



**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. 26 DT 27.11.2018
PROCEEDINGS NO.1294 OF 2012

BY ORDER OF
THE ESTATE OFFICER
KOLKATA PORT TRUST

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

-Vs-

M/s Dulari Trading Agency (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**

OFFICE OF THE LD. ESTATE OFFICER
KOLKATA PORT TRUST

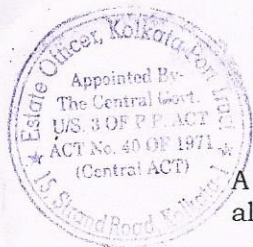
WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that
M/s Dulari Trading Agency, of Plot no. 6, Chetla Station Yard, P.O. Alipore, Kolkata 700027 is in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

- 1) That O.P. has failed to liquidate the rental dues of the Port Authority, for decades, despite being requested for its immediate liquidation.
- 2) That O.P. has admitted having carried out unauthorised construction in the public premises in question.
- 3) That O.P. has failed to honour its commitment to liquidate the estate dues of KoPT in a time-bound manner.
- 4) That the commercial interest of the O.P. cannot be allowed to thrive at the cost of the public exchequer.
- 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 22.07.2010 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.

8

Please see on reverse



:: 2 ::

A copy of the reasoned order No. 26 dated 27.11.2018 is attached hereto which also forms a part of the reasons.

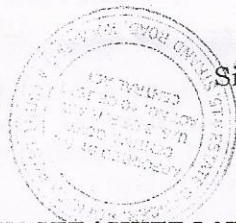
NOW, THEREFORE, in exercise of the powers conferred on me under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order the said **M/s Dulari Trading Agency, of Plot no. 6, Chetla Station Yard, P.O. Alipore, Kolkata 700027** and all persons who 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 Dulari Trading Agency, of Plot no. 6, Chetla Station Yard, P.O. Alipore, Kolkata 700027** 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. 133.780 sqm or thereabouts situated at Chetla Station Yard, Thana- Chetla Police Station, District - 24 Parganas, Registration District - Alipore. It is bounded on the North by the strip of Trustees' open land beyond which is the railway track, on the East by the Trustees' leased out land, on the South by the Trustees' strip of land used as passage and on the West by the Trustees' leased out land.

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

Dated: 27.11.2018



Suman Mukherjee
Signature & Seal of the
Estate Officer.

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

BY ORDER OF
THE ESTATE OFFICER
KOLKATA PORT TRUST

CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
KOLKATA PORT TRUST

HEAD ASSISTANT
OFFICE OF THE LD. ESTATE OFFICER
KOLKATA PORT TRUST
S DE
04.12.2018



REGISTERED POST WITH A/D
HAND DELIVERY/AFFIXATION ON PROPERTY

ESTATE OFFICER, KOLKATA PORT TRUST
(Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-Central Act)
Public Premises (Eviction of Unauthorised Occupants) Act 1971
OFFICE OF THE ESTATE OFFICER
15, STRAND ROAD (4TH FLOOR) KOLKATA-700001

Form "E"

PROCEEDINGS NO.1294/R OF 2012
ORDER NO. 26 DATED: 27.11.2018

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

ORDER OF
THE ESTATE OFFICER
KOLKATA PORT TRUST

To
M/s. Dulari Trading Agency
Plot no. 6, Chetla Station Yard, P.O. Alipore
Kolkata 700027

CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
KOLKATA PORT TRUST
f s.de
04.12.2018
HEAD ASSISTANT
OFFICE OF THE LD. ESTATE OFFICER
KOLKATA PORT TRUST

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

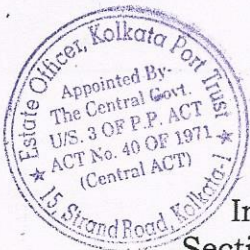
AND WHEREAS, by written notice dated 06.07.2017 you were called upon to show cause on/or before 27.07.2017 why an order requiring you to pay a sum of Rs. 2,75,163.00/- (Rupees Two Lakh Seventy Five thousand One hundred Sixty three only.) being the rent payable together with compound interest in respect 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. 2,75,163.00/- (Rupees Two Lakh Seventy Five thousand One hundred Sixty three only.) for the period 01.06.1988 to 01.08.2010 (both days inclusive) to Kolkata Port Trust by 14.12.2018.

8

PLEASE SEE ON REVERSE



: 2 :

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 15% per annum upto 18.09.1996 and thereafter @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.

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

The said piece or parcel of land Msg. 133.780 sqm or thereabouts situated at Chetla Station Yard, Thana- Chetla Police Station, District - 24 Parganas, Registration District - Alipore. It is bounded on the North by the strip of Trustees' open land beyond which is the railway track, on the East by the Trustees' leased out land, on the South by the Trustees' strip of land used as passage and on the West by the Trustees' leased out land.

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

Dated: 27.11.2018



Suman Mukherjee
Signature and seal of the
Estate Officer

BY ORDER OF
THE ESTATE OFFICER
KOLKATA PORT TRUST

CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
KOLKATA PORT TRUST
27.11.2018

HEAD ASSISTANT

OFFICE OF THE LD. ESTATE OFFICER
KOLKATA PORT TRUST



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. 1294, 1294/R, 1294/D Of 2012 Order Sheet No. 26

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Dulari VS Trading Agency

25
23-08-2018

Present: K. Dhar, Asstt. Estate Manager
P. Roy Chowdhury, Jr. Marine Engg.

None appears on behalf of O.P. despite repeated calls.

Perused the records. There is no record of compliance of this Forum's orders dated 17.05.2018 and 02.08.2018 by the O.P.

Representatives of KoPT strongly pray for order of eviction against O.P. In my view, multiple opportunities have been provided to the O.P.. However O.P. has hopelessly failed to avail of such opportunities.

In such circumstances, in the interest of justice let the final order be reserved. All concerned are directed to act accordingly.

P. Roy Chowdhury, Jr.
ESTATE OFFICER

FINAL ORDER

26
27-11-2018

The matter is taken up today for final disposal. It is the case of Kolkata Port Trust (KoPT), applicant herein, that M/s Dulari Trading Agency, O.P. herein, came into occupation of KoPT's land measuring about 133.780 sqm at Chetla Station Yard, Kolkata comprised under occupation No. D-425/A/1, being the Public Premises in question, as a monthly lessee on certain terms and conditions, and O.P. violated the fundamental condition of grant of tenancy by way of not making payment of rental dues, taxes and interest for a prolonged period, and also carrying out unauthorized construction, encroachment into the Trustees' property and parting with possession of the public premises in favour of rank outsiders. It is strongly argued on behalf of KoPT 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 22.07.2010 and the O.P. is liable to pay damages for



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. 1294, 1294/R, 1294/D Of 2012 Order Sheet No. 27

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

Dulari Trading Agency

26 27
27.11.2018

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 06.07.2017.

It is seen from record that O.P. contested the matter and filed an application/reply to show cause dated 10.08.2017. This was followed by a joint inspection of the property held on 20.12.2017. Subsequently, applications dated 18.01.2018 and 09.03.2018 came to be filed by the O.P. which were replied to by KoPT vide their application dated 15.03.2018. This Forum, taking into cognizance the prayer of the O.P., directed for liquidating KoPT's dues by the O.P. but the O.P. failed to keep its commitment without any justification whatsoever. The matter was finally heard on 23.08.2018 when O.P. chose to remain absent. As such, on 23.08.2018 after hearing the arguments of KoPT final order was reserved by the Forum.

I have carefully gone through the contentions made by KoPT against the O.P. It is seen that KoPT had complained of four breaches in its Notice to Quit dated 22.07.2010. These breaches also find mention in the Final Notice dated 09.02.2010 and the earlier correspondence with the O.P., in this regard. The question now arises how far these allegation of contractual breaches are relevant in the instant case. After the joint inspection held on 20.12.2017, there is little scope to complain about unauthorized parting of possession and encroachment, against the O.P. However, representative of O.P. on 17.05.2018 has admitted the charge of unauthorized construction and also expressed its desire to pay the applicable penalty. Now, as regards non-payment of

8



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. 1294, 1294/R, 1294/D Of 2012 Order Sheet No. 28

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Sulari ^{VS} *Trading Agency.*

2627

27.11.2018

KoPT's dues, there is no scope to deny or dispute the contention of the Port Authority. Records produced by the KoPT in the form of Statement of Accounts maintained in official course of business reveals that the O.P. has failed to pay a single penny to the statutory authority since 1988. There is no justification forthcoming from the O.P. as to how it is entitled to enjoy the public premises without paying anything to the statutory authority for decades. The O.P. has complained lack of business environment etc, but this Forum has nothing to consider in that regard. Had the situation been so grim, O.P. could have easily relocated to another location after handing over the premises to the Port Authority. The conduct of the O.P. suggests that it has definite business interest in its area of occupation, which cannot be allowed to thrive at the cost of the public exchequer. In my view, O.P. has lost all right to occupy the premises in view of its continued failure to liquidate the estate dues for decades. I also do not find any merit in O.P.'s applications dated 18.01.2018 and 09.03.2018 inasmuch as KoPT has made it ample clear that the bills raised on the O.P. do not comprise any element of "penalty" and as such their recomputation does not arise.

While the things stood thus, this Forum, taking into account the prayer of the O.P. for allowing to liquidate the dues, granted permission on 17.05.2018 to liquidate the outstanding principal amount at one shot, to prove O.P.'s veracity to arrive at an amicable settlement. However, O.P. ended up paying only a very minor part of the dues. Since this was found not acceptable, another opportunity was given to the O.P. on 02.08.2018 to liquidate a large part of the outstanding dues as well as continue payment of the present occupational charges. However, O.P. neither made payment in terms of the direction of this Forum and neither turned up before the Forum on the next date of hearing i.e. 23.08.2018. O.P. also did not approach KoPT for

S



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. 1294, 1294/R, 1294/L Of 2012 Order Sheet No. 29

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Dulari ^{VS} *Trading Agency*

2027
27.11.2018

regularization of breach of unauthorized construction which had been admitted by it. Under such a scenario, I reserved the final order with the firm understanding that O.P. is not at all interested in liquidating the huge estate dues and is only interested in dragging the proceedings which very much defeats the spirit of the P.P. Act.

In my firm view, the occupation of the O.P. does not deserve any protection even for the sake of natural justice. In view of this, I am firm in holding that the Notice to Quit dated 22.07.2010 had been validly issued and served on the O.P. and the same is binding on the parties and there is no need to interfere with the same.

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, for decades, despite being requested for its immediate liquidation.
- 2) That O.P. has admitted having carried out unauthorised construction in the public premises in question.
- 3) That O.P. has failed to honour its commitment to liquidate the estate dues of KoPT in a time-bound manner.
- 4) That the commercial interest of the O.P. cannot be allowed to thrive at the cost of the public exchequer.
- 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 22.07.2010 as served upon O.P. by the Port Authority is valid, lawful and binding upon the parties and O.P's

S



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. 1294, 1294/R, 1294/D Of 2012 Order Sheet No. 30

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

Dulari Trading Agency.

26/27

27.11.2018

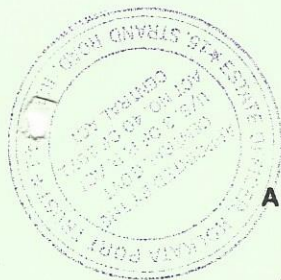
occupation, and that of any other occupant of the premises, has become unauthorised in view of Section 2(g) of the P.P Act.

- 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 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. 2,75,163.00/- for the period 01.06.1988 to 01.08.2010 (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 14.12.2018. Such dues attract interest @ 15% per annum upto 18.09.1996 and thereafter @ 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.

S



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. 1294, 1294/R, 1294/D Of 2012 Order Sheet No. 31

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Dulari **VS** *Trading Agency.*

2627
27.11.2018

I am not inclined to assess the damages at this stage as the Notice u/s 7(2) was issued only for a particular period whereas the O.P. is liable to pay damages for unauthorized use and enjoyment of the property right upto the date of handing over of possession of the public premises to KoPT. As such, the damages are to be assessed later, upon issuance of fresh Notice u/s 7(2) of the Act by this Forum, at the appropriate time. KoPT is directed to submit a report regarding its claim on account of damages against O.P., indicating there-in, the details of the computation of such damages with the rate of charges so claimed for the respective periods (including 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. or any other occupier 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

S. Mukhopadhyay
(S. MUKHOPADHYAY)
ESTATE OFFICER

*** ALL EXHIBITS AND DOCUMENTS
ARE REQUIRED TO BE TAKEN BACK
WITHIN ONE MONTH FROM THE DATE
OF PASSING OF THIS ORDER ***