bar of jurisdiction, in fact, was questioned because of the interim order of injunction passed in the aforesaid proceedings".

Hon'ble Division Bench of Calcutta High Court had the occasion to decide the jurisdiction of the Estate Officer under P.P. Act in Civil Appellate Jurisdiction being MAT No.2847 of 2007 (The Board of Trustees of the Port of Kolkata and Anr -vs- Vijay Kumar Arya & Ors.)

By Order of
ESTATE OFFICER
KOLKATA PORT TRUST
S-De
26.03.2021



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

M/s Bhagwandas Thabarmull ^{VS}

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25.03.2021

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BY ORDER OF
ESTATE OFFICER
KOLKATA PORT TRUST
S. De
26.03.2021

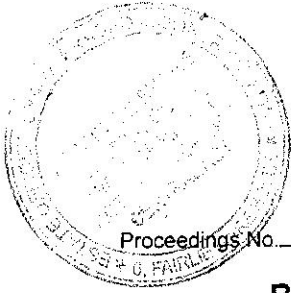
OFFICER
KOLKATA PORT TRUST

reported in Calcutta Weekly Note 2009 CWN (Vol.113)-P188 The relevant portion of the judgment (Para-24) reads as follows:-

"The legal issue that has arisen is as to the extent of Estate Officer's authority under the said Act of 1971. While it is an attractive argument that it is only upon an occupier at any public premises being found as an unauthorized occupant would he, be subject to the Estate Officer's jurisdiction for the purpose of eviction, the intent and purport of the said Act and the weight of legal authority that already bears on the subject would require such argument to be repelled. Though the state in any capacity cannot be arbitrary and its decisions have always to be tested against Article 14 of the Constitution, it is generally subjected to substantive law in the same manner as a private party would be in a similar circumstances. That is to say, just because the state is a Landlord or the state is a creditor, it is not burdened with any onerous covenants unless the Constitution or a particular statute so ordains".

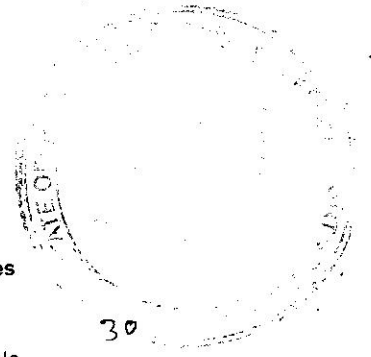
Moreover, whether a person has the locus standi to file a proceeding depends mostly and often on whether he possesses a legal right or not. In this instant case KoPT has every legal right to initiate such Proceeding before this Forum and O.P cannot challenge this. In view of the discussions above, the issues are decided in favour of KoPT.

As regards the issue No.4, I must say that O.P's objection that the instant proceeding is bad for misjoinder and non joinder of necessary or proper parties does not have any cogent reason because PP Act has extended a wide opportunity to all for appearance and contest the mater. as per Section 4



Estate Officer, Kolkata Port Trust

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(Eviction of Unauthorised Occupants) Act 1971



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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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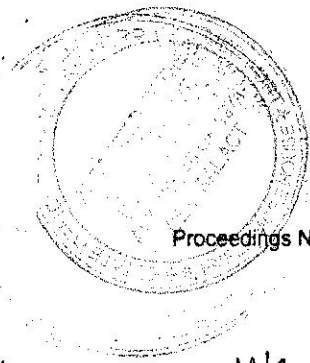
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S.D.C.
26.03.2021

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KOLKATA

sub-section 2(b) of the PP Act- All persons who are or may be in occupation of, or claim any interest in the public premises can appear before the Forum. Therefore this issue is decided in favour of KoPT.

Regarding issue No. 5, i.e on the issue of nonpayment of rental dues, I must say that although KoPT in their original application dated 21.10.2014 took nonpayment of rental dues as a ground however, vide a subsequent application dated 13.12.2017 they have admitted that no rental dues were there. Therefore, I do not find any reason to deal with this issue however, as regards the compensation charges, I must say that KoPT's allegation is justifiable because the Statement of dues as submitted by KoPT vide their comment/application dated 30.01.2019 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 KoPT 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 KoPT'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.



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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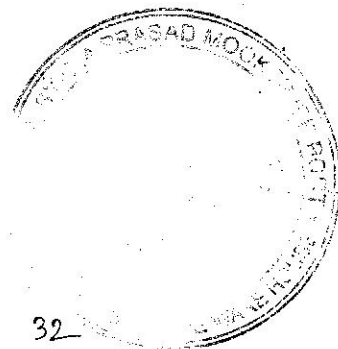
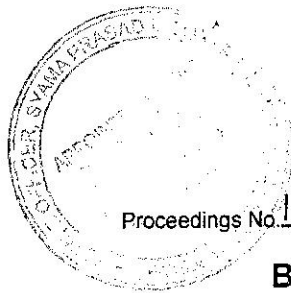
BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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25.03.2021

The issue No.6 and 7 are taken up together, as the issues are related with each other. KoPT's allegation regarding unauthorized construction and unauthorized parting with possession have been denied by O.P vide its reply/effective reply to the Shaw Cause dated 26.09.2018 and 28.03.2019. It is the categorical submission of O.P that they are not unauthorized occupant in any manner and not sublet and not made any construction which change the nature and character of the Schedule property. However, KoPT has come up with specific drawing/sketch Maps being No. 8494-H dated 17.08.2020 highlighting the unauthorized construction in red hatch but O.P is silent as to how this construction can be said to be authorized in nature. As per the P.P Act1971, once the Notice U/S-4 is issued, burden is on the O.P to Show Cause and/or produce evidence but in this case O.P has hopelessly failed to do so. In my view, the O.P. has sufficiently admitted about the existence of unauthorized construction in the premises, and since it is a settled law that admitted facts need not be proved, I have no bar in accepting that the breach of unauthorized construction was existing when the notice to quit dated Notice to Quit dated 27.01.1983 read with vacation Notice dated 13.01.2014 came to be issued by the Port Authority. O.P's claim that it has never sublet the premises to any third party is also 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

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26.03.2021
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Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises
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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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allegation of KoPT. Moreover, it appears from the letter dated 03.08.2017 as submitted by KoPT that subject premises has been unauthorisedly occupied partly by shri Ashok Agarwal and partly by M/S R.K Food Products. Such submission made by a statutory authority like KoPT cannot be disregarded. As such it is very difficult to accept the mere claim of the O.P which is bereft of any cogent reason. More over induction of a third party without the approval of KoPT is also against spirit of tenancy.

As regards the issue No.8, I must say that the principles of estoppels, waiver and acquiescence are procedural in nature and thus the same will have no application in a case where issues involved are only pure question of law. According to law the question of estoppels arise when one person has, by his declaration, act or omission, **intentionally** caused or **permitted** another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceedings between himself and such person or his representative, to deny the truth of that thing. In other words to constitute an estoppels there must be an intention or permission to believe certain thing. There is no material in O.P's objection by which it can be proved that there was any intention or permission on the part of KoPT about O.P's occupation in the said public premises in question. Moreso, no suppression of material facts as alleged by O.P have been done by KoPT.

By Order of
STATE OFFICER
F. S. De
26.03.2021

Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises
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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s Bhagwandas Jhabarmull
VS

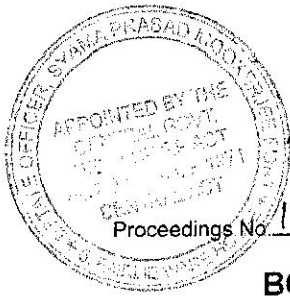
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25.03.2021

GP

As regards the issue No.9, I must say that Quit Notice dated 27.01.1983 read with vacation Notice dated 13.01.2014 as issued by KoPT 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 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. Moreover, I find from the Lease Agreement that KoPT is very much within its right to determine the relationship by virtue of this Quit notice. In such a situation when a rank outsider is carrying out commercial activity or dwelling in public premises belonging to the statutory authority that too on the strength of an agreement, this Forum cannot sit silent. In view of the discussions above, the issues are decided firmly in favour of KoPT. 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 KoPT.

THE STATE OFFICER
f s d e
26.03.2021



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. 1593, 1593/D Of 2017 Order Sheet No. 34



BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S Bhagwandas Thabazmull ^{VS}

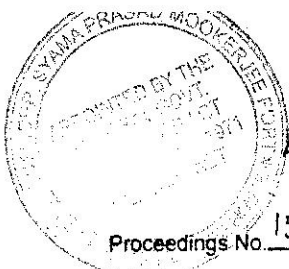
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25.03.2021

JA

By Order of:
ESTATE OFFICER
SYAMA PRASAD M.O. CENTRAL GOVT.
S.D.C.
26.03.2021

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 carried out unauthorized construction in the public premises without any lawful authority.
4. That O.P has parted with possession of the public premises without any authority of law, in facts and circumstances of the case.
5. The O.P or any other person/occupant have failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation"
6. That the O.P cannot take the shield of principles of waiver, estoppels and acquiescence and also no suppression of facts have been made by KoPT.
7. That the notice to quit dated 27.01.1983 read with vacation Notice dated 13.01.2014 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 occupant of the premises has become unauthorised in view of Sec.2 (g) of the P.P. Act.
8. 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



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

M/s Bhagwandas Jhabarmull VS

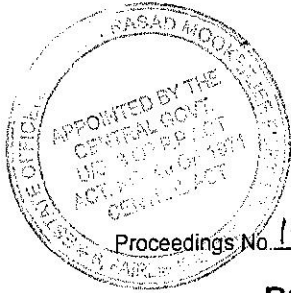
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25.03.2021

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.

It is my considered view . that a sum of Rs.14,98,485.61 (Rupees Fourteen Lakhs Ninety Eight thousand Four hundred Eighty Five and paisa Sixty One only) for the period 01.04.1983 to 30.06.2017 (both days inclusive) is due and recoverable from O.P. by the Port authority on account of damages for unauthorized occupation and O.P. must have to pay such dues to KoPT on or before 08.04.2021 The said damages shall attract compound interest @ 6.20 % 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 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 orders u/s 7 of the Act.

I make it clear that KoPT is entitled to claim further damages against O.P. for unauthorized use and occupation of the public premises right upto the date of recovery of clear, vacant and unencumbered possession of the same in accordance with Law, and as such the liability of O.P. to pay damages extends beyond 30.06.2017 as well, till such time the possession of the premises continues to be under the unauthorised occupation with the O.P. KoPT is directed to submit a

BY ORDER OF THE ESTATE OFFICER, KOLKATA PORT TRUST
S.D.E.
26.03.2021
OFFICE OF THE ESTATE OFFICER, KOLKATA PORT TRUST



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

M/s Bhagwandas VS Thabarz mull

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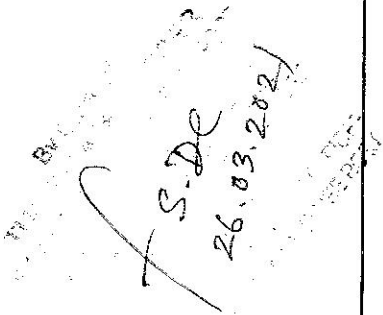
statement comprising details of its calculation of damages after 30.06.2017, indicating there-in, the details of the rate of such charges, and the period of the damages (i.e. till the date of taking over of possession) together with the basis on which such charges are claimed against O.P., for my consideration 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


(R. Mukherjee)
ESTATE OFFICER

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


F.S.De
26.03.2021