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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 (1ST Floor)
KOLKATA - 700 001

Court Room At the 1ST Floor
of Kolkata Port Trust's Fairlie Warehouse
6, Fairlie Place, Kolkata- 700 001.
REASONED ORDER NO. 54 DT 20.08.2019
PROCEEDINGS NO. 1314 OF 2012

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-
New Alipore Young Men's Association (O.P.)

22.08.2019

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 **New Alipore Young Men's Association, OF 23/A, Diamond Harbour Road, Block-B, New Alipore, Kolkata 700053** is in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

1. That O.P. has failed and neglected to hand over possession of the Public Premises in question after the expiry of long term lease and after issuance of the Notice to Quit dated 18.01.2011;
2. That O.P. failed to obtain any fresh grant from the landlord i.e. the KoPT which would validate their continued occupation within the said public premises beyond 3.12.1989 as 'authorised';
3. That O.P. has carried out unauthorized construction/s in utter disregard/defiance of the laws of the land;
4. That O.P.'s claim of "legitimate expectation", "deemed renewal" and "unjust enrichment" are without any basis both in law and in fact;
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 ejectment notice dated 18.01.2011 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 of expiry of the lease 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

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A copy of the reasoned order No. 54 dated 20.08.2019 is attached hereto which also forms a part of the reasons.

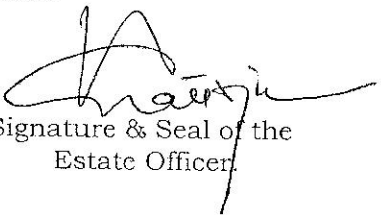
NOW, THEREFORE, in exercise of the powers conferred on me under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order the said **New Alipore Young Men's Association, OF 23/A, Diamond Harbour Road, Block-B, New Alipore, Kolkata 700053** and 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 **New Alipore Young Men's Association, OF 23/A, Diamond Harbour Road, Block-B, New Alipore, Kolkata 700053** 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

Plate no. D412/1 - The said piece or parcel of land msg.156.44 sq.m. or thereabouts is situated at New Alipore, Thana-New Alipore Police Station, District-24 Parganas, Registration District-Alipore. It is bounded on the North by the lessor's land sold to Sakuntala Mishra, on the East and South by roadway and on the West by the land belonging to the Life Insurance Corporation.

Trustees mean the Board of Trustees for the Port of Kolkata.

Dated: 20.08.2019


Signature & Seal of the
Estate Officer.

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

20.08.2019

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 (1st FLOOR) KOLKATA-700001

FORM -G

PROCEEDINGS NO. 1314/D OF 2012
ORDER NO. 54 DATED: 20.08.2019

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

To

**New Alipore Young Men's Association,
23/A, Diamond Harbour Road, Block-B,
New Alipore, Kolkata 700053**

J 22.08.2019
KOLKATA

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 26.05.2016 you were called upon
to show cause on or before 30.06.2016 why an order requiring you to pay a
sum of Rs. 6,29,297.73/- (Rupees Six lakhs twenty nine thousand two
hundred and ninety seven and seventy three paise 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 reply and/or submissions on your
behalf;

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. 6,29,297.73/-
(Rupees Six lakhs twenty nine thousand two hundred and ninety seven and
seventy three paise only) assessed by me as damages on account of your
unauthorised occupation of the public premises for the period 03.12.1989 to
10.03.2016 to Kolkata Port Trust by 15.09.2019.

PLEASE SEE ON THE REVERSE

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 @ 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's Notification Published in Calcutta Gazette.

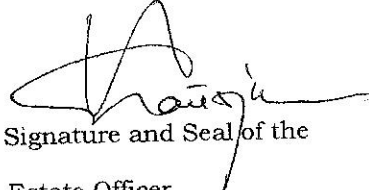
In case the said sum is not paid within the said period or in the said manner, it will be recovered as arrears of land revenue through the Collector.

SCHEDULE

8 22-08-2019
Plate no. D412/1 - The said piece or parcel of land msg.156.44 sq.m. or thereabouts is situated at New Alipore, Thana-New Alipore Police Station, District-24 Parganas , Registration District-Alipore. It is bounded on the North by the lessor's land sold to Sakuntala Mishra, on the East and South by roadway and on the West by the land belonging to the life Insurance Corporation.

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

Dated: 20.08.2019


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. 1314/1314/D Of 2012 Order Sheet No. 60

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S. New Alipore Young Men's Association ^{VS}

54
20-08-2019

FINAL ORDER

The matter is taken up for final disposal today. It is the case of Kolkata Port Trust (KoPT), the applicant herein, vide original application dated 02.06.2011, filed under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as 'the Act'), that New Alipore Young Men's Association (hereinafter referred to as O.P.) came into occupation of the Port Property in question (land Msg. about 156.44 Sq.m under occupation No. D 412/1 at New Alipore) on a long term lease basis (20 years) with effect from 03.12.1969 and that the said O.P. failed and neglected to hand over possession of the Public Premises after expiry of the said long term Lease, defaulted in payment of compensation, unauthorisedly made certain constructions and also unauthorisedly encroached upon the Trustees' adjoining land (this allegation was later withdrawn by KoPT) in clear and gross violation of the terms and conditions of the lease. KoPT has made out a case that O.P. has no right to occupy the premises on the ground of expiry of lease and also violation of other lease conditions and had levelled the charge of an unauthorised occupant on O.P. effected through the service of a quit notice dated 18.01.2011.

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 26.05.2016, as per Rules made under the Act.

The O.P. contested the case through its Ld. Advocate/s. After initially filing certain adjournment petitions, Reply to the Show Cause Notice/s has been filed by the O.P. on 20.10.2016 under the pen of its Chairman. KoPT vide application dated 17.11.2016, filed their comments against the said Reply. Subsequently O.P. desired to file an additional comprehensive Reply, which was allowed by the Forum and after much persuasion, the same came to be filed on 27.02.2017, under the pen of its Secretary. KoPT once again filed its comments against the said comprehensive Reply on 21.03.2017. KoPT, vide

J. 22.08.2019

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. 1314 A/1314/D Of 2012 Order Sheet No. 61

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S. New Alipore Young Men's Association ^{VS}

54

20.08.2019

J 22-08-2019

another application dated 30.06.2017, forwarded the revised statement of dues, calculated after taking into account certain ad-hoc payments made by the O.P. Thereafter, O.P. filed a petition on 23.08.2017 expressing, inter-alia, its intention to settle the dispute with KoPT. This was followed by another application of the O.P. styled as a Report and then a letter was filed on 21.09.2018. This was followed by KoPT's rejoinder dated 25.01.2019 and thereafter the matter was finally heard on 28.01.2019 when, after hearing the arguments of both the sides, final order was reserved. As per the leave of this Forum for filing Written Notes of Arguments, if any, by the parties, O.P. filed its final submissions on 29.01.2019.

Now, while taking up the matter for final adjudication, I have carefully gone through the documents on record as well as the submissions of the parties.

Regarding the issue of maintainability of the proceedings etc. as raised by O.P. in its consolidated reply dated 27.02.2017, I must say that P.P. Act is very much clear about its intent and object. The Act is to provide speedy machinery for eviction of unauthorized occupants from the Public Premises and recovery of arrear rental dues, damages etc. arising out of occupations in the public premises as defined under the Act. The Act puts a complete bar of court's jurisdiction to entertain any matter in respect of the public premises in connection with order of eviction, recovery of rental dues and damages etc. in terms of Sec.15 of the Act. In a situation where there is no order of stay on the proceedings by any competent court of law, it is very difficult to accept the contention of anybody to dismiss or stay the proceedings. I am consciously of the view that P.P. Act operates in a field where the Act itself specifically provided the jurisdiction of this Forum of Law (Adjudicating Authority under the Act) and any question about the maintainability of the proceedings is not sustainable without any appropriate order, restraining the proceedings etc. from the Writ Court or from any competent court of law.



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. 1314 & 1314/D Of 2012 Order Sheet No. 62

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S. New Alipore VS Young Men's Association

54

20-08-2019

KoPT has come up with an application for declaration of O.P.'s status as an unauthorized occupant into the public premises with the prayer for order of eviction, recovery of rental dues and damages against O.P. on the plea of determination of lease/termination of authority to occupy the premises, as earlier granted to O.P. in respect of the premises in question. So long the property of the Port Authority is coming under the purview of "public premises" as defined under the Act, adjudication process by service of Show Cause Notice/s u/s 4 & 7 of the Act is very much maintainable before this Forum of Law and there cannot be any question about the maintainability of the same.

22-08-2019

It is further argued on behalf of O.P. that service of quit notice dated 18.01.2011 suffers from irregularity in issuing notice for want of 6 months notice period as agreed upon. It is interalia contended by O.P. in its reply dated 20.10.2016 and 27.02.2017 that notice dated 18.01.2011 required delivery of possession of premises from O.P. on 28.02.2011, which is contrary to the agreement between the parties. I have duly considered the Registered Lease Deed between the parties in dispute. Nowhere in the said lease deed, to be acted upon by and between the parties, there is any clause which supports the contention of O.P. with regard to agreement for 6 months' notice to terminate the tenancy under lease. On the contrary, it is evident from the lease deed itself that KoPT shall have the right to terminate the lease on 6 months' notice, if the land is required by KoPT for Port purpose or for public interest. This clause cannot be termed as agreement between the parties for 6 months' notice to terminate the lease. It is not the case of KoPT that land is required for port purposes or for public interest. The grounds for serving ejectment notice dated 18.01.2011 are very much embedded in that notice itself and there is no mention about KoPT's requirement of the property for its own purpose or for public interest. I have examined the statutory provision under the Transfer of Property Act regarding service of notice and find that 6 months' notice may be required for termination of lease for immovable property in case 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. 1314 A/1314/D Of 2012 Order Sheet No. 68

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. New Alipore Young Men's Association **VS**

54
20.08.2019

20.08.2019

lease is granted either for manufacturing or for agricultural purpose. In the instant case, lease in favour of O.P. was not for manufacturing or agricultural purpose. No case has been made out as to how 6 months' notice is required under the law to terminate the tenancy under lease of O.P. Therefore, it is my considered view that the argument/averment made on behalf of O.P. is without any valid reason or basis.

I am inclined to take up the breaches alleged by KoPT, one by one, and how the O.P. has defended itself as against each such allegation. The first and foremost contention of KoPT is that the 20-years lease granted to O.P. has expired on 03.12.1989 and, therefore, O.P. must be treated as an unauthorized occupier on and from 03.12.1989. I have gone through the copy of the registered lease deed. The same clearly mentions that the lease shall stand expired after 20 years from 03.12.1969. There is no renewal clause in the said lease, meaning O.P. had no right to claim any renewal on the strength of the lease deed. Such a position is not disputed by O.P. either. It is the admission of the O.P. in several of its communications that the lease stands expired since 03.12.1989. However at the same time O.P. claims to have written to the Port Authority several times praying for renewal/extension of the lease. Now the question is, how far such prayer of the O.P. is sufficient to protect its occupation at this juncture. As per law, when there is no clause/option for renewal, the subject matter of renewal/extension of such a lease becomes the absolute prerogative of the landlord and this Forum has nothing to consider in this matter under the P.P. Act, 1971. Apparently, efforts have been made by O.P. to renew/extend the lease by taking up the matter with various authorities of KoPT but they have failed to obtain a valid grant from the Port Authority. There is no dispute that the KoPT authority did not accept the O.P. as a tenant after 03.12.1989. O.P. has itself submitted (in its additional/comprehensive reply filed on 27.02.2017) that rent bills were received till 1989 and not thereafter. The question of raising "rent" bills arise only in an authorized/regular occupation. In my view,

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. 1314 A/1314/D Of 2012 Order Sheet No. 64

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S. New Alipore Young Men's Association ^{VS}

54

28.08.2019.

J. D. 22.08.2019.

this is a clear indication of the stand of KoPT that it does not accept the O.P. as a tenant after 03.12.1989. The same view stands further fortified by KoPT's Notice to Quit dated 18.01.2011 wherein KoPT has clearly treated the occupation of the O.P. as unauthorized. In fact, culmination of the instant proceedings against the O.P. vide application dated 02.06.2011 of KoPT is sufficient demonstration of the intent of KoPT that it does not treat the O.P. as a tenant after 03.12.1989. A plea has been taken by O.P. (in its additional/comprehensive reply filed on 27.02.2017) that the non-response of KoPT towards the applications/prayers for renewal by O.P. amounted to deemed renewal of the lease. O.P. has also claimed about "legitimate expectation" of renewal in its said additional/comprehensive reply. I do not agree with such contentions of the O.P. When there is no provision for renewal in the registered lease deed, and there is no "conduct" or "consent" on the part of KoPT after 03.12.1989 signifying its assent to the continuance of the occupation of the O.P. it is futile to claim about deemed renewal of the lease. In order to make out a case for "holding over", the lessee must prove not only his possession after determination/expiry of lease but also the acceptance of rent or otherwise by the lessor as a mark of his assent to the lessee's bonafide continuance in possession of said premises. This is not the case in the instant proceedings. Evaluation of factual aspect and the papers/documents brought before me in course of hearing will certainly lead one to the conclusion that KoPT never consented in O.P's occupation into the public premises after expiry of the period as mentioned in the notice dated 18.01.2011. The essential element of "consent" for constituting the matter of holding over is absent and the O.P. has failed to adduce any evidence or bear any witness in support of its contention regarding holding over.

No evidence has been laid on behalf of O.P. by way of producing any demand for current rent by KoPT (after 03.12.1989) wherefrom it could at least be inferred that the Port Authority had any intention to the continuance in occupation by accepting any amount

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. 1314 & 1314/D Of 2012 Order Sheet No. 65.

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S. New Alipore Young men's Association. ^{VS}

54
20.08.2019

22.08.2019



as rent for such occupation. Rather, I find that O.P. was making prayers for renewal vide its letters dated 14.06.1994, 13.02.2004, 24.02.2011 etc. meaning thereby that O.P. itself never treated it as a case of "deemed renewal". Likewise, I am not at all inspired by the claim of "legitimate expectation" as I find no assurance whatsoever on the part of the KoPT to render validity to the unauthorized occupation of the O.P. It is true that there is considerable delay on the part of the KoPT in approaching this Forum but that does not necessarily mean that KoPT has consented to O.P.'s occupation after 03.12.1989. There was no element of "consent" on the part of the Port Authority, either by way of accepting rent from OP or by any other mode, expressing the assent for continuance in such occupation after expiry of the period as mentioned in the notice to vacate. Such delay is also not at all fatal to the claim of KoPT as regards unauthorised occupation of the O.P. nor does such delay makes the occupation of the O.P. as "authorised". Mere delay in filing a Suit for ejection does not create a tenancy by holding over (AIR 1962 PAT 446). In fact, as per law, the landlord is not bound to issue any notice of determination of tenancy when the tenancy has seen determined by efflux of time, like in the instant case. As such, the Notice to Quit dated 18.01.2011 of KoPT should only be read as a reminder or as an act of gratuity. Belated issuance of such a Notice does not render the occupation as valid in the eyes of law. Sec. 116 of the Transfer of Property Act makes no differential treatment for dealing with effect of "holding over", either in case of long term lease (lease for more than one year), or in case of monthly lease. No one can claim granting of lease after expiry of the period of lease, as granted earlier by the lessor/KoPT, as a matter of right, unless there is any material to show that somebody has been deprived of his legitimate right to claim so. There is no material to show that the Port Authority has wilfully or deliberately denied the O.P.'s application for grant of fresh allotment in respect of the property in question. I am firm in holding that O.P. cannot take shelter under the delay at the end of KoPT and O.P. was duty bound (as per the Transfer of Property Act, 1882) to deliver

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. 1314 & 1314/D Of 2012 Order Sheet No. 66

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S. New Alipore Young Men's Association.
VS

54

20.08.2019.

A 22-08-2019,

back vacant, peaceful and unencumbered possession to the Port Authority immediately after expiry of the lease, which it had failed to do. It is my considered view that rights and liabilities of the parties in the proceedings arise out of contractual provision for allotment of land, either by way of lease or any other mode of grant by landlord. In the instant case, the period of lease was offered for 20 years w.e.f 3.12.1969 without any option for renewal in respect of the property in question. The Registered mother lease deed between the parties specifically provides under Clause 10 for yielding up the demised land at the expiry or determination of the terms under lessee's covenant and I understand this clause is a general condition of all the Kolkata Port Trust's standard lease form. Such being the case, it is very difficult to accept the contention of OP regarding tenant "holding over".

As per 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 view, such provision is squarely attracted in the instant case. I am of the firm view that the occupation of the O.P. beyond 03.12.1989 is definitely "unauthorised" and this Forum must therefore proceed to pass order of eviction against the O.P.

Once the status of the O.P. is adjudged as "unauthorised" as above, the discussion of the other breaches alleged by KoPT becomes not of primary but incidental concern to the main narrative of the instant order. I may discuss them in a nutshell for the sake of completeness and principles of natural justice. KoPT's contention of encroachment into the adjoining properties was challenged by the O.P. and subsequently KoPT withdrew the charge. This, of course, does not put KoPT in a favourable light and it will be in the rather fitness and fairness of things that



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. 1314 & 1314/D Of 2012 Order Sheet No. 67

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S. New Alipore ^{VS} Young Men's Association.

54

20-08-2019.

22-08-2019.

in future, KoPT will take due care and caution to level charges against OP that are robust, timely and defensible and do not require to be withdrawn on challenge. KoPT's contention of unauthorised construction/s (particularly, a temple) by the O.P., however, must be treated as ipso facto proved, in the wake of clear admission on the part of the O.P. (in its additional/comprehensive reply filed on 27.02.2017) to the effect that such temple was constructed by them sometime in 1999-2000. O.P. could not produce an instance of approval/sanction from KoPT or the Kolkata Municipal Corporation (KMC) giving it a go-ahead for such construction. In my view, OP has shown marked irresponsibility in erecting an unauthorized structure during the period of its unauthorized occupation, throwing all the canons of equity and fair play to the winds and should not expect that such blatant transgressions on their part will be treated with any kind of indulgence and sympathy. As per law, whoever claims equity must come with clean hands. But in the instant case, O.P.'s occupation is not only unauthorised but O.P. has gone ahead with unauthorised construction/s on such unauthorised occupation, showing their complete indifference to the law of the land. In my view, the occupation of the O.P. therefore deserves no protection even for the sake of natural justice and I reiterate that the occupation of the O.P. on and from 03.12.1989 is "unauthorised" in terms of the P.P. Act, 1971.

In the aforementioned circumstances, being satisfied as above, I have no hesitation to uphold the claim of the Port Authority and I am inclined to hold the occupation of the O.P. as "unauthorized", and issue ^{the} order of eviction against O.P. on the following grounds :-

1. That O.P. has failed and neglected to hand over possession of the Public Premises in question after the expiry of long term lease and after issuance of the Notice to Quit dated 18.01.2011;
2. That O.P. failed to obtain any fresh grant from the landlord i.e. ~~the~~ KoPT, which would validate their continued occupation within the said public premises beyond 3.12.1989 as 'authorised';

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. 1314 A 1314/D Of 2012 Order Sheet No. 68

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S. *New Alipore Young Men's Association* ^{VS}

54

20.08.2019

3. That O.P. has carried out unauthorized construction/s in utter disregard/defiance of the laws of the land;
4. That O.P.'s claim of "legitimate expectation", "deemed renewal" and "unjust enrichment" are without any basis both in law and in fact;
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 18.01.2011 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 of expiry of the lease 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 there-under, 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 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. 6,29,297.73/- as claimed by the Port Authority as damages, is correctly payable by O.P. for the period 03.12.1989 to 10.03.2016 (both days inclusive) for the Plate in question and it is hereby ordered that O.P. shall make payment of the aforesaid sum to KoPT by

[Signature]

20.08.2019

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. 1314 & 1314/D Of 2012 Order Sheet No. 67.

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S. New Alipore Young Men's Association.

54

20-08-2019.

8
22-08-2019.
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15.9.2019. The said damages shall carry simple interest @ 15% per annum upto 18.09.1996 and thereafter @ 18% per annum till 06.04.2011 and thereafter @14.25% per annum on the above sum from the date of incurrence of liability till its final payment in accordance with the relevant notification/s published in the respective Official Gazettes. The formal order u/s 7 of the Act is 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 liability of O.P. to pay damages extends beyond 10.03.2016 as well, as the possession of the premises is still lying unauthorisedly with the O.P.. KoPT is directed to submit a statement comprising details of its calculation of damages after 10.03.2016, 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 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


(K. Chatterjee)
ESTATE OFFICER

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