



# 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. 1170, 1170/D Of 2011 Order Sheet No. 26

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

**VS**  
M/S. Uma Shankar Shukla.

37  
22.07.2020

### FINAL ORDER

The instant Proceeding No.1170, 1170/D of 2011 arising out of an application bearing No. Lnd. 4121/II/10/386 Dated 05.05.2010 is taken up today for final disposal. It is the case of Kolkata Port Trust (KoPT), applicant herein, that M/S Uma Shankar Shukla, O.P. herein, originally came into occupation of KoPT's land measuring about 137.032 Sq.m and 62.71 sq.m at 92/26, Gareden Reach Road, Kolkata -700043, both comprised under Plate Nos. D-81 and D-90, being the Public Premises in question, as a long term lessee on certain terms and conditions w.e.f 01.07.1952. At the time of issuing Show Cause notice, main allegations of KoPT were that O.P. violated the conditions of grant of tenancy by way of not making payment of rental dues, compensation charges and also unauthorisedly subletting the possession to private Companies. It is strongly argued on behalf of KoPT that O.P. has no authority under law to occupy the public premises after determination of said lease in question w.e.f 01.11.1967 vide Notice to quit dated 05.09.1967 read with vacation notice dated 16.11.2009. It is also the submission of KoPT that that O.P. is liable to pay damages for wrongful use and occupation of the Port property upto the date of handing over of clear vacant possession of the same.

OFFICE OF THE ESTATE OFFICER  
KOLKATA PORT TRUST  
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04/07/2020  
OFFICE OF THE ESTATE OFFICER  
KOLKATA PORT TRUST

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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. 1170, 1170/D Of 2011 Order Sheet No. 27

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

**VS**  
M/s. Uma Shankar Shukla.

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22.07.2020

This Forum issued Show Cause notice (Vide Order No.7 dated 15.02.2018) under Section 4 of the Act (for adjudication of the prayer for issuance of Order of Eviction etc.) and Show Cause Notice/s under 7 of the Act (for adjudication of the prayer for recovery of compensation/damages, interest etc) all dated 19.02.2018.

It is placed on record that the said Notices were 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 the mandate of the Act. The Notices sent by Speed Post were not returned back to this Forum. However, it appears from the report of Process Server dated 21.02.2018 that the O.P. has received such notice/s personally on 21.02.2018 and affixation was also done on the subject premises on the same day at about 12.15 P.M. as per the mandate of the said Act.

O.P. entered appearance through its Ld' advocate and filed on 15.05.2018 his Reply/Written Objections duly signed by Sri Uma Shankar Shukla, followed by Letter/Petition dated 04.09.2018 and 26.08.2019. Thereafter, KoPT also filed its arguments and counter-arguments through letters/applications on various dates. Both the parties were heard extensively. Finally when the matter had been come up for final

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THE  
OFFICER  
KOLKATA PORT TRUST

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Proceedings No. 1170, 1170/D Of 2011 Order Sheet No. 28

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

M/s. Uma Shankar Shukla

37

22.07.2020

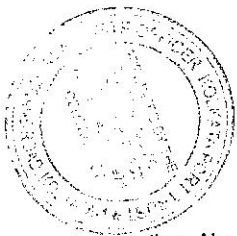
hearing, O.P did not turn up before the Forum on repeated call. Considering continuation of the Proceeding unnecessary, on 07.11.2019, the Final Order was reserved in the matter.

Now while passing the final order, upon considering the deliberations of the parties and after carefully going through all the documents placed on record, I find that the allegations of KoPT against the O.P are three folds i.e, nonpayment of rent, failure in liquidation of demand notice for compensation charges for unauthorized occupation of the premises and unauthorised subletting of such premises to the different private agencies in violation of the condition of such lease in question.

Now as regards of nonpayment of rent, I must say that a detailed Statement of Accounts generated on 29.07.2016 as furnished by KoPT clearly shows that no rent is due from O.P at present. It is already adjust on 23.05.2008 i.e before the issuance of Shaw Cause notice even before the initiation of proceeding. Therefore, such allegation has no leg to stand. However, as regards the compensation due in question, I must say that KoPT' allegation is justifiable because the Statement of Accounts generated very recently(22<sup>nd</sup> Oct 2019) shows that O.P is still liable to pay such dues for unauthorized use &

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04/08/2020

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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. 1170, 1170/D Of 2011 Order Sheet No. 29

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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occupation of the subject public premises in question.

As regards the unauthorised subletting of such premises to the different private agencies in question, O.P's claim in para no 11 of it's reply/written objection that he had never parted with possession to any other third party at any relevant point of time etc. is in my view not sufficient to defend this type of serious allegation of 'unauthorized subletting'. I must say that O.P has definitely violated the condition of such long term lease. The Minute of joint inspection as submitted by KoPT on 13.12.2018, clearly shows that although no encroachment was found but different Shops of different persons are existing there. Moreover, such joint inspection also reveals that the first floor of the subject premises is presently being used for residential purposes by Shri Uma Shankar Shukla which is also against the condition of such lease because such public premises was leased to O.P only for commercial purposes not for any other purposes and the same has been admitted by O.P in Para no 3 of it's reply/written objection. since it is a settled law that admitted facts need not be proved, I have no bar in accepting that breach as committed by O.P.

Apart from the abovementioned issues, O.P raised another point in para no.8 of his reply/written objection that as he has been

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KOLKATA PORT TRUST  
24/03/2020



### Estate Officer, Kolkata Port Trust

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Proceedings No. 1170, 1170/D Of 2011 Order Sheet No. 30

### BOARD OF TRUSTEES OF THE PORT OF KOLKATA

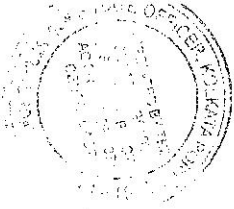
M/S. Uma <sup>VS</sup> Shankar Shukla

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22.07.2020

regularly paying the rents time to time his occupation should be reckoned as authorized occupation and approved the earlier representations treating as renewal of such lease. But in my opinion Mere acceptance of rent during pendency of the eviction proceedings does not recognize any occupation as authorized occupation. As per law, in order to constitute any occupation as authorized, O.P. must have to prove that KoPT by accepting rent had intended to treat the lease as subsisting. In absence of any such intention on the part of KoPT being proved, mere acceptance of an amount tendered by O.P. during pendency of the proceedings cannot be said to be a "waiver" on the part of KoPT. In the present case in hand KoPT actively prosecuted the proceedings for ejection against O.P. and as such it cannot be an accepted proposition that the notice to quit/s have been waived by any sense of law and payment made by O.P has been reckoned as a payment of an authorized occupant. As regards the prayer of renewal I must say that no evidence has been laid on behalf of O.P. by way of producing any Receipt for acceptance of any payment wherefrom it could at least be inferred that the Port Authority has any intention to the continuance in occupation by accepting any amount as rent for such occupation. I must say with my clear observation that granting of allotment of property in terms of

Order of:  
ESTATE OFFICER  
KOLKATA PORT TRUST

*[Handwritten Signature]*  
04/08/2020  
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. 1170, 1170/D Of 2011 Order Sheet No. 31

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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the Option Clause of the Mother Lease is subject to fulfillment of the terms and conditions on the part of O.P. and violation of any terms and conditions like nonpayment of compensation charges, unauthorized subletting etc. disentitles O.P. to claim renewal of lease as per law.

Discussion against the forgoing reveal that notice to quit dated 05.09.1967 read with vacation notice dated 16.11.2009 is validly issued and served on O.P and the same is binding and very much enforceable, in the facts and circumstances of the case. Thus being satisfied as above, I am left with no other alternatives but to issue the order of eviction against O.P as prayed for on behalf of KoPT, on following grounds/reasons.

1. That O.P has violated the condition of such long term lease by unauthorisedly subletting such public premises to different private agencies without any lawful authority.
2. That O.P has failed to liquidated the KoPT's demand notice for compensation charges which is due for their continued unauthorized use and occupation.
3. That the O.P or any other person/occupant have failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation"

*[Signature]*

SYA

*[Signature]*  
29/07/2020  
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. 1170, 1170/D of 2011 Order Sheet No. 32

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

M/s. Uma Shankar Shukla.

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22.07.2020

- 4. That the notice to quit dated 05.09.1967 read with vacation notice dated 16.11.2009 as served upon O.P. by the Port Authority is valid, lawful and binding upon the parties and O.P.'s occupation and that of any other occupant of the premises has become unauthorised in view of Sec.2 (g) of the P.P. Act.
- 5. That O.P. is liable to pay damages for wrongful use and occupation of the public premises up to the date of handing over the clear, vacant and unencumbered possession to the port authority.

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

Director of  
Kolkata Port Trust  
Kolkata

04/08/2020

Director  
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. 1170, 1170/D of 2011 Order Sheet No. 33

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

**VS**  
M/s Uma Shankar Shukla

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22.07.2020

Likewise, 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 unauthorised occupation. As such, I must say that Rs 6,55,231.93 as claimed by the Port Authority as damages in relation to the subject premises in question, is correctly payable by O.P. for the period 01.11.1967 to 04.05.2017 (both days inclusive) and it is hereby ordered that O.P. shall make payment of the aforesaid sum to KoPT by 11.08.2020 The said damages shall 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 orders u/s 7 of the Act.

I make it clear that KoPT is entitled to claim damages against O.P. for unauthorized 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, and as such the liability of O.P. to pay damages extends beyond 04.05.2017 as well, till such time the possession of the

*[Signature]*

OFFICER  
KOLKATA PORT TRUST  
*[Signature]*  
04/08/2020  
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. 1170, 1170/D Of 2011 Order Sheet No. 34

**BOARD OF TRUSTEES OF THE PORT OF KOLKATA**

M/s. Uma <sup>VS</sup> Shankar Shukla

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22.07.2020

premises continues to be under the unauthorized occupation with the O.P. KoPT is directed to submit a statement comprising details of its calculation of damages after 04.05.2017, 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.

GIVEN UNDER MY HAND AND SEAL

(A.K Sarkar)

ESTATE OFFICER

By Order of:  
ESTATE OFFICER  
KOLKATA PORT TRUST

*[Handwritten signature]*  
04/08/2020  
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 \*\*\*



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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 1<sup>st</sup> Floor  
of Kolkata Port Trust's  
Fairlie Warehouse  
6, Fairley Place, Kolkata- 700 001.

REASONED ORDER NO.37 DT 22.07.2020  
PROCEEDINGS NO. 1170 OF 2011

BOARD OF TRUSTEES OF THE PORT OF KOLKATA  
-Vs-  
**M/S Uma Shankar Shukla (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 I, the undersigned, am satisfied, for the reasons recorded below that **M/S. Uma Shankar Shukla, Sole Surviving Administrator to the Estate of Late Bhagabati Prosad Shukla, of 92/26, Garden Reach Road, Kolkata-700043 AND ALSO OF Village- Kedaurah, Post- Satni P.S- Lallunge, District- Protapgarh, U.P** is in unauthorized occupation of the Public Premises specified in the Schedule below :

**R E A S O N S**

1. That O.P has violated the condition of such long term lease by unauthorisedly subletting such public premises to different private agencies without any lawful authority.
2. That O.P has failed to liquidated the KoPT's demand notice for compensation charges which is due for their continued unauthorized use and occupation.
3. That the O.P or any other person/occupant have failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation"
4. That the notice to quit dated 05.09.1967 read with vacation notice dated 16.11.2009 as served upon O.P. by the Port Authority is valid, lawful and binding upon the parties and O.P.'s occupation and that of any other occupant of the premises has become unauthorised in view of Sec.2 (g) of the P.P. Act.
5. That O.P. is liable to pay damages for wrongful use and occupation of the public premises up to the date of handing over the clear, vacant and unencumbered possession to the port authority.

2

**PLEASE SEE ON REVERSE**

(2)

A copy of the reasoned order No. 37 dated 22.07.2020 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. Uma Shankar Shukla, Sole Surviving Administrator to the Estate of Late Bhagabati Prosad Shukla, of 92/26, Garden Reach Road, Kolkata-700043 AND ALSO OF Village- Kedaurah, Post- Satni P.S-Lallgunge, District- Protapgarh, U.P** 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. Uma Shankar Shukla, Sole Surviving Administrator to the Estate of Late Bhagabati Prosad Shukla, of 92/26, Garden Reach Road, Kolkata-700043 AND ALSO OF Village- Kedaurah, Post- Satni P.S-Lallgunge, District- Protapgarh, U.P** 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

#### Plate No.D-81

The said piece or parcel of land measuring about 137.032 sq.m under Plate No.D-81 or thereabouts is situated at Garden Reach Road, Muchikhola, P.S. West Port Police Station, Calcutta. It is bounded on the North by Garden Reach Road, on the East by the Trustees' land leased to M/S Moni Mohan Chandra & Ors., on the South by the Trustees' passage & then Trustee's leased out land & on the West by the Trustees' drain then Road Ways.

#### Plate No. D-90

The said piece or parcel of land measuring about 62.71 sq.m under Plate No.D-90 or thereabouts is situated at Garden Reach Road near Gate No.3 N.S.D., P.S-West Port Police Station. It is bounded on the north by the Garden Reach Road, on the East by the Trustees' quarters, on the South by the Trustees' wall and then Trustee's' land & on the west Trustees wall & then Trustees' land .

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

Date- 04/08/2020



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  
(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 1<sup>st</sup> Floor  
of Kolkata Port Trust's  
Fairlie Warehouse  
6, Fairlie Place, Kolkata- 700 001.

PROCEEDINGS NO.1170/D OF 2011  
ORDER NO.37 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. Uma Shankar Shukla,  
Sole Surviving Administrator to the  
Estate of Late Bhagabati Prosad Shukla,  
of 92/26, Garden Reach Road, Kolkata-700043  
AND ALSO OF  
Village- Kedaurah, Post- Satni  
P.S-Lallgunge, District- Protapgarh, U.P**

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 19.02.2018 you are called upon to show cause on/or before 06.03.2018 why an order requiring you to pay damages of Rs. 6,55,231.93 (Rupees Six Lakhs Fifty five thousand Two hundred Thirty one and paisa Ninety three 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. 6,55,231.93 (Rupees Six Lakhs Fifty five thousand Two hundred Thirty one and paisa Ninety three only) assessed by me as damages on account of your unauthorised occupation of the premises for the period from 01.11.1967 to 04.05.2017 (both days inclusive) to Kolkata Port Trust by 11.08.2020.

*2*

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 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-81**

The said piece or parcel of land measuring about 137.032 sq.m under Plate No.D-81 or thereabouts is situated at Garden Reach Road, Muchikhola, P.S. West Port Police Station , Calcutta. It is bounded on the North by Garden Reach Road, on the East by the Trustees' land leased to M/S Moni Mohan Chandra & Ors., on the South by the Trustees' passage & then Trustee's leased out land & on the West by the Trustees' drain then Road Ways.

**Plate No. D-90**

The said piece or parcel of land measuring about 62.71 sq.m under Plate No.D-90 or thereabouts is situated at Garden Reach Road near Gate No.3 N.S.D., P.S-West Port Police Station. It is bounded on the north by the Garden Reach Road, on the East by the Trustees' quarters, on the South by the Trustees' wall and then Trustee's' land & on the west Trustees wall & then Trustees' land .

Date 04/08/2020



Signature & Seal of the  
Estate Officer.

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