

**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, Fairley Place (1st Floor)  
KOLKATA – 700 001  
\*\*\*\*\*

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

REASONED ORDER NO. 23 DT 03.06.2019  
PROCEEDINGS NO. 1483 OF 2016

BOARD OF TRUSTEES OF THE PORT OF KOLKATA  
-Vs-  
**Estate Satya Charan Sett (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 Satya Charan Sett OF C-3, Jagannath Ghat Godown, Strand Road, Kolkata 700001** is 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 the submissions of O.P. as to non-receipt of Notice to Quit dated 15.05.2014 has no basis both in law and in fact;
3. That O.P. has failed to comply with the directions of the Hon'ble Calcutta High Court dated 12.02.2007 in APO No. 367 of 2006;
4. That the occupation of the O.P. is not entitled to any protection in view of the directions of the Hon'ble Supreme Court in Civil Appeal Nos 4491/2010 and 4492/2010;
5. 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';
6. That ejection notice dated 15.05.2014 as served upon O.P., demanding possession of the public premises by KoPT is valid, lawful and binding upon the parties;
7. 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;
8. 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.

**Please see on reverse**

:: 2 ::

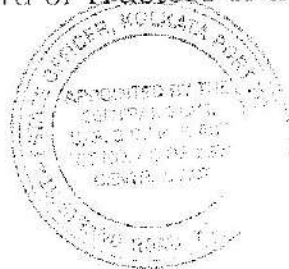
A copy of the reasoned order No. 23 dated 03.06.2019 is attached hereto which also forms a part of the reasons.


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 **Estate Satya Charan Sett OF C-3, Jagannath Ghat Godown, Strand Road, Kolkata 700001** 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 Satya Charan Sett OF C-3, Jagannath Ghat Godown, Strand Road, Kolkata 700001** 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

Compartment No. 3, Block-C, msg. 137.683 sq. mtrs. at Kolkata Port Trust's Jagannath Ghat Godown in the presidency town of Kolkata (under Plate No. CG-20.) It is bounded on the North partly by the Trustees' godown occupied by Nandy Dey Traders and partly by the Trustees' godown occupied by Panchgowri Sett & Haradhan Paul, on the South by the Trustees' Jagannath Ghat Cross Road, on the East partly by the Trustees' godown occupied by Panchgowri Sett & Haradhan Paul and partly by the Trustees' godown occupied by P. K. Mukherjee & Co. Pvt. Ltd. and on the West partly by the Trustees' godown occupied by Nandy Dey Traders and partly Jagannath Ghat Cross Road. Trustees' means the Board of Trustees of the Port of Kolkata.

Dated: 08.06.2019  
10



  
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, Fairley Place (1st FLOOR) KOLKATA-700001

**Form " E"**

PROCEEDINGS NO.1483/R OF 2016  
ORDER NO. 23 DATED: 03.06.2019

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

To

**Estate Satya Charan Sett**  
**C-3, Jagannath Ghat Godown,**  
**Strand Road, Kolkata 700001**

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

AND WHEREAS, by written notice dated 19.12.2016 you were  
called upon to show cause on/or before 18.01.2017 why an order  
requiring you to pay a sum of Rs. 27,33,831.49/- (Rupees Twenty  
Seven Lakhs Thirty Three Thousand Eight Hundred Thirty One and  
paise Forty 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. 27,33,831.49/- (Rupees Twenty Seven Lakhs Thirty  
Three Thousand Eight Hundred Thirty One and paise Forty Nine  
only.) for the period 01.09.1995 to 30.06.2014 (both days inclusive)  
to Kolkata Port Trust by 21.06.2019.

*km*

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 @ 15% per annum upto 18.09.1996 and thereafter @ 18% per annum upto 06.04.2011 and thereafter 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

Compartment No. 3, Block-C, msg. 137.683 sq. mtrs. at Kolkata Port Trust's Jagannath Ghat Godown in the presidency town of Kolkata (under Plate No. CG-20.) It is bounded on the North partly by the Trustees' godown occupied by Nandy Dey Traders and partly by the Trustees' godown occupied by Panchgowri Sett & Haradhan Paul, on the South by the Trustees' Jagannath Ghat Cross Road, on the East partly by the Trustees' godown occupied by Panchgowri Sett & Haradhan Paul and partly by the Trustees' godown occupied by P. K. Mukherjee & Co. Pvt. Ltd. and on the West partly by the Trustees' godown occupied by Nandy Dey Traders and partly Jagannath Ghat Cross Road.

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

Dated: <sup>10</sup>03.06.2019  
m

  
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. 1483/D OF 2016  
ORDER NO. 23 DATED: 03.06.2019

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

To

**Estate Satya Charan Sett  
C-3, Jagannath Ghat Godown,  
Strand Road, Kolkata 700001**

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 19.12.2016 you were called upon to show cause on or before 18.01.2017 why an order requiring you to pay a sum of Rs. 5,65,008/- (Rupees Five Lakhs Sixty Five Thousand and Eight 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. 5,65,008/- (Rupees Five Lakhs Sixty Five Thousand and Eight only) assessed by me as damages on account of your unauthorised occupation of the public premises for the period 01.07.2014 to 31.08.2016 to Kolkata Port Trust by 21.06.2019.

PLEASE SEE ON THE REVERSE

:: 2 ::

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 14.25% per annum on the above sum till its final payment in accordance with Kolkata Port Trust Notification Published in Official Gazette/s.

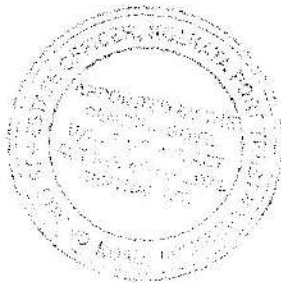
In case the said sum is not paid within the said period or in the said manner, it will be recovered as arrears of land revenue through the Collector.


**SCHEDULE**

Compartment No. 3, Block-C, msg. 137.683 sq. mtrs. at Kolkata Port Trust's Jagannath Ghat Godown in the presidency town of Kolkata (under Plate No. CG-20.) It is bounded on the North partly by the Trustees' godown occupied by Nandy Dey Traders and partly by the Trustees' godown occupied by Panchgowri Sett & Haradhan Paul, on the South by the Trustees' Jagannath Ghat Cross Road, on the East partly by the Trustees' godown occupied by Panchgowri Sett & Haradhan Paul and partly by the Trustees' godown occupied by P. K. Mukherjee & Co. Pvt. Ltd. and on the West partly by the Trustees' godown occupied by Nandy Dey Traders and partly Jagannath Ghat Cross Road.

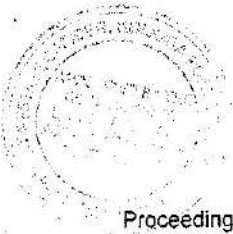
Trustees' means the Board of Trustees of the Port of Kolkata.

Dated: <sup>10</sup>~~08~~.06.2019



  
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. 1483, 1483)R-D Of 2016 Order Sheet No. 27

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Estate Satya <sup>VS</sup> Charan Sett'

23  
03-06-2019

### FINAL ORDER

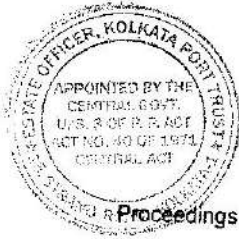
The matter is taken up for final disposal today. It is the case of Kolkata Port Trust (KoPT), the applicant herein, vide application bearing No. Lnd.11/20/II/15/2227 dated 09.10.2015 filed under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as 'the Act') that "Estate Satya Charan Sett" (hereinafter referred to as O.P.) came into the Port Property in question of compartment No. 3, Block -C, Msg. about 137.683 Sq.m under occupation No. CG-20 at KoPT's Jagannath Ghat godown, on a month to month lease. It is the case of KoPT that O.P. defaulted in payment of monthly rent and taxes, failed and neglected to remove unauthorised persons occupying the premises inspite of repeated reminders from KoPT and also failed to comply with the Hon'ble Calcutta High Court's order dated 12.02.2007 in connection with APO No. 367 of 2006 arising out of W.P. No. 347 of 1988 and W.P. No. 209 of 1997 in the matter of Kolkata Port Tenants' Welfare Association -Vs- B.T.P.C. & Ors.. It is submitted by KoPT that a notice to quit dated 15.05.2014 was served upon O.P. by KoPT forfeiting the lease which was however not acted upon by the O.P.. KoPT has made out a case that O.P. has no right to occupy the premises on the ground of violation of lease conditions and upon service of the said quit notice dated 15.05.2014.

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 all dated 19.12.2016 as per Rules made under the Act.

It appears from record that several persons expressing themselves as the heirs of deceased

*[Handwritten signature]*

*[Handwritten mark]*



## 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. 1483, 1483 R-D of 2016 Order Sheet No. 26

### BOARD OF TRUSTEES OF THE PORT OF KOLKATA

*Estate Satya* <sup>VS</sup> *Charan Sett.*

22  
04-06-2018

Present: J. Khan, Asst. Estate Manager  
A. Halder, Jr. Land Inspector  
For Kolkata Port Trust (KoPT)


Lutful Haque, Advocate for Ramendra  
Nath Sett, Saurendra Nath Sett &  
Tapas Kumar Sett

Shankar Ranjan Sen, Advocate for  
Amarendra Nath Sett & Joti Ram Sett

Mr. Haque, Advocate files an application with a copy to KoPT. He reiterates that the heirs shall pay KoPT's dues on pro-rata basis after the tenancy is transferred to their names.

Representative of KoPT strongly prays for eviction of O.P. from the subject premises.

Let the Final Order in the matter be reserved. All concerned are directed to act accordingly.

  
(M.K. Das)  
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. 1483, 1483/R-D of 2016 Order Sheet No. 28

### BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Estate Satya <sup>VS</sup> Charan Sett.

23  
03-06-2019

Satya Charan Sett contested the case through their Ld. Advocates by filing several applications. It is gathered from the various applications filed before this Forum that the rights and liabilities of the Estate of Satya Charan Sett, since deceased, has been devolved upon his four sons namely (1) Sri Tarapada Sett, (2) Sri Sailendra Nath Sett (3) Sri Jati Ram Sett and (4) Sri Amarendra Nath Sett. Thereafter, one of the sons Sri Tarapada Sett died leaving behind his two sons Sri Sourendra Nath Sett and Sri Ramendra Nath Sett. Another heir Sri Sailendra Nath Sett also expired leaving behind Sri Tapas Kumar Sett as his heir. I am given to understand that later on, the heirs separated their business by way of family arrangement and continued to carry on business under the name and style of (1) M/s. Satya Charan Sett and (2) M/s. Amarendra Nath Sett upon the subject premises. It is understood that at present the business under the name and style M/s. Satya Charan Sett is being run by two of the heirs of Satya Charan Sett namely Sri Jati Ram Sett and Sri Amarendra Nath Sett. The other business under the name and style of M/s. Amarendra Nath Sett is being carried on by rest of the heirs namely Sri Tapas Kumar Sett, Sri Sourendra Nath Sett and Sri Ramendra Nath Sett.

Now I must mention how the proceedings has advanced right since inception till disposal through this Order. On 12.01.2017 the Ld Advocate contesting the case on behalf of the heirs carrying on business under the name and style of M/s Amarendra Nath Sett appeared through Vakalatnama. The Reply to the Show cause has been filed on behalf of said M/s. Amarendra Nath Sett on 15.02.2017 detailing the devolvement of the Estate of Late Satyacharan Sett upon his heirs, with prayer for segregation of tenancy in favour M/s Amarendra Nath Sett. On 12.04.2017 KoPT replied to the said contentions by filing an



## 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. 1483, 1483/R-D Of 2016 Order Sheet No. 29

### BOARD OF TRUSTEES OF THE PORT OF KOLKATA

*Estate Satya* <sup>VS</sup> *Charan Sett.*

23  
03.06.2019

application enclosing the detailed statement of accounts relating to the subject premises, with a copy to Sri Tapas Kumar Sett. On 28.04.2017 an application u/s 8 of the Act has been moved by Sri Tapas Kumar Sett on behalf of M/s. Amarendra Nath Sett praying for holding an enquiry by summoning the Land Manager, KoPT and examining him on oath and for a direction upon KoPT to accept the rent for only the portion of their occupation. Thereafter, an Affidavit in Chief has been filed by Sri Tapas Kumar Sett on 02.08.2017. As per direction of this Forum, a joint inspection of the public premises took place on 17.08.2017, the report whereof was submitted to the Forum on 24.08.2017 by KoPT. On 25.10.2017 the Ld. Advocate contesting the case on behalf of the heirs carrying on business under the name and style of M/s Satya Charan Sett appeared and filed Vakalatnama. On 09.04.2018, a Reply to Show Cause came to be filed on behalf of Sri Amarendra Nath Sett and Sri Joti Ram Sett carrying on business under the name and style of M/s Satya Charan Sett. In the said reply the prayer for segregation of tenancy and payment for dues of KoPT proportionately has been made on behalf of M/s Satya Charan Sett. On 02.05.2018 an additional Reply to Show Cause has been filed by said Sri Amarendra Nath Sett and Sri Joti Ram Sett. The matter was finally heard on 04.06.2018 when the respective parties advanced their submissions. As directed by the Forum, on 13.06.2018 Written Notes of Arguments was filed on behalf of Sri Tapas Kumar Sett. No Written Notes were however filed by KoPT or by the representatives of Sri Amarendra Nath Sett or Sri Joti Ram Sett.

Now, while passing the final order, I have carefully considered the documents on record and the submissions of the parties. The allegations of KoPT against the O.P. are three folds, i.e. non-

# 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. 1483, 1483/R-D of 2016 Order Sheet No. 30

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

Estate Satya Charan Sett.

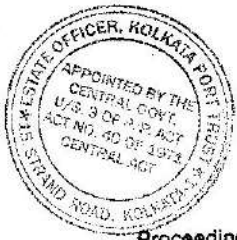
23

03.06.2019

payment rent and taxes, non compliance with the Hon'ble Calcutta High Court's order dated 12.02.2007 in connection with APO No. 367 of 2006 arising out of W.P. No. 347 of 1988 and W.P. No. 209 of 1997 in the matter of Kolkata Port Tenants' Welfare Association -Vs- B.T.P.C., and unauthorized parting with possession to third party of the Public Premises in question in violation of the lease conditions and without taking prior approval of KoPT, which led to the issuance of the Notice to Quit dated 15.05.2014. During course of proceedings, neither party has produced the lease deed in question. However, KoPT has claimed that Satya Charan Sett was its monthly lessee and such fact has not been denied by any appearing party. I find that KoPT has referred to the tenancy as "Estate Satya Charan Sett" in several of its communications which means that KoPT has accepted the heirs of the deceased Satya Charan Sett as the present lessee (jointly).

Be that as it may, with regard to the issue of non-payment, this Forum takes note of the admission of such non-payment of KoPT's rent and taxes contained in the Reply/s filed by the different factions of the heirs of O.P. on 15.02.2017 and 02.05.2018 respectively, wherein it is the submission of the respective factions that upon family settlement of the original business, regular payment of the dues could not be made by them. Both the factions have claimed that such payment to KoPT could not be made as the tenancy has not been segregated in favour of the different heirs of O.P. The factions have also blamed each other for being responsible for the non-payment of the dues. Now the question arises whether non-segregation of tenancy by KoPT can be said to be a valid excuse for not making payment of the estate dues. During the proceedings, KoPT has submitted that as per the prevalent land policy

By [Signature]  
The Estate Officer,  
Kolkata Port Trust  
Office of the Estate Officer,  
Kolkata Port Trust  
Kolkata Port Trust  
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

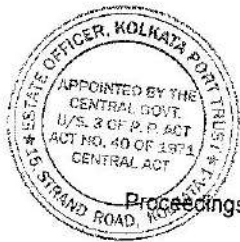
Proceedings No. 1483, 1483 R-D Of 2016 Order Sheet No. 31

### BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Estate Satya<sup>VS</sup> Charan Sett.

23  
03.06.2019

guidelines of the Ministry of Shipping, the prayer for regularization / grant of tenancy can only be considered by the Higher Authority of KoPT upon removal of all the breaches made by the O.P. of the respective lease conditions. Since the payment position was highly irregular, there was no scope to take up the tenancy for segregation. In my view, segregation/separation of tenancy is a clear discretion of the landlord and such relief cannot be claimed as a matter of right. In the instant case, after the demise of Satya Charan Sett (the original lessee) the tenancy devolved upon all his heirs as a joint tenancy. As per law, in such a situation it is the duty of all the joint lessees to together satisfy the rental dues and taxes. Even as per the family settlements/deeds produced by the different factions of the O.P. it had been decided by them to continue to jointly satisfy the legitimate demands of the landlord. However, subsequently the heirs seem to be have formed different factions amongst themselves and discontinued the payments to the Port Authority. In my firm understanding, all such arrangements took place behind the back of the Port Authority and hence the action of the Port Authority in not allowing segregation of the tenancy cannot be said to be unjustified or illegal. In my firm view, the O.P. i.e. Estate Satya Charan Sett (represented by all the legal heirs) are very much bound to make regular payments to the landlord against their continued use and enjoyment of the public premises in question. Such admitted default of rent and taxes by the different factions is a very serious matter and in my view, no leniency ought to be shown to the representatives of the O.P. who have mutually segregated the property by erecting permanent wall without any approval/authority of the Port Authority. As such, it is my conclusion that segregation / partition of tenancy cannot be taken as a plea by the O.P. as a precondition for payment of rent and taxes due to KoPT for



**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. 1483, 1483/R-D Of 2016 Order Sheet No. 32

**BOARD OF TRUSTEES OF THE PORT OF KOLKATA**

*Estate Satya Charan Sett.* <sup>VS</sup>

23  
03.06.2019

continuous use and occupation of the Port Property in question, and moreover, such grant/segregation of tenancy in favour of any person being the sole subject matter of consideration of the landlord (in this case the KoPT) of the premises, it is beyond the scope and jurisdiction of this Forum to entertain any such prayer. This Forum also takes note of the fact that several correspondences, such as letter dated 15.02.2012, 05.05.2000, 28.01.1994 etc have been issued by KoPT to the O.P. requesting them to make payment of outstanding rent, interest to KoPT. Moreover, 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 proceeding, no material defect or error in billing could ever be pointed out on behalf of the O.P. The factions of the O.P. did not make any specific dispute regarding the adjustment of payments even after receiving detailed list of payment/suspense deposits made on behalf of O.P. to KoPT. In fact, once the dues and taxes are admitted substantially by and on behalf of the O.P., there is no reason not to uphold the validity of the Notice to Quit issued by the Port Authority. Thus, this Forum holds that the charge of default in payment of rent and taxes is definitely established against the O.P.

With regard to the application u/s 8 of the Act filed by the representatives of O.P. on 28.04.2017, this Forum is of the view that the Scheme of the Act does not make it mandatory on the part of this Forum of Law to exercise the powers vested under Sec.8 of the P.P. Act. Formation of "opinion" is mandatory under the Act to proceed against any body. No eviction order could be passed until a Show Cause Notice u/s 4 of the Act is issued in respect of the Public Premises in question and

By Order of  
The Estate Officer  
Kolkata Port Trust  
Dated 03.06.2019  
OFFICE OF THE 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. 1483, 1483 (R-D) Of 2016 Order Sheet No. 33

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

*Estate Satya Charan Sett.*

23  
03.06.2019

unless the parties interested into the property in question is heard. The Show Cause Notice affords an ample opportunity to the noticee or to the person/s interested into the property to dispute/contradict the opinion of the Estate Officer. After issuance of Show Cause Notice, it is the primary responsibility of the person concerned to demolish the grounds as stated in the Show Cause Notice u/s 4 & 7 of the Act and in course of proceedings, if a definite case is made out in favour of somebody, the Estate Officer may exercise the powers as conferred u/s 8 of the Act. If no case has been made out for exercising powers u/s 8 of the Act, this Forum of Law is not bound to exercise such power. In the instant case no such case has been made out by anybody to resort to the power vested u/s 8 of the Act. The matter of adducing evidence or bearing witness depends upon the factual aspect involved in a particular matter which is considered to be the foundation of a particular case in a given circumstances. Where such circumstances deserves no merit in favour of examination or cross-examination of witness for discovery of a fact essentially required for coming into a definite conclusion, I do not find any substance to the submissions/ arguments made in this regard. The judgement of the Hon'ble Apex Court of India reported in New India Assurance Case- 2008 (3) SCC 279 is very much instrumental in deciding the question of justifiability of Estate Officer's action in the adjudication process wherein it has been decided that Civil Procedure Code and Indian Evidence Act are not applicable before the Estate Officer while conducting the adjudication process under P.P. Act and what is required is absolutely the administration of natural justice. In view of the above I do not find any merit to the submissions/arguments made in favour of exercising the power u/s 8 of the Act and with regard to evidence under the issues. It requires





## Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act 1974

Proceedings No. 1483, 1483/R-D of 2016. Order Sheet No. 34

### BOARD OF TRUSTEES OF THE PORT OF KOLKATA

<sup>VS</sup>  
*Estate Satya Charan Sett.*

23

03.06.2019

mention here that this issue has already been dealt with under Order No. 12 dated 05.07.2017 of this Forum. It is my firm view that when parties have got sufficient opportunity to lead evidence through production of documents (and parties have also availed of such liberty, to the extent of documents in support of their contentions) no fruitful purpose would be served by summoning and/or examining the Land Manager, Kolkata Port Trust and such plea, in my understanding, is intended only to delay the proceedings. Thus the prayer made u/s 8 of the Act for examination of KoPT Officer on oath is rejected.

With regard to the issue of unauthorised subletting/ parting with possession of the Port Property in question, this Forum takes into consideration the applications filed by the parties and the report of joint inspection dated 17.08.2017 signed by the parties, who were present during such inspection at the Port Property in question. The Report states that the subject premises is divided into three parts and the occupiers are carrying on business under the name and style of (1) M/s. Satya Charan Sett and (2) M/s. Amarendra Nath Sett. It bears mention here that this Forum has already taken note of the fact that after the demise of the original lessee Satya Charan Sett, the family business has been divided into the said two entities namely M/s. Satya Charan Sett and M/s. Amarendra Nath Sett (albeit behind the back of KoPT). It appears from the family settlement deed/s filed on behalf of the O.P. that the business under the name and style M/s. Satya Charan Sett is a partnership business and M/s. Amarendra Nath Sett is a branch of that concern, which subsequently started operating as an independent unit. Be that as it may, in this regard the law provides that a partnership firm is not to be considered as a separate legal entity



# 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. 1483, 1483/R-D Of 2016 Order Sheet No. 35

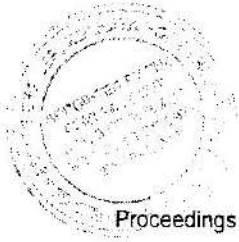
## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

*Estate Satya Charan Sett.* <sup>VS</sup>

23  
03.06.2019

from its partners. Partners share all the profit and losses amongst each other. Moreover, no stranger person/entity has been found in joint inspection apart from the heirs of the deceased Satya Charan Sett. Thus, in this case the partnership businesses under the name and style M/s. Satya Charan Sett and M/s. Amarendra Nath Sett are being carried on by the heirs/ family members of the O.P. under respective deeds of family settlement (as produced by the different factions) without involving any third person/stranger. Hence, the allegation taken by KoPT that unauthorised persons are in occupation of the Port Property in question, may have little merit in the eye of law. However, this does not dilute the defaults on the part of the O.P. Apart from non-payment of rent and taxes without any valid justification, I find that KoPT's contention regarding violation of Hon'ble Calcutta High Court's order dated 12.02.2007 in connection with APO No. 367 of 2006 is very much established, in the facts and circumstances of the case. During course of hearing, representatives of O.P. have failed to disclose how they have complied with the said Order of the Hon'ble Calcutta High Court by making payments in instalments. Moreover, I find that said Order of Hon'ble Calcutta High Court has been set aside by the Hon'ble Supreme Court in Civil Appeal Nos 4491/2010 and 4492/2010 with the direction under Article 142 of the Constitution that as regards interest, there shall be no further levy in case of respondents who have already paid interest at the rate fixed by the Hon'ble High Court. But in the instant case, nowhere it has been claimed by or on behalf of any of the representatives of the O.P. that they have complied with the Hon'ble Calcutta High Court's order dated 12.02.2007 in the strictest sense. Thus, I am of the view that occupation of the O.P. is not at all entitled to any protection and such occupation is nothing but "unauthorised". As per

*Mu*



# 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. 1483, 1483/R-D Of 2016 Order Sheet No. 36

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

*Estate Satya Charan Sett.* <sup>VS</sup>

23  
03.06.2019

Section 2 (g) of the P.P. Act, 1971, 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**. In my humble view, the said provision is squarely attracted in the instant case. The tenancy of the O.P. (Estate Satya Charan Sett) has been duly determined by the Port Authority due to valid and cogent defaults on the part of the O.P. and such determination has been duly communicated to the representatives of the O.P., in the facts and circumstances of the case. Therefore, in my view, the Notice to Quit dated 15.05.2014 is very much valid, lawful and binding between the parties.

In the aforementioned circumstances, being satisfied as above, I am inclined to hold the occupation 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 the submissions of O.P. as to non-receipt of Notice to Quit dated 15.05.2014 has no basis both in law and in fact;
3. That O.P. has failed to comply with the directions of the Hon'ble Calcutta High Court dated 12.02.2007 in APO No. 367 of 2006;
4. That the occupation of the O.P. is not entitled to any protection in view of the directions of the Hon'ble Supreme Court in Civil Appeal Nos 4491/2010 and 4492/2010;

OFFICE OF THE ESTATE OFFICER  
KOLKATA PORT TRUST  
KOLKATA

*[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. 1483, 1483/R-D Of 2016 Order Sheet No. 37

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

*Estate Satya Charan Sett.*  
**VS**

23  
03.06.2019

5. 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';
6. That ejection notice dated 15.05.2014 as served upon O.P., demanding possession of the public premises by KoPT is valid, lawful and binding upon the parties;
7. 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;
8. 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.

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. (Estate Satya Charan Sett, which includes all legal heirs and representatives of Late Satya Charan Sett) 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.

It is my considered view that a sum of Rs. 27,33,831.49/- for the period 01.09.1995 to 30.06.2014 (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 21.06.2019.

BOARD OF TRUSTEES  
THE PORT OF KOLKATA  
KOLKATA - 700001

GENERAL MANAGERS  
BOARD OF TRUSTEES OF  
KOLKATA PORT TRUST

OFFICE OF THE  
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. 1483, 1483/R-D Of 2016 Order Sheet No. 38

### BOARD OF TRUSTEES OF THE PORT OF KOLKATA

*Estate Satya Charan Seth.*

23

03.06.2019

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. 5,65,008.00/- as claimed by the Port Authority as damages in relation to the Plate in question, is correctly payable by O.P. for the period 01.07.2014 to 31.08.2016 (both days inclusive) and it is hereby ordered that O.P. shall also make payment of the aforesaid sum to KoPT by 21.06.2019. The said damages shall carry simple interest @ 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 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 the liability of O.P. to pay damages extends beyond 31.08.2016 as well, as and till such time the possession of the premises continues to be under the unauthorised occupation with the O.P.. KoPT is directed to submit a statement comprising details of its calculation of damages after 31.08.2016, 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





# 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. 1483, 1483/R-D Of 2016 Order Sheet No. 39

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

**VS**  
*Estate Satya Charan Seth.*

23  
03.06.2019

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

(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 \*\*\*

By order of the  
ESTATE OFFICER  
KOLKATA PORT TRUST  
APPOINTED BY THE CENTRAL GOVT.  
U.S. 3 OF P. 8 ACT 1971  
175, STRAND ROAD, KOLKATA