

**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
1st Floor, 6, Fairlie Place Warehouse,
Kolkata-700001

Court Room At the 1st Floor
6, Fairlie Place Warehouse
Kolkata- 700 001.

Form " E"

PROCEEDINGS NO.1650/R OF 2018
ORDER NO. 18 DATED: 23.10.2019

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

To
M/s. Ram Kumar Rajendra Kumar,
1, Bonfield Road,
Kolkata-700001.
And Also At
29, Strand Road,
Kolkata-700001.

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

AND WHEREAS, by written notice dated 08.08.2018 you were called upon
to show cause on/or before 31.08.2018 why an order requiring you to pay a
sum of Rs. 3,46,920/- (Rupees Three Lakhs Fourty Six Thousand Nine
Hundred Twenty 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. 3,46,920/- (Rupees Three
Lakhs Fourty Six Thousand Nine Hundred Twenty only.) for the period
31.07.2002 to 01.04.2015 (both days inclusive) to Kolkata Port Trust by
31.10.2019.

PLEASE SEE ON REVERSE

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 @ 6.90 % per annum, which is the current rate of interest as per the Interest Act, 1978 (as gathered by me from the official website of the State Bank of India) payable from the date of incurrence of liability, on the above sum till its final payment being the current rate of interest as per the Interest Act, 1978.

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

SCHEDULE

The said piece or parcel of land Msg. about 150.503 sqm or thereabouts is situate at Shalimar beside Siding No. 3, Howrah, under Plate No. HL-360/A. It is bounded on the North by the strip of open land used as Railway Margin of safety alongside Railway track siding No. 4, on the South by Trustees' Road, on the East by Trustees' Land occupied by Kesowji & Co. and on the West by Foreshore Road.

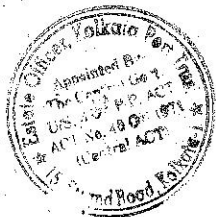
The Trustees' means the Board of Trustees of the Port of Kolkata.

Dated: 23.10.2019



Signature and seal of the

Estate Officer



Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises
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M/s Ram Kumar Rajendra Kumar VS (Plate no. HL 360/A)

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FINAL ORDER

The matter is taken up today for final disposal. Factual matrix is required to be put forward in a nutshell to link up the chain of events leading to this proceedings. Land space Msg. 150.503 Sq.m situated at Shalimar, beside Siding No. 3, Howrah under **Plate No. HL-360/A** was allotted to M/s. Ram Kumar Rajendra Kumar (O.P.) by Kolkata Port Trust (KoPT) Applicant herein on certain terms and conditions as embodied in the short term monthly lease in question and after several Notice/s being issued to O.P. for handing over possession of the Public Premises, KoPT finally took over possession on 25.03.2015 in vacant and unencumbered condition being the land in question leaving behind Rs. 3,46,920/- on account of arrear rental dues etc. It is the case of KoPT that O.P. is under obligation to pay the rental dues to KoPT with interest accrued thereon etc.

The Forum of Law issued Show Cause Notice u/s 7 of the Act to O.P. (for adjudication of the prayer for recovery of rental dues etc.) as per Rule made under the Act on 30.04.2019 to Show Cause why an order requiring O.P. to pay the arrears of rent together with interest should not be made.

Mr. K.P. Tiwari, Advocate enters his appearance on behalf of O.P. by filing Vokalatnama. It is seen from the Vokalatnama dated 12.09.2018 that Mr. Tiwari, Advocate is authorised to represent the instant case by Sri Jagdish Rai Gupta one of the Partner of the Firm namely M/s. Ram Kumar Rajendra Kumar (O.P.).

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23-10-2019

OFFICE OF THE ESTATE OFFICER, KOLKATA PORT TRUST



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Proceedings No. 1650/R Of 2018 Order Sheet No. 17

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
(Plate no. HL 36/A)
VS

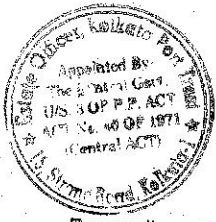
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A reply to the show cause is filed on 25.03.2019 by Sri Jagadish Rai Gupta who claims to be one of the partners of O.P. It is admitted by O.P. that the land was surrendered on 25.03.2015 and thereafter the Partnership Firm was dissolved. O.P. further put their objection against the Notice under Section 7 of the PP Act issued by this Forum for payment of the arrear rental dues, citing the judgement of New Delhi Municipal Committee -Vs- Kalu Ram & Anr reported in (1976) 3 SCC 407. O.P submits that the instant proceeding initiated by KoPT is not maintainable in the eye of Law and is barred by the Law of Limitation. O.P. also filed its written notes of argument on 25.03.2019 denying the statements and the contentions of KoPT. Representative of KoPT filed its comments being No. Lnd. 3854/II/19/220 dated 24.04.2019 along with the statement of accounts generated on 24.04.2019. KoPT in the said application vehemently objected to the contentions of O.P. KoPT submitted that the claim is very much maintainable and O.P. is liable to liquidate the same with interest.

Considering all the pleadings filed by both the parties and after going through the contention raised therein, this Forum is of the view that admittedly the possession of the subject premises was taken over by the representative of KoPT and the same was handed over by the O.P. in a peaceful and vacant condition on 25.03.2015. It is also a fact that at the time of vacating the possession, there were arrear rental

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dues/charges as also interest for delayed payment payable by O.P. Such outstanding rental dues/charges is never denied by O.P. In fact at Paragraph 7 subparagraph (b) of O.P.'s written statement filed before this Forum on 25.0.3.2019, it is categorically mentioned that 'the landlord/petitioner has not taken steps for recovery of the arrear rent within the period of limitation and therefore, the said claim is barred by law of limitation'.

Therefore, the moot question before this Forum is the applicability of the judgement of the Apex Court passed in New Delhi Municipal Committee -Vs- Kalu Ram & Anr reported in (1976) 3 SCC 407, as cited by O.P.

It is the case of O.P. that KoPT's claim against O.P. is time barred and strong reliance has been placed upon New Delhi Municipal Corporation case (AIR 1976 SC 1637 wherein it was decided by the Hon'ble Apex Court of India that claim beyond 3 years is time barred and time barred claim cannot be recovered. KoPT on the other hand submits with argument before this Forum of Law that New Delhi Municipal Corporation case has no relevance in the present case in hand. In support of KoPT's contention regarding non-applicability of Limitation Act, decision of Madhya Pradesh High Court in AIR 1980 MP 196 (DB) is relied upon, wherein it was decided that Limitation Act has no application to the proceedings before the Estate Officer as it is not a Court to be governed by the Civil Procedure Code, keeping in view the bar under Sec.15 of the P.P. Act. It would not be out of scope to mention that the argument on the basis

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of the Apex Court Judgment in New Delhi Municipal Corporation case regarding "time barred claim" should not be applicable in the instant case as the situation in which the Hon'ble Apex Court delivered its judgment has drastically changed upon amendment of the Public Premises Act, 1971 with the introduction of Sec.15 of the Act. The Apex Court delivered its judgment in New Delhi Municipal Corporation case on Public Premises Act 1958, wherein Sec.15 regarding taking away of jurisdiction of all Courts into the matters concerning the public premises was not there.

The Public Premises Act 1971 has come into force after eliminating all constitutional infirmities. At the time of the Apex Court judgment the 1958 Act was in force being the Public Premises (Eviction of Unauthorized Occupants) Act, 1958. This Act gave a choice of procedure to the Government. The fact that a contradictory process could be followed led to the repeal of the 1958 Act and enactment of the Public Premises (Eviction of Unauthorized Occupants) Act 1971 which introduced Sec. 15 with the object of making the Act constitutionally valid and not violative of Article 14 of the Constitution of India. The Limitation Act is applicable for Civil Courts to try suits unless barred by some other Act. Sec.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 expressly or impliedly barred."

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There are provisions for filing of suit in Civil Court with regard to territorial jurisdiction, pecuniary jurisdiction and jurisdiction 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 court has no jurisdiction to entertain any matter in respect of the public premises as defined under the P.P. Act.

The Limitation Act has no application in the proceedings before the Estate Officer which is not a Civil Court, governed by the Civil Procedure Code. Sec. 15 of the P.P. Act puts a complete bar in entertaining any matter before the Civil Court in respect of Public Premises. As such, I am firm in holding that Limitation Act has no application in the instant case. The Division Bench judgment of Madhya Pradesh High Court reported in AIR 1980 MP 196 (D.B) (L.S. Nair -VS-Hindusthan Steel Ltd. & Ors.) has its applicability in all sense of law. The judgment of the Delhi High Court in Nandaram's case 87 (2000) DLT 234 also supports the view taken by Hon'ble Calcutta High Court.

In order to appreciate the stands taken on behalf of the parties in dispute, it would be expedient to go into the statutory provisions of the Civil Procedure Code, Limitation Act and P.P. Act. It has been argued on behalf of KoPT that the Articles under Limitation Act are applicable to Suit only. To my understanding Civil Suits are

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VS

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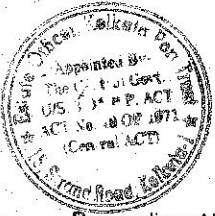
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tried by the Courts as per the Civil Procedure Code and proceedings before this Forum of Law are guided by the P.P. Act which provides a code for adjudication of matters relating to public premises. However, Civil Procedure Code has only a limited application to the proceedings before the Estate Officer in-as-much-as that an Estate Officer shall for the purpose of holding an enquiry under the P.P. Act, have the powers as are vested in a Civil Court under the Code of Civil Procedure while trying a suit in respect of summoning and enforcing attendance of any person and examining him on oath which requires the discovery and production of documents. Section 8 of P.P. Act makes it abundantly clear that an Estate Officer under P.P. Act enjoys a very restricted power of CPC. As per CPC, the courts shall have jurisdiction to try all suits of a civil nature, excepting suits for which their cognizance is either expressly or impliedly barred. As per Sec.3 and 2(j) of the Limitation Act 1963, the period of limitation as prescribed in the Limitation Act (as per Schedule of the Limitation Act) applies for "suit" etc. instituted after the prescribed period which shall be dismissed although limitation has not been set up as defense. For adjudication of a "suit" a court must have to be governed by Civil Procedure Code and Indian Evidence Act. But P.P. Act provides a complete code. Civil Procedure Code and Indian Evidence Act are not applicable here (New India Assurance Case - 2008 (3) SCC 279 = AIR 2008 SC 876).

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In the P.P. Act, there is no prescribed period of limitation for filing applications with the prayer



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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.

In view of the discussion above, I am firm in holding that this Forum of Law is very much competent under law to adjudicate the claim of KoPT against O.P. and Limitation Act has no application to the proceedings before the Estate Officer which is a quasi-judicial authority under P.P. Act and neither a Civil Court to be governed by the Civil Procedure Code nor a "court" within *the scheme of the Indian Limitation Act.*

In fact, I have nothing to disbelief in respect of KoPT's claim against O.P. as per statement of accounts maintained regularly in KoPT's office in regular course of business. It is my considered view that a sum of Rs.3,46,920/- for the period 31.07.2002 to 01.04.2015 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 31.10.2019. Such dues, in terms of Section 7 (2-A) of the PP Act, 1971, attract simple interest @ 6.90 % per annum, which is the current rate of interest as per the Interest Act, 1978 (as gathered by me from the official website of the State Bank of India) from the date of incurrence of liability, till the liquidation of the same, as per the adjustment of payments, if any made so far by O.P., in terms of KoPT's books of accounts.

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I sign the formal order u/s 7 (1) & (2-A) of the Act. I make it clear that in the event of failure on the part of O.P. to pay the amount to KoPT as aforesaid, Port Authority is entitled to proceed further for recovery of its claim in accordance with law.

All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL

(RAHUL MUKHERJEE)
ESTATE OFFICER.

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

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