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**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, Fairley Place (1st Floor)
KOLKATA - 700 001

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

REASONED ORDER NO.21 DT 04.12.2019.
PROCEEDINGS NO. 1282 OF 2012

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-
Ramani Devi (O.P.)

2 B.05.12.19.

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 **Smt. Ramani Devi, Coal Merchant, 100, Chetla Railway Siding, Kolkata-700027** is in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

1. That O.P. has failed and neglected to hand over possession of the Public Premises in question after the expiry of lease and after issuance of the Notice to Quit dated 26.05.2005.
2. That O.P. failed to obtain any fresh grant from the landlord i.e. the KoPT;
3. That O.P. has failed to make out any ground for waiver of the notice to quit;
4. That O.P. has failed to bear any witness or adduce any evidence in support of its occupation into the public premises as 'authorized occupant';
5. That ejection notice dated 26.05.2005 as served upon O.P., demanding possession of the public premises by KoPT is valid, lawful and binding upon the parties;

PLEASE SEE ON REVERSE

6. That occupation of O.P. beyond the period of expiry of the lease is unauthorized in view of Sec. 2 (g) of the Public Premises Act in question;
7. That O.P. is liable to pay damages for its unauthorized use and occupation of the public premises upto the date of handing over of clear, vacant and unencumbered possession to KoPT.

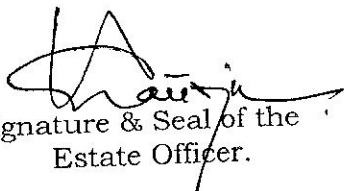
A copy of the reasoned order No. 21 dated 28.11.2019 is attached hereto which also forms a part of the reasons.

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 **Smt. Ramani Devi, Coal Merchant, 100, Chetla Railway Siding, Kolkata-700027** 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 **Smt. Ramani Devi, Coal Merchant, 100, Chetla Railway Siding, Kolkata-700027** 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

Piece or parcel of land msg. about 104.884 sq.m or thereabouts (under Plate No.D-551/A) which is situated at Chetla Station Yard, P.S. Chetla, Dist. 24 Parganas. It is bounded on the North by the Trustees' strip of land alongside the boundary wall, on the East by the Trustees' vacant land, on the South by the Trustees Road, on the West by the Trustees' land leased to M/s. Banerjee Coal Traders. Trustees' means the Board to Trustees' of the Port of Kolkata.

Date- 04.12.2019.


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

PROCEEDINGS NO.1282/D OF 2012
ORDER NO 21 DATED: 04.12.2019

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
Smt. Ramani Devi,
Coal Merchant,
100, Chetla Railway Siding,
Kolkata-700027.

+ 05.12.19

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 05.04.2018 you are called upon to show cause on/or before 04.05.2018 why an order requiring you to pay damages of **Rs.3,09,079.50** (Rupees Three Lakhs Nine Thousand Seventy Nine and paise fifty only) for **Plate No.D-551/A** for unauthorised use and occupation of the said premises, should not be made.

And whereas you have not made any objections or produced any evidence before the said date.

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.3,09,079.50** (Rupees Three Lakhs Nine Thousand Seventy Nine and paise fifty only) for **Plate No.D-551/A** as damages on account of your unauthorised occupation of the premises for the period from 09.03.2002 to 30.06.2017 to Kolkata Port Trust by 10.12.2019. In exercise of the powers conferred by Sub-section (2A) of Section 7 of the said Act,



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 18% per annum till 06.04.2011 and thereafter @14.25% per annum on the above sum with effect from the date of incurrence of liability, till its final payment in accordance with 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 through the Collector.

SCHEDULE

Piece or parcel of land msg. about 104.884 sq.m or thereabouts (under Plate No.D-551/A) which is situated at Chetla Station Yard, P.S. Chetla, Dist. 24 Parganas. It is bounded on the North by the Trustees' strip of land alongside the boundary wall, on the East by the Trustees' vacant land, on the South by the Trustees Road, on the West by the Trustees' land leased to M/s. Banerjee Coal Traders. Trustees' means the Board to Trustees' of the Port of Kolkata. Trustees' means the Board to Trustees' of the Port of Kolkata.

d. 05.12.19.

Date 04.12.2019.


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. 1282/1282/D Of 2012 Order Sheet No. -20-

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Ramani Devi - (O.P.)

D-551/A

FINAL ORDER

The matter is taken up for final disposal today. It is the case of Kolkata Port Trust (KoPT), the applicant herein, vide original application dated 26.04.2006 filed under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as 'the Act'), that Smt Ramani Devi (hereinafter referred to as O.P.) came into occupation of the Port Property in question (land Msg. about 104.884 Sq.m under occupation No. D 551/A at Chetla Station Yard) on a long term lease basis and that the said O.P. failed and neglected to hand over possession of the Public Premises after expiry of the Long Term Lease, defaulted in payment of KoPT compensation/damages/ charges etc. in clear and gross violation of the terms and conditions of lease. KoPT has made out a case that O.P. has no right to occupy the premises on the ground of expiry of lease and upon violation of lease conditions and also upon service of a quit notice dated 26.05.2005.

This Forum of Law formed its opinion to proceed against O.P. under the relevant provisions of the P.P. Act and issued show cause notices under Sec. 4 & 7 of the Act both dated 05.04.2018 as per the Rules made under the Act.

The O.P. contested the case through their Ld. Advocate. The O.P. has filed several applications on 18.05.2018, 25.06.2018, 03.08.2018, 29.08.2018 etc. KoPT on the other hand filed applications dated 13.07.2018, 10.08.2018, 12.09.2018 etc in addition to the original application filed by KoPT on 26.04.2006. Thereafter the matter was heard at length before this Forum.

Now, while passing the Final Order, I have carefully considered the documents on record and the submissions of the parties. There is no dispute or objection from O.P's side regarding status of O.P's tenancy under long term lease and its expiry on 08.03.2002. The fact of the termination of lease by efflux of time has been admitted by the O.P. vide applications dated 25.06.2018 (filed on 25.06.2018) and 29.08.2018 (filed on 29.08.2018). The service of

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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the Notice to Quit dated 26.05.2005 has also been admitted by the O.P. vide application dated 25.06.2018 (filed on 25.06.2018). This takes me to the question whether a long term lessee like O.P. can continue in occupation when lease has expired long time back and the terms and conditions of the lease in as much as it is revealed from KoPT's offer letter No. Lnd. 4795 dated 6.9.1991 did not contain any right for exercising any option for renewal by the O.P. As per Transfer of Property Act, 1882, a lessee is under legal obligation to hand over possession of the property to its landlord/lessor in its original condition after expiration of tenancy under lease. During the continuance of the proceedings, O.P. has always admitted that the lease has expired long time back. Such being the case, the tenancy of the O.P. automatically stands terminated upon expiry of the lease-hold period and no additional Notice is called for on the part of the landlord calling upon the O.P. to vacate the premises. In other words, in case of a long term lease having a specific date of expiration, there is no legal compulsion on the landlord to issue any Notice to Quit. The landlord is, however, free to issue such a Notice as a reminder or as an act of gratuity. In the instant case, the landlord i.e. KoPT adopted such a course and claims to have issued a Notice to O.P. dated 26.05.2005 asking for vacation of the premises. The O.P., upon receipt of such notice to quit dated 26.05.2005 (as has been admitted by the O.P. vide its application dated 25.06.2018) was duty bound to hand over possession long time back which she had failed to do. During the entire proceedings, O.P. failed to justify how she is entitled to enjoy the property after expiry of the leasehold right. No attempt has been made on behalf of O.P. to satisfy this Forum of Law about any consent on the part of KoPT in occupying the public premises after expiry of the long term lease. I take conscious note of the fact that KoPT never recognized O.P. as a lawful user/tenant in respect of the property in question after expiry of the lease in question and in fact, initiation of the instant proceedings vide original application dated 26.04.2006 of KoPT was a logical culmination of KoPT's intent to approach this Forum for obtaining obtain vacant possession of the public



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premises in question. It is a settled question of law that O.P. cannot claim any legal right to hold the property after expiry of the lease in question, without any valid grant or allotment from KoPT's side. I must mention that the powers of this Forum are limited by the corner stone of P.P. Act, 1971 and if the landlord refuses to settle the matter amicably with its ex-tenant, then this Forum is duty bound to dispose of the proceedings, as per the provisions of the Act. Thus, I have no hesitation in concluding that the failure of O.P. to justify its occupation after expiry of the long term lease is a sufficient ground by itself to pass an order of eviction against O.P. declaring its status as "unauthorized" in terms of the P.P. Act, 1971. As per Section 2 (g) of the P. P. Act, 1971 the "unauthorized occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. It is a settled question of law that O.P. cannot claim any legal right to hold the property after expiry of the lease in question, without any valid grant or allotment from KoPT's side.

Also, KoPT's allegation of non-payment of dues by the O.P. does appear to have merit. No paper/document could be produced on behalf of O.P., contradicting/ disputing the claim of KoPT inspite of repeated chances being given. In course of hearing, KoPT not only confirmed their claim on account of damages but also asserted their right to claim interest for delayed payment. Infact, vide the application dated 03.08.2018 (filed on 03.08.2018) the O.P. has admitted dues on her part and prayed for liquidation of the same in equated monthly installments. The O.P. did not bother to pay the said amounts as well. In my view, the conduct of the O.P. does not inspire any confidence and I am not at all inclined to protect the occupation of the O.P. even for the sake of natural justice. In my considered view, the Port Authority has a definite

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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 continuance of its occupation without making payment of requisite charges as mentioned in the Schedule of Rent Charges. I take note of the fact that some irregular payments made by O.P. after the expiry of the lease in question has been accepted by KoPT as part-payment of compensation/damages for wrongful use and occupation of the Port Property in question and without prejudice to the Notice dated 26.05.2005. In fact, the said Notice clearly mentions that any payments tendered by O.P. after expiry of the lease-hold period would be accepted as the part payment of Compensation dues/charges of KoPT.

The KoPT's claim on account of interest involves mixed question of fact and law as well. It is the case of Kolkata Port Trust that claim of interest for delayed payment is in accordance with the Schedule of Rent Charges which has been published in the Official 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. The 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 notification. It is contended that continuing in occupation of the public premises must necessarily mean that O.P. is under legal obligation to pay KoPT's demand as per the 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 payable. 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 the different Schedules of Rent Charges which were notified from time to time. I am firm in holding that such notifications have a statutory force



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of law and tenants/occupiers cannot deny the charges on account of interest as per notification in the Official Gazette until such rate of interest is modified/enhanced by further notification/s.

It is noted that the O.P. had on numerous occasions deliberated that a Kisaan Bikash Patra, deposited by them with KoPT as security deposit, which as per O.P.'s calculation had assumed the present value of Rs 80,000/-, may be returned to O.P. for encashment and onward liquidation of KoPT's dues/ charges. I am not at all impressed with the submission of O.P. On the other hand, KoPT has submitted that the return of security deposit would be considered in case O.P. furnishes the original acknowledgement issued by KoPT and furnish the security deposit as applicable in present SoR. In the balance, the submission of KoPT regarding the return of purported security deposit appears to be more logical, reasonable and hence the issue is decided accordingly.

In the aforementioned circumstances, being satisfied as above, I have no hesitation to uphold the claim of the Port Authority and I am inclined to hold the occupation of the O.P. as "unauthorized", and issue order of eviction against O.P. on the following reasons,

1. That O.P. has failed and neglected to hand over possession of the Public Premises in question after the expiry of lease and after issuance of the Notice to Quit dated 26.05.2005.
2. That O.P. failed to obtain any fresh grant from the landlord i.e. the KoPT;
3. That O.P. has failed to make out any ground for waiver of the notice to quit;
4. That O.P. has failed to bear any witness or adduce any evidence in support of its occupation into the public premises as 'authorized occupant';

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5. That ejection notice dated 26.05.2005 as served upon O.P., demanding possession of the public premises by KoPT is valid, lawful and binding upon the parties;

6. That occupation of O.P. beyond the period of expiry of the lease is unauthorized in view of Sec. 2 (g) of the Public Premises Act in question;

7. That O.P. is liable to pay damages for its unauthorized use and occupation of the public premises upto the date of handing over of clear, vacant and unencumbered possession to KoPT.

Accordingly, I sign the formal order of eviction under Sec. 5 of the Act as per Rules made thereunder, giving 15 days time to O.P. 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 as their occupation into the Public Premises is/are unauthorised in view of sec. 2(g) of the Act. 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 can be taken for execution of the order of eviction u/s. 5 of the Act as per Rule made under the Act.

In my opinion KoPT's claim for damages for Rs. 3,09,079.50(Rupees Three Lakhs Nine Thousand Seventy Nine and paise fifty only) against Plate No. D-551/A (excluding interest for delayed payment) upto 30.06.2017 for wrongful occupation may be payable by O.P. as it is gathered in course of hearing that the charges so claimed by KoPT is on the basis of the Schedule of Rent Charges published under the Authority of Law as per provisions of the Major Port Trusts Act 1963. In course of hearing, I find that KoPT has made out an arguable claim against O.P., founded with sound reasoning. I make it clear that Kolkata Port Trust is entitled to claim damages against O.P. for unauthorized use and occupation of the public premises upto the date of recovery of clear, vacant and unencumbered possession of the same in accordance

2 *05.12.19.*



Estate Officer, Kolkata Port Trust

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Ramari Devi ^{VS} (O.P.) D-551/A

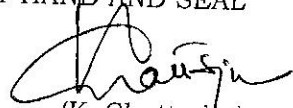
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with Law and KoPT is entitled to claim interest upon dues/charges right from the date of incurrence of liability by O.P. as per KoPT's Rule.

NOW THEREFORE, I hereby assess the damages payable by the O.P. for wrongful and unauthorised occupation of the public premises in question, for the period 09.03.2002 to 30.06.2017 as Rs. 3,09,079.50 (Rupees Three Lakhs Nine Thousand Seventy Nine and paise fifty only) (principal amount). In terms of Section 7 (2-A) of the PP Act, 1971, such dues attract interest @ 18% per annum upto 06.04.2011 and thereafter @ 14.25% per annum till its liquidation of the same from the date of incurrence of liability in accordance with the Notification/s of KoPT issued under authority of Law as per adjustment of payments made so far by O.P. as per 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 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.

GIVEN UNDER MY HAND AND SEAL


(K. Chatterjee)
ESTATE OFFICER

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

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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

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA
VS

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