

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. 1114, 1114/R, 1114/D Of 2011 Order Sheet No. 18

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S Education Officer K.M.C. VS

21
18-06-2018

FINAL ORDER

The matter is taken up for passing final order. It is the case of Kolkata Port Trust (KoPT), the applicant herein, that land measuring about 63.82 sqm or thereabout situated at Coal Dock Road, comprised under Plate no. D-315/1 was allotted to The Education Officer, Kolkata Municipal Corporation, the O.P. herein, on certain terms and conditions as lessee in respect of the property in question and O.P. defaulted in making payment of rental dues in gross violation to the condition of tenancy under lease. An application dated 20.02.2007 was filed before this Forum of Law with the prayer to issue order of eviction against O.P. and for realization of rental dues and damages etc.

This Forum of Law formed its opinion to proceed against O.P. under the relevant provisions of the P.P. Act and issued Show Cause notice under Sec. 4 & 7 of the Act for adjudication of the prayers, all dated 29.08.2011, as per Rules made under the Act.

It reveals from record that O.P. contested the matter through its Ld Advocate. However, O.P. did not file any Reply to the Show Cause Notices. Be that as it may, pursuant to the direction of this Forum, a joint inspection of the premises was held on 13.02.2018, and subsequently O.P. filed its internal note dated 16.02.2018 and an application dated 21.03.2018. Representative of one Shree Kishore Vidyalaya also appeared before this Forum, but without any document/evidence justifying its occupation of the public premises. Ultimately after hearing the parties

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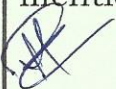
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on 28.03.2018, this Forum decided to reserve the Final Order.

I have carefully considered the documents on record and the submissions of the parties. At the very outset, I must say that both the parties (KoPT and O.P.) have failed to produce any executed lease deed regarding lease of the land for a period of 30 years. Be that as it may, it is seen from record that KoPT vide its letter dated 22.06.1968 made an offer for grant of lease for a period of 30 years, to the O.P., and O.P. in turn vide its letter dated 16.11.1968 communicated the Resolution of the Standing Works & Town Planning Committee of the Corporation of Calcutta, regarding acceptance of the offer. As per KoPT's subsequent letter dated 11.02.1969, possession of the public premises was handed over to representative of O.P. on 15.01.1969. It appears from the set of documents (filed by KoPT itself) that the O.P. vide its letter dated 03.04.1973 communicated the decision of its competent authority not to take over the land on lease as there was no immediate possibility of the Corporation to open out a school there. There was also a request, in the said communication, to make over the land in question to the management of Shri Kishore Vidyalaya who is running a school at the said land, if the C.P.C. (predecessor of the KoPT) so desires. It appears that KoPT took cognizance of the said communication of the O.P. and the then Land Manager of KoPT wrote to the O.P. vide letter no. Lnd. 4592 (date illegible) wherein KoPT categorically mentioned that the proposal of O.P. for cancellation



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of the lease and grant of fresh lease to the management of Shri Kishore Vidyalaya has been considered by the Appropriate Committee and the Committee granted the lease in favour of the management of Shri Kishore Vidyalaya with effect from 01.09.1971. In my considered view, with such communication of the Port Authority, the leasehold rights of the O.P. in connection with the public premises stood extinguished and fresh tenancy rights with the management of Shri Kishore Vidyalaya was sought to be created. It is seen that KoPT authority went ahead and made an offer for grant of lease for 10 years to the Secretary, Kishore Vidyalaya vide its communication dated 27.11.1973. Moreover, this Forum cannot ignore the communication dated 07.08.1973 of the KoPT to the Secretary, Kishore Vidyalaya wherein "permission to run the Kishore Vidyalaya on the existing plot of land" was communicated by the Labour Adviser & Industrial Relations Officer of the Port Authority. In my view, there is enough material available on record to conclude that the O.P. was not at all in "possession" of the public premises in question, since 01.09.1971. The O.P. has categorically dissociated itself from the management of the Kishore Vidyalaya and this Forum has no reason to disbelieve the submissions of a Civic Body like the Corporation of Calcutta. I must say that KoPT has hopelessly failed to produce any document to prove the continuance of the leasehold right of the O.P. beyond 01.09.1971; rather, it comes out through the documents produced by KoPT itself that all relationship with the O.P. came to an end on



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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

M/S Education officer K.H.C

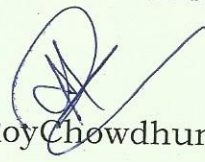
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01.09.1971. I find that the O.P. has been time and again reiterating their stand of no subsistence of tenancy over the public premises in question (such as vide letter dated 02.01.1981) whereas the Port Authority seems to have lost cognizance of their own earlier communications with the O.P.

In view of the discussions above, it is my considered view that the instant proceedings praying for eviction of O.P. from subject premises, is not at all maintainable, in the facts and circumstances of the case. As such, the instant proceedings is dismissed, with liberty to KoPT to file separate application for recovery of dues of the O.P., if any. KoPT shall also have the liberty to initiate appropriate proceedings against the management of Shri Kishore Vidyalaya, if so felt, in accordance with law.

All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL


(S. Roy Chowdhury)
ESTATE OFFICER

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