

SCAN

5/11/19

REGISTERED POST WITH A/D
HAND DELIVERY/AFFIXATION ON PROPERTY

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, Fairley Place (1st FLOOR) KOLKATA-700001

Form " E "

PROCEEDINGS NO.1405/R OF 2013

ORDER NO. 30 DATED: 30.10.2019

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 Aparna Agency Ltd.

82A, Shambhu Nath Pandit Street,

Kolkata- 700 020.

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

AND WHEREAS, by written notice dated 24.02.2017 you were called upon to show cause on/or before 15.03.2017 why an order requiring you to pay a sum of Rs. 61,815.96/- (Rupees Sixty One Thousand Eight Hundred Fifteen and paisa Ninety Six 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. 61,815.96/- (Rupees Sixty One Thousand Eight Hundred Fifteen and paisa Ninety Six only) for the period 01.01.2010 to 14.02.2010 (both days inclusive) to Kolkata Port Trust by 15.11.2019.

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 at the rate of 15% per annum upto 18.09.1996 and thereafter at the rate of 18% per annum upto 06.04.2011 and thereafter at the rate of 14.25% per annum from the date of incurrance of liability, till the liquidation of the same in accordance with Kolkata Port Trust Notification published in Official Gazette/s.


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

Compartment Nos. L1 & L2 msg. about 369.475 sqmts each at KoPT's Strand Warehouse under plate no SW- 106 which were situated on the west side of Strand Road under the jurisdiction of the North Port Police Station within the Presidency Town of Kolkata. Trustees' means the Board of Trustees of the Port of Kolkata.

Dated: 30.10.2019




Signature and seal of the
Estate Officer

Copy forwarded to The Estate manager / Chief Law Officer



5/11/19

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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30.10.2019

FINAL ORDER

The matter is taken up today for final disposal. It is the case of Kolkata Port Trust (KoPT) that Compartment Nos L1 and L2 measuring 369.475 Sq.m each situated at the then KoPT's Strand Warehouse under Plate No. SW 106 was allotted to M/s Aparna Agency (O.P.) by KoPT on certain terms and conditions. A devastating fire broke out at the Strand Warehouse on 14.02.2010 at about 2.15 AM due to which most of the parts of the building were damages. A high level technical committee was constituted thereafter to assess the condition of the building and on the recommendation of such committee the entire structure has been demolished subsequently. It is the case of KoPT that the O.P. was not in the possession of the premises since 15.02.2010 and is under obligation to pay the rental dues to KoPT upto 14.02.2010.

This Forum of Law issued Show Cause Notice u/s 7 of the Act on 24.02.2017 requiring O.P. to show cause as to why an Order requiring payment of the arrears of rent together with interest should not be made against O.P.

The O.P. contested the case and filed several applications such as applications dated 26.05.2017, 28.06.2017, 01.08.2017, 09.08.2017, 11.08.2017, 15.09.2017, 10.11.2017, 11.12.2017, 03.10.2018, 31.10.2018 etc. Perused the said applications. The main contentions of O.P. during the course of hearing and as alleged vide several applications are as follows:

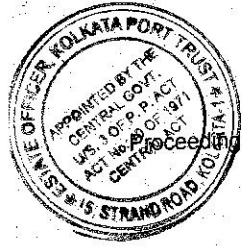
1. that the amount of Rs 61,815.96 shown by KoPT as the outstanding rent payable by O.P. upto 14.02.2010 is wrong, and
2. O.P. is not liable to pay the interest calculated by KoPT amounting to Rs 26,08,096.40 (calculated upto 01.12.2016) for the period from the year 1988 to 2010 as KoPT has arrived to this amount without having any basis and the claim has become time barred by now.

In Order of:
ESTATE OFFICER
KOLKATA PORT TRUST
[Signature]
KOLKATA PORT TRUST

[Signature]

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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3. KoPT has returned 07 no. of cheques towards license fee/s for the entire month of February 2010 till August, 2010 to O.P. vide KoPT's letter dated 30.09.2010 on the ground that the Warehouse was burnt on 15.02.2010 and became unusable.
4. That no payment has been recorded by KoPT between February, 1997 and January, 2002 though the same has been paid by the O.P. to KoPT.

Now while passing the Final Order, I have carefully considered all the applications, documents etc. filed by the parties. It is pertinent to mention here that the settled position in the case is that the O.P. was not in possession of the premises since 15.02.2010 after the fire broke out in the Warehouse on 14.02.2010. During the course of hearing, KoPT has filed comprehensive statement of accounts, copies of which have been handed over to O.P. It appears that basically the case KoPT against the O.P. is that the O.P. is in arrears of rent payable to KoPT for the month of January, 2010 and February, 2010 (till 14.02.2010) for their occupation in the Warehouse in question. In reply (vide application dated 11.12.2017) O.P. has submitted that O.P. has already liquidated the rent for the month of January, 2010 on 15.02.2010 vide cheque no 106491 dated 12.02.2010 amounting to Rs 43,528/-. In support of such contention O.P. has produced a copy of the Rent/License Fee Bill issued by KoPT. In answer, KoPT has submitted vide application dated 29.08.2018 that as per the accounting norms followed by KoPT in FIFO Method, the said amount tendered by O.P. was adjusted against the past dues of O.P. and as such the rent for the month of January, 2010 remained partly unsatisfied. Further O.P. vide their application dated 11.12.2017 has admitted dues on their part for the month of February, 2010 and has undertaken to pay the said sum to KoPT. However, the said sum has not been paid by O.P. during continuance of the proceeding.

In deciding the allegation of O.P. of non-adjustment of payments by KoPT between the period from February, 1997 to January, 2002 it appears that several

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Estate Officer, Kolkata Port Trust

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opportunities were given to O.P. for filing of evidence (Bank Statement etc.) and for reconciliation work of the respective books of accounts in order to narrow down the point/issue of disputes so that this Forum could intervene into the matter by passing appropriate order/direction, but inspite of that 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. No paper/document could be produced on behalf of O.P., contradicting/ disputing the claim of KoPT inspite of repeated chances 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 a correct financial position upon consideration of all the points as raised on behalf of the O.P. and to find out the undisputed area, leaving the disputed area for my intervention. In course of hearing, KoPT not only confirmed their claim on account of rent/ license fees 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 material particulars.

While deciding the point raised by O.P. regarding the claim of KoPT as time barred, it is the law of the land that the Limitation Act has application for the Civil Courts. 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."

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

By Order of:
ESTATE OFFICER
KOLKATA PORT TRUST
IN WITNESS WHEREOF I HAVE SIGNED
THIS 30.10.2019
ESTATE OFFICER
KOLKATA PORT TRUST

Handwritten signature/initials



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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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. To my understanding, Civil Suits are 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

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Estate Officer, Kolkata Port Trust

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and Indian Evidence Act are not applicable here (New India Assurance Case -2008 (3) SCC 279 = AIR 2008 SC 876). 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. 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.

A clear case has been made out by KoPT that charges for occupation into the public premises includes all the dues/charges which are required to be paid periodically including the charges on account of interest for delayed payment. A defaulter like O.P. cannot claim differential treatment for making payment for its continued use and enjoyment of the valuable Port property in question from that of a regular tenant/occupier. It is also argued that charges on account of interest for delayed payment is absolutely payable by O.P. Admittedly, there is a default in making payment of dues/charges on the part of O.P. It is not the case of O.P. that the allegation/statement of KoPT regarding non-payment of dues/charges as payable to KoPT is not a fact.

Now the question arises as to how far KoPT's claim on account of interest for delayed payment against O.P. is relevant and acceptable under law. It is the case of KoPT that claim of interest for delayed payment is in accordance with the Schedule of Rent Charges which has been published in the Calcutta Gazette as per provision of the Major Port Trusts Act 1963, after obtaining sanction of the Central Govt. as per provision of the said Act. It is contended that notification published under Authority of Law has statutory force of law and O.P. cannot deny the claim of KoPT on the strength of such

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30.10.2019
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KOLKATA PORT TRUST

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notification. Admittedly, O.P. was a licensee of KoPT. Continuing in occupation of the public premises on license basis must necessarily mean that O.P. is under legal obligation to pay the rental dues and charges on account of interest also in case of failure to pay KoPT's demand as per Schedule of Rent Charges. It is my considered view that payment of interest is a natural fall out and one must have to pay interest in case of default in making payment of the principal amount due to be paid. A question may arise whether there is any obligation on the part of O.P. to pay interest to KoPT even there is no existence of an express agreement between the parties. 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 respective zone 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 1976 Schedule of Rent Charges (notified in Calcutta Gazette dated 7.2.1976) that tenant/occupier must have to pay interest @15% per annum for default in making payment of rental dues. As per Major Port Trusts Act 1963 (prior to its amendment in 1997), Rent Schedule was framed by the Board of Trustees of the Port of Kolkata u/s.49 of the said Act and sanction of the Central Govt. was obtained u/s.52 of the of the said Act before publication/notification in Official Gazette in 07.02.1976. I am firm in holding that such notification has a statutory force of law and tenants/occupiers cannot deny the charges on account of interest as per notification in the Calcutta Gazette dated 7.2,1976 and as per subsequent notifications dated 31.03.1988, 19.09.1996 and 07.04.2011. Whenever, a notification is published in Official Gazette, not only the interested persons but also the people at large has constructive notice of the matters incorporated in such notification as per law.

In my view, the points raised by the O.P. do not inspire any confidence and I am not at all inclined to support the justification given by O.P. even for the sake of natural justice. In my considered view, the Port Authority has a

By Order

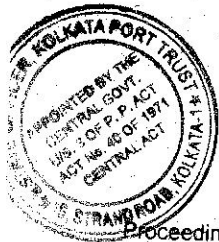
ESTATE OFFICER
PORT TRUSTS

BY ORDER
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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 waiver without making payment of requisite charges as mentioned in the Schedule of Rent Charges. 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.61,815.96 for the period 01.01.2010 to 14.02.2010 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 15.11.2019. Such dues, in terms of Section 7 (2-A) of the PP Act, 1971, attract interest at the rate of 15% per annum upto 18.09.1996 and thereafter at the rate of 18% per annum upto 06.04.2011 and thereafter at the rate of 14.25% per annum 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. 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

(M.K. Das)

ESTATE OFFICER

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

