

**REGISTERED POST WITH A/D.
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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
(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. 25 DT 12.09.2018
PROCEEDINGS NO. 1538 OF 2016

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-
M/s Jalan Timber Co. (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 Jalan Timber Co., of 67/27 Strand Road, Nimtollah, Kolkata 700006** is in unauthorized occupation of the Public Premises specified in the Schedule below:

R E A S O N S

- 1) That O.P. has admitted its failure to satisfy the rental dues of KoPT from the year 2004 onwards.
- 2) That O.P. has failed to justify the constructions carried out by it without any authority of law.
- 3) That occupation of the O.P. deserves no protection, even for the sake of natural justice.
- 4) That O.P. has failed to make out any case in support of its 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 20.08.2014 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.

Please see on reverse

A copy of the reasoned order No. 25 dated 12.09.2018 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 **M/s Jalan Timber Co., of 67/27 Strand Road, Nimtollah, 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 **M/s Jalan Timber Co., of 67/27 Strand Road, Nimtollah, 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. 139.076 Sq.m On the South side of Cross Road No. 13 at Nimtala, Thana : Jorabagan Police Station in the Presidency Town of Kolkata (under Plate No. SB-247/2). It is bounded On the North by Cross Road No. 13, On the East partly by Trustees' land occupied by Radha Shyam Mondal & Bros., and partly by Trustees' land occupied by Rangalal Mondal & Bros., On the South by Trustees' land occupied by Jagdish Prasad Pannallal & Co. Pvt. Ltd. and On the West by Trustees' land occupied by Burman Timber Supply Co.

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

Dated: 12.09.2018


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

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 Jalan Timber Co. (O.P. herein) came into occupation of KoPT's land measuring about 139.076 sqm situated on the South side of Cross Road no. 13 at Nimtollah in the Presidency Town of Kolkata, comprised under occupation No. SB-247/2, being the Public Premises in question, as a monthly lessee, on certain terms and conditions, and O.P. violated the conditions of such lease by defaulting in payment of rent and taxes and also by carrying out unauthorized constructions. 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 period as mentioned in the notice to quit dated 20.08.2014 and 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 notices under Section 4 & 7 of the Act (for adjudication of the prayer for issuance of Order of Eviction, recovery of arrears of rent, assessment of damages etc.) all dated 19.10.2016.

It is seen from record that O.P. contested the matter through its Ld Advocate and filed a reply on 15.12.2016. O.P. filed another application on 19.08.2017 reiterating its stand in the matter. An application/scheme of liquidation was also filed on



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behalf of the O.P. on 17.03.2017 with prayer for regularization. Subsequently also prayers for regularization were advanced by the O.P. vide applications dated 03.07.2017 and 28.07.2017. On 01.09.2017 KoPT filed a Rejoinder enclosing therewith copies of the relevant Gazette notifications of the Schedule of Rent. However, thereafter O.P. did not appear before this Forum despite repeated service of orders. On 07.03.2018 KoPT filed the sketch map showing the unauthorized constructions carried out by the O.P. As O.P. still did not bother to turn up before this Forum, finding no other alternative this Forum reserved the final order on 07.03.2018 after hearing the arguments of KoPT.

I have carefully gone through the contentions made by KoPT against the O.P. It is seen that a long term lease (10 years) was granted to the O.P. and a lease deed was executed between the parties. None of the parties have placed before me anything regarding monthly lease. However, since both the parties have claimed about existence of monthly lease, I have nothing to object to such contention. Be that as it may, it is seen that KoPT wrote several letters to the O.P., such as letter dated 05.11.2009, 19.08.2010, 06.07.2011 etc whereby KoPT requested the O.P. to remove the unauthorised constructions as well as to satisfy the rental dues and interest on immediate basis. It is also seen that KoPT vide letters dated 20.07.2006 and 06.07.2011 also took up the

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matter regarding unauthorised constructions with the police authorities. Not only this, KoPT's final notice dated 27.09.2013 is also specific regarding the allegations against the O.P. During the course of the hearings, KoPT has placed on record the detailed statements of accounts maintained in official course of business, which signifies huge dues on the part of the O.P. In reply, O.P. has repeatedly admitted that it paid rent only till 2004, with the pretext that thereafter the rates of rent were suddenly hiked without prior intimation and/or justification. On this count, KoPT has submitted that the hike in rent, if any, is strictly in accordance with the Govt. Gazette Notifications which are binding on all users of the Port property and construe as advanced notice to all concerned. KoPT has also placed before me copies of some such Notifications. In my view, the submissions of KoPT appear logical and I find no justification on the part of the O.P. to refuse to pay the rent while continuing to enjoy the public premises. I am firm in holding that O.P. cannot claim any differential treatment from other users of the property, while being a defaulter of rent. As such, I am not inclined to accept the submissions of the O.P.

Regarding unauthorised constructions, it is the submission of the O.P. that such construction was undertaken by it after an incident of fire, on the strength of verbal permission of the Councillor. I am not at all satisfied with such submission of the O.P. As per law, written permission in advance is

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required from both the KoPT and the Kolkata Municipal Corporation (KMC) for undertaking any construction work, and as such the verbal permission of the Councillor, as claimed by the O.P., carries no strength of law at all. O.P.'s claim that KoPT had been silent all along, is also not tenable in the facts and circumstances of the case, as it is seen that KoPT wrote to the police authority as early as 20.07.2006 (with copies to the KMC authorities) for taking necessary actions for stopping such unauthorised activities immediately. Under such circumstances, I have no scope but to hold that the contentions of the Port Authority bear merit and as such, I am firm in holding that the Notice to Quit dated 20.08.2014 as served upon the O.P. is valid, lawful, enforceable and binding on the parties.

I may add here that this Forum is functioning within the four corners of the P.P. Act, 1971, and as such there is no scope for consideration of any prayer for regularisation by the O.P. However, for the sake of natural justice, this Forum had granted an opportunity to the O.P. to liquidate the dues in instalments, in terms of scheme of liquidation filed by O.P. itself. The O.P. however failed to adhere to its own commitment and stopped making payments to KoPT subsequently. Under such circumstances, I think the occupation of the O.P. deserves no protection even for the sake of natural justice.

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In view of the above, being satisfied, 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 admitted its failure to satisfy the rental dues of KoPT from the year 2004 onwards.
- 2) That O.P. has failed to justify the constructions carried out by it without any authority of law.
- 3) That occupation of the O.P. deserves no protection, even for the sake of natural justice.
- 4) That O.P. has failed to make out any case in support of its 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 20.08.2014 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



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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.

KoPT is further directed to submit a report regarding its claim on account of dues and damages against O.P., indicating there-in, the details of the computation of such dues and damages with the rate of charges so claimed for the respective periods (details of computation with rates applicable for the relevant periods, i.e. upto the date of taking over of possession) 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 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 ***