

SC 017

**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
OFFICE OF THE ESTATE OFFICER
6, Fairlie Place (1st Floor)
KOLKATA - 700 001

Court Room At the 1st Floor
of Kolkata Port Trust's
Fairlie Warehouse
6, Fairlie Place, Kolkata- 700 001.

PROCEEDINGS NO.1540/D OF 2016
ORDER NO 36 DATED : 02.12.17

Form- G

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 Five Star Engineers & Agents Pvt. Ltd
EN-42, Saltlake, Sctor-5
Kolkata- 700091**

AND ALSO

**Uttar Ballav Para,
P.O: Bira, P.S Ashok Nagar,
North 24 Parganas-743234.**

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

And whereas by written notice dated 20.04.2017 you are/were called upon to show cause on/or before 18.05.2017 why an order requiring you to pay damages of **62,09,806.00** (Rupees Sixty Two lakhs Nine thousand Eight hundred Six only) for **Plate No.D-185/A** together with compound interest should not be made; for unauthorised use and occupation of the said premises.

And whereas you I have considered your objections and/or evidence produced before this Forum.

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 **14,98,363** (Rupees Fourteen Lakhs Ninety Eight Thousand Three Hundred and Six Three only) for **Plate No.D-185/A** as damages on account of your unauthorised occupation of the premises for the period from 01.11.2003 to 31.01.2017 to Kolkata Port Trust by 12.12.2019.

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 @ 15% per annum upto 18.09.1996 and thereafter @ 18% per annum till 06.04.2011 and thereafter @14.25% per annum on the above sum from the date of incurrance of liability till its final payment in accordance with Kolkata Port Trust's Notification published in official Gazette/s.

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 by Collector.

SCHEDULE

The said piece or parcel of land msg.2309.290 sq.mtrs. or thereabouts(1st belt land lying within 50 mtrs. from road) and 9894.840 Sq.mtrs or thereabouts (2nd belt – land lying beyond 50 mtrs fromn road) altogether msg.3204.130 Sq. mtrs or thereabouts together the boundaries there of (under Plate No.185/A) is situate at Oil Installation Road, Paharpur, Thana – West Port Police Station, Calcutta, Dist.24Parganas. Registration District – Alipore. It is bounded on the North and East by a strip of open land reserved as margin of safety alongside the railway track, On the South and West by the Kolkata Port Trust's drain. Plot Msg.1529.180 Sq.m. Is bounded on the North by Oil Installation Road, on the East by the Kolkata Port trust's strip of open land reserved as margin of safety alongside the railway track and on the West Road and on the West by the Kolkata Port Trust's drain plot msg 365.02 by Kolkata Port Tust, is bounded on the North by Oil Installation Road on the East by Kolkata Port Trust's drain on the South by the Kolkata Port Trust's strip of open land reserved as margin of safety alongside the railway track and on the West by Kolkata Port Trust's land. Trustees' means the Board of Trustees' for the Port of Kolkata.

Date


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. 1540/D Of 2016 Order Sheet No. 34

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
M/s. Five star Engineers Agents Pvt. Ltd.

36
02.12.19

FINAL ORDER

The instant proceedings No. 1540/D of 2016 arises out of the application bearing No. Lnd.4078/B/IV/II/263 dated 29.04.2011 filed by the Kolkata Port Trust (KoPT), the applicant herein, praying for recovery of dues /damages and other charges etc. along with accrued interest in respect of the public premises as defined in the 'Schedule A' of said application, against M/S Five Star Engineers & Agents Pvt. Ltd, the O.P. herein, under relevant provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

The fact of the case in a nutshell is that the O.P. came into occupation of the port property measuring 3204.130 sq.mtrs. or thereabout at the Oil Installation Road, Paharpur (under Plate No. D-185/A) Thana- West Port Police Station, Kolkata District-24th Parganas as Long term Lessee, morefully described in the 'Schedule of Property' of the said KoPT's application dated 29.04.2011. The allegation levelled by KoPT against the O.P is that a long term lease was executed between KoPT and O.P. for 30 years from 21.08.1974 to 20.08.2004 without any option of renewal and after the expiry of such long term lease on 20.08.2004, O.P. failed and neglected to quit, vacate and deliver peaceful unencumbered possession of the subject premises to KoPT. Thereafter, a Notice to Quit was issued by KoPT on 24.08.2004 to substantiate such expiry and O.P. was again asked to vacate the premises since the lease expired on 20.08.2004. The O.P. failed and neglected to deliver the clear, vacant, unencumbered possession to KoPT thereafter. It is further the case of KoPT that the O.P. is liable to pay compensation charges/ mesne profit along with the accrued interest to KoPT for wrongful use and occupation of the Public Premises in question, the details of which has been provided by KoPT vide 'Schedule-B' of the said application of KoPT dated 29.04.2011.

Considering the submission and documents filed by KoPT, the Notice to Show Cause were issued by this forum dated 20.04.2017 (vide Order no 5 dated 20.04.2017) U/s 7 of the Public Premises (Eviction of Unauthorized Occupation) Act, 1971 to the O.P. directing them to file show cause as to why an order of payment of arrear compensation/damages

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THE ESTATE OFFICER
KOLKATA PORT TRUST

ASSISTANT ESTATE OFFICER
KOLKATA PORT TRUST

OFFICE OF THE ESTATE OFFICER
KOLKATA PORT TRUST



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. 1540/D of 2016 Order Sheet No. 35

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Five Star Engineers Agent Pvt. Ltd. ^{VS}

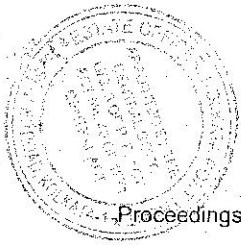
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02-12-19

together with interest should not be made against the O.P. The O.P. was also called upon to appear before this forum in person or through authorized representative capable to answer all material question/s in connection with the matter along with the evidence which the opposite party intends to produce in support of their case. Be it mentioned here that although in the Original Application prayer for eviction was there. However, no notice was issued under Section 4 of the P.P Act as because the subject property had already been taken over by KoPT on 31.07.2012.

It is placed on record that the said Notice was sent to the recorded address of O.P. vide Speed Post, hand delivery as well by affixing the same in the Public Premises in question as per mandate of the Act. The Notice/s sent by Speed Post were not returned back to this Forum. However, it appears from the report of Process Server dated 20.04.2017 that the O.P. has refused to take service of the said notice dated 20.04.2017. But it appears from the record that O.P has received such Notice on 15.06.2017. Thereafter O.P appeared and contested the matter by filing his Reply to the Show Cause on 18.07.2017 alleging inter-alia that the bill raised by KoPT were incorrect and those required to be corrected immediately for their payment and interest rate be waived. Subsequently KoPT filed their rejoinder dated 17.08.2017 objecting strongly that monthly bills were raised and issued to O.P up till 31.07.2012 (i.e the date of taking over possession) by KoPT and O.P did not raised any dispute and/or objection regarding issuance of such bills whatsoever. Such contention of O.P is a mere afterthought merely to divert the attention of the Estate Officer. So far the waiver of interest rate is concerned, it is stated that the rates are statutory in nature and binding not only on KoPT but also on each and every entity in the occupation of public Premises. Both the parties were heard several occasions and finally on 09.05.2019 the final order was reserved in this matter granting liberty to file updated statement of accounts within 10 days.

Now, while passing the Final Order, I have carefully considered the application being No. Lnd. 4073/B/IV/18/558 dated 22.05.2018 filed by KoPT, where it had been categorically stated that compensation bills for the period April, 2011 till May, 2012 were inadvertently

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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. 1540/D Of 2016 Order Sheet No. 36

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
M/s. Five star Engineers Agent Pvt. Ltd.

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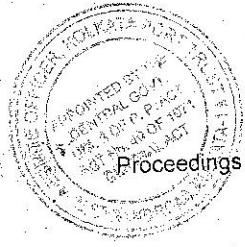
raised @ 3 times instead of single rate. It is further stated by KoPT the inadvertent error had been rectified and accordingly, credit Note of Rs. 47,11,443/- has been issued in favour of the O.P. and the same has been adjusted against their dues in respect of Plate No. D-185/A. It is seen from the corrected statement of accounts generated on 22.05.2018, that the outstanding principal dues is to the tune of Rs. 14,98,363/-. This Forum also finds that KoPT vide its application being No. Lnd. 4073/B/IV/18/1843 dated 30.08.2018 admitted that service tax has already been paid against the wrong bill which was raised by KoPT to the tune of Rs. 56,67,872 instead of Rs. 5,41,934/-. Subsequently, as stated by KoPT in the said application dated 30.08.2018 that credit note amounting to Rs. 47,11,443/- was issued against the wrong bill (admitted by KoPT) without considering the service tax amount as the same has already been paid by KoPT against such said wrong bill to the Service Tax Authority.

This Forum considering the aforesaid submissions of KoPT in their applications dated 25.05.2018 and 30.08.2018, directed vide Order No. 24 dated 18.09.2018 passed in the instant matter, to provide the calculation of the outstanding dues by deducting the service tax component from the dues of O.P.

Thereafter, KoPT vide another application being No. Lnd. 4073/B/IV/19/602 dated 30.05.2019 stated the outstanding principal amount as Rs. 14,98,363 which is also reflected in their statement of accounts generated on 24.05.2019.

Therefore, as regards payment of compensation/damages/Mesne profit to KoPT, I must say that Rs 14,98,363 (for Plate No. D-185/A) as claimed by the Port Authority in relation to the Plate in question, is correctly payable by O.P. for the period 01.11.2003 to 31.07.2012 (both days inclusive) and it is hereby ordered that O.P. shall make payment of the aforesaid sum to KoPT by 10.12.2019 . O.P. shall be liable to pay simple interest @ 15% per annum upto 18.09.1996 and thereafter @ 18% per annum till 06.04.2011 and thereafter @14.25% per annum on the above sum from the date of incurrance of liability till its final payment in accordance with the relevant

[Signature]



Estate Officer, Kolkata Port Trust

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Five Star Engineers Agent Pvt Ltd.
VS

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02-12-19

notification/s published in Official Gazette. The formal order u/s 7 of the Act is signed accordingly.

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 recovery of possession in accordance with law.

As regards the service tax paid by KoPT against the wrong bill issued to O.P., this Forum holds that both the contesting parties should take up the issue with the Service Tax Authority and/or and other competent Authority who has the rightful jurisdiction to settle the dispute. This Forum lacks jurisdiction to determine the issue of computing the excess payment if any paid to the Service Tax Authority wrongfully.

All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL

(A.K Sarkar)
ESTATE OFFICER

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

RECEIVED BY
THE ESTATE OFFICER
KOLKATA PORT TRUST
OFFICE OF THE ESTATE OFFICER
KOLKATA PORT TRUST