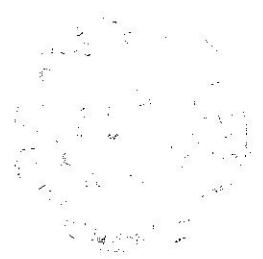


etc

**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.

REASONED ORDER NO. 13 DT 31.10.2019
PROCEEDINGS NO.1434 OF 2013

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-
Sri Kubernath Tewari & Ors

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 **Sri Kubernath Tewari, Sri Kedar Nath Tewari, Sri Jagannath Tewari, Smt. Rajeswari Debi, Smt. Keshari Debi, Smt. Kusum Kumari Debi, Smt. Bimala debi, Smt. Kaberi Debi, Smt. Bashmoti Debi** all legal heirs of **Late Gangadhar Tiwari** all residing at Vill: Bishupur, P.S. Sahpur, Dist: Sahabad Bihar and also at 1 & 2/1, Strand Road, 2nd Bye Lane And also 21, Strand Road, Ramkristopur, Howrah- 711 104 is in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

1. That O.P. has failed to file his reply to the Show Cause Notice u/s 4 of the Act inspite of sufficient chances.
2. That O.P. has failed to bear any witness or adduce any evidence in support of his occupation as "authorised occupation" inspite of sufficient chances.
3. That O.P. has violated the condition of tenancy under lease as granted by the Port authority by way of unauthorised parting with possession of the Public Premises to Sri Mahadeb Samant and Md. Jawed & ors. and defaulted in making payment of rental dues/charges
4. That O.P. has made unauthorized construction/structure and also changed the purpose of the lease in clear violation of the terms and conditions of the agreement.
5. That O.P. has violated the condition of tenancy under lease as granted by the Port authority by way of unauthorised parting with possession of the Public Premises to Sri Mahadeb Samant and Md. Jawed & ors.
6. That the ejectment notice dated 07.07.1970 read with 27.05.2013, demanding possession from O.P. as issued by the Port Authority is valid, lawful and binding upon the parties.

7. That O.P's occupation has become unauthorised in view of Sec.2(g) of the P.P. Act and O.P. is liable to pay damages for wrongful use and enjoyment of the Port Property in question upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

8. That O.P's occupation into the public premises is wrongful on and from 01.09.1970 in terms of the Quit Notice dated 07.07.1970 and O.P. is liable to pay damages/compensation for such unauthorized use and occupation of the public premises upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

A copy of the reasoned order No. 13 dated 31.10.2019 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 **Sri Kubernath Tewari, Sri Kedar Nath Tewari, Sri Jagannath Tewari, Smt. Rajeswari Debi, Smt. Keshari Debi, Smt. Kusum Kumari Debi, Smt. Bimala debi, Smt. Kaberi Debi, Smt. Bashmoti Debi** all legal heirs of **Late Gangadhar Tiwari** all residing at **Vill: Bishupur, P.S. Sahpur, Dist: Sahabad Bihar** and also at **1 & 2/1, Strand Road, 2nd Bye Lane** And also **21, Strand Road, Ramkristopur, Howrah- 711 104** 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 **Sri Kubernath Tewari, Sri Kedar Nath Tewari, Sri Jagannath Tewari, Smt. Rajeswari Debi, Smt. Keshari Debi, Smt. Kusum Kumari Debi, Smt. Bimala debi, Smt. Kaberi Debi, Smt. Bashmoti Debi** all legal heirs of **Late Gangadhar Tiwari** all residing at **Vill: Bishupur, P.S. Sahpur, Dist: Sahabad Bihar** and also at **1 & 2/1, Strand Road, 2nd Bye Lane** And also **21, Strand Road, Ramkristopur, Howrah- 711 104** 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 or parcel of land Msg. about 180.139 sqm or thereabouts on the West Side of Strand Road is situated at No. 1 and 2/1 Strand Road, 2nd Bye Lane at Ramkristopur, Howrah, Thana- Howrah, District and Registration District- Howrah under Plate No. HL-46. It is bounded on the North by the Trustees' land occupied by Durga Prosad Podder, on the East by the Strand Road on the South by the Trustees' land occupied by Sri Ramanand Singh and on the West by the land belonging to Private Parties.

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

Dated: 31.10.2019



Signature & Seal of the
Estate Officer.

**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

Proceedings No. 1434 Of 2013 Order Sheet No. 13

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Sri Kuber Nath Tewari & Others ^{VS} *(Plate no HL-46)*

13

31.10.2019

FINAL ORDER

The matter is taken-up today for Final Disposal. The instant proceeding No. 1434 of 2013 has been initiated in view of the application being No. Lnd. 2946/IV/13/2337 dated 01.11.2013 filed by KoPT. It is the case of Kolkata Port Trust(KoPT) that after the demise of Sri Gangadhar Tiwari, who was occupying the subject premises as monthly lessee in respect of the land msg. 180.139 sq. mt situated at Strand Road, Ramkristopur, Howrah, the legal heirs namely Sri Kuber Nath Tewari, Sri Kedar Nath Tewari, Sri Jagannath Tewari, Smt. Rajeswari Debi, Smt. Keshari Debi, Smt. Kusum Kumari Debi, Smt. Bimala debi, Smt. Kaberi Debi, Smt. Bashmoti Debi (O.P's) have been continuing at the said occupation of the subject Port Property under **Plate No. HL-46** as lessee and thereafter violated the condition of tenancy by way of not paying rental dues to KoPT. It is also the case of KoPT that O.P. has unauthorisedly parted with possession to one Sri Mahadeb Samanta, erected unauthorized construction on the subject land and also changed the purpose of the lease and O.P. is liable to pay damages for wrongful use and occupation of the Public Premises after expiry of the period as mentioned in the notice to quit dated 07.07.1990 read with 27.05.2013. It is argued that O.P. has lost its authority to occupy the Public Premises on and from 01.09.1970. This Forum of Law formed its opinion to proceed against O.P. and issued Show Cause Notice u/s 4 of the Act (for adjudication of the prayer for issuing order of eviction etc.) dated 25.10.2017 as per Rule made under the Act. The said Notice was sent by way of post and affixation at the subject premises and also hand delivery.

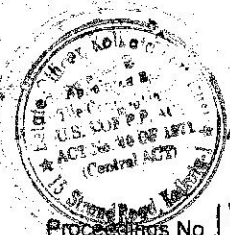
The Acknowledgement Card that of the Postal Department returned with the endorsement 'Not Known'. Perused the report of the Process Server dated 03.11.2017 regarding affixation of Show Cause notice on the property.

The Notice under Section 4 of the PP Act issued by this Forum was contested by Sri Mahaded Samanta and one Sri Ram Behari Rai both were represented by Mr. Subhankar Biswas, Advocate by filing two separate Vokatatnama. Thereafter two separate replies to the show

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31.10.2019
STATE ENGINEER
KOLKATA PORT TRUST
KOLKATA





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. 1434 Of 2013 Order Sheet No. 14

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Sri Kuber Nath Tiwari & others (Plate no HL-46) VS

13
31.10.2019

cause notice was filed both dated 12.02.2018 before this Forum with the copies of Trade license, Aadhar card, Driving License, Voter Card, electricity bill of Mahadeb Samant etc.

The gist of the contentions of Mahadeb Samanta in his reply to the show cause notice issued u/s 4 are as follows:

- a. That he is carrying on business of garaging and repairing of various types of vehicles at the subject premises for the last 30 years.
- b. That he is occupying a portion of the premises for more than 15 years and he is paying rent to the authorised representative Sri Kuber Nath Tiwari(O.P. herein) on the assumption that Sri Kuber Nath Tiwari was paying that amount to Port Authority, therefore he has not committed any fault.
- c. That he is prepared to pay the proper accommodation charges since, he is in possession for a number of years.

Further the gist of the contentions of Md. Jamir although signed by Md. Jawed in his reply to the show cause notice issued u/s 4 are on the same page as narrated above with the identity proof of the said Md. Jawed.

Representative of KoPT filed their comments vide application No. Lnd. 2946/IV/18/4853 dated 08.03.2018 against the both reply to the show cause notice filed by Md. Jawed and Sri Mahadeb Samanta. It is the case of KoPT that the erstwhile recorded lessee wrongfully parted with possession to the rank outsiders. The parties appearing before this Forum also admitted to have occupying the subject premises unauthorisedly.

I have carefully gone through the contentions made by KoPT against the O.P. It is seen that a month to month lease was executed between KoPT and O.P. until it was finally determined by way of issuance of Quit Notice dated 07.07.1970 read with 27.05.2013, when O.P. was

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Handwritten initials or signature at the bottom right.



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. 1434 Of 2013 Order Sheet No. 15

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Sri Kuber Nath Tiwari & Others (Plate no HL-46) VS

13
31.10.2019

asked to vacate the subject premises. The Quit Notice was served upon O.P. following due process of Law. It is the case of KoPT that O.P. defaulted in making payment of rental dues to KoPT. It is also the case of KoPT that O.P. has unauthorisedly parted with possession to Mahadeb Samanta and others, erected unauthorised construction and changed the purpose of the lease. Thus, it appears to me that the contentions of KoPT have definite merit and as such, I am inclined to hold that the Notice to Quit dated 07.07.1970 is valid, lawful and correctly served on the O.P. and the same is binding upon the parties.

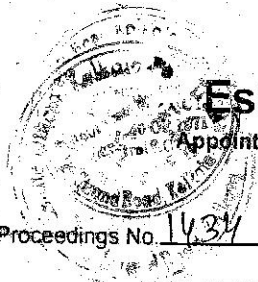
I am satisfied with the service of notice to all concerned.

No one appears on behalf of O.P. with proper authority. The parties appearing before this Forum namely Sri Mahadeb Samanta and Md. Jawed has admitted by filling application in the form of reply to the show cause that they are presently occupying the subject premises and carrying out business for the last 15-20 years and by paying occupational charge to Sri Kuber Nath Tiwari(O.P. herein).

Therefore, this Forum is adequately equipped in terms of the documentary evidence furnished and the verbal submission made by the appearing parties to decide the case in hand. I am convinced that occupation of the aforesaid occupants are wholly unauthorised and occupants are rank outsider to the Public Premises. As no reply to the Show Cause Notice u/s 4 of the Act has been filed on behalf of O.P. inspite of repeated chances, I have no other alternative but to issue order of eviction against O.P. of the following grounds/reasons:

1. That O.P. has failed to file his reply to the Show Cause Notice u/s 4 of the Act inspite of sufficient chances.
2. That O.P. has failed to bear any witness or adduce any evidence in support of his occupation as "authorised occupation" inspite of sufficient chances.

OFFICE OF THE ESTATE OFFICER
KOLKATA PORT TRUST
13
31/10/2019
S. D. DE
31/10/2019



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. 1434

of 2013

Order Sheet No. 16

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

Shri Kubernath Tiwari & Others (Plate no HL-46)

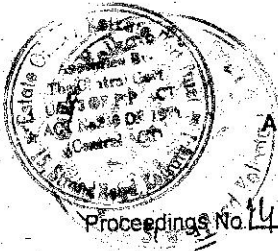
13
31.10.2019

3. That O.P. has violated the condition of tenancy under lease as granted by the Port authority by way of unauthorised parting with possession of the Public Premises to Sri Mahadeb Samant and Md. Jawed & ors. and defaulted in making payment of rental dues/charges
4. That O.P. has made unauthorised construction/structure and also changed the purpose of the lease in clear violation of the terms and conditions of the agreement.
5. That O.P. has violated the condition of tenancy under lease as granted by the Port authority by way of unauthorised parting with possession of the Public Premises to Sri Mahadeb Samant and Md. Jawed & ors.
6. That the ejectment notice dated 07.07.1970 read with 27.05.2013, demanding possession from O.P. as issued by the Port Authority is valid, lawful and binding upon the parties.
7. That O.P's occupation has become unauthorised in view of Sec.2(g) of the P.P. Act and O.P. is liable to pay damages for wrongful use and enjoyment of the Port Property in question upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.
8. That O.P's occupation into the public premises is wrongful on and from 01.09.1970 in terms of the Quit Notice dated 07.07.1970 and O.P. is liable to pay damages/compensation for such unauthorised 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

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31.10.2019

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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. 1434 Of 2013 Order Sheet No. 17

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
Shri Kubernath Tewari & Others (Plate no HL-46)

13
31.10.2019

unauthorized use and enjoyment of the property against O.P. in accordance with Law up to the date of recovery of possession of the same. 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.

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

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

GIVEN UNDER MY HAND AND SEAL

(Satyabrata Sinha)
ESTATE OFFICER

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

RECEIVED
ESTATE OFFICER
KOLKATA PORT TRUST
DATE: 31/10/2019
OFFICE OF THE ESTATE OFFICER
KOLKATA PORT TRUST