



**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 Room no. 43
of Kolkata Port Trust's
Subhash Bhavan (1st floor)
40, C.G.R. Road, Kolkata 700043.

REASONED ORDER NO. 81 DT 05.02.2019
PROCEEDINGS NO. 739 of 2005

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-
M/s Shaw Wallace & Co. Ltd. (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 Shaw Wallace & Co. Ltd., of 4, Bankshall Street, Kolkata 700001 AND also of Block-A, Hide Road, Kidderpore, Kolkata 700043** are in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

1. That O.P. had failed to satisfy the rental dues and taxes of the Port Authority for a prolonged period of time;
2. That O.P. failed to obtain any fresh grant from the landlord i.e. the KoPT;
3. That O.P. has failed to make out any ground for waiver of forfeiture of the lease;
4. That O.P. has failed to secure any relief u/s 114 of the Transfer of Property Act 1882 despite sufficient opportunities;
5. That submission of O.P. as to non-receipt of Notice to Quit dated 02.08.2005 has no basis both in law and in fact;
6. That O.P. has failed to bear any witness or adduce any evidence in support of its occupation into the public premises as 'authorized occupant';
7. That ejectment notice dated 02.08.2005 as served upon O.P., demanding possession of the public premises by KoPT is valid, lawful and binding upon the parties;
8. That occupation of O.P. beyond the period as mentioned in the Notice to Quit is unauthorized in view of Sec. 2 (g) of the Public Premises Act in question;

Please see on reverse

9. That O.P. is liable to pay damages for its unauthorized use and occupation of the public premises upto the date of handing over of clear, vacant and unencumbered possession to KoPT.

A copy of the reasoned order No. 81 DT 05.02.2019 is attached hereto which also forms a part of the reasons.

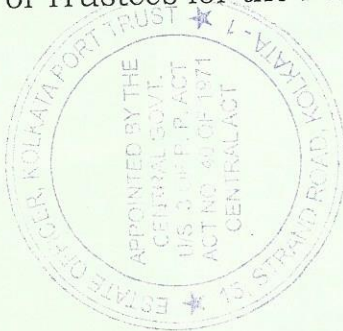
NOW, THEREFORE, in exercise of the powers conferred on me under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order the said **M/s Shaw Wallace & Co. Ltd., of 4, Bankshall Street, Kolkata 700001 AND also of Block-A, Hide Road, Kidderpore, Kolkata 700043** 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 Shaw Wallace & Co. Ltd., of 4, Bankshall Street, Kolkata 700001 AND also of Block-A, Hide Road, Kidderpore, Kolkata 700043** 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 Trustees' Godown space marked as Compartment no. 5 & 6 altogether measuring 1319.59 sqm or thereabouts together with verandah space measuring about 607.215 sqm or thereabouts, situated in Block-A, Hide Road, Thana - South Port Police Station, Calcutta, Dist. 24 Parganas (S), Registration District - Alipore. It is bounded on the North partly the Trustees' godown leased to Bells Controls Limited and partly by Trustees' verandah space leased to lessee, on the East by the Trustees' platform alongside their railway siding, on the South by the Trustees' godown and verandah space leased to American Refrigerator Co. Pvt. Ltd., and on the West by the Trustees' compound space leased to the lessee and partly by the Trustees' verandah leased to the lessee.

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

Dated: 05.02.2019




Signature & Seal of the
Estate Officer.

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

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. 739, 739/D Of 2005 Order Sheet No. 65

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S Shaw Wallace & Co. Ltd. ^{VS}

80
07-05-2018

Present: M. Dutta, Asst. Estate Manager
.....For Kolkata Port Trust (KoPT)

Shivratan Barasia, for O.P.

Representative of O.P. files an application dated 07.05.2018 and expresses his inability to file the board resolution referred to by him on the last occasion. It is however prayed for dismissal of the proceedings on the ground that O.P. has apparently satisfied all the dues as per the order of this Forum.

Representative of KoPT strongly objects to such submission. It is mentioned that huge amount is still outstanding and O.P. has failed to secure a grant from the Port Authority. It is, therefore, prayed for an order of eviction against O.P.

Considered the matter on the basis of the submissions. It appears that there are sufficient materials on record to adjudicate the rights and liabilities of the parties and no fruitful purpose would be served by giving more hearing in the matter. Let the final Order be reserved. All concerned are directed to act accordingly.


ESTATE OFFICER

FINAL ORDER


The matter is taken up for final disposal today. It is the case of Kolkata Port Trust (KoPT), the applicant herein, vide application dated 26.09.2005 that godown space measuring about 1319 sqm and verandah space measuring about 607.215 sqm at Block-A, Hide Road, comprised under Plate no. H-1, was allotted to M/s Shaw Wallace & Co. Ltd., the O.P. herein, on certain

81
05-02-2019



**IN ORDER OF
THE ESTATE OFFICER
KOLKATA PORT TRUST**

certified copy of the Order
Passed by the Estate Officer
Kolkata Port Trust


(Estate Officer)
Estate Officer of the 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. 739, 739/D Of 2025 Order Sheet No. 66

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S Shaw Wallace & Co Ltd. ^{VS}

81

05-02-2019

terms and conditions, as long term lessee (10 years) from 01.03.1986 (with one scope of renewal of 10 years). It is the submission of KoPT that during the period of the renewed lease, the O.P. failed to pay the rent and taxes for prolonged period and as such, a Notice to Quit dated 02.08.2005 was served on O.P. KoPT has made out that the O.P. has no authority to occupy the public premises after expiry of the period as mentioned in its Notice to Quit dated 02.08.2005 as issued upon the O.P. and has prayed for an order of eviction against the O.P. alongwith prayer for recovery of dues etc.

This Forum of Law formed its opinion to proceed against O.P. under the relevant provisions of the P.P. Act and issued show cause notices under Sec. 4 & 7 of the Act both dated 28.11.2005 as per Rules made under the Act.

It reveals from record that O.P. contested the case and filed an application dated 22.10.2006, informing that O.P. has liquidated certain sum of money to KoPT under cover of its letter dated 09.08.2006. It is seen that O.P. also prayed for waiver of interest. Be that as it may, it is seen that thereafter O.P. proceeded to prefer an Appeal to Chairman, KoPT vide their letter dated 27.01.2007, clearly admitting about the dues on their part. In the meantime, one Rashmi Logistics Pvt Ltd wrote a letter dated 02.05.2007 to the Hon'ble Prime Minister, claiming to have taken certain area on lease from the O.P. In reply, the O.P. filed an Affidavit on 19.05.2008 claiming to have cancelled all authorization of said Rashmi Logistics Pvt Ltd as its agent.

Be that as it may, O.P. also a Written Statement on 29.01.2008, claiming that notice to quit has not been served on the O.P. and as such, it is a valid tenant under the KoPT. In para 12 of the said Written Statement, O.P. has admitted about



BY ORDER OF THE ESTATE OFFICER, KOLKATA PORT TRUST

Verified copy of the Order issued by the Estate Officer, Kolkata Port Trust
10/11/2019
Estate Officer, Kolkata Port Trust

[Handwritten 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. 739, 73910 Of 2005 Order Sheet No. 67

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S Shaw ^{VS} Wallace & Co. Ltd.

81

05.2.19

payment of the dues during the continuance of the proceedings, while disputing the "method of calculation of rent". Interestingly, O.P. itself had prayed from time to time for permission to liquidate the KoPT's dues, which was allowed by the Forum on different occasions without prejudice to the rights and contentions of the parties.

It is seen that in order to ascertain the actual state of affairs in the premises, a joint inspection was ordered by the Forum which was carried out on 23.05.2008 when no trace of Rashmi Logistics Pvt Ltd was detected. However, it appears that O.P. continued to pay to KoPT certain amount of money as occupational charges.

Subsequently KoPT vide application dated 16.10.2017 claimed that O.P. was not paying regularly and further prayed for an order of joint inspection, which was allowed. At the time of joint inspection on 26.10.2017, no major physical breach on the part of the O.P. was detected. The matter was finally heard by the Forum on 07.05.2018 when O.P. preferred to file an application praying for dismissal of the proceedings. On 07.05.2018, after hearing the submissions of both the parties, final order was reserved by the Forum.

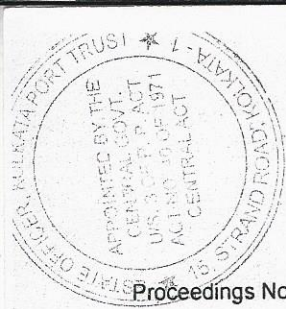
Now, while passing the final order, I have carefully considered the documents on record and the submissions of the parties. The allegation of KoPT against the O.P. is basically non-payment of rent and taxes, which led to the issuance of the Notice to Quit dated 02.08.2005. In this regard, KoPT has filed detailed statement of accounts, which indicate the dues on the part of the O.P. There is no reason to disbelieve such submission of the statutory authority, more so when during continuance of the proceedings, O.P. never disputed the quantum of such dues. In fact, O.P.'s



**ORDER OF THE ESTATE OFFICER
KOLKATA PORT TRUST**

Certified copy of the Order
Passed by the Estate Officer
Kolkata Port Trust

11/2/19
Head Assistant
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. 739, 739(D) Of 2005 Order Sheet No. 68

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S Shaw Wallace & Co. Ltd. ^{VS}

81
05.2.19

application dated 22.10.2006 is clear admission of rental dues on its part. It is correct that O.P. took the liberty of the Forum from time to time to satisfy certain demands of the Port Authority on ad-hoc basis, but I must say that such ad-hoc payments nowhere amounts to waiver of the Notice to Quit. In fact, once the rental dues and taxes are admitted substantially, there is no reason not to uphold the validity of the Notice to Quit issued by the Port Authority. Moreover, in my considered view, the ad-hoc payments made by the O.P. do not come to the protection of the O.P. at all, as, I do not find that at any point of time the Port Authority has accepted the due "rent" from the O.P. after institution of the proceedings and as such, I do not find any opportunity to conclude about waiver of forfeiture of lease. I may add that this Forum, in pursuance of Sec. 114 of the Transfer of Property Act, 1882 gave an opportunity to the O.P. to liquidate the dues in its entirety (alongwith applicable interest) but O.P. made payments in piecemeal manner and never succeeded in complete and full discharge of the dues, taxes and interest.

In view of the above, it is firm understanding that the occupation of the O.P. does not deserve any protection in law and that the Notice to Quit issued by the Port Authority is very much valid, enforceable and in accordance with law. As regards O.P.'s submission regarding non-receipt of notice to quit dated 02.08.2005, it is seen that the said notice was evidently sent through registered post to all available addresses of the O.P. As such, I must have to draw presumption of due service on the O.P. Moreover, I find that the O.P. raised this issue only in the year 2008 for the first time although they had been appearing and contesting the matter right since 2005, clearly signifying that it is only an afterthought. As such, I am not at all inspired by the submission of the O.P. On the



BY ORDER OF THE ESTATE OFFICER, KOLKATA PORT TRUST

Verified copy of the Order made by the Estate Officer, Kolkata Port Trust
05.2.19
Estate Officer
Kolkata Port Trust

(Handwritten 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. 739, 739/D Of 2005 Order Sheet No. 69

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S Shaw Wallace & Co. Ltd. ^{VS}

81

05.2.19

contrary, I repeat and reiterate that the Notice to Quit issued by the Port Authority is very much legally enforceable and ought to be put into execution readily. In my view, there will be no question of violation of natural justice if I now declare the possession of the O.P. as "unauthorized", and issue order of eviction against O.P. on the following reasons,

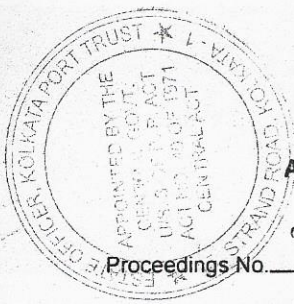
1. That O.P. had failed to satisfy the rental dues and taxes of the Port Authority for a prolonged period of time;
2. That O.P. failed to obtain any fresh grant from the landlord i.e. the KoPT;
3. That O.P. has failed to make out any ground for waiver of forfeiture of the lease;
4. That O.P. has failed to secure any relief u/s 114 of the Transfer of Property Act 1882 despite sufficient opportunities;
5. That submission of O.P. as to non-receipt of Notice to Quit dated 02.08.2005 has no basis both in law and in fact;
6. That O.P. has failed to bear any witness or adduce any evidence in support of its occupation into the public premises as 'authorized occupant';
7. That ejection notice dated 02.08.2005 as served upon O.P., demanding possession of the public premises by KoPT is valid, lawful and binding upon the parties;
8. That occupation of O.P. beyond the period as mentioned in the Notice to Quit is unauthorized in view of Sec. 2 (g) of the Public Premises Act in question;
9. That O.P. is liable to pay damages for its unauthorized use and occupation of the public premises upto the date of handing over of clear, vacant and unencumbered possession to KoPT.



ORDER OF
THE ESTATE OFFICER,
KOLKATA PORT TRUST

Verified copy of the Order
issued by the Estate Officer,
Kolkata Port Trust

18/2/19
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. 739, 739/0 Of 2005 Order Sheet No. 70

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S Shaw Wallace & Co. Ltd. VS

81
05.2.19

Accordingly, I sign the formal order of eviction under Sec. 5 of the Act as per Rules made thereunder, giving 15 days time to O.P. 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 as their occupation into the Public Premises is/are unauthorised in view of sec. 2(g) of the Act. 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.

I am not inclined to assess the damages at this stage when possession of public premises is still with the O.P. KoPT is directed to submit a report regarding its claim on account of damages against O.P., indicating therein the details of computation of such damages with the rate of charges so claimed for the respective period (alongwith rates applicable for the relevant periods and the date of taking over of possession of the land in question) for my consideration in order to assess the damages as per the Act and the Rules made thereunder by issuing Notice u/s 7 of 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

(S. Roy Chowdhury)
ESTATE OFFICER

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



ORDER OF THE ESTATE OFFICER
KOLKATA PORT TRUST

Verified copy of the Order
passed by the Estate Officer
Kolkata Port Trust

18/02/19
S. Roy Chowdhury
Estate Officer of the Ld. Estate Office
KOLKATA PORT TRUST