

**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. 10 DT 30.07.2018
PROCEEDINGS NO. 1549 OF 2017

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-
M/s Friends Engineering Corporation (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 Friends Engineering Corporation, of 7, Muktaram Babu Street, Ground Floor, Kolkata 700007 AND also of Ramakrishna Mansion, Room no. 17, 2nd floor, 16, India Exchange Place, Kolkata 700001** are in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

- 1) That O.P. has failed to liquidate the rental dues of the Port Authority within prescribed period, for a considerable time, despite being requested for its immediate liquidation.
- 2) That O.P. has failed to produce any proof of payment/s allegedly made by it to the Port Authority.
- 3) That prayer for compensation made by the O.P. for alleged loss/damage to its belongings has no basis in the eye of law.
- 4) That O.P./any other person on behalf of O.P. have failed to make out any case in support of their 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 25.04.2014 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 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. 10 dated 30.07.2018 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 Friends Engineering Corporation, of 7, Muktaram Babu Street, Ground Floor, Kolkata 700007 AND also of Ramakrishna Mansion, Room no. 17, 2nd floor, 16, India Exchange Place, 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 Friends Engineering Corporation, of 7, Muktaram Babu Street, Ground Floor, Kolkata 700007 AND also of Ramakrishna Mansion, Room no. 17, 2nd floor, 16, India Exchange Place, 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

Compartment no. 16 msg. about 221.295 sqm on the 2nd floor of Kolkata Port Trust's Canning Warehouse, on the West side of Strand Road under North Port Police Station in the presidency Town of Kolkata.

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

Dated: 30.07.2018



Signature & Seal of the
Estate Officer.

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

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

ESTATE OFFICER, KOLKATA PORT TRUST
(Appointed by the Central Govt. Under Section 5 of Act 40 of 1971-Central Act)
Public Premises (Eviction of Unauthorised Occupants) Act 1971
OFFICE OF THE ESTATE OFFICER
15, STRAND ROAD (4TH FLOOR) KOLKATA-700001

Form " E "

PROCEEDINGS NO.1549/R OF 2017
ORDER NO. 10 DATED:30.07.2018

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

To
M/s. Friends Engineering Corporation,
Of 7, Muktaram Babu Street,
Ground Floor, Kolkata-700007 AND ALSO OF
Ramakrishna Mansion, Room No.17, 2nd Floor,
16, India Exchange Place,
Kolkata-700001.

WHEREAS you are in occupation of the public premises
described in the Schedule below. (Please see on reverse).

AND WHEREAS, by written notice dated 03.04.2017 you were
called upon to show cause on/or before 22.05.2017 why an order
requiring you to pay a sum of Rs.23,27,632/- (Rupees Twenty
Three Lakhs Twenty Seven thousand Six hundred Thirty Two only.)
being the rent payable together with compound interest in respect
of the said premises should not be made;

And whereas I have considered your objection and/or the
evidence produced by you.

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.23,27,632/- (Rupees Twenty Three Lakhs Twenty Seven
thousand Six hundred Thirty Two only.) for the period 01.09.1996
to 31.05.2014 (both days inclusive) to Kolkata Port Trust by
31.08.2018.

PLEASE SEE ON REVERSE

In exercise of the powers conferred by Sub-section (2A) of Section 7 of the said Act, I also hereby require you to pay simple interest at the rate of 15% per annum upto 18.09.1996 and thereafter @18% per annum upto 06.04.2011 and thereafter at the rate of 14.25% per annum on the above sum till its final payment in accordance with Kolkata Port Trust Notification Published in Official Gazettee/s as per Kolkata Port Trust's Rule.


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

Compartment No.16 msg. about 221.295 sq.m. on the 2nd floor of Kolkata Port Trust's Canning Warehouse, on the West side of Strand Road under North Port Police Station in the Presidency Town of Kolkata.

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

Dated: 30.07.2018


Signature and seal of the
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

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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. Friends Engineering Corporation (O.P. herein) came into occupation of the Public Premises in question, being Compartment No. 16 Msg. about 221.295 Sq.m or thereabouts in the second floor of the Kolkata Port Trust's Canning Warehouse (Occupation no. SW-16) on month to month lease basis on certain terms and conditions and O.P. violated the fundamental condition for grant of tenancy under monthly lease by way of not making payment of monthly rent for a considerable period. It is strongly argued on behalf of KoPT that O.P. has lost its authority to occupy the Public Premises as mentioned under the schedule of the application dated 03.06.2014, right from the date of expiry of the period as mentioned in the notice to quit dated 25.04.2014 as served upon O.P. by the Port Authority. It is also argued that O.P. is liable to pay damages for wrongful use and enjoyment of the Port Property in question upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

This Forum of law formed its opinion to proceed against O.P. and issued Show Cause Notice/s u/s 4 of the Act (for adjudication of the prayer for order of eviction against O.P. etc.) and u/s 7 of the Act (for adjudication of the prayer for recovery of arrear rental dues, damages etc.) all dated

CS

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03.04.2017. It is seen from record that the notice/s sent through registered post were returned undelivered. It is also seen from the Report of the Process Server dated 05.05.2017 that the door of the O.P. was found closed; however, the notice/s were affixed in the public premises in question as per the mandate of the Act. However, since no one appeared before this Forum, newspaper publication in English daily "The Telegraph" was made on 30.05.2017, inviting the attention of all concerned. On 09.06.2017, an application was filed by the O.P. intimating about change of their address. On 16.06.2017, authorised representative of O.P. appeared before this Forum. Direction was passed on the O.P. to file its reply to the show cause notice/s, which was subsequently filed by the O.P. on 28.06.2017. It bears mention here that on 21.06.2017 a letter was received from one Jayesh Doshi, S/o Late Ramesh Doshi; however, since the same was unsigned, the same has not been taken into consideration. In any event, said Jayesh Doshi or his representative did not appear before this Forum nor preferred any other application. Be that as it may, neither the O.P. nor the Advocate for the O.P. appeared on the subsequent hearings before this Forum. Finally, after the arguments of KoPT, final order was reserved by this Forum on 06.09.2017.

I have carefully gone through the materials on record, particularly the reply to the show cause as



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filed on behalf of the O.P. on 28.06.2017. So far as the allegation of KoPT regarding non-payment of rental dues (upto May, 2014) is concerned, I have come across letters dated 11.04.2013 and 13.09.2013 issued by the KoPT to the O.P., asking for liquidation of huge amount of rental dues. In the letter dated 13.09.2013, while referring to letter dated 30.06.2013 received from the Advocate of the O.P., KoPT has clearly mentioned that no receipt showing payment of KoPT rent has been furnished on behalf of the O.P. I have also gone through the notice to quit dated 25.04.2014 issued to the O.P., which categorically mentions about non-payment of the rental dues by the O.P. In the reply to the show cause notice filed on 28.06.2017, it is seen that the O.P. has denied default of payment of rental dues. The O.P. has also claimed to have paid Rs Three Lakhs to KoPT as per the direction of the then Ld Estate Officer in the matter of proceedings no. 206, alongwith the allegation that KoPT has not credited the said amount to O.P.'s account. In this regard, I find from the letter dated 11.04.2013 of KoPT that the proceedings no. 206 of 1994 was dropped by the then Ld Estate Officer on 04.12.1998 on the undertaking of the O.P. to liquidate the dues of KoPT, but inspite of that, O.P. has not paid the legitimate dues of KoPT and accordingly there has been huge outstanding dues. During course of hearing, O.P. failed to produce a single evidence of payment of the dues to KoPT by prescribed mode

CS

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within prescribed time. I am not satisfied with the mere submission of O.P. that nothing is due from it. In my view, O.P. must have to produce positive evidence of payment, otherwise adverse inference must have to be drawn against it. On the other hand, KoPT has produced detailed statement of accounts maintained in official course of business, which fortify the claim of KoPT as regards non-payment of dues by O.P. Moreover, in its application dated 04.08.2017, KoPT has clarified that all payments made by O.P. have already been adjusted in the statement of accounts. In my view, statements of accounts (copy of which has been served on O.P. also during course of hearing) maintained by a statutory authority has definite evidence in the eye of law, and O.P. having failed to produce any evidence whatsoever, I must have to accept that there is truth in the allegation of the Port Authority.

It is seen that O.P. has come up with a defence that the public premises is in dilapidated condition for over two decades, and O.P. has incurred huge expenses for its upkeep etc. O.P. has prayed that KoPT be directed to compensate O.P. for loss allegedly suffered by O.P. I do not find any merit in said submission of O.P. In my view, nothing prevented the O.P. from surrendering the premises to the landlord i.e. KoPT if the premises was really in such dilapidated or poor condition. I do not find anything on record which suggests that the Port Authority had forced the O.P. to use

CS

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the premises against its wish. Moreover, O.P. has not produced a single paper in support of the loss allegedly suffered by it. As such, I am not inclined to grant any protection to the O.P. even for the sake of natural justice.

In my view, the allegations of KoPT are sufficiently substantiated in the facts and circumstances of the case. As such, I find the action taken by the Port Authority is logical and within the four corners of the law. In view of the above, I am firm in holding that the Notice to Quit dated 25.04.2014 had been validly issued and served on the O.P. and the same is binding on the parties.

In view of the circumstances, and being satisfied as above, I am left with no other alternative but to issue the Order of Eviction against O.P., as prayed for on behalf of KoPT, on the following grounds/reasons:-

- 1) That O.P. has failed to liquidate the rental dues of the Port Authority within prescribed period, for a considerable time, despite being requested for its immediate liquidation.
- 2) That O.P. has failed to produce any proof of payment/s allegedly made by it to the Port Authority.
- 3) That prayer for compensation made by the O.P. for alleged loss/damage to its belongings has no basis in the eye of law.
- 4) That O.P./any other person on behalf of O.P. have failed to make out any case in support of



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their 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 25.04.2014 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 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, 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



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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.

It is my considered view that a sum of Rs. 23,27,632/- for the period 01.09.1996 to 31.05.2014 (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 31.07.2018. Such dues attracts interest @ 15% per annum upto 18.9.1996 and thereafter @ 18% per annum upto 06.04.2011 and thereafter @ 14.25% per annum till its liquidation of the same from the date of incurrance of liability in accordance with the notification of KoPT issued under Authority of Law as per adjustment of payments made so far by O.P as per KoPT's books of accounts. I sign the formal order as per Rule u/s 7 of the Act.

I must reiterate that KoPT's total claim against O.P. on account of rental dues and charges for compensation for wrongful use and enjoyment of the property for Rs. 71,21,906.42/- upto 01.10.2017 which includes interest for delayed payment of Rs. 38,04,067.42/- has received my due attention and I am satisfied that Port Authority has made out an arguable claim based on sound reasoning for such claim against O.P. as it is gathered in course of hearing that the charges so claimed by KoPT is on the basis of the Schedule



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of Rent Charges published under the Authority of Law as per provisions of the Major Port Trusts Act 1963. I make it clear that Kolkata Port Trust is entitled to claim damages against O.P. for unauthorized use and occupation of the public premises upto the date of recovery of clear, vacant and unencumbered possession of the same in accordance with Law and KoPT is entitled to claim interest upon dues/charges right from the date of incurrance of liability by O.P. as per KoPT's Rule. KoPT is accordingly directed to submit a statement comprising details of its calculation of damages indicating there in the details of the rate of such charges 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 pay the amounts to KoPT as aforesaid, Port Authority is entitled to proceed further for recovery of its claim in accordance with law. All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL



(G.MUKHOPADHYAY)

ESTATE OFFICER

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