



**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. 16 DT 07.12.2018
PROCEEDINGS NO. 1555 OF 2017

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-
M/s. Nandy & 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. Nandy & Co., of 50/C, Muktaram Babu Street, Kolkata 700007 AND also of 25, Nirmal Chunder Street, Kolkata 700012** is in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

1. That the O.P. failed to discharge rental dues, interest and taxes to the Port Authority for a prolonged period of time.
2. That O.P. has failed to produce anything regarding sanctioned plan in relation to the existing structures.
3. That submission of O.P. regarding payment of rent at "old rate" has no basis in law.
4. 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 issuance of notice dated 17.07.2008, demanding possession by the Port Authority.
5. That O.P. has failed to bear any witness or adduce any evidence in support of their contention regarding "authorised occupation" and O.P's occupation has become unauthorized in view of Sec.2 (g) of the P.P. Act.
6. That right from the date of expiry of the period as mentioned in the said notice to quit dated 17.07.2008, O.P. has lost its authority to occupy the Public Premises and O.P. is liable to pay damages for wrongful use and enjoyment of the Port Property upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

Please see on reverse

:: 2 ::

A copy of the reasoned order No. 16 dated 07.12.2018 is attached hereto which also forms a part of the reasons.

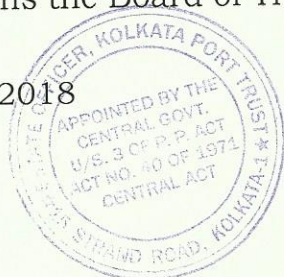
NOW, THEREFORE, in exercise of the powers conferred on me under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order the said **M/s. Nandy & Co., of 50/C, Muktaram Babu Street, Kolkata 700007 AND also of 25, Nirmal Chunder Street, Kolkata 700012** 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. Nandy & Co., of 50/C, Muktaram Babu Street, Kolkata 700007 AND also of 25, Nirmal Chunder Street, Kolkata 700012** 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 Godown space being Compartment no. D/6 measuring 67.355 sqm or thereabouts, situated at J.N. Ghat Godown in the presidency town of Kolkata. It is bounded on the North by passage and then by Trustees' leased out land, on the South by Trustees' leased out Compartment no. D/1 of J.N. Ghat godown, on the East by the Trustees' leased out compartment no. D/5 of the said godown, on the West by open space and then by Strand Bank Road.

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

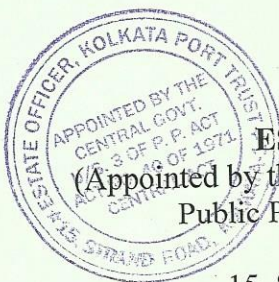
Dated: 07.12.2018




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.1555/R OF 2017
ORDER NO. 16 DATED: 07.12.2018

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

To
M/s. Nandy & Co.,
50/C, Muktaram Babu Street,
Kolkata 700007
AND also of
25, Nirmal Chunder Street,
Kolkata 700012

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

AND WHEREAS, by written notice dated 23.06.2017 you were
called upon to show cause on/or before 24.07.2017 why an order
requiring you to pay a sum of Rs. 7,08,692.99/- (Rupees Seven
Laks Eight thousand six hundred ninety two and paise ninety nine
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. 7,08,692.99/- (Rupees Seven Laks Eight thousand six
hundred ninety two and paise ninety nine only.) for the period
01.12.1996 to 30.08.2008 (both days inclusive) to Kolkata Port
Trust by 31.12.2018.

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 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 Godown space being Compartment no. D/6 measuring 67.355 sqm or thereabouts, situated at J.N. Ghat Godown in the presidency town of Kolkata. It is bounded on the North by passage and then by Trustees' leased out land, on the South by Trustees' leased out Compartment no. D/1 of J.N. Ghat godown, on the East by the Trustees' leased out compartment no. D/5 of the said godown, on the West by open space and then by Strand Bank Road.

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

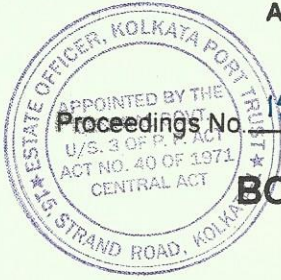
Dated: 07.12.2018



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. 1555, 1555/R, 1555/D Of 2017 Order Sheet No. 17

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Nandy & Co. **VS**

16
07-12-2018

FINAL ORDER

The instant proceedings arises out of the application dated 25.11.2008 filed by Kolkata Port Trust (KoPT), Applicant herein, praying for order of eviction and recovery of dues, interest etc against M/s Nandy & Co., O.P. herein, under relevant provision of the Public Premises (Eviction of Unauthorised Occupants) Act 1971. The facts of the case is summarised here under.

It is the case of KoPT that godown space measuring about 67.355 sqm at Trustees' J.N. Ghat Godown (being Compartment no. D/6) under Plate No. CG-237 was allotted to the O.P. by the Port Authority on month to month lease basis. It has been claimed that O.P. failed to pay monthly rent and taxes as also interest as applicable as per KoPT rules. KoPT has further claimed that O.P. has carried out unauthorized construction and also parted with possession of the public premises in favour of rank outsiders without any authority of law. As per KoPT, O.P. was required to vacate the premises in terms of the Notice to Quit dated 17.07.2008 served as per statute. It is the specific submission that O.P. has no authority under law to occupy the public premises on the expiry of period as mentioned in the notice to quit dated 17.07.2008 as served upon O.P. by the Port Authority.

This forum of law formed its opinion to proceed against O.P. on the basis of submission and materials on record and issued show cause notice u/s 4 of the Act (for adjudication for the prayer for issuance of order of eviction etc.) and show cause notice/s u/s 7 of the Act (for adjudication for prayer of recovery of rent, damages, interest etc.) all dated 23.06.2017.

O.P. contested the matter through its Ld Advocate and filed its reply to show cause styled as a Written Objections, on 11.08.2017. In the said reply, O.P. has denied the charges against it. As such, for the sake of justice, a joint inspection of the public



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. 1555, 1555/R, 1555/D Of 2017 Order Sheet No. 18

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

M/s. Nandy & Co.

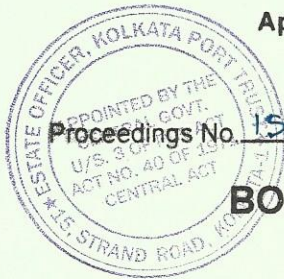
16
07.12.18

premises was ordered by the Forum. The said joint inspection with the O.P. took place on 12.09.2017 (report submitted by KoPT vide application dated 22.09.2017). Subsequently, KoPT filed the sketch map showing unauthorized constructions of the O.P., vide its application dated 02.02.2018. Ld Advocate on behalf of O.P. was advised to come up with explanation/document as to the approved plan regarding the existing structures. However, despite multiple opportunities, nothing more could be produced on behalf of O.P. As such, in view of the mandate of speedy disposal under the Act, I reserved the final order on 26.03.2018 after hearing the arguments of all concerned.

Upon considering the deliberations of the parties and after carefully going through all the documents placed on record, I find that the allegation of non-payment of rental dues (plus applicable tax and interest etc) is well established against the O.P. KoPT's Final Notice dated 21.05.2007 and Notice to Quit dated 17.07.2008 are very specific as to the huge rental dues on the part of the O.P. KoPT has also produced statement of accounts maintained in official course of business. I have nothing to disbelieve the submissions of the statutory authority, more so when the O.P. has admitted the dues in its reply/written objections filed on 11.08.2017. To quote O.P. from said reply, "monthly rents were paid by us regularly to Kolkata Port Trust upto month of November 1996" and "We offered rents at old rate but our cheques were returned back by KPT". Now, the question arises what is the authority of the O.P. to pay rent at the "old rate". The tenancy granted to the O.P. was monthly lease, where the monthly rent is subject to periodical revision. The property of the Port Trust are the public premises, the rent whereof is decided periodically by the Tariff Authority for Major Ports (TAMP), constituted under the provisions of the Major Port Trusts Act, 1963. The rates notified by the said TAMP in the official gazette is binding on all users of the port property. In view of this, any

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. 1555, 1555/R, 1555/D Of 2017 Order Sheet No. 19

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

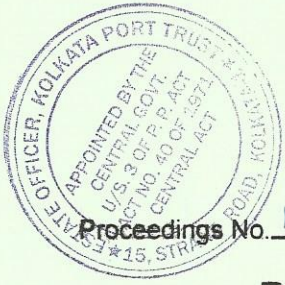
^{VS}
M/s. Nandy & Co.

16
07.12.18

special treatment is not called for on behalf of the O.P. In other words, O.P. cannot claim any differential treatment as compared to our similarly placed users of the port property. That being so, I find no reason whatsoever to allow the submission regarding payment at old rate of rent. In my view, the Port Authority is very much within its right to demand the revised rent charges as applicable from time to time, and O.P. must have had to discharge the said obligation in the manner and mode prescribed. As per records before me, O.P. has failed to discharge said obligation hopelessly. As per law, a monthly lease like the one granted to the O.P. is deemed to be renewed when the landlord issues rent bill in recognition of the tenancy and the tenant in turn fulfills the duty on its part by making timely payment. The moment payment is denied by the tenant, the tenancy automatically comes to an end. In such a situation, I am construed to hold that the tenancy came to be determined by the conduct of the O.P. itself and O.P. cannot claim any relief at this stage, even for the sake of natural justice. I must say that KoPT made its intention quite clear by issuing notice to quit dated 17.07.2008 (admitted to be received by the O.P.) that it does not desire to acknowledge the O.P. as a tenant. I find the conduct of the Port Trust very much logical, in that it refused to accept "rent" after formal determination of the monthly lease (as submitted by O.P. itself). O.P. has admittedly received "compensation" bills from 2008 onwards, which clearly signifies the intent of the Port Authority. In my view, the submission of the O.P. that increase of rent was not according to the "present ratio of increase of rent" merits no consideration, in view of the role of TAMP as stated above.

Discussions against the foregoing reveal that the Notice to Quit dated 17.07.2008 was rightly served on the O.P. by the Port Authority. In fact, I need not even go through the issue of parting of possession (also disputed by the O.P.). So far as unauthorized

M



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. 1555, 1555/R, 1555/D Of 2017 Order Sheet No. 20

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

M/s. Nandy & Co.

16
07.12.18

construction is concerned, I take note of the fact that O.P. has failed to come up with sanctioned plan despite multiple opportunities. In my view, adverse inference must be drawn against O.P. for such failure on its part. I am not at all satisfied with mere denial of charge on the part of the O.P.

As per law O.P. is bound to deliver up vacant and peaceful possession of the public premises to KoPT after expiry of the period as mentioned in the Notice to Quit. As such, the issues are decided in favour of Kolkata Port Trust. I have no hesitation to observe that O.P.'s act in continuing occupation is unauthorized and O.P. is liable to pay damages for unauthorized use and occupation of the Port property in question upto the date of delivering vacant, unencumbered and peaceful possession to KoPT. With this observation, I must reiterate that the ejectment notice, demanding possession from O.P. 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 think it is a fit case for allowing KoPT's prayer for eviction against O.P. u/s 5 of the Act for the following grounds/reasons :

1. That the O.P. failed to discharge rental dues, interest and taxes to the Port Authority for a prolonged period of time.
2. That O.P. has failed to produce anything regarding sanctioned plan in relation to the existing structures.
3. That submission of O.P. regarding payment of rent at "old rate" has no basis in law.
4. 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 issuance of notice dated 17.07.2008, demanding possession by the Port Authority.



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. 1555.1553/R, 1555/D Of 2017 Order Sheet No. 21

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

^{VS}
M/s. Nandy & Co.

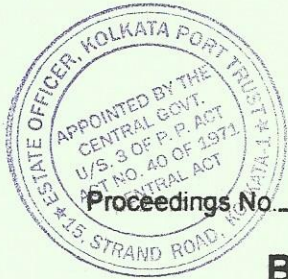
16
07.12.18

5. That O.P. has failed to bear any witness or adduce any evidence in support of their contention regarding "authorised occupation" and O.P's occupation has become unauthorized in view of Sec.2 (g) of the P.P. Act.
6. That right from the date of expiry of the period as mentioned in the said notice to quit dated 17.07.2008, O.P. has lost its authority to occupy the Public Premises and O.P. is liable to pay damages for wrongful use and enjoyment of the Port Property 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 Law up to the date of 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 could 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. 7,08,692.99/- for the period from 01.12.1996 up to 30.08.2008 (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 31.12.2018. Such dues attracts interest at the rate of 18% per annum upto 06.04.2011 and thereafter at the rate of 14.25% per annum till its 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

[Signature]



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. 1555, 1555/R, 1555/D Of 2017 Order Sheet No. 22

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

^{VS}
M/s. Nandy & Co.

16
07.12.18

by O.P as per KoPT's books of accounts. I sign the formal order as per Rule u/s 7 of the Act.

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. 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

(M.K. DAS)

ESTATE OFFICER

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