



**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. 23 DT 24.08.2018
PROCEEDINGS NO. 1476 OF 2015

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-

**West Bengal State Warehousing Corporation
(represented by its Managing Director) (O.P.)**

F O R M - "B"

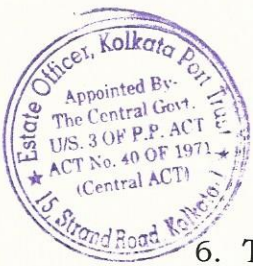
**ORDER UNDER SUB-SECTION (1) OF SECTION 5 OF THE PUBLIC
PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1971**

WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that **West Bengal State Warehousing Corporation, Khadya Bhavan, Block-B, 4th Floor, 11A Mirza Ghalib Street, Kolkata 700087** is in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

1. That O.P. has failed to justify as to how it is entitled to enjoy possession of the public premises, after expiry of the lease granted to it by the Port Authority.
2. That O.P. was very much in default of rent and taxes, at the time of issuance of Notice to Quit by the Port Authority.
3. That KoPT's notice dated 24.11.2010 demanding possession of Port property from O.P. is very much valid, lawful and enforceable in the facts and circumstances of the case.
4. That occupation of the O.P. does 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 the public exchequer.
5. 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 expiry of the lease, and occupation of O.P. has definitely become unauthorized in view of Sec.2(g) of the P.P. Act, 1971.

Please see on reverse



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6. That right from the expiry of the lease, 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.

A copy of the reasoned order No. 23 dated 24.08.2018 is attached hereto which also forms a part of the reasons.

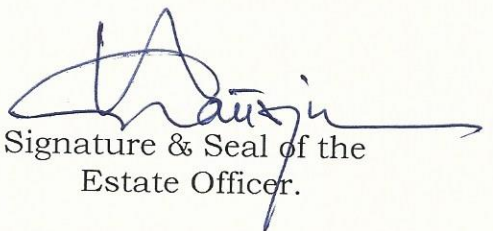
NOW, THEREFORE, in exercise of the powers conferred on me under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order the said **West Bengal State Warehousing Corporation, Khadya Bhavan, Block-B, 4th Floor, 11A Mirza Ghalib Street, Kolkata 700087** 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 **West Bengal State Warehousing Corporation, Khadya Bhavan, Block-B, 4th Floor, 11A Mirza Ghalib Street, Kolkata 700087** 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. 569.40 Sq.m at Hide Road Extension, Thana : Taratala Police Station, Calcutta, Dist.: 24 Parganas (South), Regn. Dist. : Alipore. It is bounded on the North by drain then Trustees' land occupied by M/s. Balmer Lawrie & Co. Ltd., On the East by the Trustees' land occupied by M/s. West Bengal State Warehousing Corporation, On the South by the Trustees' land occupied by M/s. Balmer Lawrie & Co. Ltd. and On the West by the Trustees' land occupied by M/s. West Bengal State Warehousing Corporation.

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

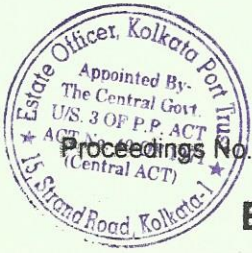
Dated: 24.08.2018


Signature & Seal of the
Estate Officer.

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

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FINAL ORDER

The matter is taken up today for final disposal. It is the case of Kolkata Port Trust (KoPT), applicant herein, vide their application dated 10.09.2012, that M/s West Bengal State Warehousing Corporation (represented by its Managing Director), O.P. herein, came into occupation of KoPT's land measuring 569.40 sqm or thereabouts, situated at Hide Road Extension, comprised under occupation No. D-634, being the Public Premises in question, as a long term lessee (coterminous with the lease of an adjacent plot), with effect from 01.12.1991, on certain terms and conditions, and the said lease expired on 14.11.2007. It is the case of KoPT that the said lessee also violated the condition of tenancy under the lease as granted by KoPT, by defaulting in payment of rent and taxes, parting with possession of the demised land to rank outsiders, and also erecting unauthorized construction upon the port property. KoPT has argued that the O.P. has no authority under law to occupy the public premises after expiry of the lease-hold period, as mentioned in the Notice to quit dated 24.11.2010, and that the 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 a Show Cause Notice under 7 of the Act (for adjudication of the prayer for recovery of damages, interest etc) both dated 07.04.2017.



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It is seen from record that O.P. contested the matter by filing its Statement of Defence on 01.06.2017. KoPT filed its comments on the said Statement on 08.06.2017. An additional Statement of Defence was filed by the O.P. on 20.06.2017. The parties also placed before this Forum a communication dated 10.07.2017 from Principal Secretary & Commissioner, Food, Department of Food & Supplies, Govt. of West Bengal, addressed to Chairman, Kolkata Port Trust. A reply dated 22.08.2017 of Dy. Chairman, Kolkata Port Trust, has also been placed before me. Be that as it may, another additional Statement of Defence was filed by the O.P. on 06.06.2018. The matter was finally heard on 27.06.2018 when both the parties submitted that their pleadings are complete and they have nothing more to depose. Under such circumstances, I reserved the final order.

I have carefully considered the deliberations of the parties and gone through the documents placed on record. No executed lease deed has been placed before me by either party. However, admittedly, the O.P. was issued an offer letter dated 11.11.1991 for grant of long term lease, coterminous with the lease of an adjacent plot, i.e. till 14.11.2007, and such offer was accepted by O.P. vide its letter dated 18.11.1991. Such offer and acceptance coupled with consideration form the contract between the parties in the instant case. I do not find anything regarding "renewal" of the lease, in the said offer letter. I also do not find any obligation on the part of the landlord i.e. KoPT, to consider any application for renewal of

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the said lease. In such a situation, the only inference which can be drawn is that the lease was intended to end on 14.11.2007 and there was no intention to continue/renew the lease on KoPT's part. During continuance of the proceedings, the O.P., a Govt. of West Bengal undertaking, admitted that the lease has expired on 14.11.2007. That being so, the question now arises regarding the exercise of right of the O.P. to occupy the public premises after expiry of their leasehold period. As per law, on the expiration of a lease, the lessee is bound to put the lessor in clear, vacant and unencumbered possession of the land. Sec. 108 (q) of the Transfer of Property Act, 1882 enjoins a duty upon the lessee to put the lessor into possession of the property. Therefore, in the instant case, I find nothing to justify O.P.'s occupation of the land after expiry of the lease period, more so when KoPT made its stand clear by issuing Notice to Quit dated 24.11.2010. KoPT's Notice to Quit is a clear manifestation of its intention that it does not recognize the O.P. as a tenant sequel to the expiry of the lease period. In such a situation, taking cognizance of the admission of the O.P., I must say that the occupation of the O.P. is definitely unauthorized after expiry of the lease-hold period. As per Section 2 (g) of the P.P. Act, 1971, 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



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to occupy the premises, has **expired** or has been determined for any reason whatsoever. In my view, the said provision is squarely attracted in the instant case and O.P. has failed to justify why it should be held otherwise.

Moreover, as per law, service of notice determining the relationship (i.e. Notice to Quit or ejection notice, as the case may be) is not at all mandatory where the relationship has been determined by efflux of time. I am fortified by the decision dated 09.09.2014 of the Hon'ble High Court, Calcutta in C.O. 3655 of 2013 (Sri Om Prakash Saxena v. The Board of Trustees' for the Port of Calcutta) where it was held that issuance of such a notice is completely unnecessary in the case of a person continuing in occupation of the public premises after the expiry of the period of grant or invitation. Here, in the instant case, KoPT has made its intention substantially clear by issuing the notice to quit dated 24.11.2010, despite being under no compulsion to do so. Therefore, I do not even need to go through the veracity or otherwise of the grounds of default in payment of rent, unauthorised parting with possession, unauthorised construction, etc, which are mentioned in said notice to quit. What is of primary importance is, in my view, the intention of the landlord and that is more than clear, in the case in hand.

Even if I am to adjudicate the issues mentioned in KoPT's application (plaint) dated 10.09.2012, irrespective of the sufficiency of evidence or

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otherwise regarding the allegations of unauthorised construction and unauthorised parting with possession, I must say that the charge of default in payment of rent and taxes is definitely established against the O.P., as can be gathered from O.P.'s own Statement of Defence. O.P. has never contended before this Forum that it had paid all the rental dues on time; rather O.P. has contended that it cleared the dues subsequent to issuance of Notice to Quit. It is very much evident from the letter dated 10.07.2017 of Principal Secretary & Commissioner, Food, Department of Food & Supplies, Govt. of West Bengal, addressed to the Chairman, Kolkata Port Trust, that the principal dues for the period November, 1997 to November, 2011 was paid by the O.P. only on 22.12.2011. Under such a situation, I am not inclined to grant any relief to the O.P. even for the sake of natural justice. I am strongly of the view that the lease in favour of O.P. having expired on 14.11.2007, KoPT is very much justified in issuing the Notice to Quit dated 24.11.2010. In such a situation, I have no constraint to accept KoPT's contentions regarding enforceability of the notice dated 24.11.2010, on evaluation of the facts and circumstances of the case. With this observation, I must reiterate that the ejectment 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.



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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 expiry of the lease granted to it by the Port Authority.
2. That O.P. was very much in default of rent and taxes, at the time of issuance of Notice to Quit by the Port Authority.
3. That KoPT's notice dated 24.11.2010 demanding possession of Port property from O.P. is very much valid, lawful and enforceable in the facts and circumstances of the case.
4. That occupation of the O.P. does 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 the public exchequer.
5. 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 expiry of the lease, and occupation of O.P. has definitely become unauthorized in view of Sec.2(g) of the P.P. Act, 1971.
6. That right from the expiry of the lease, 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

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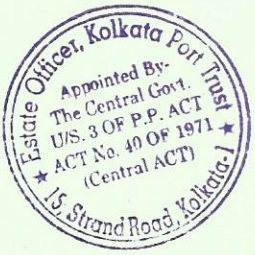
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and enjoyment of the Public Property upto the date of handing over of clear, vacant and unencumbered possession of the same to the Port Authority.

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 date of recovery of clear, vacant and unencumbered possession of the same in accordance with Law, and



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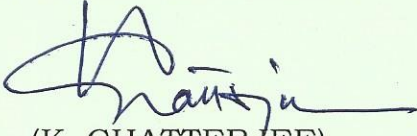
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as such I am not inclined to assess the damages at this stage when possession of the premises is still with the O.P.. KoPT is directed to submit a statement comprising details of its calculation of damages indicating there-in the details of the rate 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 ***