

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

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
(4th Floor)
KOLKATA - 700 001

Court Room At the 2nd Floor
of Kolkata Port Trust's
Head Office, Old Buildings
15, Strand Road, Kolkata- 700 001.

REASONED ORDER NO. 09 DT 09.07.2018
PROCEEDINGS NO. 1606 OF 2017

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-

M/s ABS Co. (Represented by Shri Sandip Sarkar & Others) (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 ABS Co. (Represented by Shri Sandip Sarkar & Others) (all Legal Heirs of Late Anath Bandhu Sarkar), of 129, Ramkristopur Lane, P.O. & P.S. Shibpur, Howrah 711102, AND also of 13, Foreshore Road, Ramkristopur Shed, Howrah 711101** are in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

- 1) That the legal representatives of late Anath Bandhu Sarkar have failed to appear before this Forum and failed to file reply to the Show Cause Notice/s under the Act inspite of sufficient chances being given.
- 2) That O.P. has violated the condition of tenancy under monthly term lease, as granted by the Port Authority, by way of inducting rank outsiders without any approval of the Port Authority.
- 3) That the appearing sitting occupants namely Radhe Shyam Gond and Siyaram Gond have failed to establish any "authority" to occupy the public premises.
- 4) That O.P./any other person on behalf of O.P. have failed to make out any case in support of its occupation as "authorised occupation", inspite of sufficient chances being given.
- 5) That O.P. or any other person/s asserting any right through O.P. has failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation", inspite of sufficient chances being provided.

Please see on reverse



- 6) That the notice to quit dated 02.05.2014 as served upon O.P. and legal representatives of late Anath Bandhu Sarkar 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 Section 2(g) of the P.P Act.
- 7) That O.P. is liable to pay damages for wrongful use and occupation of the Public Premises upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

A copy of the reasoned order No. 09 DT 09.07.2018 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 ABS Co. (Represented by Shri Sandip Sarkar & Others) (all Legal Heirs of Late Anath Bandhu Sarkar), of 129, Ramkristopur Lane, P.O. & P.S. Shibpur, Howrah 711102, AND also of 13, Foreshore Road, Ramkristopur Shed, 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 **M/s ABS Co. (Represented by Shri Sandip Sarkar & Others) (all Legal Heirs of Late Anath Bandhu Sarkar), of 129, Ramkristopur Lane, P.O. & P.S. Shibpur, Howrah 711102, AND also of 13, Foreshore Road, Ramkristopur Shed, 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

The said piece or parcel of land Msg. about 51 sqm or thereabouts, situated at Ramkristopur, Howrah, P.S. Howrah, District & Regn. District - Howrah. The said piece and parcel of land is bounded on the North by the KoPT's land previously allotted to Sarkar Mukherjee & Co., on the East by the Trustees' land allotted to Shri Ashutosh Chatterjee, on the South by KoPT's land occupied by Shri Bindeswari Dubey and on the West by the open land beyond which there is Railway siding.

Trustees' means the Board of Trustees for the Port of Kolkata.

Dated: 09.07.2018


Signature & Seal of the
Estate Officer.

**COPY FORWARDED TO THE ESTATE MANAGER/CHIEF LAW OFFICER,
KOLKATA PORT TRUST 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. 1606, (606) D of 2017 Order Sheet No. 09

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S (A.B.S.Co) Smt Sandip Sarkar & others VS

08
16-04-2018

Present: S. Chowdhury, Asst. Estate Manager
A. Raut, Resolution Officer-Legal
&
S. Chattopadhyay, Law Officer
For Kolkata Port Trust (KoPT)

P.K. Ghosh, Advocate For Radhey
Shyam Gond & Siyaram Gond
For Sitting Occupant

No one appears on behalf of O.P.

Mr. P.K. Ghosh, Advocate appearing on behalf of the sitting occupant submits that a two storey building is standing at the subject premises and his client running a School in the ground floor of the premises. Mr. Ghosh, files certain documents before this Forum which are relevant to adjudicate the instant matter. He further submits that he has already stated his argument in the reply to the show cause notice and also made exhaustive argument in support of his case.

Representative of KoPT submits that it is clear case of parting with possession, therefore KoPT prays for an order of eviction and recovery of dues/charges payable by O.P.

Heard the submissions and considered the matter. Let the documents filed by Mr. Ghosh, Advocate be kept on record. Both the parties have concluded their hearing today. Let Final Order be reserved. All concerned are directed to act accordingly.


(S. Sinha)

ESTATE OFFICER

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. 1606, 1606 (D) Of 2017 Order Sheet No. 10

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s (A.B.S. Co) Shri Sandip Sarkar & others. VS

09
09-07-2018

FINAL ORDER

The matter is taken up today for final disposal. It is the case of Kolkata Port Trust (KoPT), applicant herein, that a monthly term lease was granted to one M/s ABS Co., O.P. herein, represented by its proprietor Shri Anath Bandhu Sarkar, in respect of KoPT's land measuring 51 sqm situated at Ramkristopur, Howrah, comprised under occupation No. HL-59, being the Public Premises in question, on certain terms and conditions and that said M/s ABS Co. violated the conditions of grant of tenancy by way of not making payment of rental dues, carrying out unauthorised construction in the public premises in question, parting with possession in favour of rank outsiders, and also encroaching into the Trustees' property. It is strongly argued on behalf of KoPT that the said M/s ABS Co. has no authority under law to occupy the public premises after expiry of the period as mentioned in the notice/s to quit dated 04.01.1978 and 02.05.2014 and said M/s ABS Co. 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 Show Cause Notice under 7 of the Act (for adjudication of the prayer for recovery of damages, interest etc) both dated 07.02.2018.

It reveals from record that after the death of Shri Anath Bandhu Sarkar, the business is looked after

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. 1606, 1606/D Of 2017 Order Sheet No. 11

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s (A.B.S.Co) vs Smt Sandip Sarkar & others.

09
09.7.18

by his heirs, i.e. Shri Sandip Sarkar, Smt Bhawani Roy, Smt Kalyani Mazumdar, Smt Nupur Sarkar, Smt Kabita Biswas. Accordingly, this Forum issued Notice/s to the said legal representatives of Shri Anath Bandhu Sarkar as well, for the sake of natural justice. It is seen from record that nobody on behalf of O.P. or the said legal representatives appeared before this Forum at any point of time. It is also seen that the registered letters sent to the O.P. as well as the legal representatives have been returned back with postal endorsements such as "deceased", "not known" etc. It appears from the reports of the Process Server that O.P. was not found in the subject premises; however, due affixation of the orders appears to have been carried out as per mandate of the Act. Subsequently, one Radhe Shyam Gond and one Siyaram Gond appeared before this Forum through their Ld Advocate (with vakalatnama) as sitting occupants and filed their Reply to Show Cause on 09.03.2018. An application dated 23.02.2018 was also received from Shri Sushovan Karar, Advocate, purportedly on behalf of his client Sudip Sarkar son of Late Anath Bandhu Sarkar. However, since there was no vakalatnama or authorization from anybody, I declined to take cognizance of the said communication of the Advocate. Another opportunity was however granted to all concerned including O.P. on 04.04.2018 to come up with their submissions alongwith proper authorization. A set of documents came to be filed on behalf of said sitting occupants Radhe Shyam Gond and Siyaram Gond on 16.04.2018 when the matter was heard for the

9

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. 1606, 1606(D) Of 2017 Order Sheet No. 12

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s (A.B.S. Co.)^{VS} Shri Sandip Sarkar & others.

09
09.7.18

final time. However, nobody still appeared on behalf of the O.P. or the legal representatives of Late Shri Anath Bandhu Sarkar. In my view, this Forum has granted sufficient opportunity to all concerned to appear before and come up with their defence, if any, but nobody except Radhe Shyam Gond and Siyaram Gond has availed of such opportunity. Under such circumstances, being satisfied with notice to all concerned as mandated under the Act, and after hearing the arguments of appearing parties, I concluded the hearing and reserved the final order.

I have carefully considered all the documents placed before me. It is seen from the notice to quit dated 02.05.2014 that the allegations of KoPT are basically four-fold (as mentioned in the first paragraph above). Out of them, as regards the allegation of non-payment of monthly rent, encroachment into Trustees' property and unauthorized construction, I find that KoPT has not substantiated the said allegations with sufficient material evidence. However, as regards unauthorised parting with possession, it appears that strangers such as Radhe Shyam Gond and Siyaram Gond are occupying and enjoying the public premises in question. I have carefully gone through the Reply filed on behalf of said sitting occupants. As per said Reply, the said sitting occupants were inducted by the O.P. as sub-lessee and O.P. also used to collect rent initially at Rs 800 per month and later at Rs 1200 per month. The sitting occupants have also claimed that they have been running their business without any interruption since 1977 by paying rent to M/s ABS



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. 1606, 1606 (D) Of 2017 Order Sheet No. 13

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s (A.B.S. Co.) ^{VS} Sri Sandip Sarkar & others

09
09.7.2018

Co. The said sitting occupants however failed to produce any document as regards permission of the Port Authority for induction of any sub-tenant into the O.P.'s leasehold property. As such, in my view, this is a clear case of parting of possession in favour of rank outsiders. As per law, exclusive possession is very much essential for determining the question of parting with possession and such question is a question of fact to be decided in the facts and circumstances of each case. In the instant case, I find that O.P. collected rent from strangers for prolonged period and allowed such strangers to operate from the premises for decades. This sufficiently indicates that O.P. is not at all interested in the property and is rather interested in collecting "rent" from strangers in a most unlawful manner, to the detriment of the Port Authority. Moreover, it reveals from record that one Title Suit came to be filed by the said sitting occupants and the plaint in said Title Suit came to be rejected by the Ld Court. It further reveals from record that a Title Appeal was preferred against the said decision but no order of restraint/stay came to be passed. As such, it is crystal clear that the occupation of the sitting occupants is not at all protected by any forum of law. In such circumstances, I am firm in holding that the allegation of parting of possession to rank outsiders is very much established and this Forum cannot allow such strangers to enjoy the public premises to the detriment of the statutory authority. Before concluding, I must mention that a communication dated 07.06.2018 has been received from the Chairman, District Primary School Council,

Q

Proceedings No. 1606, 1606(D) Of 2017 Order Sheet No. 14

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s (A.B.S.Co) ^{VS} Sri Sandip Sarkar & others.

09
09.7.18

Howrah, requesting for according permission to Sri Anant Prasad Singh Vidyalaya for continuing to run the school in a part of the public premises. Apparently, said Sri Anant Prasad Singh Vidyalaya is also an occupier of the premises. During course of hearing, despite numerous opportunities were granted to all concerned but nobody from said Sri Anant Prasad Singh Vidyalaya came forward to establish their "authority" to occupy the premises. Such being the case, it is very difficult to accept the prayer of the Chairman, District Primary School Council, Howrah, more so when the provisions of the P.P. Act, 1971 is crystal clear and makes no distinction between the status of the unauthorised occupants. Thus, I find no scope to entertain the said prayer, within the ambit of the P.P. Act, 1971.

To conclude, in my opinion, the breach of unauthorized parting of possession as contended by the KoPT appears to be established and accordingly, I am firm in holding that the Notice to Quit dated 02.05.2014 had been validly issued and served on the O.P. and the legal representatives of Late Anath Bandhu Sarkar and same is binding on the parties.

In view of the circumstances, being satisfied as above, I am left with no other alternative but to issue the Order of Eviction against O.P. i.e. M/s ABS Co. & legal representatives of Late Anath Bandhu Sarkar, as prayed for on behalf of KoPT, on the following grounds/reasons:-

- 1) That O.P. and the legal representatives of late Anath Bandhu Sarkar have failed to appear before this Forum and failed to file reply to the

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. 1606, 1606/D Of 2017 Order Sheet No. 15

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s (A.B.S.Co) vs Sri Sandip Sarkar & others.

09
09.7.18

- Show Cause Notice/s under the Act inspite of sufficient chances being given.
- 2) That O.P. has violated the condition of tenancy under monthly term lease, as granted by the Port Authority, by way of inducting rank outsiders without any approval of the Port Authority.
 - 3) That the appearing sitting occupants namely Radhe Shyam Gond and Siyaram Gond have failed to establish any "authority" to occupy the public premises.
 - 4) That O.P./any other person on behalf of O.P. have failed to make out any case in support of its occupation as "authorised occupation", inspite of sufficient chances being given.
 - 5) That O.P. or any other person/s asserting any right through O.P. has failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation", inspite of sufficient chances being provided.
 - 6) That the notice to quit dated 02.05.2014 as served upon O.P. and legal representatives of late Anath Bandhu Sarkar 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 Section 2(g) of the P.P Act.
 - 7) That O.P. is liable to pay damages for wrongful use and occupation of the Public Premises upto the date of handing over of 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,

Q

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. 1606, 1606(D) Of 2017 Order Sheet No. 16

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S (A.B.S. Co) ^{VS} Sri Sandeep Sarkar & others.

09
09.7.18

giving 15 days' time to O.P. i.e. M/s ABS Co. & legal representatives of Late Anath Bandhu Sarkar, 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 canons of Law till the date of unencumbered recovery of possession of the same. A liberty is granted to the management of said Sri Anant Prasad Singh Vidyalaya to approach the Port Authority immediately for grant of lease or licence, as the case may be, as may be deemed appropriate by the Port Authority in terms of their extant polices and guidelines. Such request, if made by the management of said Sri Anant Prasad Singh Vidyalaya within 7 days of publication of this order, shall be decided by the Port Authority within another 7 days. 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 can be taken for execution of the order of eviction u/s 5 of the Act, as per Rule made under the Act.

Since issuance of notice to quit dated 02.05.2014 has superseded the earlier notice to quit dated 04.01.1978, I am not satisfied with the claim of KoPT as regards recovery of damages/compensation right from 01.03.1978. As such, I am not inclined to assess the damages at this stage. KoPT is directed to re-submit a report regarding its claim on account of

Q

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. 1606, 1606/D Of 2017 Order Sheet No. 17

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s (A. B. S. Co) ^{VS} Smt. Sandip Sarkar & others.

09
09.7.18

dues and damages against O.P., indicating there-in, the details of the computation of such dues and damages with the rate of charges so claimed for the respective periods (details of computation with rates applicable for the relevant periods, i.e. till the date of taking over of possession of the public premises) for my consideration in order to assess the dues and damages as per the Act and the Rules made thereunder.

I make it clear that in the event of failure on the part of O.P. or any other occupier to comply with this Order as aforesaid, 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 ,


(S. SINHA)

ESTATE OFFICER

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