



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. 1785

Of 2020

Order Sheet No. 7

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Sankalp Enterprise ^{VS}

FINAL ORDER

The matter is taken up today for final disposal. Relevant facts are required to be put forward in a nutshell in order to understand the chain of events leading to the proceedings. It is the case of Kolkata Port Trust (KoPT), applicant, herein, that land msg. 150 Sq.m. situate at Strand Bank Road, near Jagannath Ghat, passing underneath the Jagannath Ghat 'A' Shed Warehouse Thana- North Port Police Station, was allotted to M/s Sankalp Enterprise (O.P.) as a licensee for the purpose of Tin Shed w.e.f. 05.06.2014. It is the case of KoPT that O.P. undertook to obey all the Port rules vide its letter dated 20.03.2014. It appears from the application of KoPT dated 04.06.2020 as well as the Notice of Kolkata Municipal Corporation (KMC) issued under section 411(1) of Kolkata Municipal Corporation Act, 1980 that a major fire broke out on 08.06.2019 at the subject premises and consequently a huge portion of the subject premises under 'A' shed Jagannath Ghat was gutted down by fire. It appears that major portion of the roof of the Warehouse had collapsed and several cracks had developed in the said Warehouse. It appears that the fire and the resulting collapse of the roof have severely damaged the entire Warehouse and made the same structurally unstable. It appears that the warehouse has become unsafe and is not safe for use or occupation in any manner. It also appears that there is a high chance of the entire structure collapsing at any time. Considering the precarious condition of the building caused by the aforementioned fire incident, KMC has issued statutory notice to KoPT. The said notice issued under Section 411(1) of Kolkata Municipal Corporation Act, 1980 as addressed to the Secretary, Kolkata Port Trust directed KoPT to 1) demolish and removal of debris from the 1st Floor, 2) demolish dangerous portion at ground floor. It further states that all the above works should be done under the supervision of the ESE & LBS of the empanelled list of KMC. The said notice also states that "Failing to comply with the above requisitions steps will be taken by the Municipal Commissioner under Section 558 to execute the works required, subject to the provisions of Rule 6 of Schedule XVII of the Act....."

It appears that KoPT on 06.08.2019 served a notice for termination of licence with the O.P. with immediate effect. The said notice was served upon the O.P. and the same was accepted on behalf of O.P. on 07.08.2019.

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M/s. ^{VS} Ganakalp Enterprises

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20.07.2020.

It is strongly argued on behalf of KoPT that O.P. has got no authority to occupy the public premises after termination of licence as granted by Kolkata Port Trust.

As O.P. failed to vacate the premises in terms of the notice of termination of licence dated 06.08.2019, an application was filed by KoPT, praying for eviction and recovery of dues/ damages from O.P. Accordingly, Show Cause notice was issued by this Forum to the O.P on 17.06.2020 in terms of the provisions of the Public Premises Act, 1971 and the rules made thereunder, wherein O.P. was directed to file its Reply to the Show Cause Notice on or before 25.06.2020 in terms of the said Act. It appears from the report of the Process Server dated 17.06.2020 that hand service could not be done as O.P. was not found in the premises. However, the said Notice dated 17.06.2020 was affixed on the Public Premises in question in terms of the provisions of the said Act for notice to all concerned. The O.P. however did not appear before this Forum on the said date. Thereafter, two more opportunities were provided to O.P. on 30.06.2020 and 09.07.2020 to file its Reply to the Show Notice for the sake of Natural Justice. It is seen from the report of Process Server dated 02.07.2020 that the order dated 30.06.2020 was also affixed in the premises as the occupation in question was under lock and key. Under such circumstances, vide order 30.06.2020 O.P. was granted last opportunity to appear before the Forum and represent their case. In spite of affixation of the order on a conspicuous part of the premises none appeared on behalf of O.P. or any person interested in the property to represent their case. No papers/ documents have also been filed by O.P. in answer to the Show Cause Notice. Finally, on 03.07.2020 this Forum reserved the matter for passing the Final Order.

It is seen from record that inspite of repeated attempts, the O.P. did not appear before this Forum. As nobody represented before this Forum either on behalf of O.P or on behalf of any person/s interested in the property in question inspite of sufficient opportunities and repeated service of notice of hearing I find no reason to withhold passing of the Order in the instant matter. In other words, I am satisfied with the service of notice to all concerned as mandated under law.

In view of the aforementioned circumstances, as there is no Reply to the Show Cause Notice/s under Sections 4 of the Act, either on behalf of O.P or on behalf of any person/s



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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Sanjay Enterprises ^{VS}

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20.07.2020

interested in the property in question, inspite of sufficient chances being given, I am left with no other alternative but to decide the matter ex-parte and issue the Order of Eviction against O.P. as prayed for on behalf of KoPT, on the following grounds/reasons.

- I. That O.P has failed to file reply to the Show Cause Notice under Section 4 of the Act inspite of sufficient chances for a considerable period.
- II. That O.P has failed to make out any case in support of their occupation as "authorised occupation" inspite of sufficient chances being provided in terms of Sec 2(g) of the said Act.
- III. That O.P has failed to bear any witness or adduce any evidence in support of their occupation as "authorised occupation" inspite of sufficient chances being provided.
- IV. That the premises has become dangerous for use after the same was gutted by fire on 08.06.2019.
- V. That the A Shed Jagannath Ghat Warehouse requires to be demolished as per the notice issued by KMC under section 411(1) of Kolkata Municipal Corporation Act, 1980, failing which requisite steps would be taken against KoPT by the Municipal Commissioner under Section 558 of the KMC, Act 1980 to execute the work.
- VI. That the notice of termination dated 06.08.2019 as served upon O.P by the Port Authority is valid, lawful and binding upon the parties and O.P's occupation has become unauthorised in view of Section 2(g) of the P.P Act.
- VII. That vide letter dated 20.03.2014 O.P. had undertaken to obey all the Port rules.
- VIII. 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



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M/s. ^{VS} Sanjay Ramesh

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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 Law up to the date of recovery of possession of the same. 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.

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 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.

All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL

Pavonita Guha Majumdar
(P. Ghosh Majumdar)
ESTATE OFFICER.

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



**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
15, STRAND ROAD
(4th Floor)
KOLKATA - 700 001

Court Room at the 1st Floor
6, Fairlie Place Warehouse
Kolkata- 700 001.

REASONED ORDER NO. 08 DT 20.07.2020
PROCEEDINGS NO.1785 of 2020

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

-Vs-

M/s. Sankalp Enterprise

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. Sankalp Enterprise of P-221/2, Strand Bank Road, 2nd Floor, Kolkata-
700 001** is in unauthorized occupation of the Public Premises specified in the
Schedule below:

REASONS

- I. That O.P has failed to file reply to the Show Cause Notice under Section 4 of the Act inspite of sufficient chances for a considerable period.
- II. That O.P has failed to make out any case in support of their occupation as "authorised occupation" inspite of sufficient chances being provided in terms of Section 2(g) of the said Act.
- III. That O.P has failed to bear any witness or adduce any evidence in support of their occupation as "authorised occupation" inspite of sufficient chances being provided.
- IV. That the premises has become dangerous for use after the same was gutted by fire on 08.06.2019.
- V. That the A Shed Jagannath Ghat Warehouse needs to demolished as per the notice issued by KMC under section 411(1) of Kolkata Municipal Corporation Act, 1980, failing which requisite steps would be taken against KoPT by the Municipal Commissioner under Section 558 of the KMC, Act 1980 to execute the work.
- VI. That the notice of termination dated 06.08.2019 as served upon O.P by the Port Authority is valid, lawful and binding upon the parties and O.P's occupation has become unauthorised in view of Section 2(g) of the P.P Act.

Please see reverse

- VII. That vide letter dated 20.03.2014, O.P. had undertaken to obey all Port Rules.
- VIII. 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 _____ dated _____ 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. Sankalp Enterprise of P-221/2, Strand Bank Road, 2nd Floor, Kolkata-700 001** 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. Sankalp Enterprise of P-221/2, Strand Bank Road, 2nd Floor, Kolkata-700 001** 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

Land/ structure msg 150 sqm at Strand Bank Road, near Jagganath Ghat (under Plate No. A Shed or thereabouts within the Presidency town of Kolkata under North Port Police Station butted and bounded by the Strand Road in the North, by Trustees' land used as a platform in the East, by the Strand Bank Road in the south and by Strand Bank Road alongside 'A' shed Jagganath Ghat in the west. Trustees' means the Board of Trustees for the Port of Kolkata.

Dated: 20.07.2020



Pranab Kumar Ghosh
Signature & Seal of the
Estate Officer.

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