

Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises
(Eviction of Unauthorised Occupants) Act 1971

Proceedings No. 943 & 943/D Of 2008 Order Sheet No. 17

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
M/s. A. G. Minerals Pvt. Ltd.

27
28.09.2018

FINAL ORDER

The instant proceedings arose out of an application dated 10.05.2006 filed by KoPT, Applicant herein, praying for eviction as well as claiming dues and damages alongwith interest from M/s A G Minerals Pvt Ltd, the O.P. herein, under relevant provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. It is the contention of KoPT that the O.P. failed to liquidate the rental dues for a prolonged period. It is also submitted by KoPT that owing to several breaches, the short term lease was determined vide Notice to Quit dated 01.12.2005 and hence the occupation of the O.P. is nothing but unauthorised.

This Forum issued Notices u/s 4 & 7 of the Act on 17.07.2008, on the O.P., asking to show cause why order regarding eviction and payment of the arrear dues/damages alongwith interest should not be made.

It reveals from record that O.P. contested the matter through its Ltd Advocate and filed a Written Statement on 05.11.2008. During course of hearing, O.P. also filed a copy of Gazette Notification dated 21.10.2005. KoPT filed its reply on the contentions of the O.P. on 18.03.2009. Subsequently, KoPT filed an application dated 24.07.2013 informing that the possession of the public premises was with the O.P. only till 03.10.1991 and thereafter it was handed over to other persons. Under such a scenario, attempts were made to hear the submissions of the O.P. but orders of the Forum could not be served on the O.P. Thus, finding no other alternative, this Forum published a public notification in daily newspaper "The Telegraph" dated 17.06.2017 directing the O.P. to appear before this Forum and

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Proceedings No. 943 A 943/D Of 2008 Order Sheet No. 18

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S. A. G. Minerals Pvt. LTD.
VS

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defend itself. However, still O.P. did not turn up before this Forum. Since the mandate of the Act has been fulfilled, I am satisfied with service of notice upon all concerned. Accordingly, on 07.07.2017 after hearing the arguments of KoPT final order was reserved by the Forum.

I have carefully considered the submissions of KoPT and the documents produced before me. In view of the submission of KoPT regarding recovery of possession, there is no need to proceed with the Notice u/s 4 of the Act. Now, as regards assessment of damages, I find that as per claim of KoPT vide original application dated 10.05.2006, this Forum had issued Notice u/s 7 of the Act for the period 31.12.2005 to 30.04.2006. Now, it reveals from KoPT's applications dated 24.07.2013, 15.07.2015 etc that nothing was due from the O.P. for the said period; rather, it is the revised claim of KoPT that O.P. is liable to pay damages only till 03.10.1991. I find gross irregularities in such submissions of KoPT. Although KoPT had initiated the instant proceedings based on Notice to Quit dated 01.12.2005, subsequently they claim to have withdrawn the same and instead KoPT now seems to bank upon another Notice to Quit dated 09.12.1985 (even copy of which has not been produced). In my view, such irregular, vague and inconsistent submissions of KoPT cannot stand the scrutiny of law. I find that the entire proceedings had been initiated based on Notice to Quit dated 01.12.2005 forming the cause of action against O.P., and now if KoPT withdraws the said Notice then no cause of action survives against the O.P. at all. I also fail to understand how KoPT can issue Notice to Quit on the

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S. A. G. Minerals Pvt. Ltd. ^{VS}

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28.09.2018

O.P. on 01.12.2005 when possession has been taken back from the O.P. way back on 03.10.1991 and the land in question allotted to other persons right thereafter. As such, I am not at all inclined to entertain the instant proceedings.

In my firm view, the instant proceedings has lost all merit and deserves no continuation. As such, the instant proceedings is dismissed. KoPT shall have the liberty to institute fresh proceedings against the O.P., if so desired, 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 ****