

**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

REASONED ORDER NO. 31 DT 26.11.2019 read with ORDER NO. 32 DT.12.12.2019
PROCEEDINGS NO. 1171 OF 2011

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

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

-Vs-

M/S Jem Private Ltd (O.P.)

F O R M - "B"

**ORDER UNDER SUB-SECTION (1) OF SECTION 5 OF THE PUBLIC
PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1971**

Whereas the main contentions of **M/S Jem Private Ltd, 9 Sonapur Road, Kolkata -700088, AND 8, Camac Street, 6th Floor, Unit No.12, Kolkata -700017 AND ALSO 57, Diamond Harbour Road 9th Floor, Block-C 9D Kolkata -700023** during the course of hearing and as alleged vide several applications are as follows:

1. That the notice to quit was not served upon O.P. and the notice is bad in view of the laws of Limitation.
2. That the proceedings u/s 4 and 7 of the Act both dated 23.03.2017 are not maintainable.
3. That the documents replied upon by KoPT is required to be given inspection to the O.P. to take appropriate and proper defense by the O.P.
4. That the original application of KoPT dated 07.05.2007 is misconceived and failed to disclose any valid cause of action on the part of KoPT. The Application has been filed by an officer of KoPT, who is not competent to file application for legal proceeding on behalf of KoPT.
5. That the fact of non consideration of O.P.'s application / prayer for renewal or extension of lease for a further period of in respect of the occupation of Port Authority has not been communicated by KoPT. No reason has been disclosed by KoPT as to how the occupation of O.P. could be termed as 'unauthorised' without considering the prayer of O.P. for grant of lease / allotment.

Please see on reverse



:: 2 ::

6. Notice u/s4 of the Act is based upon the notice to quit dated 18.03.2005 which has no force in law.
7. That O.P. is still continuing in occupation as unauthorized and there cannot be any claim for damages or mesne profit against the O.P. without a valid or legal declaration or determination of O.P.'s occupation as 'unauthorized occupation' by any competent Court/ Forum.
8. That a substantial part of KoPT's claim is barred by limitation and the O.P. is making payment of rental dues to KoPT regularly.
9. That the O.P. was paying monthly rent to KoPT and the said rent was duly accepted by KoPT till 2016 and hence, the occupation of O.P. cannot be termed as unauthorized.
10. That O.P. was allowed to occupy the premises without any demand for possession and/ or obstruction after expiry of the lease period, question of payment of damages does not arise against the O.P.
11. That O.P. has had intention to come into a settlement of dispute with KoPT.

WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that O.P. 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 18.03.2005.
2. That O.P. failed to obtain any fresh grant from the landlord i.e. the KoPT;
3. That the submission of O.P. as to non-receipt of Notice to Quit dated 18.03.2005 has no basis both in law and in fact;
4. That O.P. has failed to make out any ground for waiver of the notice to quit;
5. That O.P. has failed to make out any ground with regard to the maintainability of the present proceedings as well as application of the law of Limitation to the present proceeding.
6. That O.P.'s allegation of incompetency of the Officer of KoPT for filing application for legal proceeding on behalf of KoPT against the O.P. has no basis in law.
7. 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';

Contd....3

8. That ejectment notice dated 18.03.2005 as served upon O.P., demanding possession of the public premises by KoPT is valid, lawful and binding upon the parties;
9. 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;
10. 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. 31 dated 26.11.2019 read with order NO. 32 DT.12.12.2019 is attached hereto which also forms a part of the reasons.

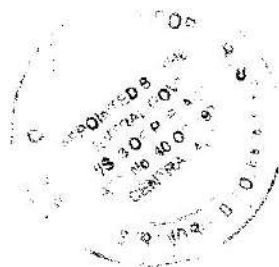
NOW, THEREFORE, in exercise of the powers conferred on me under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order the said **M/S Jem Private Ltd, 9 Sonapur Road, Kolkata -700088, AND 8, Camac Street, 6th Floor, Unit No.12, Kolkata -700017 AND ALSO 57, Diamond Harbour Road 9th Floor, Block-C 9D Kolkata -700023** 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 Jem Private Ltd, 9 Sonapur Road, Kolkata -700088, AND 8, Camac Street, 6th Floor, Unit No.12, Kolkata -700017 AND ALSO 57, Diamond Harbour Road 9th Floor, Block-C 9D Kolkata -700023** 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

The said piece or parcel of land msg. 1499.362 sq.m or thereabouts under (Plate No.D-300/4 & SF-100/18) at Sonapur Road, Thana- West Port Police Station, Dist.24Parganas, Registration District- Alipore. It is bounded on the North by Sonapur Road on the East and West by the Trustees' land on the South by the Trustees' drain.

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

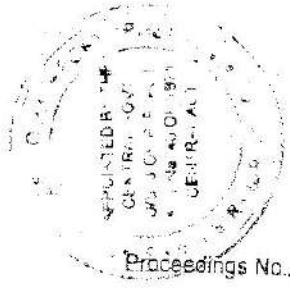
Date- 12.12.2019




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. 1171, 1171/D Of 2011 Order Sheet No. 40

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s - Jem Private Ltd. ^{VS}

32

12.12.2019

The matter is requisitioned from the department. It has received my attention, that there is an omission of a substantial portion while drawing up the decree in the Form 'B'. Such omission, I find is apparently an inadvertent clerical error which crept in the said Form and it deserves to be treated as such. In the given facts and circumstances, Department is directed to draw up the decree once again incorporating the omitted portion in the Form 'B' which forms a part of the reasoned order No. 31 dated 26.11.2019 and intimate the parties accordingly. All concerned are directed to act accordingly.

(A.K. Sarkar)
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. 1171, 1171/P Of 2011 Order Sheet No. 28

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
M/s Jem Private Ltd.

FINAL ORDER

31

26-11-19

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 07.05.2007 filed under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as 'the Act'), that M/s Jem Private Ltd. (hereinafter referred to as 'O.P.') came into occupation of the Port Property in question (land Msg. about 1499.362 Sq.m under occupation No. D 300/4 and SF 100/18 at Sonapur Road) on a long term lease basis and that 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 dues/ charges 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 also violation of lease conditions and also upon service of a quit notice dated 18.03.2005.

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 23.03.2017 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 09.05.2017, 25.05.2017, 27.06.2017, 10.08.2017, 24.10.2017, 05.12.2017, 16.01.2018, 03.07.2018, 02.08.2018, 07.02.2019 etc. KoPT on the other hand filed applications dated 28.02.2017, 31.05.2017, 15.02.2018, 15.03.2018, 30.07.2018, 06.12.2018, 07.02.2019 etc.

To sum up the allegations of KoPT against the O.P., KoPT claims that O.P. had failed and neglected to hand over possession of the Public Premises after expiry of the Long Term Lease, defaulted in payment of KoPT dues / charges in clear and gross violation of the terms and conditions of lease. The main

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31/11/19
ESTATE OFFICER
KOLKATA PORT TRUST
APPOINTED UNDER THE ORDER
OF THE BOARD OF TRUSTEES OF THE
KOLKATA PORT TRUST
FOR THE PURPOSES OF THE ACT

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. 1171, 1171/D Of 2011 Order Sheet No. 29

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

M/s. Jain Private Ltd.

31

26.11.19

contentions of O.P. during the course of hearing and as alleged vide several applications are as follows:

1. That the notice to quit was not served upon O.P. and the notice is bad in view of the laws of Limitation.
2. That the proceedings u/s 4 and 7 of the Act, both dated 23.03.2017 are not maintainable.
3. That the documents replied upon by KoPT is required to be given inspection to the O.P. to take appropriate and proper defense by the O.P.
4. That the original application of KoPT dated 07.05.2007 is misconceived and failed to disclose any valid cause of action on the part of KoPT. The Application has been filed by an officer of KoPT, who is not competent to file application for legal proceeding on behalf of KoPT.
5. That the fact of non consideration of O.P.'s application / prayer for renewal or extension of lease for a further period of in respect of the occupation of Port Authority has not been communicated by KoPT. No reason has been disclosed by KoPT as to how the occupation of O.P. could be termed as 'unauthorised' without considering the prayer of O.P. for grant of lease / allotment.
6. Notice u/s4 of the Act is based upon the notice to quit dated 18.03.2005 which has no force in law.
7. That O.P. is still continuing in occupation as unauthorized and there cannot be any claim for damages or mesne profit against the O.P. without a valid or legal declaration or determination of O.P.'s occupation as 'unauthorized occupation' by any competent Court/ Forum.
8. That a substantial part of KoPT's claim is barred by limitation and the O.P. is making payment of rental dues to KoPT regularly.
9. That the O.P. was paying monthly rent to KoPT and the said rent was duly accepted by KoPT till 2016 and hence, the occupation of O.P. cannot be termed as unauthorized.
10. That O.P. was allowed to occupy the premises without any demand for possession and/ or obstruction after expiry of the lease period, question of payment of damages does not arise against the O.P.
11. That O.P. has had intention to come into a settlement of dispute with KoPT.

By Order of:
THE ESTATE OFFICER
KOLKATA PORT TRUST

CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
KOLKATA PORT TRUST

Head Assistant
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

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
M/s. *Jem Private Ltd.*

31

26.11.19

Now, while passing the Final Order, I have carefully considered the documents on record and the submissions of the parties. On the question of non-receipt of ejection notice dated 18.03.2005 I have considered the matter seriously. 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 19.04.2004. The fact of the termination of lease by efflux of time has been admitted by the O.P. vide application dated 25.05.2017 and in subsequent application/s filed by the O.P. Now the question arises how far the question of non-receipt of notice to quit deserves merit in the facts and circumstances of the case. It is claimed by KoPT that the said notice was served upon the O.P. at the recorded address of O.P. at that point of time. In my view, a notice served in official course of business cannot be contradicted by a mere statement denying service of such notice. This takes me to the question whether a long term lessee like O.P. can continue in occupation when lease was expired long back and the terms and conditions of the lease 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 period of 30 years has expired long back and that there was no option for renewal of the same. 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 to ask 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

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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. 1171, 1171/D of 2011 Order Sheet No. 31

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

M/s. Jem Private Ltd.

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26-11-19

O.P. dated 18.03.2005 asking for vacation of the premises. Whether such Notice has been received by O.P. or not is quite immaterial inasmuch as O.P. was duty bound to hand over possession long back which it had failed to do. During the entire proceedings, O.P. failed to justify how it is entitled to enjoy the property after expiry of their 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. As such, in my view, the plea of non-receipt of the Notice dated 18.03.2005 is quite insignificant in the eye of law and I am not at all impressed by the submission of the O.P. 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 07.05.2007 of KoPT was culmination of KoPT's intent to obtain vacant possession of the public 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. The instant proceedings continued for a fairly long period of time and no intention was found on the part of KoPT to regularize the occupation of the O.P. I must mention that the powers of this Forum are limited by the 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 failure of O.P. to justify its occupation after expiry of the long term lease is sufficient ground in itself to pass an order of eviction against O.P. declaring its status as "unauthorized" in terms of the P.P. Act, 1971.

It is a settled question of law that a lessee like O.P. cannot claim any legal right to hold the property

By Order of:
THE ESTATE OFFICER
KOLKATA PORT TRUST
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
KOLKATA PORT TRUST
Head Assistant
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

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

M/s. Jam Private Ltd.

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after expiry of the period as mentioned in the notice of ejection, unless O.P. is succeeded in making a case of "Tenant Holding Over". The O.P. has failed to satisfy this Forum of Law about any consent on the part of KoPT in occupying the public premises, unconditionally in order to fulfill the essential ingredient of holding over. Rather it is a case of KoPT that by notice dated 18.03.2005, O.P. was directed to hand over possession. Further I am consciously of the view 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. As per Section 2 (g) of the P. P. Act 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.

On the question of time barred claim of KoPT on "limitation" and whether the proceedings u/s 4 and 7 of the Act are maintainable, I have borrowed my contention from the several decisions of the Hon'ble Judiciary, in particular the decisions of the Hon'ble Supreme Court, wherein it was decided that the 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. The Limitation Act is applicable for Civil Courts to try suits unless barred by some other Act. Section 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

By Order of
THE ESTATE OFFICER
KOLKATA PORT TRUST

CLERICAL COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
KOLKATA PORT TRUST

OFFICE OF THE LD. 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

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Sam Private Ltd. VS

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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 Courts have no jurisdiction to entertain any matter in respect of public premises as defined under the P.P. Act. Sec. 15 of the Act puts a complete bar on entertaining any matter before the Civil Court in respect of Public Premises. No period of limitation is prescribed under the P.P. Act, 1971. Under such circumstances, I am unable to appreciate the suggestion of the O.P. on this count also and I am firm in holding that Limitation Act has no application in the instant case and as such there is no bar in proceeding with the instant case.

In the instant case the Asst Land Manager of the Board of Trustees' of the Port of Kolkata had issued the notice demanding possession dated 18.03.2005 on behalf of the Land Manager, Kolkata port Trust. In my view, the Land Manager of Kolkata Port Trust is very much competent to serve ejection notice, acting on behalf of the Board of Trustees' of the Port of Kolkata, particularly when specific approval of the Chairman, KoPT is obtained before serving such notice. The Land Manager, KoPT is merely communicating the decision of the Chairman, KoPT and such ministerial act on the part of the Land Manager cannot be said to be out of jurisdiction. I am also of the view that the Land Manager, KoPT has acted as an agent of Board of Trustees' of the Port of Kolkata and such act cannot be questioned by O.Ps. on the plea of "incompetency". To take this view, I have borrowed my support from the decision of the Division Bench of Calcutta High Court

THE ESTATE OFFICER
KOLKATA PORT TRUST
APPROVED COPY OF THE ORDER
MADE BY THE ESTATE OFFICER
ON 26/11/19



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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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Jem Private Ltd. VS

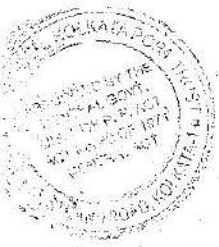
31
26.11.19

delivered on 28.01.2013 by Their Lordship Hon'ble Mr. Justice Girish Chandra Gupta and Hon'ble Mr. Justice Tarun Kumar Dutta in A.P.O. No. 108 of 2010 (Kolkata Port Trust -Vs- M/s Universal Autocrafts Pvt. Ltd. & Anr.). It may be re-called that service of notice, determining a tenancy under lease by the Land Manager, KoPT was the subject matter of challenge before the Hon'ble High Court, Calcutta and the Division Bench of Calcutta High Court confirmed that Land Manager is very much competent in serving ejectment notice on behalf of Board of Trustees of the Port of Kolkata. The matter regarding competency in serving of ejectment notice on behalf of Board of Trustees of the Port of Kolkata went upto the Apex Court of India and the Hon'ble Apex Court by its judgment and order dated 16.04.2014 (In SLP (Civil) No.18347/2013- Sidhartha Sarawgi -Versus- Board of Trustees for the Port of Kolkata and Others With SLP (Civil) Nos.19458-19459/2013- Universal Autocrafts Private Limited and Another -versus-Board of Trustees for the Port of Kolkata and others) etc. upheld the authority of the Land Manager/Officer of Kolkata Port Trust in serving ejectment notice by confirming the judgment of the Division Bench of Calcutta High Court in APO No. 108 of 2010 (Kolkata Port Trust -Vs- M/s Universal Autocrafts Pvt. Ltd. & Anr.). It has been decided by the Hon'ble Apex Court of India that lease/license can be terminated by the same authority who executed the lease/license deed and issuance of notice is a ministerial act for implementation. The Chairman, KoPT having duly authorized the Land Manager with regard to service of notice, it cannot be said that ejectment notice issued by the Land Manager, KoPT is without jurisdiction. On the same score, allegation of incompetency against the Officer-on-Special Duty for instituting the instant proceedings against the O.P., does not and can not survive.

On the prayer of O.P. for inspection of the documents relied upon by KoPT it is placed on

[Signature]

OFFICE OF THE ESTATE OFFICER
KOLKATA PORT TRUST
APPOINTED UNDER SECTION 3 OF THE PUBLIC PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT 1971
[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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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. *Jem Private Ltd.* ^{VS}

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26.11.19

record that such liberty of inspection has been provided to O.P. in terms of this Forum's Order dated 10.08.2017 and thereafter the certified copy of all the Orders as well as the petitions and pleadings filed by KoPT were served upon the O.P. in terms of this Forum's Order dated 05.12.2017 to ensure the dominance of the principles of Natural Justice in the present proceeding.

However 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. The O.P. on the other hand merely disputed the claim of the Port Authority without coming out with any material particulars. 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 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 the 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 18.03.2005. 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.

B. C. ...
ESTATE OFFICER
KOLKATA PORT TRUST
CERTIFIED COPY OF THE ORDER
12/12



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. 1171, 1171/D of 2011 Order Sheet No. 36

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
M/s. Jem Private Ltd.

31
26.11.19

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 as were notified from time to time. I am firm in holding that such notifications have a statutory force 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.

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

BY ORDER OF:
THE ESTATE OFFICER
KOLKATA PORT TRUST

CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
KOLKATA PORT TRUST

(Signature)
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

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Jem ^{VS} Private Ltd.

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26.11.19

- after the expiry of lease and after issuance of the Notice to Quit dated 18.03.2005.
2. That O.P. failed to obtain any fresh grant from the landlord i.e. the KoPT;
3. That the submission of O.P. as to non-receipt of Notice to Quit dated 18.03.2005 has no basis both in law and in fact;
4. That O.P. has failed to make out any ground for waiver of the notice to quit;
5. That O.P. has failed to make out any ground with regard to the maintainability of the present proceedings as well as application of the law of Limitation to the present proceeding.
6. That O.P.'s allegation of incompetency of the Officer of KoPT for filing application for legal proceeding on behalf of KoPT against the O.P. has no basis in law.
7. 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';
8. That ejectment notice dated 18.03.2005 as served upon O.P., demanding possession of the public premises by KoPT is valid, lawful and binding upon the parties;
9. 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;
10. 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.

BY ORDER OF:
THE ESTATE OFFICER
KOLKATA PORT TRUST

CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
KOLKATA PORT TRUST

Deputy Assistant
OFFICE OF THE LD. 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

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Tem Private Ltd.
VS

31
26.11.19

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 could be taken for execution of the order of eviction u/s. 5 of the Act as per Rule made under the Act.

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 the unauthorised occupation. I make it clear that KoPT is entitled to claim damages against O.P. for unauthorised 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 as the possession of the premises is still lying unauthorisedly with the O.P. KoPT is directed to submit a statement comprising details of its calculation of damages, 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.

R
GIVEN UNDER MY HAND AND SEAL

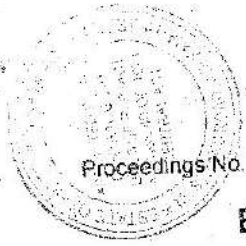
BY ORDER OF
THE ESTATE OFFICER
KOLKATA PORT TRUST

ESTATE OFFICER OF KOLKATA PORT TRUST

[Signature]
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.

1171, 1171/D

of

2011

Order Sheet No.

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
M/s Jem Private Ltd

31

26.11.19

(Signature)
(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 ***

By Order of:
THE ESTATE OFFICER
KOLKATA PORT TRUST

CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
KOLKATA PORT TRUST

(Signature)
Head of Office
OFFICE OF THE ESTATE OFFICER
KOLKATA PORT TRUST