

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 1st Floor
of Kolkata Port Trust's
Fairley Warehouse
6, Fairley Place, Kolkata- 700 001.

REASONED ORDER NO. 33 DT 04.09.2019
PROCEEDINGS NO. 1108,1108/D OF 2011

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-
M/s. Durga Yadav (O.P.)

F O R M - "B"

ORDER UNDER SUB-SECTION (1) OF SECTION 5 OF THE PUBLIC
PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1971

WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that
M/s. Durga Yadav, of 2, Hari Mohan Ghosh Road, Kolkata-700024
(Plate D-300/80) 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 lease and after issuance of the Notice to Quit dated 26.10.2006.
2. That O.P. failed to obtain any fresh grant from the landlord i.e. the KoPT;
3. That the submission of O.P. regarding non-receipt of Notice to Quit dated 26.10.2006 has no basis both in law and in fact;
4. That O.P. has failed to make out any grounds for waiver of the notice to quit;
5. That O.P. was definitely in default of rent and taxes at the time of expiration of its valid period of lease;
6. That O.P. has failed to bear any witness or adduce any evidence in support of its occupation into the public premises as 'authorized occupant';

Please see on reverse

7. That ejection notice dated 26.10.2006 as purportedly served upon O.P., demanding possession of the public premises by KoPT is valid, lawful and binding upon the parties;
8. That occupation of O.P. beyond the period of expiry of the lease is unauthorized in view of Sec. 2 (g) of the Public Premises Act in question;
9. That O.P. is liable to pay damages for its unauthorized use and occupation of the public premises upto the date of handing over of clear, vacant and unencumbered possession to KoPT.

A copy of the reasoned order No. 33 dated 04.09.2019 is attached hereto which also forms a part of the reasons.

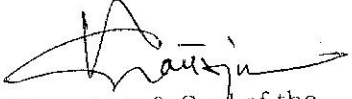
NOW, THEREFORE, in exercise of the powers conferred on me under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order the said **M/s. Durga Yadav, of 2, Hari Mohan Ghosh Road, Kolkata-700024 (Plate D-300/80)** and all persons who may be in occupation of the said premises or any part thereof to vacate the said premises within 15 days of the date of publication of this order. In the event of refusal or failure to comply with this order within the period specified above the said **M/s. Durga Yadav, of 2, Hari Mohan Ghosh Road, Kolkata-700024 (Plate D-300/80)** and all other persons concerned are liable to be evicted from the said premises, if need be, by the use of such force as may be necessary.

SCHEDULE

The said piece and parcel of land measuring about 1110.842 sq. m. or thereabouts is situated at Hari Mohan Ghosh Road, Thana West Port Police Station, District- Alipore under Plate no. D-300/80. It is bounded on the North by the Trustees' land leased to Hindustan Petroleum Corporation Limited, on the east by the Trustees' strip of open land, on the South by the Trustees' land leased to East India Enterprises and on the West by the Hariram Ghosh Road.

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

Dated: 04.09.2019


Signature & Seal of the
Estate Officer.

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

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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 27.03.2007 and subsequent application dated 16.06.2016, filed under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as 'the Act'), that M/s Durga Yadav (hereinafter referred to as O.P.) came into occupation of the Port Property in question (land msg. about 1110.842 Sq.m under occupation No. D 300/80 at Hari Mohan Ghosh Road) on a long term lease basis and the said O.P. failed and neglected to hand over possession of the Public Premises after expiry of the Long Term Lease, defaulted in payment of monthly rent and taxes, unauthorisedly erected certain structures/ made constructions and unauthorisedly encroached upon Trustees' Khas land msg. about 6 sq. m 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 lease conditions and also upon service of a quit notice dated 26.10.2006.

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 27.04.2017 as per Rules made under the Act.

The O.P. contested the case through their Ld. Advocate. Reply to the Show Cause Notice/s has been filed by the O.P. on 28.06.2017. Thereafter, the O.P. has filed several applications on 09.08.2017, 10.07.2019, 13.10.2017, 07.02.2018, 08.05.2018 etc. KoPT on the other hand filed

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applications dated 17.11.2017, 14.03.2018,
27.06.2018 etc.

To sum up, in their allegations against the O.P., KoPT claims that O.P. had failed and neglected to hand over possession of the Public Premises after expiry of the Long Term Lease, defaulted in payment of monthly rent and taxes, unauthorisedly erected certain structures and unauthorisedly encroached upon Trustees' Khas land msg. about 6 sq. m in clear and gross violation of the terms and conditions of lease. The major contentions of O.P. during the course of hearing vide several applications are as follows:

1. That KoPT has adjusted the payments firstly against interest and only, thereafter, against the principal amount. O.P. has claimed to have made an excess payment to KoPT.
2. That the notice to quit was not served upon O.P. and the notice is bad in view of the laws of Limitation.
3. That before expiry of lease, O.P. had applied for renewal of the lease against which KoPT was silent and that no reply/refusal of same was made known by KoPT to the respondent.
4. That the O.P. was paying monthly rent to KoPT and the said rent was duly accepted by KoPT till 2016 and hence, the occupation of O.P. cannot be termed as unauthorized.
5. That the Temple situated at the subject premises alleged by KoPT as 'unauthorized construction' was already there when the O.P. had taken possession of the land and O.P. is no way involved in constructing the Temple nor the O.P. has demolished the same.

Now, while passing the Final Order, I have carefully considered the documents on record and the submissions of the concerned parties. On the question of non-receipt of ejection notice dated

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Notice to Quit. The landlord is, however, free to issue such a Notice, as a generous reminder or as an act of gratuity. In the instant case, the landlord i.e. KoPT adopted such a course and avers to have issued a Notice to O.P. dated 26.10.2006 asking for immediate vacation of the premises. Whether such Notice has been received by O.P. or not is quite immaterial inasmuch as O.P. was duty bound to hand over possession after the process of determination/expiry of the lease which it had failed to do. During the entire proceedings, O.P. failed to justify how it is entitled to enjoy the property after expiry of their leasehold right. No attempt has been made on behalf of O.P. to satisfy this Forum of Law about receipt of any consent from KoPT in making them occupy the public premises after expiry of the long term lease. As such, in my view, the plea of non-receipt of the Notice dated 26.10.2006 is quite insignificant in the eyes of law and I am not at all impressed by the submission of the O.P. I take conscious note of the fact 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 and in fact, initiation of the instant proceedings, vide original application dated 27.03.2007 of KoPT was culmination of KoPT's intent to obtain vacant possession of the public premises in question, upon initiation of due process, as prescribed.

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. The instant proceedings continued for a fairly long period of time and this Forum in the light of pleadings/responses received from the parties, always allowed O.P. to take up the issue of regularization with KoPT, if it so felt, but KoPT very clearly intimated this Forum about its inability to regularize the occupation of the O.P. I

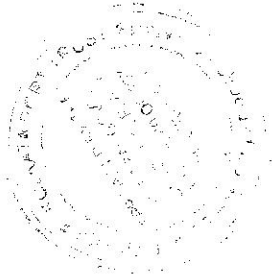
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26.10.2006 I have considered the matter seriously. There is no dispute or objection from O.P's side regarding status of O.P's tenancy under long term lease and its expiry on 19.02.2003. Now the question arises how far the question of non-receipt of notice to quit deserves merit in the facts and circumstances of the case. It is claimed by KoPT that the said notice has been served through Registered Post with A/D, under Certificate of Posting and through hand service at the recorded address of O.P. at the relevant point of time and that it has been duly acknowledged by O.P. In my view, a notice served in official course of business cannot be disputed by a mere statement denying the service of such notice. This takes me to the question whether a long term lessee like O.P. can continue in occupation when lease has expired long time back and the terms and conditions of the lease did not contain any right of the leaseholder for exercising any option for renewal of lease. As per Transfer of Property Act, 1882, a lessee is under legal obligation to hand over possession of the property to its landlord/lessor in its original condition after expiration of tenancy under lease. Also clause 11 of the current lease deed entered into between O.P. and KoPT also specifically calls for quiet and peaceful yielding up of vacant possession of demised land as a whole to the trustees etc at the expiration or sooner determination of the said term. During the continuance of proceedings, O.P. has always admitted that the lease period of 10 years has expired long time back and that there was no option for renewal of the same. Such being the case, the tenancy of the O.P. automatically ceases upon expiry of the lease-hold period and no additional Notice is called for on the part of the landlord to call for O.P. to vacate the premises. In other words, in case of a long term lease having a specific date of expiration, there is no legal compulsion on the part of landlord to issue any

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must mention that the powers of this Forum are limited by the P.P. Act, 1971 and if the landlord refuses to settle the matter amicably with its ex-tenant, then this Forum is duty bound to dispose of the proceedings, as per the provisions of the Act. Thus, I have no hesitation in concluding that failure of O.P. to justify its occupation after expiry of the long term lease is a sufficient ground in itself to pass an order of eviction against O.P. declaring its status as "unauthorized" in terms of the P.P. Act, 1971. Whether the other breaches alleged by KoPT are established or not, are not quite germane to the order of eviction but for the sake of fairness and academic nicety, I am inclined to deal with them also in a nutshell. KoPT's contention of unauthorized construction of a temple and consequential encroachment into the Port Authority's land does not seem to be well founded, as KoPT itself rescinded from their stand vide their application dated 27.06.2018, intimating that such construction was present even before O.P. took possession of the public premises in question. However, KoPT's allegation of non-payment of dues by the O.P. does appear to have merit. During the course of hearing, KoPT has filed comprehensive statement of accounts, copies of which have been handed over to O.P. It reveals from records that several opportunities were given to the O.P. for filing their calculation tables with KoPT and for reconciliation work of the respective books of accounts in order to narrow down the points/issue of disputes so that this Forum could intervene into the matter by passing appropriate order/direction, but inspite of such *opportunities* nothing has been heard from O.P's side, specifically pointing out the error/dispute in calculation of the amounts charged against the O.P. Beyond certain general denials, no paper/document could be produced/adduced on behalf of O.P., contradicting/ disputing specifically the claim of KoPT, inspite of repeated chances

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being given. There cannot be any doubt that passing of order with regard to reconciliation of accounts is a part of the adjudication process as envisaged under the Act and parties in dispute are bound to furnish information and disclose any paper/document in their power or possession in order to facilitate the adjudication process. The purpose of reconciliation of books of accounts is to arrive at the correct financial position upon consideration of all the points as raised on behalf of the O.P. and iron out the relatively undisputed areas, leaving the disputed areas for my intervention. In course of hearing, KoPT not only confirmed their claim on account of damages but also asserted their right to claim interest for delayed payment. The O.P., on the other hand, merely disputed the claim of the Port Authority without coming out with any specific material particulars. Of course, one objection of O.P. as to enhancement of rent in the year 2011 by the Tariff Authority for Major Ports (TAMP), a statutory authority under the Major Port Trusts Act, 1963, was accepted by the KoPT as well as the said TAMP authority and KoPT issued a letter dated 27.10.2016 to the O.P. modifying/reducing the dues and also requesting the O.P. for its immediate liquidation. However, O.P. did not show any well intended initiative to pay the said amounts as well. In my view, the conduct of the O.P. does not inspire any confidence and I am not at all inclined to protect the occupation of the O.P. even for the sake of natural justice. O.P. could not furnish records in support of a single instance when the Port Authority accepted "rent" after expiry of the lease nor could place on record any consent of the Port Authority to the continuance of O.P.'s occupation as a "lessee" after expiry of the lease. In my considered view, 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

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relevant period and O.P. cannot claim legitimacy of continuance of its occupation without complying with the terms of lease, making payment of requisite charges as mentioned in the Schedule of Rent Charges. I take note of the fact that the sporadic payments made by O.P., after the expiry of the lease in question has been accepted by KoPT as part-payment of compensation/damages for wrongful use and occupation of the Port Property in question and without prejudice to the Notice dated 26.10.2006. In fact, the said Notice clearly mentions that any payments tendered by O.P. after expiry of the lease-hold period would be accepted as the part payment of Compensation dues/charges of KoPT which would be without any prejudice towards rights and liabilities of either parties and would not be construed as granting of possible right of legitimacy of occupation of the public premises by KoPT to O.P. Moreover, the submission of O.P. (without any documentation) regarding errors of adjustment in the statement of accounts also does not seem to be well founded, in as much as O.P. failed to establish its case with rationality/logic despite granting of several opportunities as well as, in the wake of clear submission of KoPT that any payment tendered by O.P. has firstly been adjusted against the principal outstanding and the residue amount, if any, being adjusted against the interest component. The method is very much logical and reasonable and acknowledged to be a uniform practice not only across the Port sector but also the financial world in general.

In particular KoPT's claim on account of interest involves mixed question of fact and law as well. It is the case of Kolkata Port Trust that the claim of interest for delayed payment is in accordance with the Schedule of Rent Charges which has been published in the Official Gazette, as per provision of the Major Port Trusts Act 1963, after obtaining

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sanction of the Central Govt. as per provision of the said Act. The notification published under Authority of Law has statutory force of law and O.P. cannot deny the claim of KoPT, made on the strength of such notification. It is contended that continuance in occupation of the public premises must necessarily mean that O.P. is under legal obligation to pay such charges on account of interest also, in case of their failure to redeem KoPT's demand, as per Schedule of Rent Charges, within the statutory timelines, as envisaged. It is my considered view that payment of interest is a natural fallout and one must have to pay interest in case of default in making payment of the principal amount, due to be payable. For occupation and enjoyment of Port property, the charges leviable upon the tenants/occupiers are based on the Schedule of Rent Charges as applicable for a tenant/occupier in respect of the respective zones as indicated in such Schedule of Rent Charges. Every tenant/occupier of the Port property is under obligation to pay such charges for occupation and it has been specifically mentioned in the different Schedules of Rent Charges as were notified from time to time. I am firm in holding that such notifications have a statutory force of law and tenants/occupiers cannot deny the charges on account of interest as per notification in the Official Gazette, until such rates of interest are modified/enhanced by further notification/s by competent authorities.

On the question of O.P's contention of the pecuniary claim of KoPT being time barred on grounds of "limitation", I have borrowed my contention from the several decisions of the Hon'ble Judiciary, in particular the decisions of the Hon'ble Supreme Court, wherein it was interalia decided that the Limitation Act has no application to the proceedings before the Estate Officer as it is not a "Court", to be governed by the

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Civil Procedure Code, keeping in view the bar under Sec.15 of the P.P. Act. The Limitation Act is applicable for Civil Courts to try suits, unless barred by some other Act. Section 9 of the Civil Procedure Code reads as follows:

“The courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressedly or impliedly barred.”

There are provisions for filing of suit in Civil Court with regard to territorial / pecuniary jurisdiction and jurisdictions with regard to subject matter of dispute. But in case of recovery of possession of public premises and recovery of arrear rental dues and damages etc. in respect of public premises, this Forum of Law is the only competent adjudicating authority and Civil Courts have no jurisdiction to entertain any matter in respect of the public premises as defined under the P.P. Act. With the introduction of Sec. 15 of the P.P. Act. 1971, there is no scope for the courts to entertain any matter regarding recovery of arrear rental dues and damages etc. arising out of the public premises. In the present scenario, when the statute, in its own wisdom, has imposed a restriction upon the civil court, to adjudicate upon such matter it would be very difficult to accept the contention of O.P. with regard to application of Limitation Act in proceedings before this forum of law, which is not a civil court to be governed by the Civil Procedure Code.

The judgement of the Hon'ble Apex Court of India reported in New India Assurance Case -2008 (3) SCC 279 =AIR 2008 SC 876 is very much relevant in deciding the question whether this Forum is a court or not. It was decided by the Supreme Court that Civil Procedure Code and Indian Evidence Act

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are not applicable for proceedings before the Estate Officer under P.P. Act which provided a complete code. The Limitation Act applies to "suits" to be governed by CPC and Indian Evidence Act. When the basic elements for adjudication of a "suit" is totally absent for proceedings under P.P. Act, 1971, it is infructuous to advance any argument for its application.

In the P.P. Act, there is no prescribed period of limitation for filing applications with the prayer for eviction and adjudication of any claim on account of rental dues/damages etc. arising out of any public premises though there is specific period of limitation for filing appeal against the order of the Estate Officer, the adjudicating authority under the P.P. Act as per section 9 of the said Act. It is worthy to record that there is no prescribed period of limitation in the Limitation Act itself for recovery of damages. Thus the plea taken by O.P. regarding applicability of Limitation Act in the proceedings before the Estate officer under P.P. Act has to my considered view, got no merit. I have taken a note of Section 29 of the Limitation Act, 1963 read with Section 25 of the Indian Contract Act, 1872. It is well my considered view that even if for the sake of argument, Limitation Act is taken to apply to the proceedings before the Estate Officer(not admitting), Section 25 of the Indian Contract Act will definitely come into play against O.P's plea for 'time barred' claim under Limitation Act. Under such circumstances, I am unable to appreciate the suggestion of the O.P. on this count also and I am firm in holding that Limitation Act has no application in the instant case and as such there is no bar in proceeding with the instant case.

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

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“unauthorized”, and issue 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 lease and after issuance of the Notice to Quit dated 26.10.2006.
2. That O.P. failed to obtain any fresh grant from the landlord i.e. the KoPT;
3. That the submission of O.P. regarding non-receipt of Notice to Quit dated 26.10.2006 has no basis both in law and in fact;
4. That O.P. has failed to make out any grounds for waiver of the notice to quit;
5. That O.P. was definitely in default of rent and taxes at the time of expiration of its valid period of lease;
6. That O.P. has failed to bear any witness or adduce any evidence in support of its occupation into the public premises as ‘authorized occupant’;
7. That ejectment notice dated 26.10.2006 as purportedly served upon O.P., demanding possession of the public premises by KoPT is valid, lawful and binding upon the parties;
8. That occupation of O.P. beyond the period of expiry of the lease is unauthorized in view of Sec. 2 (g) of the Public Premises Act in question;
9. That O.P. is liable to pay damages for its unauthorized use and occupation of the public premises upto the date of handing over of

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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. 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. 3,25,818.71/- as claimed by the Port Authority as damages, is correctly payable by O.P. for the period 20.02.2003 to 17.03.2017 (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 30.09.2019. The said damages shall carry simple interest @ 18% per annum till 06.04.2011 and thereafter @14.25% per annum on the above sum from the date of incurrence of liability till its final payment in accordance with the relevant notification/s published in Official Gazette. 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 unauthorised 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.



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 pay damages extends beyond 17.03.2017 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 17.03.2017, indicating there-in, the details of the rate of such charges, and the period of the damages (i.e. till the date of taking over of possession) together with the basis on which such charges are claimed against O.P., for my consideration for the purpose of assessment of such damages as per Rule made under the Act.

I make it clear that in the event of failure on the part of O.P. to comply with this Order, Port Authority is entitled to proceed further for execution of this order in accordance with law. All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL


(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 ***

A 11-09-2019.

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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VS**

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