

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. 27 DT 25.11.2019
PROCEEDINGS NO.1406 of 2013

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-
M/s. Joharmull Brijmohan

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. Joharmull Brijmohan, OF 67/19, Strand Road , Cross Road No. 16, Kolkata-
700006 is in unauthorized occupation of the Public Premises specified in the
Schedule below:

REASONS

- 1) That O.P. has failed to appear before this Forum and failed to show cause why it should not be evicted from the public premises in question.
- 2) That O.P. violated the terms of the month to month lease by defaulting in payment of rent and taxes for a prolonged period.
- 3) That contention of KoPT about parting of possession in favour of strangers, has definite merit, in the facts and circumstances of the case.
- 4) That O.P. has erected unauthorised construction in the public premises without any authority of law and has also encroached into the Port property.
- 5) That O.P. or the sitting occupant/s have failed to make out any case in support of their occupation as "authorised occupation", inspite of sufficient chances being given.
- 6) That O.P. or any other person/s asserting any right through O.P. has failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation", inspite of sufficient chances being provided.
- 7) That the notice to quit dated 14.05.1990 as served upon O.P. by the Port Authority is valid, lawful and binding upon the parties. O.P's occupation, and that of any other occupant of the premises, has become unauthorised in view of Section 2(g) of the P.P Act.


PLEASE SEE ON REVERSE

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- 8) That O.P. is liable to pay damages for wrongful 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. 27 dated 25.11.2019 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. Joharmull Brijmohan, OF 67/19, Strand Road , Cross Road No. 16, Kolkata-700006** 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. Joharmull Brijmohan, OF 67/19, Strand Road , Cross Road No. 16, Kolkata-700006** 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.

**** However, the above findings of this Forum are subject to the orders/directions of the Hon'ble High Court and it is made clear that the decision of this Forum shall not be put into execution till the order of status quo dated 15.02.2019 passed by the Hon'ble High Court, Calcutta in W.P. No. 74 of 2019 is in force.**

SCHEDULE

The said piece or parcel of land Msg. about 151.989 sqm on the North Side of Cross Road No. 16 at Nimtollah, Thana- Jorabagan Police Station in the Presidency town of Kolkata (under Plate No. SB-265 and SF- 169). It is bounded on the North by the Trustees leased out land, on the East by the Trustees' old Nimtollah Moribound House, On the South by the Trustees' Cross Road No. 16 and on the West by the Trustees' leased out land.
Trustees' means the Board of Trustees of the Port of Kolkata.

Dated: 26.11.2019


Signature & Seal of the
Estate Officer.

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

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THE ESTATE OFFICER, KOLKATA PORT TRUST
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REASONED ORDER NO. 27 DT 25.11.2019
PROCEEDINGS NO.1406/R OF 2013

Form " E "

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-
M/s. Joharmull Brijmohan

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. Joharmull Brijmohan,
67/19, Strand Road,
(Cross Road No. 16)
Kolkata-700006.**

27-11-19,

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

AND WHEREAS, by written notice dated 02.05.2018 you were called upon
to show cause on/or before 25.05.2018 why an order requiring you to pay a
sum of Rs. 68,109/- (Rupees Sixty Eight Thousand One Hundred Nine only)
being the rent payable together with compound interest in respect of the said
premises should not be made;

And whereas you have failed to represent the instant proceedings
inspite of repeated chances given to you. As such no evidence have been
produced by you in support of your case.

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. 68,109/- (Rupees Sixty Eight
Thousand One Hundred Nine only) for the period 01.07.1983 to 30.06.1990
(both days inclusive) to Kolkata Port Trust by 02.12.2019.

PLEASE SEE ON REVERSE

Sud

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 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 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.

**** However, the above findings of this Forum are subject to the orders/directions of the Hon'ble High Court and it is made clear that the decision of this Forum shall not be put into execution till the order of status quo dated 15.02.2019 passed by the Hon'ble High Court, Calcutta in W.P. No. 74 of 2019 is in force.**

SCHEDULE

The said piece or parcel of land Msg. about 151.989 sqm on the North Side of Cross Road No. 16 at Nimtollah, Thana- Jorabagan Police Station in the Presidency town of Kolkata (under Plate No. SB-265 and SF- 169). It is bounded on the North by the Trustees leased out land, on the East by the Trustees' old Nimtollah Moribound House, On the South by the Trustees' Cross Road No. 16 and on the West by the Trustees' leased out land. Trustees' means the Board of Trustees of the Port of Kolkata.

Dated: 26.11.2019.



Signature and seal of the

Estate Officer

27-11-19.

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,
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Form G

Court Room At the 1st Floor
6, Fairlie Place Warehouse
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REASONED ORDER NO. 27 DT 25.11.2019
PROCEEDINGS NO.1406/D OF 2013

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-
M/s. Joharmull Brijmohan

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. Joharmull Brijmohan,
67/19, Strand Road,
(Cross Road No. 16)
Kolkata-700006.

1 27-11-19.

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 02.05.2018 you were called upon to
show cause on/or before 25.05.2018 why an order requiring you to pay
damages of sum of Rs. 28,37,158/- (Rupees Twenty Eight Lakhs Thirty Seven
Thousand One Hundred Fifty Eight only.) for Plate No. SB-265 and SF-169
together with compound interest for unauthorised use and occupation of the
said premises, should not be made.

And whereas you have failed to represent the instant proceedings
inspite of repeated chances given to you. As such no evidence have been
produced by you in support of your case.

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

PLEASE SEE ON REVERSE

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1971, I hereby order you to pay the sum of Rs. 28,37,158/- (Rupees Twenty Eight Lakhs Thirty Seven Thousand One Hundred Fifty Eight only.) for the period 01.07.1990 to 30.06.2017 assessed by me as damages on account of your unauthorised occupation of the premises to Kolkata Port Trust by 02.12.2019.

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.

**** However, the above findings of this Forum are subject to the orders/directions of the Hon'ble High Court and it is made clear that the decision of this Forum shall not be put into execution till the order of status quo dated 15.02.2019 passed by the Hon'ble High Court, Calcutta in W.P. No. 74 of 2019 is in force.**


SCHEDULE

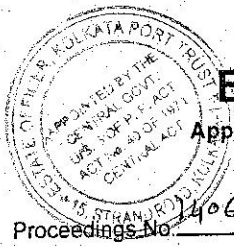
The said piece or parcel of land Msg. about 151.989 sqm on the North Side of Cross Road No. 16 at Nimtollah, Thana- Jorabagan Police Station in the Presidency town of Kolkata (under Plate No. SB-265 and SF- 169). It is bounded on the North by the Trustees leased out land, on the East by the Trustees' old Nimtollah Moribound House, On the South by the Trustees' Cross Road No. 16 and on the West by the Trustees' leased out land.
Trustees' means the Board of Trustees of the Port of Kolkata.

Dated: 26.11.2019.


Signature and seal of the

Estate Officer


27.11.19.



Estate Officer, Kolkata Port Trust

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

Proceedings No. 1406/R/1406/D of 2013 Order Sheet No. 26

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Johar null ^{VS} *Brijmohan.*

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25-11-2019

and taxes, KoPT has drawn my attention to their letter dated 16.03.1990 vide which KoPT requested the O.P. to liquidate the dues immediately. KoPT has also produced the detailed statement of accounts, maintained in official course of business, from where the default on the part of the O.P. is very much clear. During the course of proceedings, nobody appeared on behalf of O.P. with proper authority or proof of identity. The persons who appeared as sitting occupants did not produce any document/evidence to negate KoPT's such claim. Under such a situation, I am inclined to decide this issue in favour of KoPT.

The question of unauthorized parting of possession/sub-letting requires serious discussion. As per the records, KoPT authorities had granted permission to the O.P. to sub-let a portion of the premises to M/s Manoj Kumar Satish Kumar & Co., with specific advise in KoPT's communication dated 04.03.1980 that such permission was meant exclusively for M/s Manoj Kumar Satish Kumar & Co. and cannot be extended to others. Against such a background, two communications dated 22.04.1985 and 13.09.1985 of the O.P. have been produced before me whereby there is clear mentioning that O.P. had rented out the premises to M/s Murari Timber as well, apart from M/s Manoj Kumar Satish Kumar & Co. KoPT's inspection report dated 10.04.2018 also revealed the presence of said M/s Murari Timber in the premises. During course of hearing, while no one appeared on behalf of O.P., representative of said M/s Murari Timber appeared and filed applications (without any proof of identity or authority) and claimed to have been in occupation of the premises since 1975. A feeble submission has been made in their application dated 25.05.2018 about partition of the business of the O.P. but no proof whatsoever has been produced before me. I take note of the fact that in the absence of any

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J. P. 27-11-19

Estate Officer, Kolkata Port Trust

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

Proceedings No. 1406, 1406/R x 1406/D Of 2013 Order Sheet No. 27

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. ^{VS} Jobermull Brijmolan.

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evidence, there is no scope to treat the said M/s Murari Timber as a related family concern of the O.P. and consequently said M/s Murari Timber must be held to be a stranger/unauthorized person operating in the premises. I also take note of the fact that one Reply to the Show Cause Notices came to be filed on 13.06.2019 i.e. at the tag end of the proceedings, by the pen of Ravi Prakash Poddar as proprietor of the O.P., without producing any document/evidence to that effect. This Ravi Prakash Poddar is the same person who had earlier claimed to be the proprietor of M/s Murari Timber Traders. As such, it appears to me that there is an attempt to camouflage the unauthorised existence of M/s Murari Timber in the premises and consequently the Reply filed on 13.06.2019 is outrightly discarded. In such a situation, I am of the firm view that there is nothing wrong if the said M/s Murari Timber is adjudged as an unauthorized occupier of the premises.

As regards encroachment and unauthorized construction, KoPT has relied on the self-same set of documents as referred to above. Additionally, reliance has been placed on a letter dated 26.10.1991 addressed by KoPT to the City Architect, Calcutta Municipal Corporation, requesting the attention of the Corporation to the unauthorized constructions in the occupations of the O.P. During course of hearing, not a single scrap of paper was produced by O.P. or the sitting occupants to nullify the contentions of the KoPT. As such, I have no hesitation to decide these issues in favour of KoPT, as well.

During course of hearing, an application came to be filed on 05.03.2019 on behalf of M/s Murari Timber, referring to an Order dated 29.01.2019 passed by the Government of West Bengal on the West Bengal Escheats and Forfeitures Act, 2012. KoPT, vide their

Sd/-

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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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S. Jahanmull Breijmohan.
VS

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application dated 20.03.2019 duly replied to the contentions of the sitting occupants, while referring to an order dated 25.02.2019 passed by the Hon'ble High Court, Calcutta in WP no. 74 of 2019. I am agreeable with the contention of the Port Authority.

I find no order of stay on the instant proceedings by the Hon'ble High Court, Calcutta. Moreover, it is a settled law that even the tenant cannot question the title of the landlord, and here, in the instant case, the application has been filed not by the tenant but by the sitting occupant who has no locus to question the title of the Port Authority at all, more so when such sitting occupant has failed to justify its authority to occupy the premises.

In view of the above discussions, I have no alternative but to hold that the contentions of KoPT have definite merit and as such, I am inclined to conclude that the Notice to Quit dated 14.05.1990 is valid, lawful and correctly served on the O.P. and the same is binding between the parties.

In view of the circumstances, being satisfied as above, I am left with no other alternative but to issue the Order of Eviction against O.P., as prayed for on behalf of KoPT, on the following grounds/reasons:-

- 1) That O.P. has failed to appear before this Forum and failed to show cause why it should not be evicted from the public premises in question.
- 2) That O.P. violated the terms of the month to month lease by defaulting in payment of rent and taxes for a prolonged period.
- 3) That contention of KoPT about parting of possession in favour of strangers, has definite merit, in the facts and circumstances of the case.

Sub

27-11-19

Estate Officer, Kolkata Port Trust

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

Proceedings No. 1406, 1406/R, 1406/D of 2013 Order Sheet No. 29

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S. Jofermull Brijmolan.
VS

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- 4) That O.P. has erected unauthorised construction in the public premises without any authority of law and has also encroached into the Port property.
- 5) That O.P. or the sitting occupant/s have failed to make out any case in support of their occupation as "authorised occupation", inspite of sufficient chances being given.
- 6) That O.P. or any other person/s asserting any right through O.P. has failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation", inspite of sufficient chances being provided.
- 7) That the notice to quit dated 14.05.1990 as served upon O.P. by the Port Authority is valid, lawful and binding upon the parties. O.P.'s occupation, and that of any other occupant of the premises, has become unauthorised in view of Section 2(g) of the P.P Act.
- 8) That O.P. is liable to pay damages for wrongful use and occupation of the Public Premises upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

ACCORDINGLY, I sign the 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 unauthorized use and enjoyment of the property against O.P., in accordance with the canons of Law till the date of unencumbered recovery of possession of the same. KoPT is directed to submit a comprehensive status report of the Public Premises

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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. 1406, 1406/R A/406/D of 2013 Order Sheet No. 30

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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in question on inspection of the property after expiry of the 15 days as aforesaid, so that necessary action can be taken for execution of the order of eviction u/s 5 of the Act, as per Rule made under the Act.

It is my considered view that a sum of Rs. 68,109/- for the period 01.07.1983 to 30.06.1990 (both days inclusive) 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 02.12.2019. 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 incurrence 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.

Likewise, 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. 28,37,158/- as claimed by the Port Authority as damages in relation to the Plate in question, is correctly payable by O.P. for the period 01.07.1990 to 30.06.2017 (both days inclusive) and it is hereby ordered that O.P. shall also make payment of the aforesaid sum to KoPT by 02.12.2019. The said damages shall also carry simple interest @ 6.75 % per annum as discussed above. I sign the formal orders u/s 7 of the Act.

I make it clear that KoPT is entitled to claim damages against O.P. for unauthorized 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 the liability of O.P. to pay damages extends beyond 30.06.2017 as well, till such time the

Sd/-

27-11-19

Estate Officer, Kolkata Port Trust

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Joharwall **VS** Brijmohan.

{SB-265}
{SF-169}

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25-11-2019

possession of the premises continues to be under the unauthorised occupation with the O.P.. KoPT is directed to submit a statement comprising details of its calculation of damages after 30.06.2017, 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.

However, the above findings of this Forum are subject to the orders/directions of the Hon'ble High Court and it is made clear that the decision of this Forum shall not be put into execution till the order of status quo dated 15.02.2019 passed by the Hon'ble High Court, Calcutta in W.P. No. 74 of 2019 is in force.

J 27-11-19.

GIVEN UNDER MY HAND AND SEAL



(S. MITRA)

ESTATE OFFICER

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

