

**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  
1<sup>st</sup> Floor, 6, Fairlie Place Warehouse,  
Kolkata-700001  
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**Form G**

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

PROCEEDINGS NO.1407/D OF 2013  
ORDER NO. 23 DATED: 19.11.2019

BOARD OF TRUSTEES OF THE PORT OF KOLKATA  
-Vs-  
**M/s. S. Nandy & Co.**

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

To  
M/s. S. Nandy & Co.  
25, Nirmal Chunder Street,  
Kolkata-700012.

Whereas I, the undersigned, am satisfied that you are in unauthorised  
occupation of the public premises mentioned in the Schedule below:

And whereas by written notice dated 15.12.2017 you were called upon to  
show cause on/or before 12.01.2018 why an order requiring you to pay  
damages of sum of Rs. 3,86,065.18/- (Rupees Three Lakh Eighty Six Thousand  
Sixty Five and Eighteen paise only.) for Plate No. HL-408/11 together with  
compound interest for unauthorised use and occupation of the said premises,  
should not be made.

And whereas I have considered your objection and/or the evidence  
produced by you.

PLEASE SEE ON REVERSE



Now, therefore, in exercise of the powers conferred on me by Sub-section (2) of Section 7 of the Public Premises(Eviction of Unauthorised Occupants) Act 1971, I hereby order you to pay the sum of Rs. 3,86,065.18/- (Rupees Three Lakh Eighty Six Thousand Sixty Five and Eighteen paise only.) for Plate No. HL-408/11 for the period 10.01.2012 to 01.09.2015 assessed by me as damages on account of your unauthorised occupation of the premises to Kolkata Port Trust by 26.11.2019.

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 @ 6.75% per annum on the above sum till its final payment being the current rate of interest as per the Interest Act, 1978.

In the event of your refusal or failure to pay the damages within the said period or in the manner aforesaid, the amount will be recovered as an arrear of land revenue.


#### **SCHEDULE**

The said piece or parcel of land Msg. about 289.86 sqm or thereabouts is situate at Siding No. 29, Shalimar, Howrah, P.S.- Howrah, Dist. and Registration District- Howrah under Plate No. HL-408/11 . It is bounded on the North by the Trustees open land on the East by the Trustees strip of open land alongside river Hooghly on the South by the strip of open land alongside Trustees railway siding No. 29 and on the West by the Trustees land allotted to Sunita Industrial Corporation.

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

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

Dated: 19.11.2019

  
Signature and seal of the  
Estate Officer

**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)  
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Court Room At the 1<sup>st</sup> Floor  
6, Fairlie Place Warehouse

**Form " E "**

PROCEEDINGS NO.1407/R OF 2013  
ORDER NO. 23 DATED: 19.11.2019

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. S. Nandy & Co.  
25, Nirmal Chunder Street,  
Kolkata-700012.

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

AND WHEREAS, by written notice dated 15.12.2017 you were called upon  
to show cause on/or before 12.01.2018 why an order requiring you to pay a  
sum of Rs. 4,37,959/- (Rupees Four Lakh Thirty Seven Thousand Nine  
Hundred and Fifty Nine only.) being the rent payable for Plate No. HL-408/11  
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. 4,37,959/- (Rupees Four  
Lakh Thirty Seven Thousand Nine Hundred and Fifty Nine only.) for the period  
01.07.1999 to 09.01.2012 (both days inclusive) to Kolkata Port Trust by  
26.11.2019.

PLEASE SEE ON REVERSE



: 2 :

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 @ 6.75 % 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 incurrance 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 289.86 sqm or thereabouts is situate at Siding No. 29, Shalimar, Howrah, P.S.- Howrah, Dist. and Registration District- Howrah under Plate No. HL-408/11 . It is bounded on the North by the Trustees open land on the East by the Trustees strip of open land alongside river Hooghly on the South by the strip of open land alongside Trustees railway siding No. 29 and on the West by the Trustees land allotted to Sunita Industrial Corporation.  
Trustees' means the Board of Trustees of the Port of Kolkata.

Dated: 19.11.2019

Signature and seal of the

  
Estate Officer

# Estate Officer, Kolkata Port Trust

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

Proceedings No. 1407/R, 1407/D Of 2013 Order Sheet No. -20-

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s S. Nandy & Co. <sup>(Plate No. # - 408/1)</sup> VS

### FINAL ORDER

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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. 289.86 Sq.m situated at Siding No. 29, Shalimar Howrah under **Plate No. HL-408/11** was allotted to M/s. S. Nandy & Co (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, and initiation of eviction proceeding before this Forum, KoPT finally took over possession on 03.08.2015 in vacant and unencumbered condition being the land in question leaving behind Rs. 4,37,959/- on account of arrear rental dues and Rs. 3,86,065.18/- on account of damages etc. It is the case of KoPT that O.P. is under obligation to pay the rental dues and damages for unauthorised use and occupation till the recovery of possession to KoPT with interest accrued thereon etc.

The Forum of Law issued Show Cause Notice/s u/s 7 of the Act to O.P. (for adjudication of the prayer for recovery of rental dues and recovery of Damages etc.) as per Rule made under the Act on 15.12.2017 to Show Cause why an order requiring O.P. to pay the arrears of rent and damages together with interest should not be made.

Sri Bibekananda Paul, Authorised representative of O.P. appears with the letter of Authorisation dated 11.01.2018 to represent the instant proceeding before this Forum. He also files an application on the same date seeking clarifications regarding the demand notice which shows two different amounts. He further submits in the said application, that the subject land was proposed to be handed over to KoPT on 10.01.2012 and accordingly it was communicated to KoPT vide their letter dated 24.12.2011, but KoPT did not turn up to take over the possession. A reply to the show cause notice is filed by O.P. on 05.03.2018, another application on 29.03.2018. It is the contention of O.P. vide their application dated 16.05.2018 that although O.P. vide their letter dated 24.12.2011 expressed their intent to hand over the possession, KoPT after a lapse of 4 years took over possession only on

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VS

M/s S. Nandy & Co.

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03.08.2015, therefore KoPT could not make O.P. liable to pay the damages for the period 17.11.2011 to July, 2015. It is also submitted that the purported demand for rent and damages for the period 31.07.1999 to 01.08.2015 was barred by limitation. O.P. also claimed for refund of the amount of Rs. 1,00,000/- which was paid by O.P. in 2015.

To the contention of O.P. regarding its intent to handover the possession to KoPT which was also intimated to KoPT vide O.P's letter dated 30.06.2014 (annexed with the application dated 05.03.2018 filed by O.P. before this Forum on 09.03.2018), representative of KoPT files the letter of communication exchanged in response to O.P's letter dated 30.06.2014 being No. Lnd. 367/1/6/14/1803 dated 10.09.2014. In the said communication it was categorically mentioned that the possession was not handed over to the representative of KoPT.

Therefore, it is the case of KoPT that O.P. did not hand over the possession of the subject premises to the representative of KoPT as per the quit notice dated 17.11.2011 where O.P. was asked to vacate within 10.01.2012 and it became possible to take over in vacant and unencumbered condition of the subject premises only on 03.08.2015. Therefore, O.P. failed to handover the possession on the date mentioned in the quit notice dated 17.11.2011 and accordingly the contention of O.P. regarding handover of the possession is denied and disputed by KoPT.

KoPT also filed its comments dated 06.04.2018 and 18.06.2018 against the reply to the show cause filed by O.P., in which it is stated that O.P. refused to hand over possession in vacant condition to KoPT. It is only on 03.08.2015 the subject premise was handed over by Sri Amitava Nundy, authorised representative of O.P. KoPT also cites a communication with O.P. being No. Lnd. 367/1/6/16/2436 dated 18.10.2016, where the details outstanding dues/charges were demanded from O.P. after taking over vacant unencumbered possession of the subject land.

Considering all the pleadings filed by both the parties and after going through the contention raised therein, this Forum is of the view that the possession of the subject premises was taken over by the representative of KoPT in



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clear vacant and unencumbered possession only on 03.08.2015 and O.P's contention of its intent to handing over the subject land long before has no legs to stand. O.P. failed to produce any documentary evidence except the letters dated 24.12.2011, 30.06.2014 and 07.11.2014 from which it can be presumed legally that formal handing over and taking over of the possession was carried out following due process of law. In this respect the provision of Section 108 clause (q) is worth quoting where it is enumerated that

....  
*'on the determination of the lease, the lessee is bound to put the lessor into possession of the property'*. Therefore, after the determination of the lease in question it is the duty cast upon the lessee to put the lessor into physical possession formally in writing and not orally when the lease agreement was executed in writing itself. It is the case of KoPT that the subject land was not vacant and O.P refused to hand over possession. It is also a fact that at the time of vacating the possession, there were arrear rental dues/charges as also interest for delayed payment payable by O.P. Such outstanding rental dues/charges is reflected in the statement of accounts submitted by KoPT. Therefore, the moot question before this Forum whether such claim is barred by law of limitation as referred by O.P.

It is the case of O.P. that KoPT's claim against O.P. is time barred and the same cannot be recovered. KoPT on the other hand submits the decision of Madhya Pradesh High Court in AIR 1980 MP 196(DB), 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.

Regarding the issue of time barred claim this Forum is of the view that The Public Premises Act 1971 has come into force after eliminating all constitutional infirmities. 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:

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"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 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.

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).

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



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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.4,37,959/- for the period 01.07.1999 to 09.01.2012 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 26.11.2019. Such dues, in terms of Section 7 (2-A) of the PP Act, 1971, attract simple interest @ 6.75 % 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 incurrance 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.

I have carefully considered the submissions of KoPT and the documents produced before me. It reveals from said statement that O.P. was indeed in default of Compensation bills. In my view, the statement of accounts maintained by a statutory authority has definite evidentiary value in the eye of law and I find no reason to disbelieve the claim of KoPT, in the facts and circumstances of the case.

During course of hearing, it is submitted by the Port Authority that the calculations of rent/ compensation are based on the relevant Gazette Notifications of the Tariff Authority for Major Ports (TAMP) which are uniformly applicable on all occupiers of port property. I find nothing contrary in the records of this Forum. As such, I have no hesitation to decide the case against the O.P.

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NOW THEREFORE, I hereby assess the damages/compensation dues payable by the O.P. for its occupation of the public premises in question, for the period 10.01.2012 to 01.09.2015 as Rs 3,86,065.18/- (principal amount). The O.P. is directed to pay the said amount to KoPT by 26.11.2019. In terms of Section 7 (2-A) of the PP Act, 1971, such dues attract simple interest @ 6.75 % 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 incurrance of liability, till the liquidation of the same, as per the adjustment of payments, 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. 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 \*\*\*