



**REGISTERED POST WITH A/D.
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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 Room no. 43
of Kolkata Port Trust's
Subhash Bhavan (1st floor)
40, C.G.R. Road, Kolkata 700043.

REASONED ORDER NO. 101 DT 13.07.2018
PROCEEDINGS NO. 720 of 2005

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-

M/s S. D. Harry & Co. Pvt. Ltd. (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 S. D. Harry & Co. Pvt. Ltd., of “Harry House”, 640, Rabindra Sarani, Kolkata 700003, AND also of 1, Satya Doctor Road, Kolkata 700023** are in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

1. That O.P. had been a defaulter of rent and taxes, at the time of issuance of the Notice to Quit dated 02.06.2005 by the Port Authority;
2. That O.P. has admitted the allegation of unauthorised constructions/structures in the public premises in question;
3. That O.P. has failed to secure any fresh tenancy from the landlord, inspite of several opportunities granted by this Forum;
4. That O.P. has failed to bear any witness or adduce any evidence in support of its occupation into the public premises as 'authorized occupant';
5. That ejectment notice dated 02.06.2005 as served upon O.P., demanding possession of the public premises by KoPT is valid, lawful and binding upon the parties;
6. That occupation of O.P. is unauthorized in view of Sec. 2 (g) of the Public Premises Act in question;
7. That O.P. is liable to pay damages for its unauthorized use and occupation of the public premises upto the date of handing over of clear, vacant and unencumbered possession to KoPT.

Please see on reverse



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A copy of the reasoned order No. 101 DT 13.07.2018 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 S. D. Harry & Co. Pvt. Ltd., of "Harry House", 640, Rabindra Sarani, Kolkata 700003, AND also of 1, Satya Doctor Road, Kolkata 700023** 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 S. D. Harry & Co. Pvt. Ltd., of "Harry House", 640, Rabindra Sarani, Kolkata 700003, AND also of 1, Satya Doctor Road, Kolkata 700023** 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

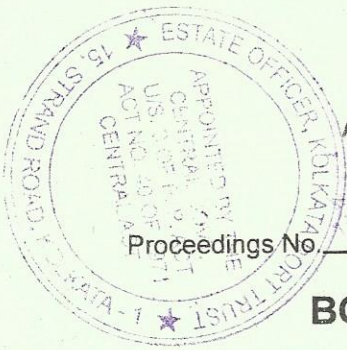
The said piece or parcel of land comprising Plot "A" msg. 459.68 sqm or thereabouts in the 1st belt and Plot "B" msg. 1922.16 sqm or thereabouts in the 2nd belt, altogether msg. 2381.84 sqm (Plot "A" & Plot "B") or thereabouts, situated at Satya Doctor Road, Kidderpore, Thana-Watgunge, Dist. 24 Parganas, Registration Dist. Alipore. Plot "A" is bounded on the North by the Trustees' land used as passage, on the South and East by the Trustees' land leased to Amiya Lal Mukherjee, and on the West by Satya Doctor Road. Plot "B" is bounded on the North by the Trustees' land used as passage, on the East partly by the Trustees' land leased to Martin Burn Limited and partly by land belonging to private owners, on the South by the land belonging to private owners and on the West by the Trustees' land leased to Amiya Lal Mukherjee.

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

Dated: 13.07.2018


Signature & Seal of the
Estate Officer.

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



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18-06-2018

Present: S. Atha, Executive Engineer
Pranab Roy Chowdhury, Jr. Marine
Engineer
.....For Kolkata Port Trust (KoPT)

None appears on behalf of O.P. Representatives of KoPT seek further time to intimate the outcome of the prayer for regularization.


Considered the submissions in the light of the documents on record. This Forum has granted several opportunities to the parties to settle the dispute between themselves, going beyond the purview of the P.P. Act, 1971, for the sake of natural justice. However, till date none of the parties could intimate any outcome. In my view, the matter is mature enough to be decided on merit. I am not inclined to allow any further time to anybody. There are enough material available on record to decide the respective rights and contentions. Let hearing be concluded. Final order is reserved. All concerned are directed to act accordingly.


ESTATE OFFICER

FINAL ORDER

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13-07-2018

The matter is taken up for final disposal today. It is the case of Kolkata Port Trust (KoPT), the applicant herein, that land measuring about 2381.842 sq. m. situated at Satya Doctor Road (Kidderpore), Thana- Watgunge Police Station, Dist.-South 24 Parganas, comprised under Plate no. D-58, was allotted to M/s S. D. Harry & Co. Pvt. Ltd., the O.P. herein, on certain terms and conditions, as short term lessee. It is the submission of KoPT that O.P. defaulted in payment of rent and taxes, sub-let the public premises to rank outsiders without any authority





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of law, encroached into the Port property and also that the O.P. carried out unauthorized construction without any approval of the Port Authority. An application dated 20.07.2005 was filed before this Forum of Law with the prayer to issue order of eviction against O.P. and for realization of dues etc. KoPT has made out that the O.P. has no authority to occupy the public premises after expiry of the period as mentioned in its Notice to Quit dated 02.06.2005 as issued upon the O.P.

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 notices under Sec. 4 & 7 of the Act both dated 16.08.2005 as per Rules made under the Act.

It reveals from record that O.P. contested the case through its Ld Advocate. A joint inspection of the premises was held on 07.11.2005. Thereafter, KoPT filed an application together with sketch map on 22.03.2006, highlighting the issue of unauthorized construction. KoPT also filed applications on 01.11.2006 and 06.12.2006, regarding occupation of one "Malu Motors Pvt. Ltd.". On 15.02.2007 O.P. filed an application, intimating its eagerness to pay the arrear rent/interest to KoPT. Be that as it may, another joint inspection of the premises was held on 26.09.2007, the report of which was submitted by KoPT vide its application dated 04.10.2007. On 11.06.2008, KoPT filed an application enclosing therewith certain photographs showing a retail showroom of "Hero Honda" in the premises under occupation of the O.P. O.P. replied to said contention of KoPT on 14.08.2008, submitting that it had already written to KoPT on 20.09.2007 regarding such two-wheeler retail showroom. In such facts and circumstances, another joint inspection was directed by the Forum, which took place on 30.10.2008.

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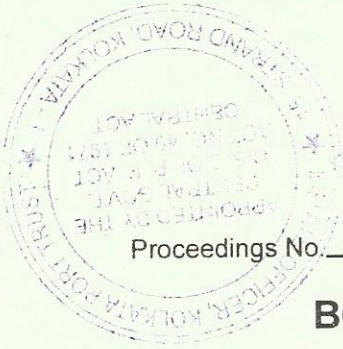
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On 09.01.2009, KoPT submitted sketch plan highlighting unauthorized construction in the premises. O.P. vide its application dated 14.03.2009 denied any unauthorized sub-letting. O.P. also submitted that the unauthorized construction as shown by the KoPT representative is of very temporary nature and can be removed if and when necessary as the said structures are made of wood, but without removing those structures O.P. is interested to keep them for his business and for which O.P. is ready to pay the damages as applicable in the KoPT rules. A proposal for reconciliation was made by O.P. vide application dated 03.03.2010. On 10.06.2010 a Written Objection was filed by the O.P. This was followed by a petition dated 05.08.2010 from KoPT, placing on record certain documents forming the correspondence between the parties. On 07.03.2012 O.P. filed two photocopies of sketch plans, alleged to be plans sanctioned by the concerned Authorities. On 05.04.2012, KoPT came up with the submission that a fair/legible copy of the plan is required to be supplied from O.P.'s end so that necessary scrutiny work could be made from KoPT's end.

Subsequently, as per prayer of O.P., on 19.07.2012, this Forum referred the matter to the Land Manager, KoPT, for his consideration regarding any allotment or regularization of tenancy. KoPT vide their letter/application dated 11/03.06.2013 intimated their stand in the matter. I find that in the said application, KoPT has drawn reference to one "Raunak Motors" functioning in the premises. After giving several opportunities to the parties to amicably settle the matter between themselves, this Forum again directed a joint inspection in order to ascertain the actual state of affairs. Such joint inspection was carried out on 06.06.2016 when neither any encroachment was found nor any existence of



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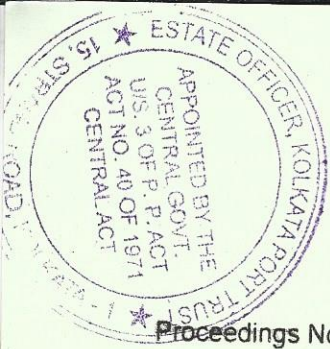
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Raunak Motors was detected. However, apparently, unauthorised structures/construction was detected which are marked in the sketch plan attached to the report of joint inspection. O.P. thereafter filed two applications dated 29.06.2016 and 30.06.2016. It is seen from record that several opportunities were again granted by this Forum to the parties to reach an amicable settlement but the parties could not communicate any such settlement even after expiry of about two years. Finally, on 18.06.2018 I decided to close the hearing and posted the matter for passing final order.

I have carefully considered the documents on record and the submissions of the parties. It is seen from record that the allegations of KoPT against the O.P. are basically fourfold, i.e. non-payment of rent and taxes, unauthorized construction, encroachment, and unauthorized parting with possession. It is the submission of KoPT that these four breaches led to the determination of the monthly lease by Notice to Quit dated 02.06.2005. Upon going through said Notice to Quit, it is observed that all four breaches are mentioned as grounds for determination of the lease. Now the question arises how far the allegations of such breaches, are tenable in the eye of law. As regards encroachment, KoPT has not placed before me any satisfying evidence; rather, it has been brought out through repeated joint inspections that no encroachment is subsisting in the public premises in question. As such, I am not inclined to agree with the charge of encroachment against the O.P.

Similarly, so far as unauthorized parting of possession is concerned, law requires "positive evidence" to be led for determining the issue against the O.P. but in the instant case, no such evidence has been led on behalf of KoPT. It is true that KoPT from time to time referred to certain



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occupants of the public premises such as "Malu Motors Pvt. Ltd.", "Raunak Motors" etc. but it is also true that KoPT was never able to establish that such entities are different and distinguishable from the O.P. It has been the submission of the O.P. before this Forum that such entities are/were run by the O.P. only and not by any strangers. I do not find any convincing counter-submission on behalf of KoPT, on this count. Moreover, as per law, mere occupation of even a third party does not constitute parting with possession, unless and until "exclusive possession" is handed over to such occupants. In such circumstances, I am inclined to disallow the charge of unauthorised parting of possession, as well. It could have been otherwise had the issue of change of purpose of lease was also listed as a breach in the Notice to Quit dated 02.06.2005, but since it was not so, there is little scope, in my view, to add change of purpose of lease as a breach, at this stage.

The question now survives if the other two breaches can be said to be established, in the facts and circumstances of the case. Regarding default in payment of rent and taxes, KoPT has placed before me a number of communications addressed to the O.P., requesting the O.P. to liquidate the dues. I have gone through letters dated 17.05.1995, 02.09.2003, 24.05.2004, etc. of KoPT. During continuance of proceedings before this Forum, O.P. never denied or disputed its liability to pay arrears of rent. The O.P. also sought liberty from time to time to clear the dues, which were allowed by this Forum without prejudice to the rights and contentions of the parties. It is true that O.P. cleared substantial amount of dues during continuance of the proceedings; but it is also true that I cannot lose sight of the fact that as per contract, O.P. was bound to pay the monthly dues in a time bound manner which O.P. has failed to execute. I have

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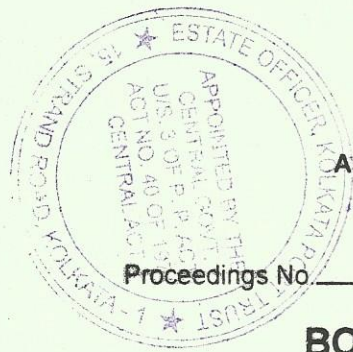
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gone through the comprehensive statement of accounts produced by KoPT. It is evident that O.P. cleared the rental dues only after a prolonged period of time, for instance rent for the year 1998 was paid only in the year 2006, and so on. In my view, there is substantial evidence available on record to come to the conclusion about O.P. being a defaulter for a prolonged period.

Now, as regards unauthorized construction, it has come out through repeated joint inspections that such unauthorized constructions/structures continued to be in existence even after determination of the lease. O.P.'s application dated 14.03.2009 is clear admittance on its part, where O.P. has not only expressed its intention to continue with the said unauthorized structures but also desired to pay the applicable damages to KoPT. O.P.'s re-submission at the fag end of the proceedings, vide application dated 30.06.2016, fortifies the claim of KoPT inasmuch as O.P. again desired to pay the necessary charges for "regularization of unauthorized construction". In my view, in the face of such clear admission on the part of the O.P., the issue need not be delved any further. I am not inclined to take cognizance of the illegible sketch map produced by the O.P., when O.P. itself by its submissions have admitted that the structures/constructions are unauthorized.

The facts and circumstances as they stand now, the charges of default in rent and taxes and unauthorized construction, are clearly proved against the O.P. As per law, if even one breach is established, it is sufficient to uphold the validity of the Notice to Quit. Therefore, in the instant case I have no hesitation to conclude that KoPT's Notice to Quit dated 02.06.2005 is valid, lawful and correctly issued and served on the O.P., in the facts and circumstances of the case. I may add that I have allowed considerable time to the



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parties, to amicably settle the disputes, outside the purview of this Forum, but the parties have hopelessly failed to communicate any such settlement. As such, in my view, there will be no question of violation of natural justice if I now declare the possession of the O.P. as "unauthorized", and issue order of eviction against O.P. on the following reasons,

1. That O.P. had been a defaulter of rent and taxes, at the time of issuance of the Notice to Quit dated 02.06.2005 by the Port Authority;
2. That O.P. has admitted the allegation of unauthorised constructions/structures in the public premises in question;
3. That O.P. has failed to secure any fresh tenancy from the landlord, inspite of several opportunities granted by this Forum;
4. That O.P. has failed to bear any witness or adduce any evidence in support of its occupation into the public premises as 'authorized occupant';
5. That ejectment notice dated 02.06.2005 as served upon O.P., demanding possession of the public premises by KoPT is valid, lawful and binding upon the parties;
6. That occupation of O.P. is unauthorized in view of Sec. 2 (g) of the Public Premises Act in question;
7. That O.P. is liable to pay damages for its unauthorized use and occupation of the public premises upto the date of handing over of clear, vacant and unencumbered possession to KoPT.

Accordingly, I sign the formal order of eviction under Sec. 5 of the Act as per Rules made thereunder, giving 15 days time to O.P. 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 as their occupation into the



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Public Premises is/are unauthorised in view of sec. 2(g) of the Act. 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.

KoPT is further directed to submit a report regarding its claim on account of damages against O.P., indicating therein the details of computation of such damages with the rate of charges so claimed for the respective period (alongwith rates applicable for the relevant periods and the date of taking over of possession of the plot) for my consideration in order to assess the 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. 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


(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 ***