



**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.1743/D OF 2019
ORDER NO.16 DATED : 22.07.2020

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 Bengal Tools Ltd,
2, Jessore Road, Dumdum,
Kolkata-700028
AND ALSO OF
Srachi Tower,
686, Anndapur,
E.M Bypass- R.B. Connector Junction,
Kolkata-700107.

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 12.07.2019 you are called upon to show cause on/or before 26.07.2019 why an order requiring you to pay damages of Rs. 19,89,617/- (Rupees Nineteen Lakhs Eighty Nine thousand Six hundred seventeen only) together with [compound interest] for unauthorised use and occupation of the said premises, should not be made.

And whereas 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 Rs. 19,89,617/- (Rupees Nineteen Lakhs Eighty Nine thousand Six hundred seventeen only) assessed by me as damages on account of your unauthorised occupation of the premises for the period from 10.09.2014 to 19.06.2015 (both days inclusive) to Kolkata Port Trust by 05.08.2020.

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 compound interest @ 6.20 % 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 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 through the Collector.

SCHEDULE

Plate No.D-816

The said piece or parcel of room space msg structure : RCC-37.439. Sq.m, CI-16.405 sq.m & ASB-47.316 sq.m appurtenant land : 1463.19 sq.m thereabouts is situated at Kolkata Port Trust's North Workshop, at Panbazar, under SPPS, Kolkata. Trustees' means the Board of Trustees' for the Port of Kolkata.

Date 22.07.2020

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. 1743/D Of 2019 Order Sheet No. 10

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S Bengal Tools Limited VS (Plate no D-816)

FINAL ORDER

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22.07.2020

The instant proceedings No. 1743/D of 2019 arises out of the application bearing No. Lnd. 5579 dated 02.08.2017 filed by the Kolkata Port Trust (KoPT), the applicant herein, praying for an order of recovery of arrear compensation and other charges etc. along with accrued interest in respect of the public premises as defined in the Schedule of said application, against M/S Bengal Tools 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 being structures measuring RCC-37.439 sq.m, CI-16.405 sq.m & ASB-47.31 sq.m along with appurtenant land measuring about 1463.19 sq.m or thereabouts adjacent to KoPT's North Workshop adjacent to slipway No.2 at Pan bazar, Thana- SPPS (under Plate No.D-816) as Licensee, more fully described in the 'Schedule of Property' of the KoPT's application dated 02.08.2017.

The allegations levelled by KoPT against the O.P is that while in possession of Port property as Licensee, the O.P has defaulted in making payment of damages/compensation and taxes and also accrued interest thereon in gross violation of the said licence agreement, the details of which has given in 'Schedule-C' of the KoPT's application.

It is the case of KoPT that the O.P. was asked to pay damages/compensation up to 19.06.2015 as because O.P has vacated the subject premises on 19.06.2015.

Considering the submission and documents as submitted by KoPT, Notice to Show Cause dated 12.07.2019 (vide Order-01 dated 12.07.2019) was issued by this forum to the O.P. U/s 7 of the Public Premises (Eviction of Unauthorized Occupation) Act, 1971 to show cause as to why an order requiring to pay arrear damages/compensation together with interest

BY ORDER OF
THE ESTATE OFFICER
KOLKATA PORT TRUST

CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
KOLKATA PORT TRUST
22.07.2020

HEAD 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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M/s Bengal Tools Limited **VS** (Plate no. D-816)

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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 of answering all material questions connected with the matter along with the evidence which the opposite party intends to produce in support of this case.

The said notice served through Speed Post to the correct recorded address of O.P. at 2, Jessore Road, Kolkata-700028 and also at Shrachi Tower, 686, Anandapur, E.M Bypass- R.B Connector Junction Kolkata-700107. It appears from records that the Notice sent to both the recorded addresses of O.P. were not returned back. The Notice have also been sent to the occupation of O.P. by hand delivery. It appears from the report of the Process Server dated 18.07.2019 that order have been served upon O.P personally and the copy of the said Notice/s have also been affixed on the property under schedule on the same day at about 4 P.M. in compliance of the provisions of the Act.

After issuance of the aforesaid notice, On the day fixed for appearance and filing of reply to the Show Cause by the O.P., i.e on 26.07.2019 one Mr. Rajib Sommadar, claiming himself as Sr. Manager (Legal) for O.P. appeared before this Forum and prayed one-month time for giving reply to the Shaw Cause. However, it is seen that O.P has failed to file his reply on four consecutive occasion. Thereafter on 01.11.2019 O.P has finally filed his reply alleging interalia that KoPT's claim is misconceived, baseless, and barred by limitation therefore liable to be dismissed. Moreover, KoPT has illegally held their security Deposit of Rs.7,79,837.00 Despite the fact of possession being handed over to KoPT and illegally and arbitrarily seized their entire possession, machineries and belongings. Thereafter dated 15.11.2019 KoPT has filed their rejoinder. In their rejoinder, KoPT has strongly contended that O.P has failed to pay the arrear licence fees with accrued interest which constrained KoPT to withhold the Security Deposit, if all the dues are

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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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cleared of by O.P such Security Deposit will be refunded to O.P without charging any interest. That's apart O.P's plea of limitation also has no applicability in a proceedings before the Estate Officer. Thereafter on 22.01.2020 O.P filed comment against the rejoinder of KoPT denying strongly the all averment of such application. However, this Forum on 24.01.2020 allowed further opportunity to KoPT to furnish a point to point replication against the comment filed by O.P. Finally, on 31.01.2020, when KoPT has filed such replication refuting all the subsequent allegations made by O.P, the Final order was reserved in this instant matter in absence of O.P.

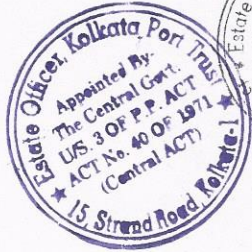
Now while delivering the final order, I have carefully gone through the application/documents on record. Such as original application bearing No. Lnd. 5579 dated 02.08.2017 filed by KoPT, copy of Licence Agreement being No.28917 dated 29.10.2013 the statement of accounts produced by the Port Authority, reply filed by O.P dated 29.08.2019 as received by this Forum on 01.11.2019, rejoinder of KoPT dated 15.11.2019, comment filed by O.P on 18.01.2020 as received by this Forum on 22.01.2020 and replication filed by KoPT on 31.01.2020.

On the basis of such documents on records my considered view is that the O.P.'s objection that KoPT's claim is misconceived, baseless, and barred by limitation therefore, liable to be dismissed is not at all tenable in the eye of law, because in *para No.4* of O. P's reply it is specifically stated by O.P that.....*It is denied that we are not under any obligation under law to make any payment whatsoever to KoPT or is entitled to make a claim as alleged or at all....*From this point it is clear that O.P has admitted his liability to pay such dues and is a clear defaulter of damages/compensation and taxes for a considerable period and such application of KoPT is not misconceived or baseless. Regarding the applicability of limitation, I must say that The Limitation Act has no application in the proceedings before the Estate Officer which is not a Civil Court, governed by the Civil Procedure Code. Sec. 15 of the

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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

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P.P. Act puts a complete bar in entertaining any matter before the Civil Court in respect of Public Premises. As such, I am firm in holding that Limitation Act has no application in the instant case. Moreover, Shri Rajib Sommadar, who claimed to be the Sr. Manager (Legal) and Sri S. Sinha Roy who appeared on a subsequent date for O.P. had neither filed any Letter of Authority or Identity to represent the O.P. therefore I am quite sceptical about the status of representing persons on behalf of O.P. O.P's allegation that KoPT has illegally held their Security Deposit of Rs.7,79,837.00 and despite possession being handed over to KoPT illegally and arbitrarily seized their entire possession, machineries and belongings, is, in my considered opinion, is not maintainable. KoPT in their rejoinder dated 15.11.2019 has unequivocally stated that Security Deposit is a non interest bearing and refundable amount and it would be returned when all dues are cleared off by O.P. therefore, O.P has no claim on the Security Deposit unless the dues are cleared off first. More so, O. P's allegation of illegal and arbitrary seizure of machineries and belongings is merely a concocted fact. Report of the Joint Inspection dated 28.05.2015 as attached with KoPT's comment bearing No. Lnd.5579/(Loose)/20/193 dated 31.01.2020, in terms of the recommendation of Condemnation Committee for the purpose of disposal of various materials as well as structure reveals that representative of O.P was present there and they informed that they have use for all the 4 nos of structures existing on the licenced area and it has also been revealed that those materials were put up for disposal several occasion but the bids received were lower than the RSP & hence could not be recommended for disposal. The O.P., it appears, had clear knowledge that KoPT was going to take over the property and as per PP Act, all belongings found on the property on the day of takeover will also be taken over/seized with no further claim on these by the O.P. Therefore, this allegation of O.P also does not stand on merit of logic. In such a situation, I am of the firm view that there is

BY ORDER OF
THE ESTATE OFFICER
KOLKATA PORT TRUST

CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER

S.D.R.
24.07.2020

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

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no bar to uphold the contention of the Port Authority as brought out and to accept the claim of KoPT on account of damages/compensation etc. In fact, I have nothing to disbelieve in respect of KoPT's claim against O.P. as per statement of accounts maintained regularly in KoPT's office in regular course of business.

It is my considered view that a sum of Rs.19,89,617/- for the period 10.09.2014 to 19.06.2015 (both day inclusive) is due and recoverable from O.P. by the Port authority on account of damages/compensation and O.P. must have to pay such dues to KoPT on or before 5th August, 2020, failing which KoPT shall forfeit the Security Deposit of Rs. 7,79,837.00 as partial recovery of the dues. It is clarified that such dues will attract compound interest @ 6.20 % 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, if any made so far by O.P., in terms of KoPT's books of accounts. I sign the formal order u/s 7 (2) & (2-A) of the Act.

I make it clear that in the event of failure on the part of O.P. to pay the amount to KoPT as aforesaid, Port Authority is entitled to proceed further for recovery of its claim in accordance with law.

All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL


22/07/2020
(P. Mukhopadhyay)
ESTATE OFFICER

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 LD. ESTATE OFFICER
KOLKATA PORT TRUST

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