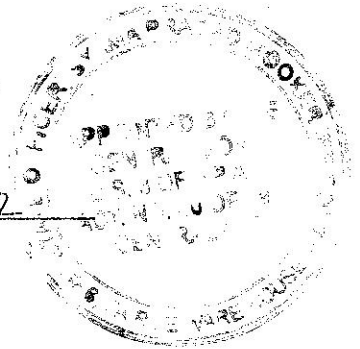


Kolkata Port Trust, Kolkata
Smt. Ashima Khan & Sri Dilip Kumar Khan
(1448/R of 2014)

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. 1448/R of 2014 Order Sheet No. 22

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Smt. Ashima Khan & Sri Dilip Kumar Khan ^{VS}

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28.09.2020

FINAL ORDER

The instant proceedings No. 1448/R of 2014 arises out of the application bearing No. Lnd.1152/III/14/2907/1 dated 15.01.2014 filed by the Kolkata Port Trust (KoPT), the applicant herein, praying for an order of recovery of rent and other charges etc. along with accrued interest in respect of the public premises as defined in the Schedule of said application, against Smt. Ashima Khan & Sri Dilip Kumar Khan, 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 measuring 235.79 sq.mt. or thereabout situated at Cross Road, Ramkristopur, Howrah (under Plate No. HL-106/A and HL-106/1/A) as short term lessees, more fully described in the Schedule- A of Property of the KoPT's application. The allegations levelled by KoPT against the O.P is that while in possession of Port property as short term lessees, the O.P has defaulted in making payment of rent and taxes and also accrued interest thereon the details of which has given in 'Schedule-B' of the KoPT's application.

It is the case of KoPT that the O.P. was asked to pay rents upto 31.10.2013 as because the subject premises had already been taken over by KoPT on 01.11.2013.

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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

Order No. 48/R of 2014 Order Sheet No. 23

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Smt. Ashima Khan ^{VS} Sri Dilip Kumar Khan

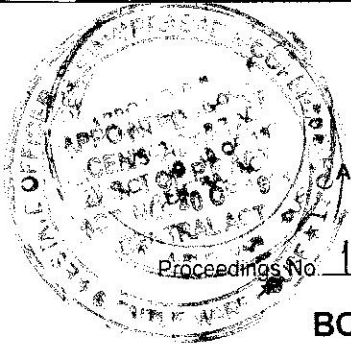
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28.09.2023

Considering the submission and documents as submitted by KoPT, Notice to Show Cause dated 29.03.2017 (vide Order No.5 dated 29.03.2017) 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 rent together with interest, 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 to answer of material question connected with the matter along with the evidence which the opposite party intends to produce in support of this case.

It is placed on record that the said Notice was sent to the recorded address of O.P. vide Registered Post, hand delivery as well as by affixation of the same in the Public Premises in question as per mandate of the Act. Thereafter O.P appeared and file his letter of authority to represent before this Forum and contested the matter by filing his Reply to the Show Cause on 19.04.2017 and thereon seeks the original application filed by KoPT and other requisite documents which KoPT has relied upon and also alleging inter-alia that O.P has received the subject plot of land to KoPT on 01.11.2013 and the rent was enhanced but O.P's earning is fixed and profit out of business is of a specific nature.

Therefore, such sudden enhancement of rent is illegal, arbitrary in nature. O.P. submits that the rate of rent varied from 1996 for each and every month till 1st November 2013, whereas the rate should have been consisted for a

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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. 1448/R of 2014 Order Sheet No. 25

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Smt. Ashima Khan ^{VS} Sri Dilip Kumar Khan

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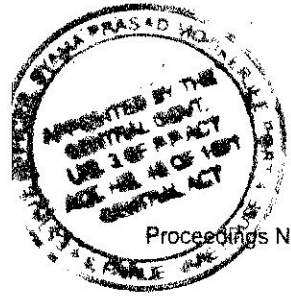
of KoPT in a peaceful and vacant condition on 01.11.2013. It is also a fact that at the time of vacating the possession, there were arrear rental dues/charges as also interest for delayed payment payable by O.P. Such outstanding rental dues/charges is never denied by O.P.

Now after carefully considering the documents on record and the submissions of both the parties, my considered view is that O.P's allegations are regarding sudden enhancement of rents and the said proceeding is barred by limitation as such are not tenable in the eye of law. It is the case of O.P. that KoPT's claim against O.P. is time barred. During the course of hearing, KoPT has placed before me computerized statement of accounts, maintained in official course of business, from where non-payment of rent by the O.P. is very much evident. O.P.'s allegation that sudden increase of rent is illegal and arbitrary is not justifiable and acceptable to me because when charges for occupation and enjoyment of Port Property are fixed up in accordance with the provisions of the Major Port Trusts Act, it is very difficult to accept any contention regarding charging fair rent. I have nothing to disbelieve the said claim of KoPT, in the backdrop of the case.

KoPT also submits with argument before this Forum of Law that Ramjas Foundation & another Vs. Union of India & Ors case has no relevance in the present case in hand and totally irrelevant. In support of KoPT's contention regarding non-applicability of Limitation Act, decision of Madhya Pradesh

28/09/2020
ESTATE OFFICER
KOLKATA PORT TRUST
KOLKATA

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Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises
(Eviction of Unauthorized Occupants) Act 1971

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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High Court in AIR 1980 MP 196(DB) is relied upon, wherein it was decided that 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. Enactment of the Public Premises (Eviction of Unauthorized Occupants) Act 1971 which introduced Sec. 15 with the object of making the Act constitutionally valid and not violative of Article 14 of the Constitution of India. The Limitation Act is applicable for Civil Courts to try suits unless barred by some other Act. Sec.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 nature excepting suits of which their cognizance is either expressly or impliedly barred.”

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 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. The Division Bench judgment of Madhya Pradesh High Court reported in AIR 1980 MP 196 (D.B) (L.S. Nair -VS-Hindusthan Steel Ltd. & Ors.) has its applicability in all sense of law. The judgment of the Delhi High Court in Nandaram's case 87 (2000) DLT 234 also supports the view taken by Hon'ble Calcutta High Court.

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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

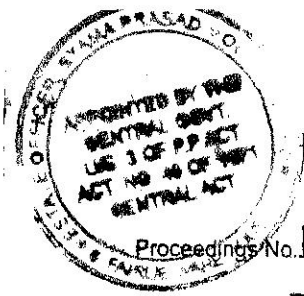
Smt. Ashima Khan ^{VS} Sri Dilip Kumar Khan

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In order to appreciate the stands taken on behalf of the parties in dispute, it would be expedient to go into the statutory provisions of the Civil Procedure Code, Limitation Act and P.P. Act. It has been argued on behalf of KoPT that the Articles under Limitation Act are applicable to Suit only. To my understanding Civil Suits are tried by the Courts as per the Civil Procedure Code and proceedings before this Forum of Law are guided by the P.P. Act which provides a code for adjudication of matters relating to public premises. However, Civil Procedure Code has only a limited application to the proceedings before the Estate Officer in-as-much-as that an Estate Officer shall for the purpose of holding an enquiry under the P.P. Act, have the powers as are vested in a Civil Court under the Code of Civil Procedure while trying a suit in respect of summoning and enforcing attendance of any person and examining him on oath which requires the discovery and production of documents. Section 8 of P.P. Act makes it abundantly clear that an Estate Officer under P.P. Act enjoys a very restricted power of CPC. As per CPC, the courts shall have jurisdiction to try all suits of a civil nature, excepting suits for which their cognizance is either expressly or impliedly barred. As per Sec.3 and 2(j) of the Limitation Act 1963, the period of limitation as prescribed in the Limitation Act (as per Schedule of the Limitation Act) applies for "suit" etc. instituted after the prescribed period which shall be dismissed although limitation has not been set up as defense. For adjudication of a "suit" a court must have to be governed by Civil Procedure Code and Indian

30.09.2020
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Estate Officer, Kolkata Port Trust

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(Eviction of Unauthorised Occupants) Act 1971



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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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Evidence Act. But P.P. Act provides a complete code. Civil Procedure Code and Indian Evidence Act are not applicable here (New India Assurance Case -2008 (3) SCC 279 = AIR 2008 SC 876).

In the P.P. Act, there is no prescribed period of limitation for filing applications with the prayer for eviction and adjudication of any claim on account of rental dues/damages etc arising out of any public premises though there is specific period of limitation for filing appeal against the order of the Estate Officer, the adjudicating authority under the P.P. Act as per section 9 of the said Act.

In view of the discussion above, I am firm in holding that this Forum of Law is very much competent under law to adjudicate the claim of KoPT against O.P. and Limitation Act has no application to the proceedings before the Estate Officer which is a quasi-judicial authority under P.P. Act and neither a Civil Court to be governed by the Civil Procedure Code nor a "court" within the scheme of the Indian Limitation Act.

Therefore, in view of this circumstance, I have no bar to accept the claim of KoPT on account of arrear rental dues etc. In fact, I have nothing to disbelief 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.1,62,911/- for the period upto 31.10.2013 is due and recoverable from O.P.

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f. S. D. E.
30.09.2020

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. 1448/R Of 2014 Order Sheet No. 29

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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28.09.2020

by the Port authority on account of rental dues and O.P. must have to pay the rental dues to KoPT on or before 13.10.2020 Such dues 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 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


(Satyabrata Sinha)
ESTATE OFFICER

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

30.09.2020
De
OFFICE OF THE ESTATE OFFICER
KOLKATA PORT TRUST

Scan Copy

Noted. For this case, removed as
to be a copy of the order of Kolkata
to be a copy of the order of Kolkata

**REGISTERED POST WITH A/D.
HAND DELIVERY
AFFIXATION ON PROPERTY**

**ESTATE OFFICER,
Syama Prasad Mookerjee Port, Kolkata((SMP.KOLKATA)**

(Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-Central Act)
Public Premises (Eviction of Unauthorized Occupant) Act 1971
1st Floor, 6, Fairlie Place Warehouse,
Kolkata-700001

Court Room At the 1st Floor
6, Fairlie Place Warehouse
Syama Prasad Mookerjee Port, Kolkata
(SMP.KOLKATA)

PROCEEDINGS NO.1448/R OF 2011
ORDER NO. 20 DATED: 28.09.2020

Form "E"

Form of order under Sub-section (1) and (2A) of Section 7 of the Public
Premises (Eviction of Unauthorised Occupants) Act,1971.

To
Smt. Ashima Khan & Ors.,
130/2, Makardah Road,
Howrah.
Pin-711101

WHEREAS you are in occupation of the public premises described in
the Schedule below. (Please see on reverse).

AND WHEREAS, by written notice dated 29.03.2017 you are called
upon to show cause on/or before 19.04.2017 why an order requiring you
to pay a sum of Rs.1,62,911/- (Rupees One Lakh Sixty Two Thousand
Nine hundred Eleven only) being the rent payable together with
compound interest in respect of the said premises should not be made;

AND WHEREAS I have considered your objections and/or evidence
produce by you.

NOW, THEREFORE, in exercise of the powers conferred by sub-section
(1) of Section 7 of the Public Premises(Eviction of Unauthorised
Occupants) Act 1971, I hereby require you to pay the sum of
Rs.1,62,911/- (Rupees One Lakh Sixty Two Thousand Nine hundred
Eleven only) for the period 01.04.1996 to 31.10.2013 (both days
inclusive) to Kolkata Port Trust by 13.10.2020

PLEASE SEE ON REVERSE

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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 rent 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.HL106/A and HL106/1/A

The said piece or parcel of land msg. **235.79 sq.mtrs.** at Ramkristopur, Howrah, Thana-Howrah Police Station, District-Howrah, Registration District. Howrah. It is bounded on the **North** partly by the Trustees' Cross Road No.4 and partly Cross Road No.2, on the **East** partly by the Trustees Cross Road No.2 and partly Trustees land allotted to Madan Mohan Khan, on the **South** partly by the Trustees land allotted to Madan Mohan Khan, partly vacant land previously allotted to Mommotho Nath Mondal, on the **West** partly by the Trustees' land allotted to Monmotho Nath Mondal and partly Trustees Cross Road No.4. Trustees' means the Board of Trustees' for the Port of Kolkata.

Dated: 28.09.2020


Signature and seal of the
Estate Officer

SERVICE TO THE SYAMA PRASAD MOOKERJEE PORT, KOLKATA, (SMP.KOLKATA) (ERSTWHILE BOARD OF TRUSTEES' FOR THE PORT OF KOLKATA) THROUGH ESTATE MANAGER/CHIEF LAW OFFICER, (SMP.KOLKATA) AT 15, STRAND ROAD, KOLKATA-700 001 FOR INFORMATION.