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THE ESTATE OFFICER, KOLKATA PORT TRUST  
(Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-Central Act)  
Public Premises (Eviction of Unauthorized Occupant) Act 1971  
OFFICE OF THE ESTATE OFFICER  
15, STRAND ROAD  
(4<sup>th</sup> Floor)  
KOLKATA - 700 001  
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Court Room At the 2<sup>nd</sup> Floor  
of Kolkata Port Trust's  
Head Office, Old Buildings  
15, Strand Road, Kolkata- 700 001.

REASONED ORDER NO. 48 DT 03.07.2018  
PROCEEDINGS NO. 857 OF 2007

BOARD OF TRUSTEES OF THE PORT OF KOLKATA  
-Vs-  
**M/s United Liner Agencies of (I) Pvt. Ltd. (O.P.)**  
(Now known as International Cargo Terminals & Infrastructure Pvt. Ltd.)

**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 United Liner Agencies of (I) Pvt. Ltd., of Mookerjee House, 17 Brabourne Road, Kolkata 700001** are in unauthorized occupation of the Public Premises specified in the Schedule below:

**R E A S O N S**

1. That O.P. has failed to justify as to how it is entitled to enjoy possession of the public premises, after determination of the monthly lease by due service of statutory notice.
2. That KoPT's notice dated 28.10.1992 demanding possession of Port property from O.P. is very much valid, lawful and enforceable in the facts and circumstances of the case.
3. That occupation of the O.P. do not deserve any protection, even for the sake of natural justice, as a commercial activity by an occupant having no valid and lawful grant from the landlord, cannot be allowed to thrive at the cost of public safety and security.
4. That no case has been made out on behalf of O.P. as to how its occupation in the Public Premises could be termed as "authorised occupation" after issuance of notice dated 28.10.1992, demanding possession by the Port Authority and occupation of O.P. has become unauthorized in view of Sec.2(g) of the P.P. Act, 1971.
5. That right from the period as mentioned in the said Notice to quit dated 28.10.1992, O.P. has lost its authority to occupy the Public Premises and O.P. is liable to pay compensation charges/damages with interest for wrongful use and enjoyment of the Public Property upto the date of handing over of clear, vacant and unencumbered possession of the same to the Port Authority.

**Please see on reverse**

A copy of the reasoned order No. 48 dated 03.07.2018 is attached hereto which also forms a part of the reasons.

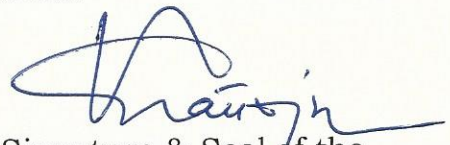
NOW, THEREFORE, in exercise of the powers conferred on me under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order the said **M/s United Liner Agencies of (I) Pvt. Ltd., of Mookerjee House, 17 Brabourne Road, Kolkata 700001** and all persons 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 United Liner Agencies of (I) Pvt. Ltd., of Mookerjee House, 17 Brabourne Road, Kolkata 700001** 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

The said Compartment msg. 88.537 sqm or thereabout, situated at the Southern half of Compartment no. 4 at KoPT's Fairlie Warehouse on the West side of Strand Road under the North Port Police Station within the Presidency Town of Kolkata.

Trustees mean the Board of Trustees for the Port of Kolkata.

Dated: 03.07.2018

  
Signature & Seal of the  
Estate Officer.

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

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Appointed by the Central Govt. Under Section 3 of the Public Premises  
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### FINAL ORDER

The matter is taken up today for final disposal. It is the case of Kolkata Port Trust (KoPT), applicant herein, that M/s United Liner Agencies of (I) Pvt Ltd., O.P. herein, came into occupation of KoPT's godown space measuring 88.537 sqm or thereabouts, situated at Southern half of Compartment no. 4 at KoPT's Fairlie Warehouse, comprised under occupation No. CG-139/1, being the Public Premises in question, as a short term (monthly) lessee, on certain terms and conditions and the said lessee violated the condition of tenancy under the monthly lease as granted by KoPT, by encroaching into the Port property unauthorisedly, parting ~~of~~ <sup>with</sup> possession of the demised godown, and also by paying no heed to the request of the Port Authority to vacate the premises, as the same were required for development of the land in accordance with KoPT's land use plan. KoPT has argued that the lessee has no authority under law to occupy the public premises after expiry of the period as mentioned in the notice to quit dated 28.10.1992 and that the lessee is liable to pay damages for wrongful use and occupation of the Port property upto the date of handing over of vacant possession of the same.

This Forum issued Show Cause notice under Section 4 of the Act (for adjudication of the prayer for issuance of Order of Eviction etc.) and a Show Cause Notice under 7 of the Act (for adjudication of the prayer for recovery of damages, interest etc) both dated 27.06.2007.

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It is seen from record that O.P. contested the matter by filing its Reply to Show Cause (styled as an objection petition) on 29.08.2007. Thereafter, KoPT vide applications dated 05.12.2007 & 19.03.2008 filed inspection reports of the said public premises. Subsequently, an application dated 27.06.2011 came to be filed by KoPT for disposal of certain goods/materials seized from or around the premises. It is also seen that an Order was passed on 30.08.2011 directing the Officer-in-Charge, North Port Police Station (N.P.P.S.) for submission of a Report in connection with disposal of the said materials, and the O.P., N.P.P.S complied with the Order by submitting a Report dated 19.09.2011. It is also seen that two Affidavits came to be filed by one Dinesh Kumar Chouhan, who claimed to be the owner of said goods/materials. The Port Authority also filed another application on 16.09.2011, mentioning that a Committee had been formed by Chairman, KoPT to assess the safety and security of Warehouses of ~~the~~ KoPT in the wake of incidence of a severe fire in KoPT's Strand Warehouse. Finally, KoPT filed application on 28.03.2017 claiming that O.P. is still encroaching on the adjoining areas of the public premises. KoPT also filed another application on 09.05.2017 claiming that the premises was required for KoPT's own purpose. KoPT also filed a detailed report on 27.06.2017. This Forum, on the basis of such information received, issued an additional Notice u/s 4 of the Act on 31.07.2017, with added grounds of encroachment and reasonable requirement. An objection petition came to be filed by the O.P. on 10.11.2017, followed by a



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Rejoinder on 28.02.2018. It was submitted on behalf of O.P. that the name of the O.P. has changed to M/s International Cargo Terminals & Infrastructure Pvt. Ltd. and O.P. also filed copy of its Certificate of Incorporation issued by Registrar Of Companies, Mumbai. Be that as it may, the matter was finally heard on 11.04.2018 when, after hearing both the parties, final order was reserved.

I have carefully considered the deliberations of the parties and gone through all the documents placed on record. No executed lease deed has been placed before me by either party. However, admittedly, the O.P. was a monthly lessee under the KoPT. KoPT has produced an offer letter dated 28.05.1960 through which offer for grant of monthly lease was conveyed to the O.P., and O.P. in turn accepted such offer by issuing a letter dated 03.06.1960. Clause (i) of the said offer letter is very relevant-

*"The tenancy of the above godown will be terminable on either side by 15-days notice expiring with the end of an English calendar month."*

KoPT has placed on record a communication dated 10.12.1991 addressed to the O.P. wherein the Port Authority has categorically mentioned that the land at Calcutta Jetty area (of which the subject public premises is a part) has been decided to be developed for commercial use. The said communication required the O.P. to vacate the space as early as possible. Understandably, O.P. did not vacate the premises. As such, the Port Authority went ahead and issued a notice to quit dated 28.10.1992. Although the O.P. has claimed in its Reply to the Show cause filed on 29.08.2007 that it has not



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received any notice to quit, I am not at all inspired by such submission of O.P. in view of O.P.'s communication dated 07.11.1992, a copy of which has been placed on record by KoPT alongwith its application dated 11.04.2018 (copy of which has been handed over to O.P. as well, during <sup>the</sup> course of hearing). In the said communication dated 07.11.1992 of O.P., the latter, while acknowledging the notice to quit, has mentioned that it is prepared to cooperate with KoPT's development programme and is prepared to vacate the godown if KoPT confirms in writing that it will be giving the O.P. the same area after the development in the same locality.

Now, a question arises as to how far such conditional surrender by the O.P. is valid, in the eyes of law. As per provisions of the Transfer of Property Act, as laid down in Sec. 108 (q) thereof, on the determination of the lease, the lessee is bound to put the lessor into possession of the property. In other words, the lessee is bound to deliver peaceful and unencumbered possession of the land/godown, in the same condition in which he received it, to the lessor/landlord as soon as the lease/grant is determined. In the instant case, I find that the Port Authority has issued a notice for determination of the lease, as per Sec. 111 (h) of the Transfer of Property Act, 1881, in terms of which, a lease of immovable property determines on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other. In my understanding, it is not open to the O.P. to put up any "condition" for

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handing over of possession, after acknowledging the statutory notice, determining the lease. It is my considered view that O.P. could not have set up a "condition" before surrendering possession of the public premises in terms of such statutory notice. During the course of hearing, O.P. has failed to justify how it is not bound by such notice to quit which is in consonance with the contract between the parties. O.P. has tried to make out that the development programme of KoPT is no longer in existence/operation and has also claimed that the encroachment complained about by KoPT in its original application dated 16.05.2006, is no longer subsisting. It is correct that the allegation of "encroachment" had been withdrawn by KoPT vide its application dated 05.12.2007 when it was submitted that no encroachment was found in the premises. It is also correct that subsequently, KoPT again pressed for encroachment charges as fresh encroachment was again detected at the premises. It is also true that a person/entity different from that of the O.P. had claimed ownership of the goods/materials lying in the area, alleged to be encroached upon by O.P., and O.P. disowned such goods/materials in writing. However, at the same time I must say that all these developments, which are subsequent to the issuance of the notice to quit by the Port Authority, cannot come to the protection of the O.P. It is my considered view that O.P. cannot take shelter under the garb of such subsequent developments and claim to be a "tenant" under the KoPT, when the Port Authority is not at all ready to accept the O.P. as a tenant. I must say that O.P. has



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not furnished any cogent reason as to how the notice to quit dated 28.10.1992 should be taken as "waived". As per Sec. 113 of the Transfer of Property Act, 1882, a notice u/s 111 (h) is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an "intention to treat the lease as subsisting". In the instant case, KoPT has produced documents which show that the Port Authority had refused to accept "rent" from the O.P. and returned various cheques to the O.P. as ejection notice had already been served on the O.P. This fact has been admitted by O.P. also, in para 6 (ii) of its reply to the Show Cause filed on 29.08.2007, where O.P. has itself mentioned that the Port Authority has refused to accept such amount. Hence, in the absence of renewal of the monthly lease, O.P.'s occupation is definitely to be taken as unauthorised. To take this view, I am fortified by the decision of Hon'ble Apex Court of India reported in [(2016)11 SCC 406, Para 31].

Moreover, it is a settled question of law that an ejection notice must not have to be construed with a view to detecting defect in it, but must be considered as a whole to convey the real intention of such notice. It is judicially established that a notice of ejection is required to be interpreted to preserve its validity rather than to destroy it. (AIR 1977 SC 1120) (AIR 1961 SC 1067). Furthermore, in the instant case, lease has been determined by KoPT by service of notice under Section 106 of the Transfer of Property Act and the validity of serving such notice has not been challenged by O.P. for the purpose of





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deciding the question of law. Rather O.P. advocated for suitable alternative accommodation for vacating the premises in question. In such a situation, when lease has been determined, the occupants become unauthorised occupants and are liable to be evicted. [AIR 1981 SC 670 (FB)].

Now the matter is required to be considered with all its seriousness as an important civil right of doing business of the public premises is involved on the question of administration of natural justice, particularly when every action of the authority like KoPT must have to be satisfied with the test of reasonableness. Admittedly, KoPT never expressed their desire to show a go by to their notice to quit dated 28.10.1992 by way of restoring rent charges against O.P. or by any other means. The matter of "safety and security" is an integral part of a development project. KoPT has sufficiently disclosed the reason of requirement of the premises on the ground of safety and security of the premises. It must have to be presumed that a statutory authority like KoPT has acted fairly for the interest of the public at large, unless there is material to consider the matter otherwise. When a positive evidence has been given by KoPT by submitting a report/minutes dated 09.06.2017 duly signed by Senior officials of KoPT in connection with the requirement of the premises for the safety and security of the port property, I have to accept that the matter has got a probative value of the substance, more so when there is no evidence, either oral or documentary, on the part of O.P. to contradict the same.



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As such, as per my finding, the notice to quit dated 28.10.1992 is still very much binding on the O.P., in the facts and circumstances of the case.

A question now arises whether the occupation of the O.P. deserves any protection for the sake of natural justice. It is seen from the records/reports produced by KoPT that there are no in-built fire protection system in the public premises in question. On the basis of certain objective considerations as stated in the Report, it has been assessed by the Security Officer (Fire Fighting) of KoPT that a good house-keeping needs to be maintained all over the area to minimize fire hazards, particularly in the wake of major incidence of fire at KoPT's Warehouse/s. The concern of the Port Authority is evident from the Report of Joint Inspection held on 09.06.2017 at the Fairlie Warehouse. The said report mentions that considering the sensitivity, safety and security of the premises as well as KoPT Offices located in the premises, it is always preferable that no such private/commercial party such as the O.P. be allowed to function further inside the premises and in future the premises may be used for KoPT's own use only. It is my firm understanding that the commercial activity of the O.P. cannot deserve any privilege over and above the public safety and security, as has been highlighted by KoPT. I must reiterate that this Forum of Law is duty bound to consider any matter within the four corners of the P.P. Act for adjudication of the same and it is not a court of equity to deliver equitable justice to any. Under such circumstances, I find no reason to allow



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the O.P. to occupy the premises even for the sake of natural justice.

On evaluation of the factual aspects involved in this matter, the logical conclusion which could be arrived at is that KoPT's notice dated 28.10.1992 as issued to O.P., demanding possession of the port property from O.P. is valid and lawful and binding upon the O.P. and other occupants of the public premises in question, if any. As per Section 2 (g) of the Act the "unauthorized occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or **has been determined for any reason, whatsoever.** The monthly lease granted to O.P. was doubtlessly determined in terms of provisions of the Transfer of Property Act and the Port Authority has demanded possession by due service of the statutory notice. KoPT's application for order of eviction is a clear manifestation of Port Authority's intention to get back possession of the premises. In my view, there cannot be any doubt that the O.P. is in unauthorized occupation of the premises, once the monthly lease was determined. In such a situation, I have no constraint to accept KoPT's contentions regarding enforceability of the notice dated 28.10.1992, on evaluation of the facts and circumstances of the case. With this observation, I



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must reiterate that the ejection notice, demanding possession as stated above has been validly served upon O.P. in the facts and circumstances of the case and such notice is valid, lawful and binding upon the parties.

NOW THEREFORE, I consider that it is a fit case for allowing KoPT's prayer for eviction against O.P. u/s 5 of the Act on the following grounds/reasons:

1. That O.P. has failed to justify as to how it is entitled to enjoy possession of the public premises, after determination of the monthly lease by due service of statutory notice.
2. That KoPT's notice dated 28.10.1992 demanding possession of Port property from O.P. is very much valid, lawful and enforceable in the facts and circumstances of the case.
3. That occupation of the O.P. do not deserve any protection, even for the sake of natural justice, as a commercial activity by an occupant having no valid and lawful grant from the landlord, cannot be allowed to thrive at the cost of public safety and security.
4. That no case has been made out on behalf of O.P. as to how its occupation in the Public Premises could be termed as "authorised occupation" after issuance of notice dated 28.10.1992, demanding possession by the Port Authority and occupation of O.P. has become unauthorized in view of Sec.2(g) of the P.P. Act, 1971.



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5. That right from the period as mentioned in the said Notice to quit dated 28.10.1992, O.P. has lost its authority to occupy the Public Premises and O.P. is liable to pay compensation charges/damages with interest for wrongful use and enjoyment of the Public Property upto the date of handing over of clear, vacant and unencumbered possession of the same to the Port Authority.

ACCORDINGLY, formal order of eviction u/s 5 of the Act as per Rule made there-under, is drawn 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 the Law, up to the date of recovery of unencumbered 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.

During the course of hearing, 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 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



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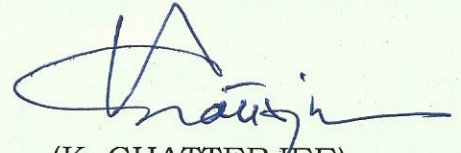
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date of recovery of clear, vacant and unencumbered possession of the same in accordance with Law, and as such I am not inclined to assess the damages at this stage when possession of the premises is still with the O.P.. KoPT is directed to submit a 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 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 recovery of possession in accordance with law.

All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL

  
(K. CHATTERJEE)  
ESTATE OFFICER

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