

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. 1156, 1156/R & 1156/D Of 2011 Order Sheet No. 28

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

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FINAL ORDER

The instant proceedings No. 1156, 1156/R and 1156/D of 2011 arise out of the application bearing No. Lnd.4814/09/12206 dated 25.03.2009 filed by the Kolkata Port Trust (KoPT), the applicant herein, under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as 'the Act') praying for an order of eviction and recovery of arrear license fees, compensation/damages/ mesne profit and other charges etc. along with accrued interest in respect of the Public Premises as defined under Schedule- 'A' of said application, against M/s Mother Dairy, Kolkata (hereinafter referred to as O.P.).

The fact of the case in a nutshell is that the O.P. came into occupation of the port property (under Plate No. D -606) on license basis at Taratala Road in the Presidency Town of Kolkata, morefully described in the Schedule 'A' of the KoPT's application dated 25.03.2009. The allegations leveled by KoPT against the O.P are that the O.P defaulted in payment of monthly license fees and taxes, made unauthorized construction at the premises in gross violation of the terms and conditions of the license. It is the case of KoPT that the license with the O.P. was revoked w.e.f. 15.12.2008 in terms of the Notice to Quit dated 12.11.2008. It is the case of KoPT that the O.P. failed and neglected to vacate/ hand over the possession of the premises after service of the said Notice to Quit. KoPT has made out a case that O.P. has no right to occupy the premises after the termination of the license in question upon service of a quit notice dated 12.11.2008.

This Forum of Law formed its opinion to proceed against O.P. under the relevant provisions of the Public Premises



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Act, 1971 and issued show cause notices under Sec. 4 & 7 of the said Act both dated 13.11.2017 (vide Order No. 6 dated 23.10.2017), as per the Rules made under the Act.

Thereafter, the matter was heard by this Forum extensively on different occasions. It is seen from records that O.P. contested the matter by filing its Statement of Defence dated 11.05.2018 on 14.05.2018. An additional Statement of Defence dated 22.05.2018 was filed by the O.P. on 25.05.2018. KoPT filed its comments on the said Statement of O.P. on 04.07.2018. KoPT also filed a copy of the Rent Schedule' 1983 under cover of the application dated 14.09.2018. It is noted that the pleadings have been exchanged between the parties. The matter was finally heard on 21.01.2019 when both parties submitted that their pleadings are complete and they have nothing more to depose. Under such circumstances, the final order was reserved.

The main contentions of O.P., as can be summarized from the said applications dated 11.05.2018 and 22.05.2018 filed by O.P., are as follows:

1. With a view to extending the facility to KoPT's large number of employees, a mutually beneficial agreement was made by and between Kolkata Port trust and NDDB so that such employees of KoPT could get good quality milk and milk products from of the O.P., Calcutta at an affordable price throughout the year.
2. The parcel of land was allotted to the O.P./ NDDB by KoPT against monthly rentals at a nominal rate as the O.P. will supply milk and milk products exclusively to the employees of KoPT as a public service to the people in the vicinity.

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3. O.P. being a West Bengal State Government project, the primary objective of the organisation has been declared as a 'public utility' service.
4. The milk booth was found to be un-remunerative from the first day. The situation has not improved even after long 24 years of existence, and the turnover of the milk booth in terms of sales volume or earning was still very discouraging. In spite of that O.P. decided to continue with the milk booth for the use of KoPT's employees so that those employees are not abruptly put into any trouble due to sudden closure of the milk booth.
5. KoPT has provided the parcel of land to the O.P. at a nominal rate as a separate status of public service. Kolkata Port trust had never revised such rent of these lands so provided to the O.P. in spite of hike in the rates of rent by KoPT in the year 1983, 1998 and 1999 by public notification in the Calcutta Gazette.
6. KoPT has been realising rent from the O.P. month by month at the same old rates for more than 25 years and suddenly in July 2007 KoPT raised supplementary bill for the entire period of 25 years from September, 1983 to July, 2007 in respect of the said plot of land, handed over to the O.P.
7. The O.P. has duly paid rent to KoPT in respect of the said plot of land upto July 2008. The O.P. denied that arrears of rent from 1stDecember, 2004 upto 14thDecember, 2008 in respect of the said premises, is due and payable by the O.P. to KoPT.
8. In a meeting conducted by the Principal Secretary, Transport Department, Government of West Bengal on 18.02.2015, the Principal Secretary requested KoPT to bilaterally sort out the issues of

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rate of licence fees with Mother Dairy Calcutta as early as possible.

I have carefully gone through the rival contentions made by KoPT and O.P. and the supporting documents submitted in this respect. On perusal of submissions and materials available on the record, I find that the O.P. had issued letter bearing no CO/MDC/Mkt/KPT/858 dated 22.09.2007 requesting KoPT to provide detailed break up of KoPT bills following alleged receipt of exorbitant bills from KoPT. I find that the Port Authority replied to the said letter issued by the O.P. vide KoPT's letter bearing no Lnd 4814/07/3202 dated 12.11.2007 indicating the breakup of KoPT's bills and also forwarding the copies of the relevant portions of the Gazette Notification of Tariff Authority for Major Ports (TAMP). It appears that the main contention of O.P. revolves around the alleged enhancement of KoPT's bills for the subject occupation of O.P. It requires mention here that Kolkata Port Trust is the Successor in Interest of the erstwhile Commissioners for the Port of Kolkata which is a 'Local Authority' as defined under the General Clauses Act, 1897 (Section 3) and West Bengal General Clauses Act, 1899 (Section 3(23)). On the application of The Major Port Trusts Act, 1963, all properties, Assets and Funds etc. vested in the Central Government or as the case may be, any other Authority (Commissioners for the Port Of Calcutta constituted under the Bengal Act) for the purpose of Port immediately vested in the Board KoPT Board under Section 29 of the MPT Act). The Port Trust Authority from time to time by issuance of notification in the Official Gazette, fixed the scale of rates on which lands and structures belonging to Port Authority are to be let out. In terms of the power granted U/s 52 of the Major Port Trusts Act, 1963, the Central

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Government was to approve such rates before it was made applicable. In 1997, Sec. 52 was repealed and an alternate mechanism was evolved by which power to fix rent was assigned to the Tariff Authority of the Major Ports. Sec. 49 of M.P.T Act was also amended by the Port Laws (Amendment) Act 1997 with effect from 09.01.1997. The validity of these provisions of the MPT Act was upheld by the Hon'ble Supreme Court in the case of Luga Bay Shipping Corporation -Vs- Board of Trustees of the Port of Cochin and Ors. Reported in AIR 1997 SC 544 = 1997(1) SCC 631.

Admittedly, O.P is in occupation and enjoyment of the Public Premises after expiry of the period mentioned in the notice of ejection dated 12.11.2008. The reply to the show cause notice u/s 4 of the Act as filed by O.P dated 11.05.2018 and the additional reply as filed by O.P. dated 22.05.2018 clearly demonstrate that O.P is admitting their liability towards payment of occupational charges to the Port Authority for the period of their occupation into the Port property, subject to payment of license fees/ rent at the old rate, after expiry of the period as mentioned in the ejection notice in question. Thus O.P is in clear and open admittance of their liability towards payment of charges for occupation and merely disputing KoPT's claim as per KoPT's demand on the basis of notification issued by the TAMP (Tariff of Authority for Major Ports). Admittedly, O.P is disputing KoPT's claim at the enhanced rate with the contentions that such claims are unreasonable etc. No argument has been advanced on behalf of O.P as to how their claim for payment at the old rate of rent, after expiry of the period mentioned in ejection notice issued by KoPT, is valid under authority of law, except making the contention that they have been running a 'Public Utility' service,

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allegedly for the benefit of KoPT's employees, residing in the vicinity of the Milk Booth. It appears from records that an appeal has been made by O.P. to KoPT, vide letter bearing no MDC/CPT/License Fees/1315 dated 28.03.2018 for waiver of enhanced license fees for Milk Booths etc. However, no papers/ documents have been filed nor any indication given during the course of proceedings before this Forum regarding the possible disposition of the appeal made by O.P. On the contrary, it is the contention of KoPT that the charges for occupation have been claimed against O.P on the basis of Schedule of Rent charges in force for the relevant periods. I am taking note of the fact that KoPT's enhancement of rent charges is on the basis of notified rate of rent as per notification issued by the authority of law as per provisions of the Major Port Trusts Act, 1963, as amended from time to time. It is a settled position that such notified rates of rent (Rent Schedule) has been upheld by the Hon'ble Apex Court (in Luga Bay Shipping Corporation -Vs- Board of Trustees) and that any dispute/question relating to arbitrariness/unreasonableness with regard to enforceability of such notified rates of rent charges, is beyond the jurisdiction/scope of this forum of law.

Even O.P.'s plea of sudden increase of License fees/ rent by KoPT through a supplementary bill in July 2007 does not stand the test of legal scrutiny as the non-application of Limitation Act does not permit O.P to take the plea of "time barred claim", while being in occupation and enjoyment of the property, as per Sec.22 of the Limitation Act, in the event of continuing commitment of breaches on the part of O.P., after expiry of the period mentioned in the ejection notice. The Public Premises (Eviction of Unauthorized Occupants) Act 1971 introduced



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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."

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 court has no jurisdiction to entertain any matter in respect of the public premises as defined under the P.P. Act. Hence, it can be concluded 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 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. In this connection I am fortified by a judgment of the Hon'ble High Court, Calcutta in S.N. BHALOTIS -VS- L.I.C.I. & Ors. reported in 2000(1) CHN 880 with reference to the judgment reported in AIR 1972 Tripura 1 (Hemchandra Charkraborty -Vs- Union of India) wherein it was clearly

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held that proceedings initiated by an Estate Officer are not in the nature of suit nor the Estate Officer acts as a Court while deciding proceedings before him.

It is submitted with argument that as per law, O.P was under obligation to hand over possession of the property to KoPT in vacant and unencumbered condition and failure on the part of O.P. to discharge such statutory liability is a breach of contract. It is my well considered view that unless there is any material/argument to substantiate O.P.'s claim regarding their entitlement to pay at old rate charges/dues for occupation into the public premises, duly endorsed by a competent authority, a mere statement disputing/contesting KoPT's claim is not acceptable under the general tenets of law. It is very futile to assert that O.P. can restrict their liability to pay at the old rate/charges for occupation and enjoyment of the Port Property, subsequent to the publication of notification by the Tariff Authority for Major Ports, in exercise of the power under the Major Port Trusts Act 1963. Needless to mention that a Gazette Notification is made by the Government for a notice to all concerned and a separate or personal intimation of a Gazette Notification is not required in the eyes of law. During the course of hearing, I am given to understand by the Port Authority that the rent charged from time to time is based on the rates notified by the Tariff Authority for Major Ports (TAMP) in the Official Gazette, which is binding on all users of the port property. In fact, O.P. cannot claim differential treatment from other occupiers/users of the Port Property, in similarly placed situations, many of whom carries on 'public utility' service as well, for making concessional payment of charges, in deviation of those as indicated in terms of the gazette notification, unless the same are categorically endorsed by a competent authority. A careful perusal of

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the record of the proceeding reveals that there is no paper/document of evidentiary value regarding KoPT's grant/ permission for a special treatment of O.P. in case of fixation of license fees/ rent for the subject occupation of O.P. I find the documents relied on by O.P. in their defence dated 11.05.2018 deal with a different piece of land altogether (being occupation no D-607), which is not the subject matter of the instant proceeding/s. For instance, the document such as the KoPT's letter bearing no Lnd 4814/15/3330 dated 11.02.2015 relied on by O.P. deals with the another piece of land being occupation no D-607, while the subject occupation of the instant proceeding is D- 606. It also appears from the Minutes of the meeting conducted by the Principal Secretary, Transport Department, Government of West Bengal on 18.02.2015 that the Secretary has requested KoPT to bilaterally sort out issues of rate of licence fees with O.P., while alluding to KoPT's letter dated 11.2.2015 which relates to the other occupation no D-607 and does not have any bearing on the present proceeding. In view of the above, I do not find any merit in the contentions of O.P. regarding KoPT's possible differential/preferential treatment with O.P. unlike the other tenants of KoPT or possible fixation of a nominal rate for O.P. on the ground of the said 'public service' being run by O.P. As such, in my view, there is no scope to grant any differential treatment to the O.P. in any manner whatsoever. It is a settled question of law that in a license agreement like the one granted to the O.P., the jural relationship between the two parties in the agreement continues on liquidation of occupational charges by the licensee in the prescribed mode, within prescribed time. Such a relationship comes to a surcease in the event of a default of payment of any one bill/license fee. In other words, the continuance of such a relationship is very much



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pivotal to the "conduct" of the parties. The moment the licensor refuses to accept the licensee, owing to non-payment of license fees, nothing survives in the relationship. In the instant case, KoPT has produced document/s substantiating arrears of payment towards license fees/ rent by the O.P., which has not been denied by the O.P. The O.P., has in turn prayed for waiver of enhanced license fees from KoPT and stated to have cleared up the dues upto July, 2008 through their reply dated 11.05.2018. I take note of the fact that such statement is only for a particular period and not the entire period of occupation of the O.P. As such, in my view, there is a definite element of truth in the submission of KoPT that the O.P. is in arrear of licence fees/ rent. It is also my firm opinion that the O.P. was definitely in arrears of licence fees at the time of issuance of notice to quit by the Port authority. Moreover, I must mention that the said notice to quit specifically mentions that KoPT has no intention or desire to revive the status of OP as tenant under the Board of Trustees for Kolkata Port and that any payment tendered by the O.P. after expiry of the period mentioned therein, will be deemed to have been tendered as compensation for wrongful use and occupation, and not as rent/licence fees. Therefore, as I find, even any payment made by the O.P. after 15.12.2008 cannot waive/condone or excuse the breach of non-payment of licence fees. Discussion against the foregoing paragraphs will certainly lead to the conclusion that the ejection notice dated 12.11.2008 as issued by the Port Authority, demanding possession from O.P. is very much valid, lawful and binding upon the parties. The properties of the Port Trust are definitely coming under the purview of "public premises" as defined under the Act. The license granted to O.P. was undoubtedly revoked due to service of Notice to Quit dated 12.11.2008

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and institution of proceedings against O.P. by KoPT is a clear manifestation of Port Authority's intention to get back possession of the premises. In such a situation, I have no bar to accept KoPT's contentions regarding revocation of the license, on evaluation of the facts and circumstances of the case.

It is noted that KoPT has not pressed with the issue of 'unauthorized construction' made by the O.P. at the subject occupation. Hence this Forum is under no obligation to deal/decide the issue and the same has been kept outside the purview of present adjudication.

As such, I hereby conclude that the occupation of the O.P. is definitely unauthorized after expiry of the period mentioned in the Notice to Quit dated 12.11.2008. I must reiterate that the ejection notice, demanding possession as stated above, has been validly served upon O.P., in the facts and circumstances of the case, and such the notice is valid, lawful and binding upon the parties.

NOW THEREFORE, I consider it a fit case for allowing KoPT's prayer for eviction against O.P. i.e. M/s Mother Dairy, Calcutta u/s 5 of the Act on the following grounds/reasons:

1. That O.P. has been found to be in arrears of rent and taxes for long period, in clear defiance of the contractual terms and conditions.
2. That O.P. has failed to come up with any proposal to liquidate the dues, even after several opportunities provided by this Forum for the sake of natural justice.
3. That KoPT's notice dated 12.11.2008 demanding possession of Port property from O.P. is very much

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valid, lawful and enforceable in the facts and circumstances of the case.

4. That no case has been made out on behalf of O.P. as to how its occupation in the Public Premises could be termed as "authorized" after expiry of the period mentioned in the Notice to Quit, and accordingly, the occupation of O.P. has definitely become unauthorized in view of Sec.2(g) of the P.P. Act, 1971.
5. That, right since expiry of the period as mentioned in the Notice to Quit dated 12.11.2008, O.P. has lost its authority to authorisedly occupy the Public Premises and O.P. is liable to pay compensation charges/damages with interest for wrongful use and enjoyment of the Public Property from that date upto the date of handing over of clear, vacant and unencumbered possession of the same to the Port Authority.

ACCORDINGLY, formal order of eviction u/s 5 of the Act as per Rule made there-under, is drawn 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 the Law, up to the date of recovery of clear and unencumbered 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.

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Regarding payment of rental dues to KoPT, I must say that Rs. 2,17,628.00/- as claimed by the Port Authority in relation to the Plate in question, is correctly payable by O.P. for the period 01.12.2004 to 14.12.2008 (both days inclusive) and it is hereby ordered that O.P. shall make payment of the aforesaid sum to KoPT by 30.10.2020. O.P. shall be liable to pay compound interest @ 18% per annum till 06.04.2011 and thereafter @14.25% per annum on the above sum from the date of incurrance of liability till its final payment in accordance with the relevant notification/s published in Official Gazette. The formal order u/s 7 of the Act is signed accordingly.

On the issue as to whether O.P. is liable to pay mesne profit/damages and taxes etc. to the Port Authority, for the use and occupation of the public premises, as claimed by KoPT it is noted that the O.P. was requested to arrange for vacation of the subject premises on 15.12.2008, free from all encumbrances. No reason or evidence has been brought forth by the O.P. as to how their occupation beyond 15.12.2008 (i.e. the date earmarked by KoPT for surrender of vacant and peaceful possession of the subject premises by OP to KoPT in terms of the Notice to Quit dated 12.11.2008) could be termed as "authorised occupation" in the absence of any grant of permission on behalf of KoPT. For occupation and enjoyment of Public Premises, one must have to pay requisite charges for occupation. "Damages" are like "mesne profit", that is to say, the profit arising out of wrongful use and occupation of the property in question. I have no hesitation in mind to say that, on evaluation of all factual aspects involved into this matter, right from the date of revocation of the license in question, O.P. has lost its authority to occupy the public premises, and

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that O.P. is liable to pay damages for such unauthorized use and occupation. It is contended that KoPT's intention to get back possession is evident from the conduct of the Port Authority and O.P. cannot claim its occupation as "authorized" without receiving any rent demand note from KoPT. Therefore, there cannot be any doubt that the O.P. was in unauthorized occupation of the premises, once the license was revoked. The Port Authority has a definite and legitimate claim to get its revenue involved into this matter 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 the requisite charges as mentioned in the Schedule of Rent Charges. It has been held by the Hon'ble Apex Court of India that a person continuing in possession of the premises after termination, withdrawal or revocation of license/lease continues to occupy it as a trespasser or as a person who has no semblance of any right to continue in occupation of the premises. Such person, by no stretch of imagination, can be called a bonafide licensee/lessee. In course of hearing, it is submitted on behalf of KoPT that the charges claimed on account of damages are on the basis of the KoPT's Schedule of Rent Charges, as applicable, for all the tenants/occupiers of the premises in similarly placed situations and such Schedule of Rent Charges is but the notified rates of charges under provisions of the Major Port Trusts Act 1963. In my view, such claim of charges for damages by KoPT is based on sound reasoning and should be acceptable by this Forum of Law. As per law, when a contract has been unilaterally breached/broken, the party who suffers by such breach is entitled to receive, from the party who has ostensibly broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of

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things from such breach, or which the parties knew, when they agreed to tenets of the contract, to be likely to result from the breach of it. Moreover, as per law, O.P. is bound to deliver up vacant and peaceful possession of the public premises to KoPT after revocation of the license in question in its original condition. I am of the considered view that OP cannot repudiate the claim of KoPT towards damages for wrongful occupation after revocation of the license in question. Further, in the absence any submission or evidence, contradicting KoPT's allegation of unauthorized occupation by the O.P. beyond the period as mentioned in the Notice to Quit dated 12.11.2008, this Forum is left with no other alternative but to consider the possession of the public premises by the O.P. beyond 15.12.2008 as "unauthorized occupation" within the meaning of sec 2 (g) of the P.P. Act, 1971, which reads as under:

"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."

In view of the foregoing, I am of the considered view that the claim of the Port Authority regarding the damages cannot be said to be arbitrary or unreasonable.

NOWHEREFORE, I think it is a fit case for issuance order for recovery of damages u/s 7 of the Act as prayed for on behalf of KoPT. I sign the order as per rule made under the Act, giving time upto 30.10.2020 for



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M/s. Mother Dairy, Kolkata
VS

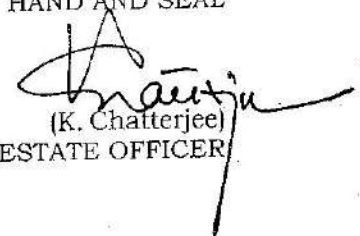
25
19-10-2020

payment of damages of Rs. 6,95,408.00/- to KoPT by O.P. for the period 15.12.2008 to 26.07.2017. Such dues attracts interest @ 18% per annum upto 06.04.2011 and thereafter @ 14.25% per annum till the liquidation of the same from the date of incurrance of liability, in accordance with the Notification/s of KoPT issued under authority of Law, as per the adjustment of payments made so far by O.P., as per KoPT's Books of Accounts.

I make it clear that in the event of failure on the part of O.P. to pay the amounts to KoPT as aforesaid, Port Authority is entitled to proceed further in accordance with Law.

All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL


(K. Chatterjee)
ESTATE OFFICER

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

J. B. (19-10-2020)
MANAGER (GENERAL)

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

**ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT, KOLKATA
(erstwhile KOLKATA PORT TRUST/ KoPT)**

(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 1st Floor
of Kolkata Port Trust's
Fairley Warehouse
6, Fairley Place, Kolkata- 700 001.

REASONED ORDER NO. 25 DT 12.10.2020,
PROCEEDINGS NO. 1156 OF 2011

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

-Vs-

MOTHER DAIRY, KOLKATA

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 Mother Dairy, Kolkata, P 129, Block -A, Lake Town, Kolkata- 700089, ALSO AT P.O. Dankuni Coal Complex, District- Hooghly (W.B.) PIN 712310** 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 been found to be in arrears of rent and taxes for long period, in clear defiance of the contractual terms and conditions.
2. That O.P. has failed to come up with any proposal to liquidate the dues, even after several opportunities provided by this Forum, for the sake of natural justice.
3. That KoPT's notice dated 12.11.2008 demanding possession of Port property from O.P. is very much valid, lawful and enforceable in the facts and circumstances of the case.
4. That no case has been made out on behalf of O.P. as to how its occupation in the Public Premises could be termed as "authorized" after expiry of the period mentioned in the Notice to Quit, and accordingly, the occupation of O.P. has definitely become unauthorized in view of Sec.2(g) of the P.P. Act, 1971.
5. That, right since expiry of the period as mentioned in the Notice to Quit dated 12.11.2008, O.P. has lost its authority to authorisedly occupy the Public Premises and O.P. is liable to pay compensation charges/damages with interest for wrongful use and enjoyment of the Public Property from that date upto the date of handing over of clear, vacant and unencumbered possession of the same to the Port Authority.



Please see on reverse

:: 2 ::

A copy of the reasoned order No. 25 dated 12.10.2020 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 Mother Dairy, Kolkata, P 129, Block -A, Lake Town, Kolkata- 700089, ALSO AT P.O. Dankuni Coal Complex, District- Hooghly(W.B.) PIN 712310** 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 Mother Dairy, Kolkata, P 129, Block -A, Lake Town, Kolkata- 700089, ALSO AT P.O. Dankuni Coal Complex, District- Hooghly(W.B.) PIN 712310** 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 37.439 sq.m or thereabouts under Plate no . D-606 situated at Taratala Road, Thana- Taratala Police Station, Calcutta, District- 24 Parganas (S), Registration District- Alipore. It is bounded on the north by Trustees' Taratala Road, on the east by the Trustees' land occupied by the Labour Commissioner of West Bengal, on the South by the Trustees' Metal Road and on the west by the Trustees' Metal Road then Staff Quarters known as Taratala Staff Colony.

Trustee's means the Board of Trustees of **SYAMA PRASAD MOOKERJEE PORT, KOLKATA** (erstwhile Board of Trustees for the port of Kolkata).

Dated: 19.10.2020,


Signature & Seal of the
Estate Officer.

COPY FORWARDED TO THE ESTATE MANAGER/CHIEF LAW OFFICER, SYAMA PRASAD MOOKERJEE PORT, KOLKATA (erstwhile KOLKATA PORT TRUST) FOR INFORMATION.

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

**ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT, KOLKATA
(erstwhile KOLKATA PORT TRUST)**

(Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-Central
Act)

Public Premises (Eviction of Unauthorised Occupants) Act 1971
OFFICE OF THE ESTATE OFFICER
6, Fairley Place (1st FLOOR) KOLKATA-700001

Form " E "

PROCEEDINGS NO.1156/R OF 2011
ORDER NO. 25 DATED: 12.10.2020

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

To

**M/s Mother Dairy, Kolkata,
P 129, Block -A,
Lake Town,
Kolkata- 700089,
ALSO AT
P.O. Dankuni Coal Complex,
District- Hooghly (W.B.)
PIN 712310**

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

AND WHEREAS, by written notice dated 13.11.2017 you were called upon
to show cause on/or before 08.12.2017 why an order requiring you to pay a
sum of Rs. 2,17,628.00/- (Rupees Two Lakhs Seventeen Thousand Six
Hundred and Twenty Eight 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 objection and/or the evidence
produced 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. 2,17,628.00/- (Rupees Two
Lakhs Seventeen Thousand Six Hundred and Twenty Eight only) for the period
01.12.2004 to 14.12.2008 (both days inclusive) to Kolkata Port Trust by

30.10.2020

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 at the rate of @ 18% per annum till 06.04.2011 and thereafter @14.25% per annum the above sum till its final payment in accordance with Kolkata Port Trust Notification Published in Official Gazette/s.

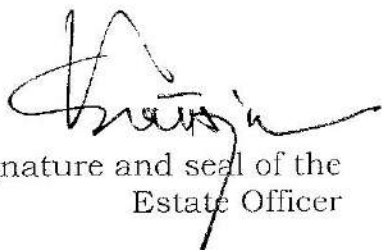
In case the said sum is not paid within the said period or in the said manner, it will be recovered as arrears of land revenue through the Collector.

SCHEDULE

The said piece or parcel of land Msg 37.439 sq.m or thereabouts under Plate no . D-606 situated at Taratala Road, Thana- Taratala Police Station, Calcutta, District- 24 Parganas (S), Registration District- Alipore. It is bounded on the north by Trustees' Taratala Road, on the east by the Trustees' land occupied by the Labour Commissioner of West Bengal, on the South by the Trustees' Metal Road and on the west by the Trustees' Metal Road then Staff Quarters known as Taratala Staff Colony.

Trustee's means the Board of Trustees of **SYAMA PRASAD MOOKERJEE PORT, KOLKATA** (erstwhile **KOLKATA PORT TRUST**).

Dated: 19.10.2020.


Signature and seal of the
Estate Officer

COPY FORWARDED TO THE ESTATE MANAGER/CHIEF LAW OFFICER, SYAMA PRASAD MOOKERJEE PORT, KOLKATA (erstwhile KOLKATA PORT TRUST) FOR INFORMATION.

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

**ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT, KOLKATA
(erstwhile 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 1st Floor
of Kolkata Port Trust's
Fairley Warehouse
6, Fairley Place, Kolkata- 700 001.

REASONED ORDER NO. 25 DT 12.10.2020.
PROCEEDINGS NO. 1156/D OF 2011

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 Mother Dairy, Kolkata,
P 129, Block -A,
Lake Town,
Kolkata- 700089,
ALSO AT
P.O. Dankuni Coal Complex,
District- Hooghly (W.B.)
PIN 712310**

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 13.11.2017 you were called upon
to show- cause on/or before 08.12.2017 why an order requiring you to pay a
sum of Rs. 6,95,408.00/- (Rs. Six Lakhs Ninety Five Thousand Four Hundred
and Eight only) being damages payable together with compound interest for
unauthorised use and occupation of the said premises, should not be made.

And whereas I have considered your objection and/or the evidence
produced by you.

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. 6,95,408.00/- (Rs. Six
Lakhs Ninety Five Thousand Four Hundred and Eight only) for the period
from 15.12.2008 to 26.07.2017 assessed by me as damages on account of your
unauthorised occupation of the premises to Kolkata Port Trust, by
30.10.2020

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 @ 18% per
annum till 06.04.2011 and thereafter @14.25% per annum on the above sum
with effect from the date of incurrance of liability, till its final payment in
accordance with Notification Published in Official Gazette/s.

Please see on reverse

:2:

A copy of the reasoned order no. 25 dated 12.10.2020 is attached hereto.


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.

SCHEDULE

The said piece or parcel of land Msg 37.439 sq.m or thereabouts under Plate no. D-606 situated at Taratala Road, Thana- Taratala Police Station, Calcutta, District- 24 Parganas (S), Registration District- Alipore. It is bounded on the north by Trustees' Taratala Road, on the east by the Trustees' land occupied by the Labour Commissioner of West Bengal, on the South by the Trustees' Metal Road and on the west by the Trustees' Metal Road then Staff Quarters known as Taratala Staff Colony.

Trustee's means the Board of Trustees of **SYAMA PRASAD MOOKERJEE PORT, KOLKATA** (erstwhile **KOLKATA PORT TRUST**).

Dated: 19.10.2020.


Signature and seal of the
Estate Officer.

COPY FORWARDED TO THE ESTATE MANAGER/CHIEF LAW OFFICER, SYAMA PRASAD MOOKERJEE PORT, KOLKATA (erstwhile KOLKATA PORT TRUST) FOR INFORMATION.