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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  
(4<sup>th</sup> Floor)  
KOLKATA - 700 001  
\*\*\*\*\*

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

REASONED ORDER NO. 14 DT 07.09.2018  
PROCEEDINGS NO. 1284 OF 2012

BOARD OF TRUSTEES OF THE PORT OF KOLKATA  
-Vs-  
**Shri Ashok Kumar Shaw & Shri Ram Kishore Shaw (O.P.)**

**F O R M - "B"**

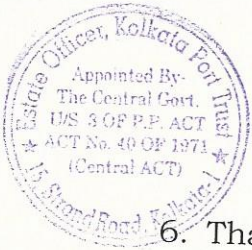
**ORDER UNDER SUB-SECTION (1) OF SECTION 5 OF THE PUBLIC  
PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1971**

WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that **Shri Ashok Kumar Shaw & Shri Ram Kishore Shaw, of Plot no. 1A, Taratala Staff Colony, Kolkata 700088** is in unauthorized occupation of the Public Premises specified in the Schedule below:

**REASONS**

1. That O.P. has admitted about non-payment of rent and taxes on its part, for a prolonged period.
2. That O.P. has parted with possession of the public premises unauthorisedly, to rank outsiders/businesses without any permission of the Port Authority.
3. That KoPT's notice dated 20.08.2010 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 period mentioned in the Notice to Quit, 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 period mentioned in the Notice to Quit dated 20.08.2010, 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. 14 dated 07.09.2018 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 Ashok Kumar Shaw & Shri Ram Kishore Shaw, of Plot no. 1A, Taratala Staff Colony, Kolkata 700088** 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 Ashok Kumar Shaw & Shri Ram Kishore Shaw, of Plot no. 1A, Taratala Staff Colony, Kolkata 700088** 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. 66.89 Sq.m or thereabouts situated at the lessor's Taratala Staff Colony at Taratala Road, Thana : Taratala Police Station, Dist. : 24 Parganas, Regn. Dist.: Alipore. It is bounded on the North by Pucca Road inside the lessor's Taratala Staff Colony, On the East by Shop No. 1, On the South by the lessor's open land and On the West by the Lessor's open land.

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

Dated: 07.09.2018

  
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

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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 21.12.2010, that Shri Ashok Kumar Shaw & Shri Ram Kishore Shaw, the O.P. herein, came into occupation of KoPT's land measuring 66.89 sqm or thereabouts, situated at Taratala Staff Colony, comprised under occupation No. D-379/9/A, being the Public Premises in question, as a short term (monthly) lessee, on certain terms and conditions and the said lessee 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 period as mentioned in the notice to quit dated 20.08.2010, 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 Show Cause Notice/s under 7 of the Act (for adjudication of the prayer for recovery of damages, interest etc) all dated 23.05.2017.

It is seen from records that O.P. contested the matter by filing an application/reply on 07.07.2017. KoPT filed its comments on the said application/reply on 30.08.2017. Subsequently on



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13.10.2017 KoPT filed an application clarifying its stand in the matter. The matter was finally heard on 08.11.2017 when after hearing the arguments of both the parties, the final order was reserved.

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 enjoying a month to month lease in the public premises in question and such lease was sought to be determined by KoPT vide Notice to Quit dated 20.08.2010. Now, the question before this Forum is whether such determination of lease can be said to be valid and enforceable in law. As regards the allegation of unauthorized construction, O.P. has contended that it has not carried out any unauthorized construction. O.P. has also produced a sketch plan alongwith a "no-objection" from KoPT for carrying out certain constructions. KoPT, on examination of these documents produced by O.P., has submitted that no unauthorized construction was subsisting. As such, the allegation of unauthorized construction can be said to have failed in all practical sense of the purpose.

Now, as regards non-payment of rent and taxes, KoPT has produced a letter dated 24.12.2008 whereby it requested the O.P. to liquidate the rental dues. In its final notice dated 22/23.07.2009, KoPT has reiterated its request for immediate redemption of rental dues. KoPT has also produced detailed statement of accounts maintained in official course of business. It reveals from the said statement that O.P. was indeed in default of rent. In my view, the



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statement of accounts maintained by a statutory authority has definite evidentiary value in the eyes of law and I find no reason to disbelieve the claim of KoPT, in the facts and circumstances of the case. In fact, O.P.'s letter dated 12.08.2009 (addressed to the Land Manager, KoPT) is a clear admission on the part of O.P. as regards default in payment of rent and taxes on its part. In its application/reply filed on 07.07.2017, O.P. has again admitted its inability to pay the rents to KoPT for a prolonged period, albeit due to reason of poor business conditions etc. In my view, there are sufficient materials available on record to decide the issue of non-payment of rent and taxes, against the O.P.

Regarding the issue of parting of possession, I find that the O.P. has been very evasive in its submission. The application/plaint dated 21.12.2010 as well as KoPT's final notice dated 22/23.07.2009 mentions about parting of the premises for the purpose of saloon, doctor's chamber, sweet shop, computer centre etc whereas in its letter dated 12.08.2009 O.P. only clarified its position regarding sweet shop and saloon. As per law, reply must be specific, complete with all material evidences, and not evasive or incomplete. I find that despite getting numerous opportunities, O.P. did not specifically rebut the allegations of KoPT. Rather, on 08.11.2017 O.P. verbally admitted that it has allowed certain commercial establishments to function from the premises in question under its aegis. Under such a situation, in my view, adverse inference must be drawn against the O.P. and I have no hesitation to conclude that

*AS*



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the O.P. has definitely committed the breaches of non-payment of rent and taxes alongwith unauthorised parting of possession.

As such, 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 period mentioned in the Notice to Quit. 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 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. With this observation, I must reiterate that the ejection 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.

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 admitted about non-payment of rent and taxes on its part, for a prolonged period.
2. That O.P. has parted with possession of the public premises unauthorisedly, to rank

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outsiders/businesses without any permission of the Port Authority.

3. That KoPT's notice dated 20.08.2010 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 period mentioned in the Notice to Quit, 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 period mentioned in the Notice to Quit dated 20.08.2010, 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.

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

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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.

Regarding payment of rental dues to KoPT, I must say that Rs. 6,42,253.13/- as claimed by the Port Authority in relation to the Plate in question, is correctly payable by O.P. for the period 01.07.1988 to 30.09.2010 (both days inclusive) and it is hereby ordered that O.P. shall make payment of the aforesaid sum to KoPT by 28.09.2018. O.P. shall be liable to pay simple interest @ 15% per annum upto 18.09.1996 and thereafter @ 18% per annum till 06.04.2011 and thereafter @14.25% per annum on the above sum from the date of incurrance of liability till its final payment in accordance with the relevant notification/s published in Official Gazette. The formal order u/s 7 of the Act is signed accordingly.

During the course of hearing, I find that KoPT has made out an arguable claim against O.P., founded with sound reasoning, regarding the





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damages/compensation to be paid for unauthorised occupation. I make it clear that KoPT is entitled to claim damages against O.P. for unauthorised 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 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 \*\*\*