



# 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. 1274, 1274R, 1274D of 2012 Order Sheet No. 29

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Shri Brij Krishore Singh & Md. Asa Faque Ali VS

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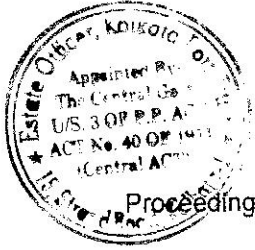
18-04-2019

### FINAL ORDER

The matter is taken up today for final disposal. It is the case of Kolkata Port Trust (KoPT), applicant herein, that Shri Brijkishore Singh & Md Asafaque Ali, O.P.s herein, came into occupation of KoPT's land measuring about 96.16 sqm at Chetla Station Yard, Kolkata comprised under occupation No. D-470/1/A, 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. 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 20.08.2010 and the O.P. 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 Show Cause Notice/s under 7 of the Act (for adjudication of the prayer for recovery of rental dues, damages, interest etc) all dated 12.09.2017.

It is seen from record that O.P. contested the matter and filed an application/reply to show cause dated 14.12.2017. KoPT filed their comments on said Reply, on 21.12.2017, followed by another application dated 11.01.2018. KoPT also carried out an inspection of the property and filed a report dated 21.06.2018. Thereafter, O.P. by filing an application dated 23.08.2018 expressed its intention to liquidate the entire dues of KoPT. This Forum, based on the submission of the O.P. and considering natural justice, granted sufficient opportunities to O.P. for this purpose



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18-04-2019

but O.P. hopelessly failed to keep its commitment. Finding no other alternative, this Forum reserved the final order on 01.02.2019 after hearing the submissions of the parties.

Now while delivering the final order, I have carefully gone through the contentions made by KoPT against the O.P. It is seen that the case mainly revolves around the breach of non-payment of rent and taxes by the O.P. To prove its case, KoPT has produced statement of accounts for the period in question which portrays the O.P. as a clear defaulter for decades. KoPT has also produced other communications with O.P., such as letter dated 29.10.2008, Final Notice dated 13.01.2010 etc thereby requesting the O.P. repeatedly to clear the dues, but apparently no heed was paid by the O.P. Now, as regards the Replies filed by the O.P., it is seen that O.P. is practically admitting the dues on its part but attributing the same to wrongful charging of bills by KoPT. As regards such defence of the O.P., I find that KoPT has come up with the submission that the O.P.'s occupation was never rail-served, i.e. the plot was granted without any railway siding facilities but such facilities was otherwise available in the area to be utilized by the O.P. and other occupants after complying with the terms and conditions thereof. KoPT has also categorically submitted that nothing extra has been charged to O.P. for providing any railway facility. On the other hand, despite opportunity, O.P. failed to produce anything that shows/proves that any extra charge was drawn by KoPT for providing any railway facilities. As such, I am not at all satisfied with the stand of the O.P. On the other hand, the allegations of the Port Authority appear to be based on sound reasoning and quite logical. I do not find any reason to allow the O.P. to pay rent at "old rate" as was claimed by it in its letter dated 07.10.2011 addressed to Land Manager of the



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13.04.2019

KoPT, as there is no justification to extend any special treatment to the O.P., who, like any other occupant of the KoPT's properties, is equally bound by the Gazette Notifications of the Tariff Authority for major Ports (TAMP) from time to time. Moreover, I find that O.P. has failed to refer to any particular order of any competent court of law allowing it to pay rent at the "old rate". On 05.07.2018, representative of O.P. expressed its intention of liquidating the entire dues of the Port Authority and this Forum, based on the request of the O.P., directed O.P. to make the payment to KoPT, which shall be accepted by KoPT without prejudice to its rights and contentions. On the next date of hearing i.e. 23.08.2018 it revealed that O.P. has failed to comply with the Order. This time, since O.P. came up with a written application, another opportunity was granted to the O.P. to liquidate a part of the dues as a good and sincere gesture. But, still after several opportunities O.P. did not pay anything to the Port Authority. In my view, the O.P. is not at all interested to liquidate the dues of the Port Authority and is only interested in prolonging the proceedings, thereby defeating the mandate of speedy disposal under the Act. I cannot allow such abuse to thrive at the cost of the public exchequer. As such, considering the entire gamut of the case, it is my firm conviction that KoPT's allegation against O.P. being a defaulter is very much correct. Accordingly, I hereby conclude that the Notice to Quit dated 20.08.2010 as served by the Port Authority is very much valid, enforceable and binding upon the parties.

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:-



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- 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 practically admitted of such default on its part.
- 3) That O.P. has failed to honour its commitment to liquidate the estate dues of KoPT despite numerous opportunities.
- 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 20.08.2010 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.

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



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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. 1,95,549.94/- for the period 01.03.1989 to 30.09.2010 (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 15.05.2019. 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.

Likewise, 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. As such, I must say that Rs. 2,20,067.02/- as claimed by the Port Authority as damages in relation to the Plate in question, is correctly payable by O.P. for the period 01.10.2010 to 27.07.2017 (both days inclusive) and it is hereby ordered that O.P. shall also make payment of the aforesaid sum to KoPT by 15.05.2019. The said damages shall carry simple interest @ 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 orders u/s 7 of the Act are signed accordingly.

I make it clear that KoPT is entitled to claim damages against O.P. for unauthorised use and



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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 liability of O.P. to pay damages extends beyond 27.07.2017 as well, as the possession of the premises is still with the O.P.. KoPT is directed to submit a statement comprising details of its calculation of damages after 27.07.2017, 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 such 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 execution of this Order in accordance with law.

All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL

  
(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 \*\*\*





**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  
6, FAIRLIE PLACE  
(1<sup>ST</sup> Floor)  
KOLKATA - 700 001  
\*\*\*\*\*

Court Room At the 2<sup>nd</sup> Floor  
of, Kolkata Port Trust's  
Fairley Warehouse  
6, Fairlie Place (1<sup>st</sup> Floor), Kolkata- 700 001.

REASONED ORDER NO. 31 DT 18.04.2019  
PROCEEDINGS NO.1274 OF 2012

BOARD OF TRUSTEES OF THE PORT OF KOLKATA  
-Vs-  
**Shri Brijkishore Singh & Md. Asafaque Ali (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 **Shri Brijkishore Singh & Md. Asafaque Ali, of 4, Prince Anwar Shah Road, Kolkata 700033 AND ALSO OF 55, Chetla Railway Siding, 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 practically admitted of such default on its part.
- 3) That O.P. has failed to honour its commitment to liquidate the estate dues of KoPT despite numerous opportunities.
- 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 20.08.2010 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.

**Please see on reverse**



:: 2 ::

A copy of the reasoned order No. 31 dated 18.04.2019 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 **Shri Brijkishore Singh & Md. Asafaque Ali, of 4, Prince Anwar Shah Road, Kolkata 700033 AND ALSO OF 55, 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 **Shri Brijkishore Singh & Md. Asafaque Ali, of 4, Prince Anwar Shah Road, Kolkata 700033 AND ALSO OF 55, 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. 96.16 sqm or thereabouts situated at Chetla Station Yard, Thana - Chetla, District - 24 Parganas, Registration District - Alipore. It is bounded on the North by the lessor's leased out land, on the East by the lessor's roadway, on the West by the lessor's leased out land and on the South by the lessor's land used as passage.

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

Dated: 18.04.2019

  
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  
6, FAIRLIE PLACE, (1<sup>st</sup> FLOOR) KOLKATA-700001

**Form " E "**

PROCEEDINGS NO. 1274/R OF 2012  
ORDER NO. 31 DATED: 18.04.2019

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

To  
**Shri Brijkishore Singh & Md. Asafaque Ali,**  
**4, Prince Anwar Shah Road,**  
**Kolkata 700033**  
**AND ALSO OF**  
**55, 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 12.09.2017 you were  
called upon to show cause on/or before 12.10.2017 why an order  
requiring you to pay a sum of Rs. 1,95,549.94/- (Rupees One Lakh  
ninety five thousand five hundred and forty nine and paise ninety  
four only) being the rent payable together with compound interest  
in respect of the said premises should not be made;

And whereas I have considered the cause and/or evidence  
produced by you before this Forum.

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. 1,95,549.94/- (Rupees One Lakh ninety five thousand  
five hundred and forty nine and paise ninety four only) for the  
period 01.03.1989 to 30.09.2010 (both days inclusive) to Kolkata  
Port Trust by 15.05.2019.

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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 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. 96.16 sqm or thereabouts situated at Chetla Station Yard, Thana – Chetla, District – 24 Parganas, Registration District – Alipore. It is bounded on the North by the lessor's leased out land, on the East by the lessor's roadway, on the West by the lessor's leased out land and on the South by the lessor's land used as passage.

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

Dated: 18.04.2019

  
Signature and seal of the  
Estate Officer



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  
6, FAIRLIE PLACE (1<sup>st</sup> FLOOR) KOLKATA-700001

**FORM -G**

PROCEEDINGS NO. 1274/D OF 2012  
ORDER NO. 31 DATED: 18.04.2019

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

To

**Shri Brijkishore Singh & Md. Asafaque Ali,  
4, Prince Anwar Shah Road,  
Kolkata 700033  
AND ALSO OF  
55, Chetla Railway Siding,  
Kolkata 700027**

Whereas I, the undersigned, am satisfied that you are in unauthorised  
occupants of the public premises described in the schedule below:

AND, whereas, by written notice dated 12.09.2017 you were called upon to  
show cause on or before 12.10.2017 why an order requiring you to pay a sum of Rs.  
2,20,067.02/- (Rupees two lakhs twenty thousand sixty seven and paise two only)  
being the damages payable together with compound interest in respect of the said  
premises should not be made;

AND whereas I have considered the cause and/or evidence produced by you or  
on your behalf, before this Forum.

NOW, THEREFORE, in exercise of the powers conferred on me by Sub-Section  
(2) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971,  
I hereby require you to pay the sum of Rs. 2,20,067.02/- (Rupees two lakhs twenty  
thousand sixty seven and paise two only) assessed by me as damages on account of  
your unauthorised occupation of the public premises for the period 01.10.2010 to  
27.07.2017 to Kolkata Port Trust by 15.05.2019.

*(Signature)*

PLEASE SEE ON THE REVERSE



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IN exercise of the powers conferred by Sub-section (2-A) 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.

**S C H E D U L E**

The said piece or parcel of land Msg. about 96.16 sqm or thereabouts situated at Chetla Station Yard, Thana - Chetla, District - 24 Parganas, Registration District - Alipore. It is bounded on the North by the lessor's leased out land, on the East by the lessor's roadway, on the West by the lessor's leased out land and on the South by the lessor's land used as passage.

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

Dated: 18.04.2019

  
Signature and Seal of the

Estate Officer