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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, 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. 20 DT 06.09.2019  
PROCEEDINGS NO. 1335, 1335/D OF 2012

BOARD OF TRUSTEES OF THE PORT OF KOLKATA  
-Vs-

**Tarakeswar Singh (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 **Tarakeswar Singh, son of Hit Lal Singh, of Plot No 62, 72B Chetla Rly Siding, Kolkata- 700 027** is in unauthorized occupation of the Public Premises specified in the Schedule below:

**REASONS**

- 1) That O.P has violated the condition of tenancy under month to month lease as granted by the Port Authority by way of not making payment of dues to KoPT without any authority of law.
- 2) That O.P./sitting occupants of public premises have failed to make out any case in support of their occupation as "authorised occupation", inspite of sufficient chances.
- 3) That O.P./sitting occupants of public premises have failed to bear any witness or adduce any evidence in support of their occupation as "authorised occupation", inspite of sufficient chances.
- 4) That the notice to quit dated 28.07.1993 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.
- 5) 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.

*A*

Please see on reverse

By Order of:  
THE ESTATE OFFICER  
KOLKATA PORT TRUST  
CERTIFIED COPY OF THE ORDER  
PASSED BY THE ESTATE OFFICER  
KOLKATA PORT TRUST  
OFFICE OF THE ESTATE OFFICER  
KOLKATA PORT TRUST

A copy of the reasoned order No. 20 dated 06.09.2019 is attached hereto which also forms a part of the reasons.

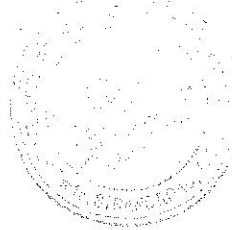
NOW, THEREFORE, in exercise of the powers conferred on me under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order the said **Tarakeswar Singh, son of Hit Lal Singh, of Plot No 62, 72B Chetla Rly Siding, Kolkata- 700 027** and all persons 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 **Tarakeswar Singh, son of Hit Lal Singh, of Plot No 62, 72B Chetla Rly Siding, Kolkata- 700 027** 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**

- i) **Plate no. D- 478/A** - All that piece or parcel of land msg. about 66.890 sqm at Chetla Station Yard (Plate no. D- 478/A) District: 24 Parganas, registration District Alipore. It is bounded on the north partly by the Trustees' open land and partly by the Trustees' land leased to you on the East by the Trustees' leased out land, on the South by the Trustees' land used as passage and on the West by the Trustees' open land.
- ii) **Plate No. D 534**- All that piece or parcel of land measuring about 34.002 sqm at Chetla Station Yard (Plate No. D 534) District: 24 Parganas, Registration District : Alipore. It is bounded on the north by the Trustees' open land, on the East by the Trustees' land leased to you, on the South by the Trustees' land used as passage and on the West by the Trustees' open land.

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

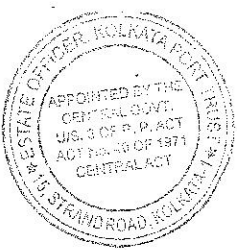
Dated: 06.09.2019



  
Signature & Seal of the  
Estate Officer.

Handwritten signature and date: 06/09/19

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



# Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971

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## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

Tarakeswar Singh

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06.07.2017

### FINAL ORDER

The instant proceeding nos. 1335, 1335/D of 2012 arises out of the application bearing No. Lnd.3184/90/12/1356 dated 18.04.2012 filed by the Kolkata Port Trust (KoPT) under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act 1971 on 18.04.2012, praying for an order of eviction and recovery of dues/damages/mesne profit/compensation/other charges etc. along with accrued interest against Sri Tarakeswar Singh, hereinafter referred to as the Opposite Party ('O.P.'), under the relevant provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

The fact of the case in a nutshell is that the opposite party (O.P.) came into occupation of two plots of land measuring 66.890 sqm (under plate no D 478/A) and 34.002 sqm (under Plate No D 534) situated at Chetla Station Yard, District : Alipore morefully described in Schedule of Property of KoPT's application dated 18.04.2012 as a monthly lessee and had defaulted in making payment of rent and taxes and unauthorisedly parted with the possession to the rank outsider without prior approval which is an obligation under the terms of tenancy. It is the case of KoPT that the O.P. was asked to vacate the premises on 30.09.1993 in terms of the Quit Notice dated 28.07.1993, served upon the O.P. as per statute under certificate of posting to the recorded address of O.P. requesting the O.P. to quit, vacate and deliver up the vacant and peaceful possession of the premises on the expiry of the month of September, 1993 (i.e. 30.09.1993). The said notice has been duly acknowledged by the O.P.

Order of  
THE ESTATE OFFICER  
KOLKATA PORT TRUST

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KOLKATA PORT TRUST

FILED BY 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. 1335, 1335/D of 2012 Order Sheet No. 18

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The said notice was simultaneously sent by KoPT authority to the O.P. by the KoPT's Land Inspector and the same was acknowledged by the O.P. It is further the case of KoPT that inspite of the said Quit Notice dated 28.07.1993, the O.P. failed and neglected to quit, vacate and deliver up vacant and peaceful possession of the said premises on 30.09.1993 and failed and neglected to hand over the public premises to KoPT.

Considering the submission and materials on record as submitted by KoPT, Notice/s to Show Cause, all dated 01.06.2017, U/s 4 and 7 of the Act, were issued to the O.P. as to why an order of eviction and an order requiring payment of Damages with compound interest, etc should not be made against the O.P. The O.P. was also called upon to appear before this forum in person or through their duly authorized representative capable to answer all material questions connected with the matter along with evidence which the O.P. intends to produce in support of his case.

As per the Report dated 12.06.2017 of the Process Server of this Forum, the notice/s were affixed on the property under the Schedule, for Notice to All Concerned. The notices which were sent via Speed Post did not return back by the Postal Department raising a presumption of effective service of the Notice/s.

On 27.06.2017 i.e. the day fixed for hearing of the Show Cause one Sri Rabindra Sharma appeared before this Forum and submitted that O.P. had handed over the possession of the premises under Plate No. D 534

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# Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises  
(Eviction of Unauthorised Occupants) Act 1971

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to him. It also appears from the application filed on 27.06.2017 by Sri Rabindra Sharma that he is admittedly in occupation of the plot of land measuring 34.002 sqm bearing plate no D 534. It is further stated in the said application that Sri Rabindra Sharma was ready to pay the rent and taxes for the said plot in certain instalments. In such circumstances KoPT was directed to carry out an inspection of the premises and file a report thereof in order to ascertain the correct factual position of the matter. Thereafter, on 11.07.2017 Sri Rabindra Sharma filed copy of two documents and claimed himself as the Power of Attorney holder of the O.P. for the purpose of looking after business of O.P. Subsequently KoPT has filed an application dated 10.08.2017 intimating the outcome of an inspection where it was found that Sri Rabindra Sharma was occupying the plot of land measuring 34.002 sqm under the occupation plate no D 534. It appears from records that none appeared on behalf of the O.P. or Sri Rabindra Sharma after the hearing took place on 27.07.2017. Thereafter repeated notices have been sent to the address of O.P. intimating the subsequent date/s of hearing. Copies of the Orders dated 16.11.2017 and 07.12.2012 were received by a person named 'R. Sharma' but nothing came to be filed on behalf of the O.P. or Sri Rabindra Sharma thereafter. In fact the copy of the Order dated 25.01.2018 and the copy of the rejoinder filed by KoPT were sent to the recorded address O.P. vide speed post, which was returned back with the endorsement of Postal Department as the O.P. 'deceased'. Additionally the order dated 25.01.2018 has been affixed on a conspicuous part of the subject premises as it appears from the report of the Process Server dated 07.02.2018

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KOLKATA

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# Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971

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## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

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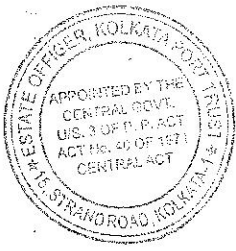
for a notice to all concerned. In spite of such repeated attempts in Order to provide chances to the O.P. for fling the reply to Show cause, none appears on behalf of O.P. or any other person interested in the property. Consequently, being satisfied with service of notice upon all concerned, the Final Order was reserved by this Forum.

Now, while passing the Final Order, I have carefully considered the documents on record and the submissions of the parties. It is a settled question of law that a lessee like O.P. cannot claim any legal right to hold the property after expiry of the period as mentioned in the notice of ejection, unless O.P. is succeeded in making a case of "Tenant Holding Over". No attempt has been made out on behalf of O.P. to satisfy this Forum of Law about any consent on the part of KoPT in occupying the public premises, unconditionally in order to fulfill the essential ingredient of holding over. Rather it is a case of KoPT that by notice dated 28.07.1993, O.P. was directed to hand over possession. A letter /notice issued in official course of business has definitely got an evidentiary value unless there is material, sufficient to contradict the case of KoPT on the basis of such letter. Further I am consciously of the view that KoPT never recognized O.P. as a lawful user/tenant in respect of the property in question after expiry of the lease in question. As per Section 2 (g) of the P. P. Act the "unauthorized occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation and includes the continuance in occupation by any person of the public premises after the authority

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## Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971

Proceedings No. 1335, 1335/D Of 2012 Order Sheet No. 21

### BOARD OF TRUSTEES OF THE PORT OF KOLKATA

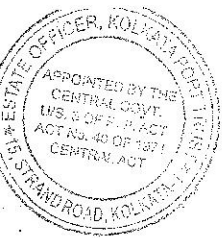
<sup>VS</sup>  
Tarakeswar Singh

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(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. As per Transfer of Property Act, a lease of immovable property determines either by efflux of time limited thereby or by implied surrender or on expiration of notice to determine the lease or to quit or of intention to quit, the property leased, duly given by one party to another. It is a settled question of law that O.P. cannot claim any legal right to hold the property after expiry of the lease in question, without any valid grant or allotment from KoPT's side.

Further it appears that KoPT vide different letters dated 30.01.1988, 21.01.1989, 03.06.1989, 28.05.1991, 21.05.1991, 21.04.1990 requested O.P. to liquidate the dues/ charges to KoPT. It further appears that vide letter dated 11.11.1883 the O.P. expressed their inability to liquidate the KoPT's dues. Needless to mention that the Port Authority has a definite legitimate claim to get its revenue involved into the Port Property in question as per the KoPT's Schedule of Rent Charges for the relevant period and O.P. cannot claim continuance of its occupation without making payment of requisite charges as mentioned in the Schedule of Rent Charges. Regarding non-payment of dues, KoPT vide its detailed statement of accounts dated 07.11.2013 and 16.03.2017 has produced evidence of the fact that huge amount is lying outstanding from the O.P. It appears from the statement of accounts that no payment has been credited by the O.P. against the occupational charges/bills of KoPT since the year 1993. In fact the sitting occupant Sri Rabindra Sharma vide application

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# Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971

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## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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dated 27.06.2017 has admitted that the occupational charges are not being liquidated.

Regarding the issue of "unauthorised parting with possession" as levelled against O.P. requires serious consideration with evaluation of factual aspect on the basis of materials on record. It is the case of KoPT vide application dated 10.08.2017 that Sri Rabindra Sharma is occupying the KoPT property unauthorisedly. However, it appears from the application filed by Sri Rabindra Sharma, the sitting occupant herein who has produced a copy of the Power of Attorney stated to be the constituted attorney of O.P. for looking after the affairs of the said tenanted portion of KoPT. It is noted that Sri Rabindra Sharma prayed for liquidation of KoPT's dues in respect of the properties in question without making any prayer for regularisation of tenancy in favour of O.P. Nothing has been disputed on behalf of Sri Rabindra Sharma regarding status of O.P. as monthly term lessee under KoPT. Now the question arises as to how far the act of Sri Rabindra Sharma (who is functioning over the premises in question) could be construed as "unauthorised parting with possession". The proceedings is continuing against Sri Tarakeswar Singh and no application has been filed on behalf of Sri Tarakeswar Singh. All applications are filed with the signature of Sri Rabindra Sharma which is nothing but representation of Sri Rabindra Sharma in his personal capacity not on behalf of Sri Tarakeswar Singh. This takes me to the question of filing a copy of General Power of Attorney on behalf of Sri Rabindra Sharma as lawful attorney of Sri Tarakeswar Singh. In such a situation, I have reasons to believe that Sri

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Head Assistant  
OFFICE OF THE LD. ESTATE OFFICER  
KOLKATA PORT TRUST

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## Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises  
(Eviction of Unauthorised Occupants) Act 1971

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### BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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Rabindra Sharma is functioning over the properties in question in his personal capacity under the shield of Power of Attorney from Sri Tarakeswar Singh. In these circumstances, "unauthorised parting with possession" is not proved beyond doubt as there is no corroborative evidence regarding delivery of exclusive possession of the premises in favour of Sri Rabindra Sharma.

Upon consideration of the facts of the matter, I think that the breach of non payment as claimed by the KoPT are very much established against the O.P. and consequently I have no hesitation to hold that the Notice to Quit dated 28.07.1993 had been validly issued and served on the O.P. and the same is binding on the parties. However, it is placed on record that no other piece of evidence regarding the death of O.P. except the said Postal Department's remark as O.P. 'deceased' came to be filed before this Forum. Hence it cannot be reasonably concluded that the O.P. is deceased when this Forum has exhausted all available modes of service of notice of hearing upon the O.P. and none appeared on his behalf inspite of repeated chances being given.

In view of the circumstances, 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:-

- 1) That O.P has violated the condition of tenancy under month to month lease as granted by the Port Authority by way of not making payment of dues to KoPT without any authority of law.

*[Handwritten signature]*

By Order of:  
THE ESTATE OFFICER  
KOLKATA PORT TRUST

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KOLKATA PORT TRUST

Head Assistant  
OFFICE OF THE E.O. 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. 1335, 1335)D Of 2012 Order Sheet No. 24

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

Tarakeswar Singh.

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6.4.19

- 2) That O.P./sitting occupants of public premises have failed to make out any case in support of their occupation as "authorised occupation", inspite of sufficient chances.
- 3) That O.P./sitting occupants of public premises have failed to bear any witness or adduce any evidence in support of their occupation as "authorised occupation", inspite of sufficient chances.
- 4) That the notice to quit dated 28.07.1993 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.
- 5) 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, Department is directed to draw up 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 Law upto the date of recovery of possession of the same. KoPT is directed to submit a comprehensive status report of

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# Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971

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## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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the Public Premises in question on 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. KoPT is further directed to submit a report regarding its claim on account of damages against O.P., indicating there-in, the details of the computation of such damages with the rate of charges so claimed for the respective periods (details of computation with rates applicable for the relevant periods) for my consideration in order to assess the damages as per the Act and the Rules made thereunder.

All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL

(A.K.SARKAR)  
ESTATE OFFICER

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

By Order of  
THE ESTATE OFFICER  
KOLKATA PORT TRUST  
  
BY ORDER OF THE ORDER  
OFFICER OF THE ESTATE OFFICER  
KOLKATA PORT TRUST  
  
OFFICE OF THE ESTATE OFFICER  
KOLKATA PORT TRUST

