

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. 1580, 1580/D Of 2017 Order Sheet No. 15

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S Universal Auto^{VS} Crafts (Pvt) Ltd.

19
25.11.2020

FINAL ORDER

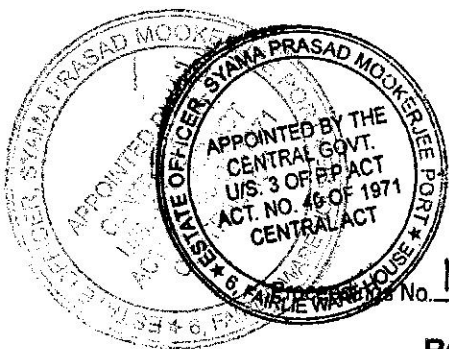
The instant proceeding No. 1580, 1580/D of 2017 arising out of an application bearing No. Lnd.5044/II/14/2556 Dated 21.11.2014 as filed by Syama Prasad Mookerjee Port, Kolkata [erstwhile Kolkata Port Trust], hereinafter referred to as KoPT, applicant herein, for eviction & recovery of dues, damages and other charges along with accrued interest against M/S Universal Auto Crafts Pvt Ltd, the O.P., herein, is taken up today for final disposal.

It is the case of Kolkata Port Trust (KoPT), applicant herein, that M/S Universal Auto Crafts Pvt. Ltd, O.P. herein, originally came into occupation of the Public Premises in question being KoPT's land measuring about 1800.460 sq.m at Transport Depot Road, Thana-Taratala Police Station, Kolkata, comprised under Plate No. D-343/4/C having connected permission fee for subletting Plate No.SF-100/86, as a long term lessee for 30 years on certain terms and conditions w.e.f 19.08.1990 for the purpose of port oriented industrial use. The allegations leveled by KoPT against O.P is that while in possession of Port property as lessee, O.P. violated the conditions of grant of tenancy by way of not making payment of damages/ compensation, mesneprofits and other charges to KoPT, erected unauthorized constructions, unauthorisedly parted with possession to rank outsiders and also changed the purpose of such lease. It is strongly argued on

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No. 1580, 1580/D of 2017 Order Sheet No. 16/17

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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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 01.08.2009 vide Notice to quit dated 30.01.2009. It is also the submission of KoPT that that O.P. is liable to pay such damages for wrongful use and occupation of the Port property upto the date of handing over of clear vacant possession of the same.

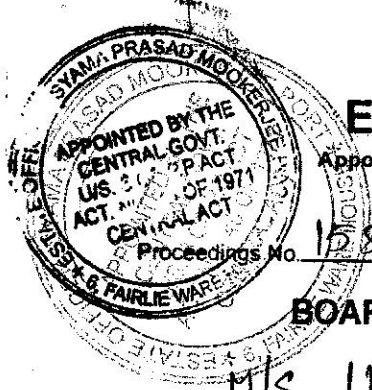
This Forum issued Show Cause notice (Vide Order No.6 dated 12.06.2019) under Section 4 of the Act (for adjudication of the prayer for issuance of Order of Eviction etc.) and Show Cause Notice/s under Section 7 of the Act (for adjudication of the prayer for recovery of compensation/ damages, mesne profit and other charges etc) all dated 14.06.2019.

It is placed on record that the said Notice/s were sent to the recorded addresses of O.P. at P-1, Transport Depot Road, Kolkata-700088. And Also at 4, Indian Exchange Place, 6th Floor, Kolkata-700001 vide Speed Post as well as by hand delivery. The Notice/s sent by Speed Post to 1st mentioned recorded address of O.P i.e P-1, Transport Depot Road, Kolkata-700088 were returned back to this Forum with an endorsement "N/C". However, it appears from the report of Process Server dated 18.06.2019 that the O.P. has received such notice/s by it's authorised representative on 18.06.2019 and affixation was also done on the

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15/11/2020
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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Estate Officer, Kolkata Port Trust

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Proceedings No. 1580, 1580/D Of 2017 Order Sheet No. 1718

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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subject premises on 19.06.2019 at about 4 P.M. as per the mandate of the P.P Act.

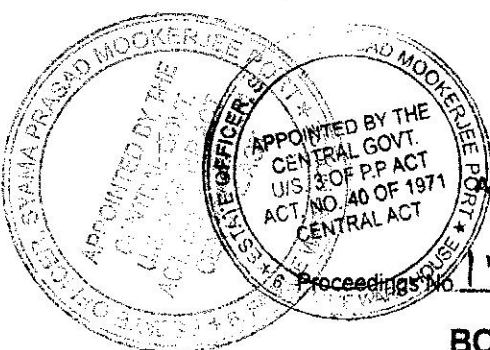
O.P entered appearance through his Ld' advocate and undertook to file Vokalatnama/letter of Authority to represent the instant case along with a prayer(vide application dated 24.06.2019) for certain documents on which KoPT has relied upon. Thereafter, Forum allowed multiple opportunities to O.P for filing reply to the Show Cause Notice/s. Finally on 27.09.2019 Advocate of O.P filed his Reply/Written Objection in the form of Affidavit-in-opposition duly signed by Sri Gokul Chand Damani, authorized signatory of O.P. along with a copy of Board Resolution dated 27.09.2019, followed by Letter/Petition dated 03.10.2019 and 08.11.2019. Thereafter, KoPT also filed its arguments and counter-arguments through letters/ applications on various dates. Both the parties were heard extensively. Finally on 08.11.2019 when the matter had been come up for final hearing, on arguments of both the parties, the matter was reserved for Final Order. Now very recently (vide an Application bearing No.Lnd.5044/II/20/1756 dated 04.09.2020) KoPT has intimated this Forum that as per the willingness of O.P the subject premises has been taken over by KoPT on 02.09.2020 in vacant and unencumbered condition.

Under such circumstances, it is seen that except damages/compensation charges for unauthorized use and occupation of the Port property, other allegations of KoPT has lost their grounds,

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT TRUST
KOLKATA
25.11.2020
[Signature]
Estate Officer
Kolkata Port Trust

[Signature]

[Signature]



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. 1580, 1580/D of 2017 Order Sheet No. 18/19

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

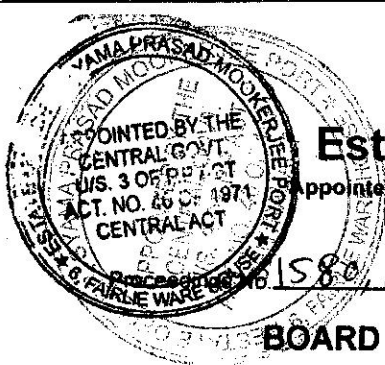
M/S Universal Auto Crafts (PVT) Ltd ^{VS}

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therefore, proceeding of eviction is dropped against O.P.

Upon considering the deliberations of the parties and after carefully going through all the documents placed on record, now I find that only issue that remains for Forum's adjudication is nonpayment of arrear dues and other charges. Although O.P vide its Affidavit-in-Opposition dated 27.09.2019 has denied such dues for the occupation of the said Public premises, however, It is settled law that mere denial is not sufficient to rebut the charge unless it is corroborated by sufficient evidence. Here, no such attempt has been made by the O.P. at all. As regards the allegations of non payment of such dues against the O.P., I find that KoPT has produced detailed statement of accounts dated 22.05.2019 and 04.09.2020 in respect of the said occupation. It appears from the said statements of accounts that since 2009, no payment, whatsoever, has been made on behalf of the O.P. In my view, such statement maintained by the statutory authority in the usual course of business has definite evidentiary value, unless challenged by any of the concerned/interested parties with fortified documents/evidences etc, ready to bear the test of legal scrutiny. Moreover, during the course of hearing, no other submissions or documents have been placed before this Forum which may be in contradiction with the Statements produced by KoPT Authorities. During the course of hearing, I am given to understand by the Port Authority that the rent

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SYAMA PRASAD MOOKERJEE PORT



Estate Officer, Kolkata Port Trust

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

No. 1580, 1580/D of 2017 Order Sheet No. (19) 2017

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s Universal Auto ^{YS} Crafts (Pvt) Ltd

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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 my view, the breach committed by the O.P. is very much well established in the facts and circumstances of the case and O.P. must have to suffer the consequences, following due applications of the tenets of law. In my view, the conduct of the O.P. does not inspire any confidence and I am not at all inclined to protect O.P. even for the sake of natural justice. In my considered view, the Port Authority has a definite legitimate claim to get its revenue involved into the Port Property in question as per the KoPT's Schedule of Rent Charges for the relevant period and O.P. cannot deny such payment of requisite charges as mentioned in the Schedule of Rent Charges.

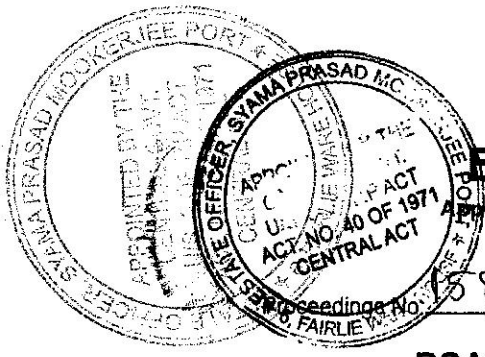
In the aforementioned circumstances, being satisfied as above, I have no hesitation to uphold the claim of the Port Authority.

Further O.P has also denied the KoPT's claim on account of interest. Therefore, it required to be adjudicated seriously as the issue involves mixed question of fact and law as well. It is my considered view that payment of interest is a natural fall out and one must have to pay interest in case of default in making payment of the principal amount due to be payable. For occupation and enjoyment of Port property, the charges leviable upon the tenants/occupiers are based on the Schedule of Rent Charges as applicable for a tenant/occupier in

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OFFICE OF THE ESTATE OFFICER
SVAMA PRASAD MOOKERJEE PORT

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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. 1580, 1580/D of 2017 Order Sheet No. 20/21

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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respect of respective zone as indicated in such Schedule of Rent Charges. Here in this instant matter O.P cannot deny such liability of payment of interest also as he has failed to pay the principal amount due to be payable by him. ^{More} more so this forum has no power in the matter of waiver of interest for which O.P has to pray before proper Authority of KoPT. As such, I have no hesitation to decide the issue in favour of KoPT and I have no bar to accept the claim of KoPT on account of Interest accrued for delayed payment.

It is my considered view that a sum of Rs.97,68,482/- (for Plate No.D-343/4/C) and Rs.63,84,667/- (for Plate No.SF-100/86) both for the period 01.09.2009 to 22.05.2019 (both day inclusive) are due and recoverable from O.P. by the Port authority on account of damages/compensation for unauthorized occupation and O.P. must have to pay such dues to KoPT on or before 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 incurrance 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 of the Act.

I make it clear that KoPT is entitled to claim further damages against O.P. for unauthorized use and occupation of the public premises right upto the date

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Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



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. 1580, 1580/D of 2017 Order Sheet No. 2122

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S Universal Auto ^{VS} Crafts (Pvt) Ltd.

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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 22.05.2019 as well, till such time the possession of the premises continues to be under the unauthorised occupation with the O.P. KoPT is directed to submit a statement comprising details of its calculation of damages after 22.05.2019, 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.

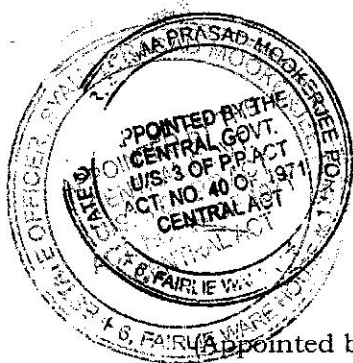
I make it clear that in the event of failure on the part of O.P. to comply with this Order, Port Authority is entitled to proceed further for execution of this order in accordance with law. All concerned are directed to act accordingly.

By Order of:
THE ESTATE OFFICER,
SYAMA PRASAD MOOKERJEE PORT
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SYAMA PRASAD MOOKERJEE PORT
Head Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

GIVEN UNDER MY HAND AND SEAL

(Kausik Kumar Manna)
ESTATE OFFICER

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



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

**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, Fairlie Place (1st FLOOR) KOLKATA-700001

Court Room At the 1st Floor
of Kolkata Port Trust's
Fairlie Warehouse
6, Fairlie Place, Kolkata- 700 001.

PROCEEDINGS NO. 1580/D OF 2017
ORDER NO. 19 DATED : 25.11.2020

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 Universal Auto Crafts Pvt. Ltd
P-1, Transport Depot Road,
Kolkata-700088
And also of
4, Indian Exchange Place,
6th floor, Kolkata-700001

By Order of
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
25.11.2020
Head Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

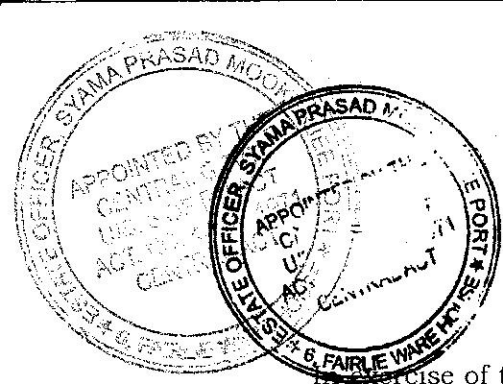
Whereas I, the undersigned, am satisfied that you were in unauthorised occupation of the public premises mentioned in the Schedule below:

And whereas by written notice dated 14.06.2019 you are called upon to show cause on/or before 28.06.2019 why an order requiring you to pay damages of Rs.97,68,482/-(Rupees Ninety Seven Lakhs Sixty Eight Thousand Four Hundred Eighty Two Only) for Plate No.D-343/4/C and Rs.63,84,667/-(Rupees Sixty Three Lakhs Eighty Four Thousand Six Hundred Sixty Seven Only) for Plate No.SF-100/86 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.97,68,482/-(Rupees Ninety Seven Lakhs Sixty Eight Thousand Four Hundred Eighty Two Only) for Plate No.D-343/4/C and Rs.63,84,667/-(Rupees Sixty Three Lakhs Eighty Four Thousand Six Hundred Sixty Seven Only) for Plate No. SF-100/86 both for the period assessed by me as damages on account of your unauthorised occupation of the premises both for the period from 01.09.2009 to 22.05.2019 (both days inclusive) to SMP, Kolkata by 08.12.2020

PLEASE SEE ON REVERS



: 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 SMP, Kolkata'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-343/4/C & SF-100/86

The piece or parcel of land Msg.1800.460 Sq.m or thereabouts is situated at Transport Depot Road, Thana : Taratala Police Station, Kolkata, Dist : 24 Parganas(South),Registration District : Alipore. It is bounded on the North by the Trustees' Transport Depot Road, on the East, West and South by the Trustee's land occupied by M/S Hopes Metal Industries(India) Ltd.

Trustee's means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata.)

Date 25.11.2020

Signature & Seal of the
Estate Officer.

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

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
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PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
Head Assistant
OFFICE OF THE ESTATE OFFICER
6, FAIRLE WARE HOUSE