

**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. 21 DT 01.08.2018
PROCEEDINGS NO. 1532 OF 2016

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-
Shri Pawan Kumar Saraf (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 **Shri Pawan Kumar Saraf, of 63, Rafi Ahmed Kidwai Road, Kolkata 700016 AND also of 11A, Jatindra Mohan Avenue, Kolkata 700006** 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 liquidate the rental dues of the Port Authority, within prescribed periods.
- 2) That O.P. has failed to explain how it is authorised to occupy the public premises after expiry of the lease period.
- 3) That O.P. has failed to make out any case in support of its occupation as "authorised occupation", inspite of sufficient chances being given.
- 4) 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.
- 5) That the notice to quit dated 15.10.2015 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.
- 6) 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.

Please see on reverse

A copy of the reasoned order No. 21 dated 01.08.2018 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 **Shri Pawan Kumar Saraf, of 63, Rafi Ahmed Kidwai Road, Kolkata 700016 AND also of 11A, Jatindra Mohan Avenue, Kolkata 700006** 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 **Shri Pawan Kumar Saraf, of 63, Rafi Ahmed Kidwai Road, Kolkata 700016 AND also of 11A, Jatindra Mohan Avenue, Kolkata 700006** 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

Land msg. about 428.92 sqm at Cossipore, Thana-North Port Police Station in the presidency town of Kolkata (under Plate no. SB-545). It is bounded on the North by the Trustees' leased out land allotted to Satrugan Singh, on the South by the Trustees' land, on the East by the Trustees' strip of land covered by drain beyond which lies private property and on the West by Trustees' road known as Strand Bank Road.

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

Dated: 01.08.2018



Signature & Seal of the
Estate Officer.

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

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OFFICE OF THE ESTATE OFFICER
15, STRAND ROAD (4TH FLOOR) KOLKATA-700001

Form " E "

PROCEEDINGS NO.1532/R OF 2016
ORDER NO.21 DATED:01.08.2018

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

To
Shri Pawan Kumar Saraf,
63, Rafi Ahmed Kidwai Road,
Kolkata-700 016 AND ALSO AT
11A, Jatindra Mohan Avenue,
Kolkata-700 006.

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

AND WHEREAS, by written notice dated 30.06.2016 you were
called upon to show cause on/or before 21.07.2016 why an order
requiring you to pay a sum of Rs.94,463.00/- (Rupees Ninety
Four thousand Four hundred Sixty Three 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.18,260.00/- (Rupees Eighteen thousand Two hundred
Sixty only.) for the period 30.09.2010 to 05.12.2010 (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 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

Land msg. about 428.92 sq.m. at Cossipore, Thana-North Port Police Station in the presidency town of Kolkata (under Plate No.SB-545). It is bounded on the North by the Trustees' leased out land allotted to Satrughan Singh, on the South by the Trustees' land, on the East by the Trustees' strip of land covered by drain beyond which lies private property and on the West by Trustees' road known as Strand Bank Road.

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

Dated: 01.08.2018


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 Shri Pawan Kumar Saraf, O.P. herein, originally came into occupation of KoPT's land measuring about 428.92 sqm at Cossipore, Kolkata, comprised under occupation No. SB-545, being the Public Premises in question, as a long term (20 years) lessee on certain terms and conditions, and O.P. violated the conditions of grant of tenancy by way of not making payment of rental dues and also unauthorisedly parting with possession to rank outsiders. It is strongly argued on behalf of KoPT that O.P. has no authority under law to occupy the public premises after expiry of the lease on 05.12.2010. It is also the submission of KoPT that a notice to quit dated 15.10.2015 had been issued and served on the O.P. and that O.P. 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/s under 7 of the Act (for adjudication of the prayer for recovery of rental dues, damages, interest etc) all dated 30.06.2016.

It is seen from record that O.P. contested the matter and filed a Written Objection on 17.11.2016. Subsequently, O.P. filed a Supplementary Affidavit on 06.03.2017 followed by a petition on 20.03.2017. On 14.06.2017 O.P. filed its Written Notes of Arguments. An offer for settlement of the dispute/s was made on behalf of O.P. vide application dated 03.07.2017. However, no such settlement is seen to have culminated between the parties. As such, this Forum after



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hearing the arguments of both the sides on 19.07.2017, reserved the final order.

I have carefully gone through the contentions made by KoPT against the O.P. As regards allegation of parting with possession, KoPT has not led any "positive evidence" during the course of the proceedings and as such I cannot allow the said allegation against O.P.. It is however seen that KoPT vide its letter dated 10.04.2012 requested the O.P. to liquidate the rental dues. During the course of hearing, KoPT has placed before me detailed statement of accounts maintained in official course of business, from which non-payment of rent by the O.P. is very much apparent. Moreover, by filing application for settlement on 03.07.2017, O.P. has practically admitted the dues on its part. In the annexure to the said application, O.P. has admitted to KoPT that it has paid rent only for the period upto August 2010. Whereas, the long term lease expired on 05.12.2010, i.e. O.P. was definitely a defaulter for atleast a few months as per the own admission of the O.P.

Now a question arises how the O.P. is authorized to occupy the public premises after expiry of the lease in question. Admittedly, the lease granted to the O.P. expired on 05.12.2010. I have carefully gone through the executed lease deed. I find that there was no provision for renewal of the lease. On the contrary, clause (10) of the deed required the O.P. to quietly and peacefully yield up vacant possession of the demised land as a whole unto the Trustees with all factories or buildings etc, at the expiration or sooner determination of the lease term. The O.P. has nowhere explained how KoPT is bound to renew or extend the said lease. In para 6 (iv) of its Written Objections, O.P. has admitted that it is using and occupying the property without any interruption. In para 6 (v), O.P. has



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tried to make out that on several occasion the O.P. were verbally assured that the said lease period has extended and very soon a formal, legal document shall be executed in the near future. I am not at all inclined to believe the said submission of the O.P. I do not understand how O.P. can claim to have acted on "verbal" communication with a statutory authority like KoPT. O.P. has also failed to name any such Officer with whom such alleged verbal communication was made by the O.P. When O.P. had executed registered lease deed with KoPT in the past, it is very difficult to believe the proposition that any "verbal" assurance was conveyed to the O.P. Moreover, in para 6 (vi) of same Written Objections O.P. has submitted that KoPT refused to accept the rent (after expiry of lease). Refusal or objection to receive "rent" after expiry of lease is a clear manifestation of the intention of the Port Authority that it does not recognize the O.P. as a tenant at all. As such, I do not find any merit in the submission of O.P. that it continued to enjoy the public premises merely on the basis of "verbal" assurance of some unknown Officer of KoPT. In my view, O.P. has failed to justify how it is authorized to hold and enjoy the public premises after expiry of the lease.

Moreover, it is a settled law that service of notice to quit is not at all essential when the contractual period of lease has expired. It is judicially settled that issuance/service of notice to quit is not at all necessary in cases where the lease has expired by efflux of time (order dated 09.09.2014 of Hon'ble High Court Calcutta in C.O. 3655 of 2013). In the instant case, I find that KoPT has duly issued a notice to quit dated 15.10.2015 receipt of which has not been denied by the O.P. I do not find anything wrong with the conduct of the Port Authority. Rather, I find that the KoPT has made its stand clear by issuing said notice to quit.



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In my view, KoPT has made out a very strong case for issuance of order of eviction against the O.P. As such, I hereby hold that the Notice to Quit dated 15.10.2015 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 periods.
- 2) That O.P. has failed to explain how it is authorised to occupy the public premises after expiry of the lease period.
- 3) That O.P. has failed to make out any case in support of its occupation as "authorised occupation", inspite of sufficient chances being given.
- 4) 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.
- 5) That the notice to quit dated 15.10.2015 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.
- 6) 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.



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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 the canons of Law till the date of unencumbered 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 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.

It is my considered view that a sum of Rs. 18,260.00/- for the period 30.09.2010 to 05.12.2010 (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 31.08.2018. Such dues attract interest @ 18% per annum upto 06.04.2011 and thereafter @ 14.25% per annum, till the 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., in terms of KoPT's books of accounts. I sign the formal order as per rule u/s 7 of the Act.

I must mention 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 under the concerned Occupation no. for Rs. 31,53,775.14/- upto 01.07.2018 which includes interest (for delayed payment) of Rs. 7,42,938.08/- has received my due attention and I am satisfied that Port Authority has made out an



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arguable claim based on sound reasoning for such claim against O.P. KoPT is directed to submit a report regarding its claim on account of rent and damages against O.P., indicating there-in, the details of the computation of such rent and damages with the rate of charges so claimed for the respective periods (details of computation with rates applicable for the relevant periods, till the date of taking over of possession) for my consideration in order to assess the rent 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. 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



(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 ***