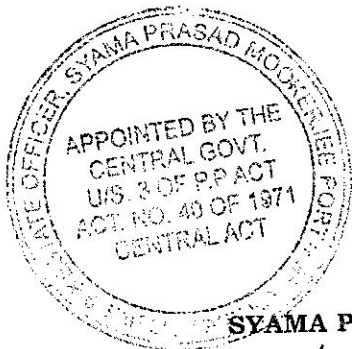


Web-Seite



**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. 34 DT 07.04.2021.
PROCEEDINGS NO. 574 OF 2004

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

-Vs-

Estate Sital Chandra Sett (O.P.)

By Order of:
**THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT**
CERTIFIED COPY OF THE ORDER
ISSUED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
07.04.2021
Head Assistant

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 **Estate Sital Chandra Sett, 46, Strand Road, Cross Road No.6, Calcutta-700007** 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 violated the condition of monthly lease as granted by the Port Authority by way of not making payment of rental dues and taxes to KoPT, for a prolonged period of time.
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 04.02.1989 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.

sd/-

PLEASE SEE ON REVERSE



(2)

A copy of the reasoned order No. 34 dated 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 **Estate Sital Chandra Sett, 46, Strand Road, Cross Road No.6, Calcutta- 700007** 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 **Estate Sital Chandra Sett, 46, Strand Road, Cross Road No.6, Calcutta- 700007** 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.SB-144

The piece or parcel of land measuring 3 cottahs 8 chittacks or thereabouts is situate on the north side of Cross Road No.6 leading from Strand Road at Jagannath Ghat within the presidency Town of Calcutta. The said plot of land is bounded on the north by the said Commissioners land leased to Bhabani Charan Nandy, On the south by the Cross Road No.6 leading from Strand Road and on the west by the said Commissioners land leased to Estate Kamakhya Charan Sett.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
ISSUED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
12.09.2021
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

Date-Signature & Seal of the
Estate Officer.

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

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

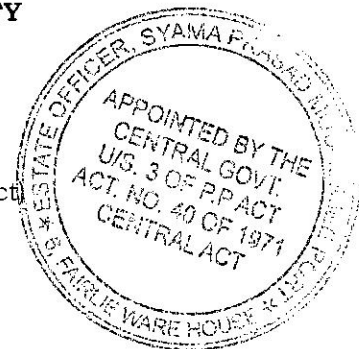
ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT, KOLKATA
(erstwhile KOLKATA PORT TRUST)

(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



Form "E"

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

PROCEEDINGS NO.574/R OF 2004,
ORDER NO.34 DATED: 07.04.2021.

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

To
Estate Sital Chandra Sett,
46, Strand Road, Cross Road No.6,
Calcutta- 700007.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
ISSUED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
07.04.2021
+ Head Assisstant
OFFICE OF THE ESTATE OFFICER
6, FAIRLEY PLACE WAREHOUSE PORT

WHEREAS you are in occupation of the public premises described in the
Schedule below.

AND WHEREAS, by written notice dated 10.07.2013 you are called upon
to show cause on/or before 21.08.2013 why an order requiring you to
pay a sum of Rs 1,88,517.82(Rupees One Lakh Eighty Eight Thousand
Five Hundred Seventeen and paisa Eighty Two only) being the rents
payable together with compound interest in respect of the said premises
should not be made;

AND WHEREAS I have considered your objections and/or evidence
produced before this Forum.

NOW, THEREFORE, in exercise of the powers conferred by sub-section
(1) of Section 7 of the Public Premises (Eviction of Unauthorised
Occupants) Act 1971, I hereby require you to pay the sum of Rs
1,88,517.82(Rupees One Lakh Eighty Eight Thousand Five hundred
Seventeen and paisa Eighty Two only) for the period 01.04.1967 to
31.03.1989 (both days inclusive) to Kolkata Port Trust by 23.04.2021.

PLEASE SEE ON REVERSE



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

SCHEDULE

Plate No.SB-144

The piece or parcel of land measuring 3 cottahs 8 chittacks or thereabouts is situate on the north side of Cross Road No.6 leading from Strand Road at Jagannath Ghat within the presidency Town of Calcutta. The said plot of land is bounded on the north by the said Commissioners land leased to Bhabani Charan Nandy, On the south by the Cross Road No.6 leading from Strand Road and on the west by the said Commissioners land leased to Estate Kamakhya Charan Sett.

SA
Dated: 08.04.2021

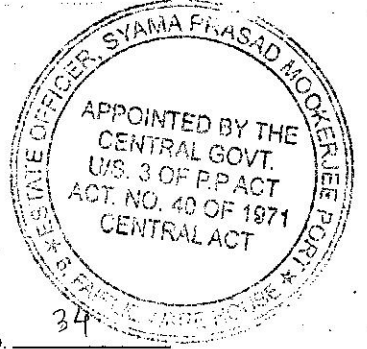
Syama Prasad
Signature and seal of the
Estate Officer

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
ISSUED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
08.04.2021
A Head Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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. 574 & 574/R of 2004 Order Sheet No. 34

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Estate Sital chandra Sett. (SB-144) ^{VS}

FINAL ORDER

34
07.04.2021

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
07.04.2021
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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 KoPT, Applicant herein, that a short term monthly lease was granted to Estate Sital Chandra Sett (O.P), on certain terms and conditions in respect of land msg. 234.115 Sq.m situated at 46, Strand Road(Cross Road No.6) Calcutta-7 in the ground/1st/2nd/3rd Floor of the KoPT's godown comprised under Plate No.SB-144 and O.P violated the condition of such tenancy by way of not making the payment of rental dues along with accrued interest. It is argued on behalf of KoPT that O.P has no authority under law to occupy the public premises after expiry of the period as mentioned in the notice to quit dated 04.02.1989 and O.P is liable to pay damages for unauthorised use and enjoyment of the Port property in question.

This Forum 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 rental dues etc.) both dated 10.07.2013(vide Order No. 05 dated 20.03.2013 as per rule made under the Act.

The said notice/s were sent through Speed Post/hand delivery to the recorded address of O.P. at 46 Strand Road, Cross Road No.6, Calcutta-700007. Notice sent through speed post was returned back to the Forum with an endorsement "not known". However, the report of the Process Server dated 29.07.2013 depicts that said notice/s were served upon O.P's address personally on

SM



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. 574 & 574/R Of 2004 Order Sheet No. 35

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
Estate Sitol Chandra Sett.

34
07-04-2021

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
ISSUED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
09.04.2021
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

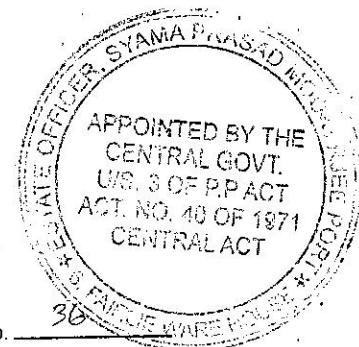
29.07.2013 and due affixation was also made over the subject premises in question on the same day as per the mandate of the P.P Act.

On the Scheduled date of appearance and filing reply to the Show Cause i.e on 21.08.2013, one Sri Prafulla Sett, claiming himself as a representative of O.P appeared before the Forum and sought time to file reply to the Show Cause on behalf of O.P. However, considering the submission and the documents as filed by the representative of O.P, Forum allowed him opportunity to file such reply. Thereafter, the representative of O.P has filed such reply to the Show Cause dated 11.09.2013 along with a scheme for liquidation of the outstanding dues by way of monthly instalment. It appears that O.P has made some payments as per the direction of the Forum dated 11.09.2013. Thereafter dated 03.06.2015 when KoPT had alleged that payment was not being made by O.P regularly, both the parties were directed to sit together for reconciliation of their respective books of accounts and to file a joint Minutes accordingly. Thereafter on 05.08.2015 when KoPT confirmed that such reconciliation of accounts with O.P had been satisfactorily executed, Forum gave further direction to O.P for continuation of payment as per payment Order dated 11.09.2013 and ordained that the entire matter would be reviewed on the month of March, 2016. Thereafter on 02.03.2016, KoPT brought the further allegation of non payment of interest against O.P. and accordingly the representative of O.P had been directed to file further scheme of liquidation within 15 days to liquidate the outstanding dues on account of interest. Thereafter on 16.03.2016 representative of O.P filed such scheme for liquidation and undertook their liability on account of interest in addition to their principal dues.

SR

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. 574 & 574/R Of 2004 Order Sheet No. 30

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
Estate Sital Chandra Saha

34
07-04-2021

Thereafter on 09.02.2018, one Mr. Rajat Dutta, claiming himself as a Ld' Advocate for O.P appeared before the Forum and prayed for waiver of the 3 times bill as raised by KoPT. However, the Forum directed both the parties to reconcile their statement of accounts once again and specifically directed KoPT to submit their comment on O.P's reply and also to file report on their inspection. Thereafter on 18.05.2018, representative of O.P has filed their supplementary reply to the Show Cause Notice/s dated 10.07.2013. Thereafter on 07.08.2018, KoPT also filed their rejoinder to such reply and supplementary reply as filed by O.P on 11.09.2013 and 18.05.2018. O.P filed their written notes of arguments on 14.09.2018. Thereafter on 08.03.2019, the matter had been assigned to the undersigned. Thereafter on 02.04.2019, Ld' Advocate of O.P preferred an application for dismissal of the instant Proceeding in view of Gazette Notification of State of W.B dated 29th January 2019. I have duly considered the applications filed by both the parties. After due consideration of the submission /arguments made on behalf of the parties, I find that following issues have come up for my adjudication/decision:

- 1) Whether the proceedings under P.P. Act is maintainable or not;
- 2) Whether the Show Cause Notice issued upon O.P. under P.P Act is valid and lawful or not;
- 3) Whether the present proceeding is maintainable in view of the State of W.B Gazette Notification dated 29th January 2019 or not;
- 4) Whether the claim of KoPT is justified or not;
- 5) Whether O.P. has defaulted in making payment of rental dues to KoPT, or not;

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
TRUST
CERTIFIED COPY OF THE ORDER
ISSUED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
TRUST
07-04-2021
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

Sd/-



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. 574 & 574/R Of 2004 Order Sheet No. 37

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
Estate Sital chandra Sett.

34
07.04.2021

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
ISSUED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
07.04.2021
Head Assistant
ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

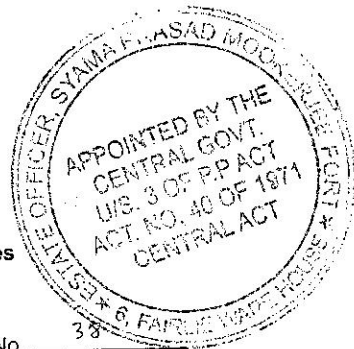
6) Whether the Notice to Quit as issued by KoPT to O.P dated 04.02.1989 is valid and lawful or not;

7) 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 KoPT during the period of its unauthorised occupation or not;

The 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 unauthorised 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 unauthorised 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 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 04.02.1989.

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. 574 & 574/R Of 2004 Order Sheet No. 38

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

Estate Sital chandra Sett.

34
07.04.2021

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSES BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
07.04.2021
Head Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

Therefore, this Issue is decided accordingly in favour of KoPT. As regards the issue of Gazette Notification of State of W.B dated 29th January 2019 as annexed by the representative of O.P with their application dated 02.04.2019, I must say that such notification is not relevant today because being aggrieved by the said Notification dated 29.01.2019, KoPT 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 10.08.2010 allowed such W.P. No 74 of 2019 by setting aside such Notification dated 29th January 2019 with the following observations:-

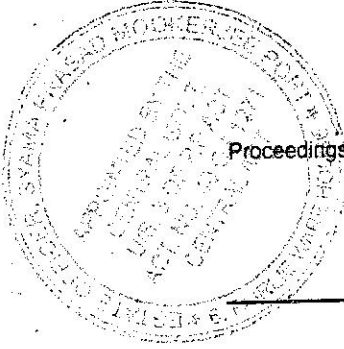
"..... A) that the original notice dated 25th October, 2018 was both subject and purpose specific.

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.

sd/
E) The KMC decided to aid the arbitrary state action by failing to identify and/or correlate the Municipal Premises



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. 574/574/R Of 2004 Order Sheet No. 39

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
Estate Setal Chandra Sethi.

34

07.04.2021

Nos. of the property in issue with its corresponding area/ boundary.

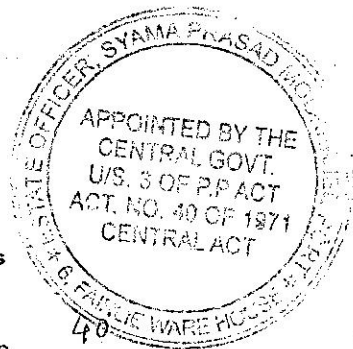
In the backdrop of the above discussion, this Court is persuaded to interdict the passage of the Royal Horse. This Court finds the action impugned of the Respondents to the foundationally flawed and accordingly sets it aside....."

Therefore, I am firm in holding that this Forum being empowered under P.P Act has every jurisdiction to deal with and dispose of this instant matter in accordance with Law.

As regards the issue No.4 and 5 are required to be discussed analogously as the issues are related with O.P's contention on justifiability of the claim of KoPT. As per Division Bench of the Hon'ble Calcutta High Court's order dated 12.02.2007 in A.P.O. No.367 of 2006 arising out of Writ Petitions moved by the Port Tenant Welfare Association to which O.P. is claiming to be a member of such Association, O.P. is under legal obligation to pay all the dues/charges as payable to KoPT in terms of KoPT's Schedule of Rent Charges for the time being in force by 36 Monthly instalments together with interest at the rate of 6% per annum. Needless to mention that O.P. has failed to comply with the order of the Hon'ble High Court, Calcutta regarding liquidation of KoPT's dues/charges and KoPT has come up with the applications for eviction of O.P. from the Public Premises etc. in terms of the liberty as provided in the said order passed by the Division Bench of Calcutta High Court. In my view, O.P. being a member of the Port Tenant Welfare Association was protected by the order of the Hon'ble High Court only upon compliance of the said order and failure on the part

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
07.04.2021
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

sd/



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. 574 & 574/R of 2004 Order Sheet No. _____

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

Estate Sital efandra sett.

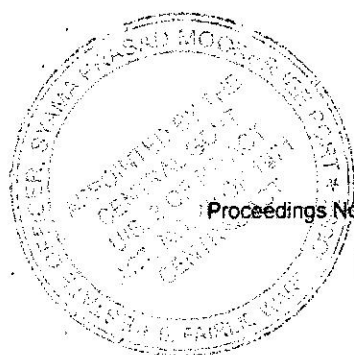
34
07.04.2021

of O.P. to comply with the order disentitled them to take any protection of the said order. In such a situation, O.P. is under legal obligation to pay the dues/charges as claimed by KoPT.

On the issue of non payment of rent and taxes, I must say that O.P's claim in this regard is unreasonable. There is no averment on the part of O.P that the claim of KoPT in respect of the property in question is not on the basis of KoPT's schedule rent charges. In fact O.P has admitted the dues vide their reply/supplementary reply to the Show Cause notice/s dated 11.09.2013 and 18.05.2018. It is the categorical submission of O.P that they have liquidated all the arrear rents with interest as claimed by the applicant and has been paying the current monthly rent/ occupational charges regularly without any default and KoPT is accepting the same without raising any protest. Before this Forum, KoPT has filed an updated Statement of Accounts as generated on 14.09.2020; which clearly indicates the huge dues on the part of the O.P. Although during the course of hearing O.P had made payments but never succeeded in complete and full discharge of such dues taxes and interest due to KoPT. There is no reason to disbelief such submission of the statutory authority. Moreover, O.P's plea that he has been making payment of monthly rent regularly without any default or there are no dues on account of current monthly rent/occupational charges since the O.P has made payment up to date as per the direction of Estate Officer etc. does not seem to have any justification in this juncture because such statement do not come to the protection of O.P. at all. 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

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MUKHERJEE PORT
CERTIFIED COPY OF THE ORDER
ISSUED BY THE ESTATE OFFICER
SYAMA PRASAD MUKHERJEE PORT
09.04.2021
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MUKHERJEE PORT

sd.



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. 574 of 574/R Of 2004 Order Sheet No. 481

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
Estate Sital Chandra Sett.

34
07.04.2021

By Order of:
THE ESTATE OFFICER
KOLKATA PORT TRUST
CERTIFIED COPY OF THE ORDER
ISSUED BY THE ESTATE OFFICER
ON 07.04.2021
Head Assistant
OFFICE OF THE ESTATE OFFICER
KOLKATA PORT TRUST

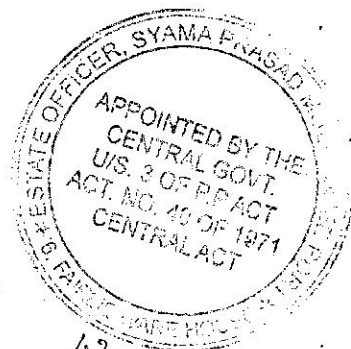
and O.P. cannot deny such payment of requisite charges as mentioned in the Schedule of Rent Charges.

Further it appears from the record that at the time of issuing Quit Notice breach of non-payment was very much prevalent therefore, O.P cannot bypass his liability of payment of rent on the basis of his present plea. It is a settled law that during the course of hearing if anything is received by KoPT that should be treated as occupational charges not as rent. Thus this Forum holds that the charge of default in payment of rent and taxes is definitely established.

KoPT'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 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 more so this forum has no power in the matter of waiver of interest for which O.P has to pray before proper Authority of KoPT. As such, I have no hesitation to decide the issue in favour of KoPT and I have no bar to accept the claim of KoPT on account of Interest accrued for delayed payment.

[Handwritten signature]

Issue No. 6 and 7 are also taken up together, as the issues are related with each other. O.P contended in their



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. 574/574/R Of 2004 Order Sheet No. 42

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

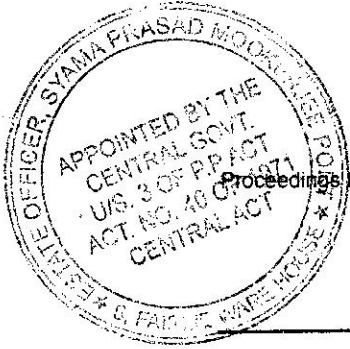
VS
Estate Sital chandra Seth.

34
07-04-2021

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
TRUST
CERTIFIED COPY OF THE ORDER
ISSUED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
TRUST
07-04-2021
Head Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

SD

reply that the Notice to Quit dated 04.02.1989 issued by KoPT is infructuous as because such Notice was issued on the ground of non payment of rent but ultimately KoPT has received rent as per the order of the Hon'ble High Court and Supreme Court therefore, KoPT by their conduct accepted the O.P as its tenant. But my view is that mere acceptance of rent during pendency of the eviction proceedings does not confer any better right to O.P and it does not amount to waiver of notice to quit. As per law, in order to constitute a waiver of notice to quit/s, O.P. must have to prove that KoPT by accepting rent had intended to treat the lease as subsisting. In absence of any such intention on the part of KoPT being proved, mere acceptance of an amount tendered by O.P. during pendency of the proceedings cannot be said to be a "waiver" on the part of KoPT. In the present case in hand KoPT actively prosecuted the proceedings for ejectment against O.P. and as such it cannot be an accepted proposition that the notice to quit/s is infructuous by any sense of law. Further, I must say that Quit notice dated 04.02.1989 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. 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



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. 574 & 574/R Of 2004 Order Sheet No. 43

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
Estate Sital chandra Sett.

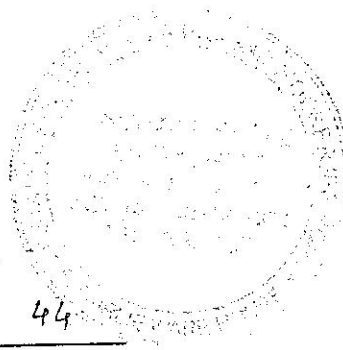
34
07.04.2021

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.
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 violated the condition of monthly lease as granted by the Port Authority by way of not making payment of rental dues and taxes to KoPT, for a prolonged period of time.
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 04.02.1989 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.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
ISSUED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
09.04.2021
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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. KoPT is directed to submit a comprehensive status report of the Public Premises in question on inspection of the property



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. 574 & 574/R Of 2004 Order Sheet No. 44

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
Estate Sitol chandra Saha.

34
07.04.2021

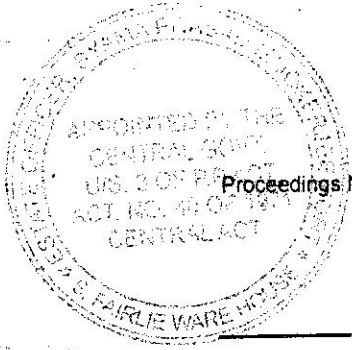
after expiry of the 15 days as aforesaid so that necessary action could be taken for execution of the order of eviction u/s. 5 of the Act as per Rule made under the Act.

It is my considered view that a sum of Rs.1,88,517.82 (Rupees One Lakh Eighty Eight Thousand Five Hundred Seventeen and paisa Eighty Two) for the period 01.04.1967 to 31.03.1989 (both days inclusive) is due and recoverable from O.P. by the Port authority on account of rental dues and O.P. must have to pay the rental dues to KoPT on or before 23.04.2021. Such dues 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 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 KoPT's books of accounts.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
ISSUED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
09.04.2021
Head Assistant
ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

I find that KoPT has made out an arguable claim against O.P., founded with sound reasoning, regarding the damages/compensation to be paid for the unauthorised occupation. 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 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.

SR



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. 574 & 574/R Of 2004 Order Sheet No. 45

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

Estate Setol Chandra Sett.

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07.04.2021

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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

J.P. Boipai
(J.P. Boipai)

ESTATE OFFICER

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

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
ISSUED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
09.04.2021
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT