

**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. 28 DT 30.11.2018
PROCEEDINGS NO. 1181 OF 2011

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

-Vs-

**Estate Shew Ratan Singh, represented by
Shri Subodh Singh (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 **Estate Shew Ratan Singh (represented by Shri Subodh Singh), of plot no. 6, Chetla Railway Siding, Kolkata 700027** 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 been found to be in arrears of rent and taxes for decades, in utter defiance of the contractual terms and conditions.
2. That O.P. has failed to liquidate the dues, even after numerous opportunities provided by this Forum for the sake of natural justice.
3. That O.P. has failed to produce any evidence or document so as to defend the allegations by KoPT of unauthorized construction, parting with possession and encroachment into the Trustees' land.
4. That KoPT's notice dated 12.04.2007 demanding possession of Port property from O.P. is very much valid, lawful and enforceable in the facts and circumstances of the case.
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 "authorized" after expiry of the period mentioned in the Notice to Quit, and accordingly, the occupation of O.P. has definitely become unauthorized in view of Sec.2(g) of the P.P. Act, 1971.
6. That since 11.05.2007, O.P. has lost its authority to authorisedly 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 from that date upto the date of handing over of clear, vacant and unencumbered possession of the same to the Port Authority.

Please see on reverse

A copy of the reasoned order No. 28 dated 30.11.2018 is attached hereto which also forms a part of the reasons.

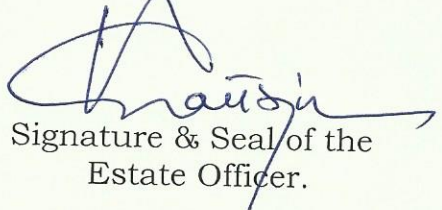
NOW, THEREFORE, in exercise of the powers conferred on me under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order the said **Estate Shew Ratan Singh (represented by Shri Subodh Singh), of plot no. 6, Chetla Railway Siding, Kolkata 700027** 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 **Estate Shew Ratan Singh (represented by Shri Subodh Singh), of plot no. 6, Chetla Railway Siding, 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. 99.498 sqm or thereabouts situated at Chetla Station Yard, P.S. New Alipore, now Chetla P.S., District - 24 Parganas. It is bounded on the North by the Trustees' strip of open land reserved as margin of safety alongside P.T. Boundary Line, on the East by the land leased to Shri Bharat Singh, on the South by the Trustees' Roadway and on the West by the Trustees' land leased to Shri Parameswar Singh.

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

Dated: 30.11.2018


Signature & Seal of the
Estate Officer.

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

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.1181/R OF 2011
ORDER NO. 28 DATED: 30.11.2018

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

To
Estate Shew Ratan Singh
(represented by Shri Subodh Singh),
Plot no. 6, Chetla Railway Siding,
Kolkata 700027

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

AND WHEREAS, by written notice dated 15.05.2015 you were
called upon to show cause on/or before 18.06.2015 why an order
requiring you to pay a sum of Rs. 1,53,490.52/- (Rupees One Lakh
Fifty Three thousand Four hundred ninety and paise fifty two only.)
being the rent payable together with simple 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. 1,53,490.52/- (Rupees One Lakh Fifty Three thousand
Four hundred ninety and paise fifty two only.) for the period
01.12.1984 to 10.05.2007 (both days inclusive) to Kolkata Port
Trust by 31.12.2018.



PLEASE SEE ON REVERSE

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 Gazette/s.

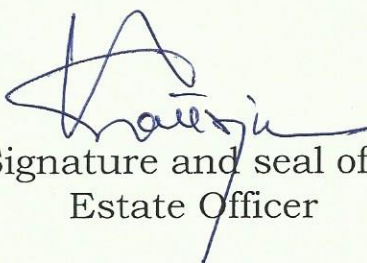
In case the said sum is not paid within the said period or in the said manner, it will be recovered as arrears of land revenue through the Collector.

SCHEDULE

The said piece or parcel of land msg. 99.498 sqm or thereabouts situated at Chetla Station Yard, P.S. New Alipore, now Chetla P.S., District - 24 Parganas. It is bounded on the North by the Trustees' strip of open land reserved as margin of safety alongside P.T. Boundary Line, on the East by the land leased to Shri Bharat Singh, on the South by the Trustees' Roadway and on the West by the Trustees' land leased to Shri Parameswar Singh.

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

Dated: 30.11.2018


Signature and seal of the
Estate Officer

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. 1181, 1181/R Of 2011 Order Sheet No. 27

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Estate Shew Ratan Singh, Represented by Sri Subodh Singh.
VS

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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 26.07.2007, that one Shri Shew Ratan Singh came into occupation of KoPT's land measuring 99.498 sqm or thereabouts, situated at Chetla Station Yard, comprised under occupation No. D-485/1, being the public premises in question, as a 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, erecting unauthorized construction upon the port property and also encroaching into the Trustees' land. KoPT has argued that Shri Shew Ratan Singh has no authority under law to occupy the public premises after expiry of the period as mentioned in the notice to quit dated 12.04.2007, and that Shri Shew Ratan Singh 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 under 7 of the Act (for adjudication of the prayer for recovery of rent, interest etc) both dated 15.05.2015.

It is seen from records that one Shri Subodh Singh s/o Parameswar Singh appeared before this Forum, with the submission that Shri Shew Ratan Singh has expired and that he is the grandson of Late Shew Ratan Singh. An affidavit to that effect was also filed by said Shri Subodh Singh. In absence of any other documents etc filed by interested/concerned parties/KoPT, contesting the said statement of Shri Singh, this Forum finds no reason to disbelieve the facts as brought out by said Shri Subodh Singh. Accordingly, the instant proceedings was allowed to be continued against "Estate Shew Ratan Singh, represented by Shri Subodh Singh" as O.P., thereby complying with the mandate of the Act for giving opportunity of hearing to all concerned who are



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interested in the property. Be that as it may, a Reply to Show Cause came to be filed on behalf of the O.P. on 07.01.2016 followed by a proposal for liquidation of dues by the party. Since the amount proposed to be liquidated was found to be very meagre, compared to the outstanding dues of the O.P., O.P. was directed to file a revised scheme of liquidation of dues. KoPT, on its part, filed comments dated 28.07.2016 against the Reply on behalf of the O.P.. It is seen from the records that a miniscule amount was liquidated by the O.P. in terms of its commitment, which being wholly insufficient, O.P. was again advised on 15.12.2016 to come up with fresh scheme of liquidation as also providing a rejoinder in response to the comments of KoPT, if any. Records reveal that despite numerous opportunities offered to him, O.P. failed to come up with any submission. In fact, O.P. chose not to turn up before this Forum thereafter. Finding no other alternative, a final order was reserved by the Forum on 16.02.2017 after hearing the arguments of KoPT.

I have carefully considered the deliberations of the parties and gone through the documents placed on record. As regards the four-fold allegations of breach of contract against the O.P., I find that KoPT has produced a letter dated 13.03.2006 addressed to the O.P., requesting to liquidate immediately the huge rental dues. KoPT's letter dated 12.01.2007 addressed to O.P. is even more specific as to the allegations of unauthorized construction, parting with possession and encroachment into the Trustees' land. This apart, KoPT has also produced statement of accounts in respect of the occupation, right since 1984, which show that no payment whatsoever has been made on behalf of the O.P. right since 1985. In my view, such statement maintained by the statutory authority in usual course of business has definite evidenciary value, unless challenged by any of the concerned/interested parties with fortified documents/evidences etc, ready to bear the test of legal scrutiny. Moreover, O.P. has failed to produce a single document as to the evidence of payment of rent/dues to the Port Authority. Rather, reply dated 07.01.2016 of O.P. is a tacit admission of the fact that



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O.P. was in arrears of rent for a prolonged period. O.P. has sought to clear the dues as per the old rate of rent. I do not agree with such submissions of O.P. inasmuch as the executed lease deed between the parties (registered deed) clearly signifies in Clause II that the rent was to be varied by the 'Trustees' after expiry of the initial period of two months of the lease. That being so, I find the insistence of O.P. to the applicability of old rate of rent of KoPT as very futile and redundant. In my view, O.P. cannot claim differential treatment from any other user of the Port property. Moreover, O.P.'s submission regarding pendency of legal proceedings on this count on other Forum is also very vague and devoid of any details.

Be that as it may, during the course of hearing, O.P. did not produce any sanction plan so as to counter the allegation of unauthorized construction as leveled by KoPT. Now, even if I do not decide the issue of unauthorized construction or encroachment, non-payment of rent and taxes for decades is a sufficient ground, in my view, to decide the case against the O.P. As per law, a monthly tenancy like the one granted to the O.P. continues only on the basis of timely payment of rent bill/s and non-payment, even for a period, is enough to vitiate the contract. In fact, Clause X of the registered lease between the parties is very specific and permits the Lessor (KoPT) to re-enter the premises if the monthly rent is in arrears and remains unpaid for twenty-one days after the same has become due. In such a scenario, I find nothing to protect the occupation of the O.P. beyond 11.05.2007, as laid down in terms of KoPT's quit notice dated 12.04.2007, as authorized. In my view, the breach committed by the O.P. is very much well established in the facts and circumstances of the case and O.P. must have to suffer the rigours of law.

As such, I must conclude that the occupation of the O.P. is definitely unauthorized after expiry of the period mentioned in the Notice to Quit dated 12.04.2007. 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



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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 it 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 been found to be in arrears of rent and taxes for decades, in utter defiance of the contractual terms and conditions.
2. That O.P. has failed to liquidate the dues, even after numerous opportunities provided by this Forum for the sake of natural justice.
3. That O.P. has failed to produce any evidence or document so as to defend the allegations by KoPT of unauthorized construction, parting with possession and encroachment into the Trustees' land.
4. That KoPT's notice dated 12.04.2007 demanding possession of Port property from O.P. is very much valid, lawful and enforceable in the facts and circumstances of the case.
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 "authorized" after expiry of the period mentioned in the Notice to Quit, and accordingly, the occupation of O.P. has definitely become unauthorized in view of Sec.2(g) of the P.P. Act, 1971.
6. That since 11.05.2007, O.P. has lost its authority to authorisedly occupy the Public Premises and



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O.P. is liable to pay compensation charges/damages with interest for wrongful use and enjoyment of the Public Property from that date 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.

Regarding payment of rental dues to KoPT, I must say that Rs. 1,53,490.52/- as claimed by the Port Authority in relation to the Plate in question, is correctly payable by O.P. for the period 01.12.1984 to 10.05.2007 (both days inclusive) and it is hereby ordered that O.P. shall make payment of the aforesaid sum to KoPT by 31.12.2018. 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 damages/compensation to be paid for unauthorised occupation. I make it clear that KoPT is entitled to

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Estate Officer Rotan Singh, ^{VS} Represented by Sri Subodh Singh.

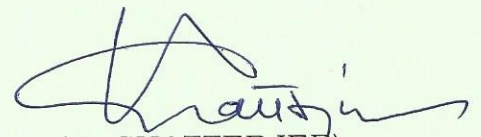
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claim damages against O.P. for unauthorized use and occupation of the public premises right upto the date of recovery of clear, vacant and unencumbered possession of the same in accordance with Law, and as such I am not inclined to assess the damages 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 ***