

# 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. 1105 & 1105/R Of 2011 Order Sheet No. 29

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

**VS**  
*Estate Probhat Biswas*

### FINAL ORDER

*2.6*  
*27.11.2020*

The instant proceedings No. 1105, 1105/R and 1105/D arise out of the application bearing No. Lnd.4565/07/3457 dated 03.09.2007 filed by Syama Prasad Mookerjee Port, Kolkata [erstwhile Kolkata Port Trust], hereinafter referred to as **KoPT**, the applicant herein, under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (here-in-after referred to as '**the Act**'), praying for an order of eviction and recovery of rental dues, compensation/damages/mesne profit and other charges etc. along with accrued interest in respect of the public premises, as defined under Schedule- 'A' of the said application, against the Estate of Probhat Biswas, since deceased, (here-in-after referred to as '**O.P.**').

*B.2.12.2020*

The fact of the case in a nutshell is that the O.P. came into occupation of the port property (under Plate Nos. D 328/2) on a short term lease at Circular Garden Reach Road in the Presidency Town of Kolkata, morefully described in the Schedule 'A' of the KoPT's application dated 03.09.2007. The allegations of breaches levelled by KoPT against the O.P are that the O.P has defaulted in payment of monthly rent and taxes with the accrued interest thereon and has unauthorisedly parted with the possession of the premises to rank outsiders, in gross violation of the terms and conditions of the tenancy. It is the case of KoPT that the tenancy with the O.P. was determined w.e.f. 15.01.2007 in terms of the Notice to Quit dated 15.12.2006 and 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 lease in question upon service of the quit notice dated 15.12.2006. Since the initiation of the proceedings, KoPT has filed several applications viz. those dated 06.09.2011, 02.09.2013 enclosing copies of several documents in support of their case, against O.P. The papers/

*[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. 1105A/1105/R Of 2011 Order Sheet No. 30

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

*Estate Probfet* <sup>VS</sup> *Beiswas*

26  
27-11-2020

documents such as the copies of KoPT's offer letter dated 19.09.1958, possession certificate dated 28.05.1970, copies of O.P.'s letter dated 07.11.1969, 29.12.1969 regarding taking over of possession of the premises in question by O.P., registration of the lease deed etc, and on the other hand, copies of KoPT's letters dated 10.10.1969, 13.05.1970 on the subject of the said registration of lease, handing over of possession etc. has received my due attention. KoPT has also filed detailed statement of accounts dated 13.10.2014, 20.02.2017, 15.03.2017 for substantiating KoPT's claim on account of rental, compensation/damages/mesne profit and other dues/ charges etc. against the O.P.

Accordingly, this Forum of Law formed its opinion to proceed against O.P. under the relevant provisions of the Public Premises Act, 1971 and issued show cause notices under Section 4 of the Act (for adjudication of the prayer for issuance of Order of Eviction etc.) and two Show Cause Notices under 7 of the Act (for adjudication of the prayer for recovery of rental dues, mesne profit/compensation/ damages etc) all dated 27.04.2017 (vide Order No 09 dated 15.03.2017) as per the Rules made under the Act.

It is seen from records that nobody appeared on behalf of O.P., during the course of the hearing before this Forum. It appears that the Notices sent through Speed post at the recorded address of O.P. were returned to this Forum with the remarks "no such addressee" / "not known" by the Postal Authorities. As per the report of the Process Server dated 03.05.2017, the O.P. was not found in the premises but the Notice/s were affixed on the property in question, as per the mandate of the Act.

Thereafter, on the day fixed for showing cause (i.e. 19.05.2017) none appeared before this Forum on behalf of O.P. However, six persons (viz., Arun Kr. Mahuri, Md.Hasim, Umesh Kr. Himangsu, Ranjan Prasad, Sanjay Prasad, Md. Samiruddin) appeared and stated that they have been in occupation of the

*27-11-2020*



# 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. 1105 A 1105/R Of 2011 Order Sheet No. 31

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

*Estate Prabhat Biswas*

26  
27-11-2020

*f 02.12.2020*

said premises as sitting occupants for the past 40 years or so and have made small goomties there-on. In terms of the established tenets of natural justice, the sitting occupants were allowed to represent their cases and copies of the documents filed by KoPT in connection with the instant proceedings were handed over to them. In the light of the above development, KoPT, however, prayed for incorporation of the breach of parting with possession as an additional ground in the proceeding initiated under Section 4 of the Act. Considering the situation, KoPT was directed to organize an inspection in the subject premises and file a comprehensive report regarding the present status of the property, indicating the number of occupants residing at the said premises. The O.P./interested persons were directed to file reply to the Show Cause Notice issued by this Forum. Thereafter, during the course of hearing on 09.06.2017, numerous sitting occupants (viz Arun Kr. Mahuri, MD.Hasim, Umesh Kr. Himangsu, Ragonandan Ram, Ranjan Prasad, Tarakeswar Sharma, Sayed Jawandali, Shahabuddin Ahmed, Md Shamiuddin, Md. Samiruddin) appeared before this Forum and sought extension of time for filing their written submission. Thereafter, another notice was issued under section 4 of the Act dated 26.07.2017 (vide Order No 13 dated 14.07.2017) adding 'parting with possession' as a ground for the show cause. Another attempt was made to effect service of the said Notice upon O.P. by the Process Server of this Forum; yet service could not be effected as O.P. was not found at the recorded address of O.P. (as per the Report of Process Server dated 07.08.2017). However, a copy of the said Notice dated 26.07.2017 was affixed on the subject premises as per mandate of the Act. It requires mention here that this Forum made several attempts to serve the Notice/s upon O.P. by 'Speed Post' as well as by hand delivery through the Process Server at the recorded address of O.P. It requires mention here that several correspondences exchanged between KoPT and O.P. (viz., KoPT's letters dated 19.09.1969, 13.05.1970, 15.10.1969 and O.P.'s letters dated 07.11.1969 etc.) and the Police Enquiry Report dated

*[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. 1105/1105/R Of 2011 Order Sheet No. 31

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

*Estate Probhat Biswas*

26

27-11-2020

04.09.2005 establish the presence of the heirs of O.P. at the recorded address of O.P. It reveals from records that the O.P. or his representative did not appear before this Forum, although the said Sitting Occupants continued to appear before this Forum and represented their case through filing of Vakalatnama by their Ld. Advocate/s, who appeared before this Forum. The Sitting Occupants were allowed to represent their case by filing several applications, viz those filed on 15.11.2017, 18.04.2018 etc. The main contentions, as can be summarized from the said applications, are as follows:

1. That the entire proceedings initiated at the behest of Kolkata Port Trust before this Forum is wrongful and illegal.
2. That the subject premises did not belong to the Kolkata Port Trust but was and is belonging to the Zamindars including one Bhukailash Debutter Estate, represented by its *shebait*s. That the present occupants, have occupied and have been occupying the subject premises, by their own right, through their forefathers.
3. That the Bhukailash Debutter Estate has filed a proceeding being Title Suit No 1583 of 2017 against one Mohammed Kalam in the court of Ld. 3rd Civil Judge (Junior Division) at Alipore in respect of a *property* viz., at premises No 48C Karl Marx Sarani, PS South Port, KMC Ward no 79, Kolkata- 23, being a *contiguous property*, for eviction. That the said Bhukailash Debutter Estate has recently threatened the present sitting occupants by filing similar suits against them for their eviction.
4. That Kolkata Port Trust is in collusion and in conspiracy with someone in the name of Probhat Biswas and had issued the purported notice dated 15.12.2006, for the purpose of unlawfully taking possession of the property of the sitting occupants.
5. That the motive of KoPT is not very clear and that the present sitting occupants have been "made a scapegoat"

*J. B. 02-12-2020*

# 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. 1105/1105/R Of 2011 Order Sheet No. 33

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

**VS**  
*Estate Probhat Biswas*

26  
27.11.2020

*202-12-2020*

*LA*

- by KoPT through unnecessary mental, physical and financial harassment, at a time when they have been preparing their defence against the suit of eviction filed by Bhukailash Debutter Estate.
6. That the documents produced by Kolkata Port Trust are manufactured, void and wrongful. That Kolkata Port Trust has miserably failed to produce the original alleged Lease deed before this Forum.
  7. That the present sitting occupants, through their predecessor-in-interest, have been occupying the subject premises way back since 1970. Some of the present occupants have been occupying the subject premises after obtaining the right of occupancy from their predecessor-in-interest.
  8. That the sitting occupants have been carrying on their business in several small parts of the premises in question for the last several decades and earning their livelihoods from the said place.
  9. That the sitting occupants have wrongfully been given the notice to appear by this Forum when neither of the sitting occupants may be referred to as Probhat Biswas nor Estate Probhat Biswas and do not have any connection with them but are entitled to their independent right to occupy the schedule premises.
  10. That the instant proceeding is null and void as it was filed at a time when Probhat Biswas had expired, since law does not give permission to file a suit against a dead man. Some case laws have been cited in this regard.
  11. That the allegation made in the purported notice to quit dated 15.12.2006 to the effect that there was an alleged short term lease in respect of the subject premises in favour of Estate Probhat Biswas is a false one. At no point of time Estate Probhat Biswas nor Probhat or by any other name did or could occupy any portion of the subject premises.

# 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. 1105 A 1105/R Of 2011 Order Sheet No. 36

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

<sup>VS</sup>  
Estate Probhat Biswas.

26  
27.11.2020

2  
02-12-2020

12. That no legal heir of Probhat Biswas has ever been made a party and no official summons have been forwarded to their legal heirs.

13. That in a span of last three years, KoPT could not produce a "single scrap of paper" which clarifies their stand, whereas the sitting occupants, having entered into the proceeding since 04.09.2017, have not been given at least 10 months' time to complete their research and produce the necessary documents before this Forum.

KoPT, on the other hand, filed application dated 05.03.2018 and submitted that the sitting occupants are rank outsiders and have no relationship with KoPT. The Schedule of Property as is mentioned in the photocopy of the Plaint of Title Suit bearing no 1583 of 2017 (Bhukailash Debutter Estate Vs Md. Kalam- annexed with the written submissions of the sitting occupants filed on 15.11.2017) does not match with the subject premises of the O.P. as morefully described in KoPT's original application before this Forum dated 03.09.2007.

KoPT has also submitted that since January, 2006 no payment towards rent/ mesne profit for the occupation of subject premises could be realized by KoPT.

This Forum, after hearing the arguments of KoPT and the sitting occupants proceeded to reserve the Final Order on 09.03.2018.

I have carefully considered the deliberations of the parties and gone through the documents placed on record.

With regard to the maintainability of the present proceeding in view of Title Suit no 1583 of 2017 (Bhukailash Debutter Estate Vs Md. Kalam) I must say that the properties owned and controlled by the Port Authority have been declared as "public premises" by the Public Premises (Eviction of Unauthorised





# 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. 1105 & 1105/R Of 2011 Order Sheet No. 35

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

*Estate Probhet Biswas*

26  
27-11-2020

*J. 02-12-2020*

(Occupants) Act, 1971 and Section-15 of the Act puts a complete bar on Court's jurisdiction to entertain any matter relating to eviction of unauthorized occupants from the public premises and recovery of rental dues and/or damages, etc. KoPT has come up with an application for declaration of O.P.'s status as an unauthorized occupant into the public premises with the prayer of order of eviction, recovery of rental dues etc against O.P., on the ground of effecting termination of authority to occupy the premises as earlier granted by KoPT to O.P. in respect of the premises in question. So long the property of the Port Authority is coming under the purview of "public premises" as defined under the Act, the adjudication process initiated through the service of Show Cause Notice/s u/s 4 & 7 of the Act are very much maintainable and there cannot be any question about its maintainability before this Forum of Law. In fact, proceedings before this Forum of Law are not statutorily barred unless there is any specific order of stay of such proceedings, by any competent court of law.

Now, in view of the allegation leveled by O.P. that the owner of the subject property is not KoPT but one Bhukailash Debutter Estate, I have carefully compared the Schedule mentioned in KoPT's original application dated 03.09.2007 with the Schedule mentioned in the Plaint of the Title Suit no 1583 of 2017 (Bhukailash Debutter Estate Vs Md. Kalam-) and find that the details of KoPT's piece of property does not match at all with the piece of property mentioned in the said Title Suit. In this regard, it is further the contention of the sitting occupants that the men and agents of the said Bhukailash Debutter Estate have threatened them with the proposed filing of a suit for their eviction from the subject premises. In my view, mere threatening for filing of a suit by somebody with regard to eviction of the sitting occupants from the subject premises does not at all stand a ground for dismissal of the case in hand, in as much as the schedule mentioned in the plaint of T.S. no 1583 of 2017 ( In Bhukailash Debutter Estate vs Md Kalam ) are in complete variance to the details of KoPT's



# 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. 1105 A 1105/R of 2011 Order Sheet No. 36

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

**VS**  
*Estate Probhat Biswas*

26

27.11.2020

*27.11.2020*

piece of property as mentioned in the schedule which the O.P. /interested parties are currently holding on to. In this regard, the records produced by KoPT have been perused and I find that there is substantial evidentiary value to the same and there is nothing to question or doubt the veracity of the statements made by a public authority to this effect. Accordingly, the allusion to the filing of Title Suit No 1583 of 2017 by one Bhukailash Debutter Estate as sought to be referred by the sitting occupants in their contentions, which does not match with the subject premises of the O.P. are purely extraneous and misleading and confers no right, title or interest on the sitting occupants and therefore the specious reason with which the sitting occupants seek protection under its cover, does not hold any ground of legal merit.

In view of the above, the collusion / conspiracy by and between KoPT and Shri Probhat Biswas, as alleged by the sitting occupants in their contentions appears to be a false, baseless and mischievous contention taken by the sitting occupants in their defense.

As regards the allegations of breach of contract against the O.P. as non payment of KoPT's dues/ charges, as brought out by KoPT, I find that KoPT has produced letters dated 28.05.2006, 21.03.2006 etc addressed to the O.P., requesting him to liquidate immediately the huge rental dues. That apart, KoPT has also produced detailed statement of accounts dated 13.10.2014, 20.02.2017, 15.03.2017 in respect of the said occupation. It appears from the said statements of account that since 2006, 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





# 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. 1105 & 1105/R Of 2011 Order Sheet No. 37

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

*Estate Prabhat Biswas*

26

27.11.2020

*f 02.12.2020*

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 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. Non-payment of rental dues by O.P. for decades together is very much prominent and established, as discussed above, which leads to the breakdown of the bonafide jural relationship as mentioned between KoPT and the O.P. through the subject arrangement of contractual tenancy. As per law, a short term lease tenancy like the one granted to the O.P., continues only on the basis of timely payment of rent bill/s and non-payment of the same, even for a small period, is enough to vitiate the contract. Here, in the instant case, O.P. is a defaulter for decades and had never bothered to pay a single penny to KoPT since 2006. 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 the due applications of the tenets of law.

As regards the allegation of unauthorised parting with possession, I have gone through the application/ papers/ documents placed before me by KoPT as well as by the sitting occupants. It is KoPT's allegation and ironically, the admitted position of the sitting occupants too, that the sitting occupants, who are but rank outsiders, having no valid and enforceable lease/tenancy agreements with KoPT, have been enjoying the subject premises for a pretty long period of time. As per the statement of the sitting occupants, vide their applications filed before this Forum on 15.11.2017, 18.04.2018 etc, and as have emerged during the course of the hearings, the sitting occupants have been enjoying the possession of the subject premises for the last 40-50 years, practically since the days of their predecessor-in-interest. The sitting occupants have also admitted that they have been carrying on business at the subject premises, vide their said

*JA*

# 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. 1105 A1105/R Of 2011 Order Sheet No. 38

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

**VS**  
*Estate Prabhat Biswas*

26

27.11.2020

2 2020/12/2020

applications, and that they have no relationship with the O.P. Ample opportunities were provided to the heirs of O.P. to appear before this forum for making submissions, but the heirs of O.P. failed to avail of such opportunities. It further appears from the submissions made by the sitting occupants that the O.P. is not at all in possession of the premises. Still for the ends of justice, the Orders of this Forum were affixed on the conspicuous part of the premises each time, as confirmed from the Report/s of the Process Server. The O.P. was neither found at the premises during service of the Notice/s nor did he care to appear before this Forum at any point of time. Considering all these aspects, I think it is a clear case of parting of possession to a rank outsider without any authority of law. The O.P. has clearly abandoned the KoPT land in favour of strangers who are found to be enjoying the Port property for a very long period.

As per law, there is a strong proposition for creation of sub-tenancy or parting with possession in case there is a delivery of "exclusive possession" in favour of a third party. To consider and/or decide any question of creation of sub-tenancy, there must be a prima facie case of transfer of an exclusive right to enjoy the property in favour of a third party. Hon'ble Supreme Court of India had the occasion to decide on a question of creation of sub-tenancy. It was observed that whether there is sub-letting or not, is always a question of fact. With reference to Hon'ble Supreme Court's decision in Shalimar Tar Products Case [AIR 1988 SC 145], it was held that to constitute a sub-letting there must be a parting of legal possession, that is possession with the right to include and also right to exclude others; and in a particular case, any instance of sub-letting, was substantially a question of fact. In the instant case, transfer of an exclusive right to enjoy the premises, that too for a substantial period, and without liquidating the legitimate rental dues of the landlord, is very much significant, in the facts and circumstances of the case.



## 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. 1105/1105/R Of 2011 Order Sheet No. 3)

### BOARD OF TRUSTEES OF THE PORT OF KOLKATA

**VS**  
*Estate Probhat Biswas.*

26  
27-11-2020

*L B 02.12.2020*

However, the sitting occupants, have made no attempt to satisfy this Forum of Law, about any consent given on the part of KoPT to them, in occupying the public premises. As per Section 2 (g) of the P. P. Act, the "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 my view, the said provision is squarely attracted in the instant case and the sitting occupants have failed to justify why it should not be held otherwise. Accordingly, I am firm in holding that the O.P. had definitely parted with possession, to a number of strangers. With this observation, 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 notice is valid, lawful and binding upon the parties.

An attractive and specious submission has been made by the sitting occupants, that the proceeding cannot be instituted/continued against a dead person. In this context, I must say that the notice to quit was issued by KoPT to the Estate of Probhat Biswas on on 15.12.2006. The Police Enquiry Report dated 04.09.2005 ( filed before this Forum on 30.10.2014) establishes the presence of the heirs of O.P. at the recorded address of OP for communication with O.P. It is evident from the Police Enquiry Report dated 04.09.2005 that Shri Probhat Biswas expired on 24.10.1981. Now, regarding the Notice/s issued by this Forum, I must say that as per the mandate of the PP Act, 1971, in case of death of original tenant, the heirs/legal representatives are to be granted opportunity of hearing. In other words, there is no bar in continuance of the proceedings against the heirs/legal representatives of O.P. This Forum has not only followed the



# 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. 1105 & 1105/R Of 2011 Order Sheet No. 40

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

*Estate Probhat Biswas.*

26  
27.11.2020

*27.11.2020*

approved course of action but has also given ample opportunity by duly sending the show cause notice/s to the said heirs/legal representatives of Shri Probhat Biswas, since deceased. However, it is quite another thing that no person turned up on behalf of such heirs/legal representatives. Be that as it may, I do not find any merit in the contention of the sitting occupants regarding non-maintainability of the proceedings, as discussed above.

On the issue of delayed hearing of the instant proceeding and whether the proceedings u/s 4 and 7 of the Act are maintainable, I have borrowed my contention from the several decisions of the Hon'ble Judiciary, in particular the decisions of the Hon'ble Supreme Court, where-in it was decided that the 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. The Limitation Act is applicable for Civil Courts to try suits, unless barred by some other Act. Section 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, pecuniary jurisdiction and jurisdiction with regard to the 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 Courts have no jurisdiction to entertain any matter in respect of the public premises as defined under the P.P. Act. Sec. 15 of the Act puts a complete bar on entertaining any matter before the Civil Court in respect of Public Premises. No period of limitation is prescribed under the P.P. Act, 1971. Under such circumstances, I am

# 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. 1105 & 1105/R Of 2011 Order Sheet No. 41

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

**VS**  
*Estate Prabhat Biswas.*

26

27-11-2020

unable to appreciate the contention of the O.P. on this count as I am firm in holding that Limitation Act has no application in the instant case and as such, there is no bar in proceeding with the instant case.

In the aforementioned circumstances, being satisfied as above, I have no hesitation to uphold the claim of the Port Authority and I am inclined to hold the occupation of the O.P. as "unauthorized", and issue the order of eviction against O.P. on the following grounds,

1. That this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrear of dues/damages etc. as prayed for on behalf of KoPT and the Notice/s issued by this Forum are in conformity with the provisions of the Public Premises (Eviction of Unauthorised Occupant) Act 1971.
2. That any authorized representative of O.P. (Since the O.P. has reportedly died by the time the quit Notice was issued, he cannot attend the hearing of the forum) has also failed to appear before this Forum and has also failed to file reply to the Show Cause Notice/s under the Act, in spite of sufficient chances being given.
3. That O.P./his authorized representative, has violated the condition of tenancy under short term lease, as granted by the Port Authority by way of not making payment of rental dues to KoPT and unauthorised parting with possession.
4. That the O.P. /his authorized representative committed the breaches as has been mentioned by KoPT in the notice to quit dated 15.12.2006, viz. non-payment of rents and taxes etc. without any authority of law.
5. That O.P. /his authorized representative has failed and neglected to hand over possession of the Public Premises in question after expiry of the lease and after

J. B. 02-12-2020

# 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. 1105 & 1105/R Of 2011 Order Sheet No. 42

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

**VS**  
*Estate Probhat Biswas.*

26  
27.11.2020

*27.11.2020*

*[Signature]*

issuance of the Notice to Quit dated 15.12.2006 duly issued by KoPT.

6. That O.P. has parted with possession of the public premises unauthorisedly, to rank outsiders/businesses without any permission of the Port Authority.
7. That the filing of Title Suit No 1583 of 2017 by Bhukailash Debutter Estate as sought to be referred by the sitting occupants in their contentions, confers no right, title, interest on the sitting occupants and therefore the specious rationale with which the sitting occupants seek protection under its cover, does not hold any ground of legal merit and hence is rejected.
8. That the contention of the sitting occupants of non-maintainability of proceedings due to death of Shri Probhat Biswas, is not at all tenable in law.
9. That no case has been made out on behalf of either O.P. or sitting occupants as to how their occupation in the Public Premises could be termed as "authorised occupation" after issuance of notice dated 15.12.2006, demanding possession by the Port Authority and occupation of O.P. and the sitting occupants have become unauthorized in view of Sec.2(g) of the P.P. Act, 1971.
10. That, right from the period as mentioned in the said Notice to quit dated 15.12.2006, O.P. and sitting occupants have lost their authority to occupy the Public Premises and O.P./ sitting occupants are liable to pay compensation charges/damages with interest for wrongful use and enjoyment of the Public Property upto the date of handing over of clear, vacant and unencumbered possession of the same to the Port Authority.
11. That the occupation of O.P. beyond the period of expiry of the ejection notice dated 15.12.2006 is unauthorized in view of Sec. 2 (g) of the Public Premises Act in question;



# 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. 1105 & 1105/B of 2011 Order Sheet No. 43

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS  
*Estate Prabhat Biswas*

2.6  
27-11-2010

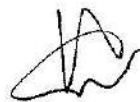
*J* 20.12.2010

12. That O.P./ sitting occupants has failed to bear any witness or adduce any evidence in support of its occupation into the public premises as 'authorized occupant';

13. That ejectment notice dated 15.12.2006 as served upon O.P., demanding possession of the public premises by KoPT is valid, lawful and binding upon the parties;

Accordingly, I sign the formal order of eviction under Sec. 5 of the Act as per Rules made thereunder, giving 15 days time to O.P. 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 as their occupation into the Public Premises is/are unauthorized, in view of sec. 2(g) of the Act. 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.

It is my considered view that a sum of Rs. 7,05,421.00/- (Rupees Seven Lakhs Five Thousand Four Hundred and Twenty One only) for the period from 01.01.2006 up to 14.01.2007 (both days inclusive) is due and recoverable from O.P. by the Port authority on account of arrear rent fees and O.P. must have to pay the rent fees to KoPT on or before 15.12.2010. Such dues attract interest at the rate of 18% per annum upto 06.04.2011 and thereafter at the rate of 14.25% per annum, till the liquidation of the same from the date of incurrence of liability, in accordance with the notification of KoPT, issued under Authority of Law as per adjustment of payments made so far by O.P as per KoPT's books of accounts. I sign the formal order as per Rule, u/s 7 of the Act.



# 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. 1105/1105/R Of 2011 Order Sheet No. 44

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

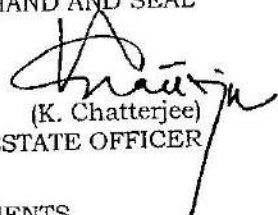
**VS**  
*Estate Probhat Beiswas.*

26  
27.11.2020.

I am not inclined to assess the damages at this stage as the O.P. is liable to pay damages for unauthorized use and enjoyment of the property right upto the date of handing over of possession of the public premises to KoPT. As such, the damages are to be assessed later, upon issuance of *afresh* Notice u/s 7(2) of the Act by this Forum, at the appropriate time. KoPT is directed to submit a report regarding its claim on account of damages against O.P., indicating there-in, the details of the computation of such damages with the rate of charges so claimed for the respective periods (including the date of taking over of possession) for my consideration in order to assess the damages as per the Act and the Rules made thereunder.

I make it clear that in the event of failure on the part of O.P. to comply with this order as aforesaid, Port Authority is entitled to proceed further for recovery of possession 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 \*\*\*

*2* 22.12.2020.

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

REASONED ORDER NO. 26 DT 27.11.2011  
PROCEEDINGS NO. 1105 OF 2011

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

-Vs-

M/S Estate Probhat Biswas

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 Estate Probhat Biswas, 12, Braunfield Road, Kolkata - 700 027 is in unauthorized occupation of the Public Premises specified in the Schedule below:

**REASONS**

1. That this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrear of dues/damages etc. as prayed for on behalf of KoPT and the Notice/s issued by this Forum are in conformity with the provisions of the Public Premises (Eviction of Unauthorised Occupant) Act 1971.
2. That any authorized representative of O.P. (Since the O.P. has reportedly died by the time the quit Notice was issued, he cannot attend the hearing of the forum) has also failed to appear before this Forum and has also failed to file reply to the Show Cause Notice/s under the Act, in spite of sufficient chances being given.
3. That O.P./his authorized representative, has violated the condition of tenancy under short term lease, as granted by the Port Authority by way of not making payment of rental dues to KoPT and unauthorised parting with possession.
4. That the O.P. /his authorized representative committed the breaches as has been mentioned by KoPT in the notice to quit dated 15.12.2006, viz. non-payment of rents and taxes etc. without any authority of law.
5. That O.P. /his authorized representative has failed and neglected to hand over possession of the Public Premises in question after expiry of the lease and after issuance of the Notice to Quit dated 15.12.2006 duly issued by KoPT.
6. That O.P. has parted with possession of the public premises unauthorisedly, to rank outsiders/businesses without any permission of the Port Authority.
7. That the filing of Title Suit No 1583 of 2017 by Bhukailash Debutter Estate as sought to be referred by the sitting occupants in their contentions, confers no right, title, interest on the sitting occupants and therefore the specious rationale with which the sitting occupants seek protection under its cover, does not hold any ground of legal merit and hence is rejected.

Please see on reverse

8. That the contention of the sitting occupants of non-maintainability of proceedings due to death of Shri Probhat Biswas, is not at all tenable in law.
9. That no case has been made out on behalf of either O.P. or sitting occupants as to how their occupation in the Public Premises could be termed as "authorised occupation" after issuance of notice dated 15.12.2006, demanding possession by the Port Authority and occupation of O.P. and the sitting occupants have become unauthorized in view of Sec.2(g) of the P.P. Act, 1971.
10. That, right from the period as mentioned in the said Notice to quit dated 15.12.2006, O.P. and sitting occupants have lost their authority to occupy the Public Premises and O.P./ sitting occupants are liable to pay compensation charges/damages with interest for wrongful use and enjoyment of the Public Property upto the date of handing over of clear, vacant and unencumbered possession of the same to the Port Authority.
11. That the occupation of O.P. beyond the period of expiry of the ejection notice dated 15.12.2006 is unauthorized in view of Sec. 2 (g) of the Public Premises Act in question;
12. That O.P./ sitting occupants has failed to bear any witness or adduce any evidence in support of its occupation into the public premises as 'authorized occupant';
13. That ejection notice dated 15.12.2006 as served upon O.P., demanding possession of the public premises by KoPT is valid, lawful and binding upon the parties;

A copy of the reasoned order No. 26 dated 27-11-2020 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 **Estate Probhat Biswas, 12, Braunfield Road, Kolkata - 700 027** 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 **Estate Probhat Biswas, 12, Braunfield Road, Kolkata - 700 027** 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-328/2**

The said piece or parcel of land Msg.104.89 Sq.m or thereabouts is situate at Circular Garden Reach Road, Thana: South Port Police Station, Calcutta, Dist.: 24 Parganas, Registration District : Alipore. It is bounded On the North by Circular Garden Reach Road, On the East & the South by the Trustees' vacant land and On the West by the road leading to private property.

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

Dated: 01-12-2020

  
Signature & Seal of the  
Estate Officer.

**COPY FORWARDED TO THE ESTATE MANAGER/CHIEF LAW OFFICER, SYAMA PRASAD MOOKERJEE PORT, KOLKATA 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, Fairlie Place (1st FLOOR) KOLKATA-700001

Form " E "

PROCEEDINGS NO. 1105/R of 2011  
ORDER NO. 26 DATED: 27.11.2012

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

To  
**Estate Probhat Biswas,**  
**12, Braunfield Road,**  
**Kolkata - 700 027.**

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

AND WHEREAS, by written notice dated 27.04.2017 ( Vide Order No 09  
dated 15.03.2017) you were called upon to show cause on/or before  
19.05.2017 why an order requiring you to pay a sum of Rs. 7,05,421.00  
(Rupees Seven Lakhs Five Thousand Four Hundred and Twenty One 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. 7,05,421.00 (Rupees Seven  
Lakhs Five Thousand Four Hundred and Twenty One only) for the period  
01.01.2006 to 14.01.2007 (both days inclusive) to Kolkata Port Trust by  
15.12.2012.

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 upto 06.04.2011 and thereafter at the rate of 14.25% per annum till it's liquidation of the same from the date of incurrence of liability in accordance with the notification of KoPT issued under Authority of Law as per adjustments of payments made so far by O.P. as per KoPT's books of accounts.

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**

**Plate no. D-328/2**

The said piece or parcel of land Msg. 104.89 Sq.m or thereabouts is situate at Circular Garden Reach Road, Thana: South Port Police Station, Calcutta, Dist.: 24 Parganas, Registration District : Alipore. It is bounded On the North by Circular Garden Reach Road, On the East & the South by the Trustees' vacant land and On the West by the road leading to private property.

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

Dated: 01-12-2020

  
Signature and seal of the  
Estate Officer

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