

**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. 19 DT 04.12.2018
PROCEEDINGS NO.1298 OF 2012

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

-Vs-

Estate Shamsul Hasan

(represented by legal heirs/representatives) (as 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 Shamsul Hasan (represented by legal heirs/representatives, Asghar Hussain & Others) of (1) Plot no. 9, S.E. Rly. Siding, Kolkata - 43 (2) Vill. Susundi, P.O. Para, Thana - Nonahra, Dist. Gazipur, U.P. (3) Plot no. 16, Watgunge Railway Siding, K.P. Docks, Kolkata 700023 (4) G-224/A, Battikal 2nd Lane, P.O. & P.S. Garden Reach, Kolkata 700024** is in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

1. That O.P. has violated the condition of monthly lease as granted by the Port authority by way of not making payment of rental dues to KoPT and also parting with possession in favour of rank outsiders, without any authority of law whatsoever.
2. That O.P. has failed to make out any case in support of its occupation as "authorised occupation".
3. That O.P. or any other persons asserting any right through O.P. has failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation"
4. That the notice to quit dated 04.05.1979 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 Sec.2 (g) of the P.P. Act.
5. That O.P. is liable to pay damages for wrongful use and occupation of the public premises up to the date of handing over the clear, vacant and unencumbered possession to the port authority.

Q

Please see on reverse

A copy of the reasoned order No. 19 dated 04.12.2018 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 **Estate Shamsul Hasan (represented by legal heirs/representatives, Asghar Hussain & Others) of (1) Plot no. 9, S.E. Rly. Siding, Kolkata - 43 (2) Vill. Susundi, P.O. Para, Thana - Nonahra, Dist. Gazipur, U.P. (3) Plot no. 16, Watgunge Railway Siding, K.P. Docks, Kolkata 700023 (4) G-224/A, Battikal 2nd Lane, P.O. & P.S. Garden Reach, Kolkata 700024** 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 Shamsul Hasan (represented by legal heirs/representatives, Asghar Hussain & Others) of (1) Plot no. 9, S.E. Rly. Siding, Kolkata - 43 (2) Vill. Susundi, P.O. Para, Thana - Nonahra, Dist. Gazipur, U.P. (3) Plot no. 16, Watgunge Railway Siding, K.P. Docks, Kolkata 700023 (4) G-224/A, Battikal 2nd Lane, P.O. & P.S. Garden Reach, Kolkata 700024** 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. about 199.742 sqm or thereabouts, situated at Watgunge Railway Siding, Kidderpore, Thana - South Port Police Station, District - 24 Parganas, Reg. Dist. Alipore. It is bounded on the North by the Trustees' strip of open land beyond which is the Trustees' Controller of Security Office Compound Wall, on the East partly by the trustees' obtain and partly by the Trustees' land leased to Ramlal Ram Govind Prasad, on the South by the Trustees' strip of open land reserved as margin of safety alongside Port Trust Railway Line and on the West by the Trustees' land leased to G.L. Sen Properties, Sarjee Prasad Shaw and Ashim Prakash Sen.

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

Dated: 04.12.2018



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.1298/R OF 2012
ORDER NO. 19 DATED: 04.12.2018

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

To

Estate Shamsul Hasan

(represented by legal heirs/representatives, Asghar Hussain & Others)

(1) Plot no. 9, S.E. Rly. Siding, Kolkata - 43

(2) Vill. Susundi, P.O. Para, Thana - Nonahra, Dist. Gazipur, U.P.

(3) Plot no. 16, Watgunge Railway Siding, K.P. Docks, Kolkata 700023

(4) G-224/A, Battikal 2nd Lane, P.O. & P.S. Garden Reach, Kolkata 700024

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

AND WHEREAS, by written notice dated 30.05.2017 you were
called upon to show cause on/or before 22.06.2017 why an order
requiring you to pay a sum of Rs. 557/- (Rupees Five Hundred Fifty
Seven 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. 557/- (Rupees Five Hundred Fifty Seven only.) for the
period 01.03.1979 to 30.06.1979 (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

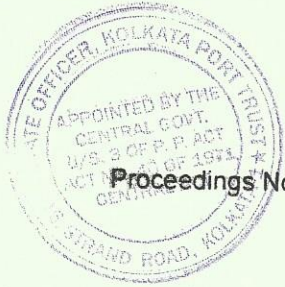
The said piece or parcel of land Msg. about 199.742 sqm or thereabouts, situated at Watgunge Railway Siding, Kidderpore, Thana - South Port Police Station, District - 24 Parganas, Reg. Dist. Alipore. It is bounded on the North by the Trustees' strip of open land beyond which is the Trustees' Controller of Security Office Compound Wall, on the East partly by the trustees' obtain and partly by the Trustees' land leased to Ramlal Ram Govind Prasad, on the South by the Trustees' strip of open land reserved as margin of safety alongside Port Trust Railway Line and on the West by the Trustees' land leased to G.L. Sen Properties, Sarjee Prasad Shaw and Ashim Prakash Sen.

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



Dated: 04.12.2018

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. 1298, 1298/R, 1298/D Of 2012 Order Sheet No. 18

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
Estate Shamsul Hasan

19

04-12-2018

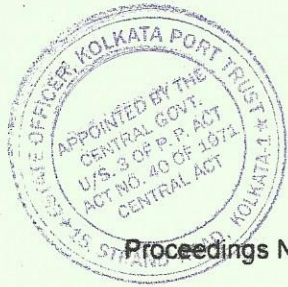
FINAL ORDER

The matter is taken up today for final disposal. It is the case of Kolkata Port Trust (KoPT), applicant herein, vide application dated 14.03.2011, that one Shamsul Hasan came into occupation of the Port property measuring about 199.742 sq.mtr. at Watgunge Railway Siding (Plate No. D-31/1) as a monthly lessee and had defaulted in making payment of the arrear dues, interest and taxes and also parted with possession of the leasehold premises unauthorisedly without any prior approval of the Port Authority, in favour of rank outsiders, in clear violation of the terms and conditions of the lease in question.

It is submitted that Shamsul Hasan had no authority under law to occupy the public premises after issuance of notice to quit dated 04.05.1979 and was required to hand over the peaceful vacant possession of the property in question to KoPT on 30.06.1979 in terms of the notice to quit dated 04.05.1979. My attention is drawn with a strong argument that the cause of action arises upon failure on the part of Shamsul Hasan to hand over possession in terms of the said notice dated 04.05.1979 as served upon him and thereafter.

This Forum issued Show Cause Notice/s under sections 4 & 7 of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 for adjudication of the prayers of passing of Order of Eviction, recovery of rent, damages etc., all dated 30.05.2017.

It appears from record that the Notice/s sent through registered post were returned back undelivered. It was also reported by the Process Server attached to this Forum that the O.P. was not found at the address. However, record reveals that on 11.07.2017 the Notice/s were finally served on one Asghar Hussain, who claimed to be the son of Late Shamsul Hasan. The said Asghar Hussain appeared before this Forum on several occasions and filed an application dated 26.07.2017 followed



Estate Officer, Kolkata Port Trust

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(Eviction of Unauthorised Occupants) Act 1971

Proceedings No. 1298, 1298/R, 1298/D Of 2012 Order Sheet No. 19

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

Estate Shamsul Hasan

19
04.12.2018

by a Reply dated 01.08.2017 through his Ld Advocate (without any vakalatnama/authorization). Be that as it may, KoPT filed a Rejoinder dated 14.09.2017 against the said Reply. KoPT also filed another application dated 04.09.2017 praying for incorporation of additional ground of unauthorized construction, which was allowed and additional Notice u/s 4 of the Act was issued on 09.01.2018. In response to such Notice, one Mahesh Shaw appeared before this Forum, claiming to be a sitting occupant and also filed an application dated 15.02.2018. Several opportunities were again granted to all concerned to come up with their submissions/comments but none (including the said appearing sitting occupant) came up with any specific submission. Thus, finding no other alternative, final order was reserved by the Forum on 15.03.2018.

Now while delivering the final order, I have carefully gone through the contentions made by KoPT along with supporting documents submitted in this respect and submissions of the respective appearing parties in this respect thereto. First and foremost, I must mention that Asghar Hussain who appeared before this Forum has submitted about the death of Shamsul Hasan (date of death as mentioned in Reply dated 01.08.2017 - 26.10.1996). In such a scenario, in terms of the provisions of the PP Act, I have continued the instant proceedings against "Estate Shamsul Hasan" as O.P. giving opportunity to the legal heirs/representatives as well as any other person interested, to appear before this Forum and defend their case.

Be that as it may, it is seen that Asghar Hussain, claiming to be son of Late Shamsul Hasan, has nowhere denied receipt of the Notice to Quit dated 04.05.1979. Rather, it has been claimed in the Reply dated 01.08.2017 (filed through Advocate) that possession of the premises was handed back to KoPT way back. Curiously, not a single scrap of paper has been produced by the said Asghar

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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. 1298, 1298)R, 1298)D Of 2012 Order Sheet No. 20

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
Estate Shamsul Hasan

19
04.12.2018

Hussain in support of such handing back of public premises. In fact, Asghar Hussain has not been able to even indicate the date of handing over. I have also gone through the application dated 26.07.2017 of Asghar Hussain. A question arises, if the premises had really been surrendered way back, why should the same again offered to be surrendered on 26.07.2017. The O.P. has hopelessly failed to answer this question. As such, I find no rhyme or reason to accept the submission of the O.P. as regards handing over of premises. Moreover, KoPT's Rejoinder dated 14.09.2017 (filed after inspection of the premises) categorically mentions that there is no record whatsoever regarding surrender of premises by the Shamsul Hasan or his representatives and also that the premises is still under the use and occupation of Asghar Hussain and other rank outsiders. The truth in said application of KoPT is borne out through application dated 15.02.2018 of Mahesh Shaw (a sitting occupant) who has categorically admitted that he is using the premises for long time with "understanding" with the said Shamsul Hasan and his sons, for which he also paid revenue to them.

Thus, it is a clear case of deprivation of lawful revenue of the Port Authority. There is no scope for doubt that the premises has been parted with unauthorisedly by Shamsul Hasan, and in his absence, by his son/s. In my view, such type of loss to the public exchequer has to be prevented at any cost and cannot be encouraged. As such, I am of the view that the breaches complained of by KoPT are sufficiently established, in the facts and circumstances of the case, and the occupation of Asghar Hussain and other rank outsiders deserves no protection. In fact, I find that the Asghar Hussain has gone to the extent of collecting revenue from the unauthorisedly inducted occupants without bothering to deposit anything into KoPT's coffer, which is very much detrimental to public interest and must not be allowed to continue any further.

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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. 1298, 1298/R, 1298/D Of 2012 Order Sheet No. 21

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

Estate Shamsul Hasan.

19
04.12.2018

As such, finding no merit in the submission of the O.P., and taking note of the background of the matter, I am inclined to allow the prayer of KoPT for eviction. The properties of the Port Trust are coming under the purview of "public premises" as defined under the Act. Now the question arises as to how a person becomes unauthorized occupant into such public premises. As per Section 2 (g) of the Act, the "unauthorized occupation", in relation to any public premises, means the occupation by any person 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. The monthly lease granted to Shamsul Hasan was undoubtedly determined by the Port Authority by due service of notice to quit dated 04.05.1979 (when Shamsul Hasan was very much alive) and institution of proceedings against "Estate Shamsul Hasan" by KoPT is a clear manifestation of Port Authority's intention to get back possession of the premises for violation of the fundamental conditions of the lease.

As such, I am left with no other alternative but to issue the order of eviction against O.P. (Estate Shamsul Hasan) as prayed for on behalf of KoPT on the following ground/ reasons:

1. That O.P. has violated the condition of monthly lease as granted by the Port authority by way of not making payment of rental dues to KoPT and also parting with possession in favour of rank outsiders, without any authority of law whatsoever.
2. That O.P. has failed to make out any case in support of its occupation as "authorised occupation".
3. That O.P. or any other persons asserting any right through O.P. has failed to bear any

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Estate Officer, Kolkata Port Trust

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(Eviction of Unauthorised Occupants) Act 1971

Proceedings No. 1298, 1298/R, 1298/D Of 2012 Order Sheet No. 22

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

Estate Shamsul Hasan.

19
04.12.2018

witness or adduce any evidence in support of its occupation as "authorised occupation"

4. That the notice to quit dated 04.05.1979 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 Sec.2 (g) of the P.P. Act.
5. That O.P. is liable to pay damages for wrongful use and occupation of the public premises up to the date of handing over the 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. (Estate Shamsul Hasan) 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. 557/- for the period from 01.03.1979 up to 30.06.1979 (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 15% per annum upto 18.09.1996 and thereafter 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

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Estate Officer, Kolkata Port Trust

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(Eviction of Unauthorised Occupants) Act 1971

Proceedings No. 1298, 1298/R, 1298/D of 2012 Order Sheet No. 23

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

Estate Shamsul Hasan.

19

04.12.2018

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 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. 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

(A.K. SARKAR)
ESTATE OFFICER

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