

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. 1382 & 1382/R Of 2013 Order Sheet No. 33

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Smt. Govinda Devi & others.

VS

{ SB-25/A }
{ SF-181 }

FINAL ORDER

The instant proceedings No. 1382, 1382/R of 2013 arose out of an application being No. Lnd. 15/37/06/09 dated 03.01.2006 filed by Syama Prasad Mookerjee Port, Kolkata [erstwhile Kolkata Port Trust], hereinafter referred to as KoPT, Applicant herein, praying for an order of eviction and recovery of dues damages and/or compensation along with accrued interest etc. against **Smt. Govinda Devi & Ors** the O.P. herein, under relevant provisions of the Public Premises (Eviction of Unauthorised Occupant) Act 1971. The facts of the case is summarised here under.

O.P. came into occupation of the Port property being land measuring about 117.058 sq.mtrs or thereabout situated on the West Side of Strand Road between Jagannath Ghat Cross Road and C.I.T Road (under Plate Nos.SB-25/A & SF-181) within the presidency town of Kolkata, as lessee on short term with certain conditions as embodied in KoPT's offer/letter for allotment. KoPT has submitted that while in possession of the port property as lessee, OP violated the condition of such lease by way of defaulting in payment of rental dues for use and enjoyment of the Port property in question the details of which has been given in 'Schedule-B' of the KoPT's application dated 03.01.2006.

It is further submitted by KoPT that O.P has erected unauthorized construction on the subject premises and also have unauthorisedly sublet or parted with possession of the demised land without taking any permission from KoPT in gross violation of the terms of said tenancy & O.P has failed to remove such breaches inspite of repeated chances being given to them by KoPT.

In view of the aforesaid breaches committed by the O.P., KoPT had issued notice to quit being No. Lnd.15/37/05/249 dated 02.05.2005 asking the

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J.R. 15.12.2020

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O.P. to hand over clear, vacant, peaceful and unencumbered possession of the property to KoPT on 31.05.2005. But O.P has failed and neglected to vacate/ hand over the possession of such premises to KoPT after service of the said Notice to Quit.

Considering the submission advanced by KoPT and the documents on record, Notice/s to Show Cause under section 4 and 7 of the Public Premises (Eviction of Unauthorized Occupation) Act, 1971 all dated 30.07.2013 (vide Order No.03 dated 06.03.2013) were issued by this Forum to O.P. The Notice/s were issued in terms of the said provisions of the Act calling upon the O.P. to appear before this Forum in person or through authorized representative capable of answering all material questions in connection with the matter along with the evidence which the opposite party intends to produce in support of their case.

The said notice/s were sent through Speed Post/hand delivery to the correct recorded addresses of O.P. at 67/50, Strand Road, Kolkata-700007. It appears from records that the Notice/s sent through speed post were not returned back. However, it appears from the report of Process Server dated 31.07.2013 that said notices were served upon O.P personally and one Sri Pradip Kr Pal has received the same on behalf of O.P. Affixation was also done on the same day at about 12.15 P.M over the subject premises as per the mandate of the P.P Act.

Pal
O.P entered appearance and contested the matter through their Ld' advocate by filing Vokatnama along with their reply to the Show Cause dated 04.09.2013, followed by letter/petition dated 09.10.2013, 13.11.2013, 20.11.2013, 05.03.2014, 02.07.2014, 22.04.2015, 23.12.2015, 13.01.2016, 12.08.2016, 02.11.2016, 04.01.2017, 03.01.2018, 18.06.2018 and 11.07.2018. Thereafter, KoPT also

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files their Minutes of Reconciliation of Accounts dated 17.02.2016, Letter/comment dated 02.11.2016, 01.11.2017, 09.05.2018, Statement of Accounts as generated on 04.03.2019 for clarification of the dues as payable by O.P and copy of undated Joint Inspection report & Sketch plan. Both the parties were heard extensively and finally on 05.03.2019 on arguments of both parties the matter was reserved for final Order.

To some up the allegations of KoPT against O.P. I find that allegations of KoPT against the O.P are four folds i.e non payment of rent and other charges, unauthorized construction on the public premises in question unauthorised subletting or parting with possession of the demised land without taking any permission from KoPT in gross violation of the terms of said tenancy and failure in removal of such unauthorised constructions inspite of repeated requests from KoPT.

Contention of O.P during the course of hearing and submitted documents are summarised as follows:-

- I) That O.P in the instant proceeding are the lessee and lawful occupiers of the said scheduled property since long as per the Registered Deed of Lease.
- II) That the O.P never violated the condition of the lease Deed in question. Unfortunately due to some unstable business condition rents were not paid on time.
- III) That O.P did not make any unauthorised construction in the schedule property in question or in any part thereof without prior permission from KoPT and thereby not violated the term and conditions of the said lease Deed.
- IV) That the said business/Trade is the only source of income of O.P.
- V) O.P prays for sympathetic consideration or withdrawal/recall of the notice/s and other

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- charges as imposed and mentioned in the said notice/s by the authority concerned.
- VI) That O.P undertake to pay the dues after adjustment of accumulated payments as have already been paid till date and favoured them with the opportunity at least 16(sixteen) monthly instalments to clear such dues(rent) if any.

Now, while passing the Final Order, I have carefully considered the documents on record and the submissions of the parties. With regard to the KoPT's allegation on non payment of rent and other charges, O.P has admitted his liability vide reply/written objection as filed on 04.09.2013. It is the categorical submission of O.P in terms of demand notice/s given by KoPT that O.P have paid an amount of a total sum of Rs.2,00,000/- towards rents on diverse dates from July 1988 and afterwards and such payments were made abruptly not on time due to unfortunate business condition and KoPT had not issued any receipt for such payment. During the course of hearing O.P prayed for reconciliation of their dues but it is amply clear from the minutes of reconciliation as received by this Forum on 17.02.2016 that such reconciliation was made in presence of both the parties and O.P has failed to clear their dues despite the fact of such reconciliation. Further, before this forum KoPT has filed an updated Statement of Accounts as generated on 04.03.2019, which clearly indicates that huge dues on the part of the O.P. is still payable. Although during the course of hearing O.P had made some payments but never succeeded in complete and full discharge of such dues taxes and interest due to KoPT. Copy of such Statements of Accounts has already been handed over to O.P. There is no reason to disbelief such submission of a statutory authority like KoPT. Moreover, O.P's plea that they have made payment by instalments as per the direction of Estate Officer etc. does not seem to

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have any justification in this juncture because such statement do not come to the protection of O.P. at all. Further it appears from the record that at the time of issuing Quit Notice breach of non-payment was very much prevalent therefore, O.P cannot bypass his liability of payment of rent on the basis of his present plea. More so, it is a settled fact that during the course of hearing if anything is received by KoPT that should be treated as occupational charges not as rent. Thus this Forum holds that the charge of default in payment of rent and taxes is definitely established. Further the application filed by O.P. for waiver of KoPT's claim on account of interest is 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 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 as he has failed to pay the principal amount due to be payable by him 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.

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With regards to the O.P's contention and KoPT's allegation on unauthorized construction and unauthorized parting with possession/ subletting by O.P in violation of lease term, the content of KoPT's letter to O.P dated 13.05.2004 (styled as Final Notice) is very much vital in deciding the

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issues. It reveals that KoPT has given one more opportunity to O.P to remove the breaches before issuing the Ejectment notice dated 02.05.2005, terminating the lease in question. No reply to KoPT's allegation regarding unauthorized parting with possession have been given from O.P's end in his initial application/reply to the Shaw Cause dated 04.09.2013. Moreover, during the course of hearing KoPT has also come up with a specific drawing/sketch Maps being No. 9950K dated 11.04.2018 and a joint inspection report which clearly depicts such breach on the part of O.P. As per the P.P Act 1971, once the Notice U/S-4 is issued, burden is on the O.P to Show Cause and/or produce evidence but in this case O.P has hopelessly failed to do so. In my view, the O.P. has sufficiently admitted about the existence of unauthorized construction in the premises, and since it is a settled law that admitted facts need not be proved, I have no bar in accepting that the breach of unauthorized construction was existing when the notice to quit dated 02.05.2005 came to be issued by the Port Authority.

Now as regards unauthorized parting with possession/sub-letting, O.P has not specifically denied such fact vide their reply to the Show Cause. However, the Joint Inspection Report and the photographic evidences as submitted by KoPT depicts that such unauthorized parting as well as other breaches as alleged by KoPT are still existing. Even O.P did not produce any single photographic evidence or documentary evidence for trade or business from that premises to counter the allegation of KoPT. As such it is very difficult to accept the mere claim of the O.P which is bereft of any cogent reason. More over induction of a third party without the approval of KoPT is also against spirit of tenancy.

As regards the O.P's prayer for sympathetic consideration or withdrawal/recall of the notice/s

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and other charges, I must say that such allegations does not seem to have any ground because proceeding under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 is a summary proceeding and So long the property of the Port Authority is coming under the purview of "public premises" as defined under the Act, adjudication process by serving Show Cause Notice/s u/s 4 & 7 of the Act is very much maintainable and there cannot be any question about withdrawal/ recall of such notice/s before this Forum of Law.

Discussion against the forgoing reveal that the notice to quit dated 02.05.2005 is validly issued and served on O.P and the same are binding and very much enforceable, in the facts and circumstances of the case. Thus being satisfied as above, I am left with no other alternatives but to issue the order of eviction against O.P as prayed for on behalf of KoPT, on following grounds/reasons.

1. That O.P. has violated the condition of short term lease as granted by the Port Authority by way of not making payment of rental dues and taxes to KoPT, for a prolonged period of time.
2. That the O.P has no authority to occupy the port property after determination of the lease in question by way of Quit notice dated 02.05.2005.
3. That O.P has unauthorisedly parted with possession of the premises to rank outsiders without any lawful authority.
4. That O.P has carried out unauthorized construction in the public premises without any lawful authority.
5. That the O.P or any other person/occupant have failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation"

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6. That the notice to quit dated 02.05.2005 as served upon O.P. by the Port Authority is valid, lawful and binding upon the parties and O.P.'s occupation and that of any other occupant of the premises has become unauthorised in view of Sec.2 (g) of the P.P. Act.
7. That O.P. is liable to pay damages for wrongful use and occupation of the public premises up to the date of handing over the clear, vacant and unencumbered possession to the port authority.

ACCORDINGLY, I sign the formal order of eviction u/s 5 of the Act as per Rule made there under, giving 15 days time to O.P. and any person/s whoever may be in occupation to vacate the premises. I make it clear that all person/s whoever may be in occupation are liable to be evicted by this order and the Port Authority is entitled to claim damages for unauthorized use and enjoyment of the property against O.P. in accordance with Law up to the date of recovery of possession of the same. KoPT is directed to submit a comprehensive status report of the Public Premises in question on inspection of the property after expiry of the 15 days as aforesaid so that necessary action could be taken for execution of the order of eviction u/s. 5 of the Act as per Rule made under the Act.

It is my considered view that a sum of Rs.8,33,849.26 for the period 01.12.1991 to 31.05.2005 (both days inclusive) is due and recoverable from O.P. by the Port authority on account of rental dues and O.P. must have to pay such rental dues to KoPT on or before The said dues shall attract compound interest @ 6.20 % per annum, which is the current rate of interest as per the Interest Act, 1978 (as gathered by me from the official website of the State Bank of India) from the date of incurrence of liability, till the liquidation of the same, as per the adjustment of payments, if

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Smt.

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any made so far by O.P., in terms of KoPT's books of accounts. I sign the formal orders u/s 7 of the Act.

I find that KoPT has made out an arguable claim against O.P., founded with sound reasoning, regarding the damages/compensation to be paid for the unauthorised occupation. I make it clear that KoPT is entitled to claim damages against O.P. for unauthorised use and occupation of the public premises right upto the date of recovery of clear, vacant and unencumbered possession of the same in accordance with Law as the possession of the premises is still lying unauthorisedly with the O.P. KoPT is directed to submit a statement comprising details of its calculation of damages, indicating there-in, the details of the rate of such charges, and the period of the damages (i.e. till the date of taking over of possession) together with the basis on which such charges are claimed against O.P., for my consideration for the purpose of assessment of such damages as per Rule made under the Act.

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

GIVEN UNDER MY HAND AND SEAL


(J.P. Boipai)
ESTATE OFFICER

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



f B 15.12.2020

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

REASONED ORDER NO. 31 DT 14.12.2020.
PROCEEDINGS NO. 1382 OF 2013

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-

Smt.Govinda Devi & Others (O.P.)

15.12.2020

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 **Smt.Govinda Devi & Others of 67/50, Strand Road, Kolkata-700007** is in unauthorized occupation of the Public Premises specified in the Schedule below :

REASONS

1. That O.P. has violated the condition of short term lease as granted by the Port Authority by way of not making payment of rental dues and taxes to KoPT, for a prolonged period of time.
2. That the O.P has no authority to occupy the port property after determination of the lease in question by way of Quit notice dated 02.05.2005.
3. That O.P has unauthorisedly parted with possession of the premises to rank outsiders without any lawful authority.
4. That O.P has carried out unauthorized construction in the public premises without any lawful authority.
5. That the O.P or any other person/occupant have failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation"
6. That the notice to quit dated 02.05.2005 as served upon O.P. by the Port Authority is valid, lawful and binding upon the parties and O.P.'s occupation and that of any other occupant of the premises has become unauthorised in view of Sec.2 (g) of the P.P. Act.
7. That O.P. is liable to pay damages for wrongful use and occupation of the public premises up to the date of handing over the clear, vacant and unencumbered possession to the port authority.

Handwritten mark

PLEASE SEE ON REVERSE

A copy of the reasoned order No. 31 dated 14.12.2020 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 **Smt. Govinda Devi & Others of 67/50, Strand Road, Kolkata-700007** 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 **Smt. Govinda Devi & Others of 67/50, Strand Road, Kolkata-700007** 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. SB-25/A & SF-181

The said piece or parcel of land msg about 117.058 sq.m or thereabouts is situated on the west side of Strand Road between Jagannath Ghat Cross Road and CIT Road, in the presidency town of Kolkata. It is bounded on the north by the lessor's land leased to Raghunandan Prasad, on the east by Strand Road, on the south by the lessor's godown known as Block-A, Jagannath Ghat godown & on the west by the lessor's land partly open and partly used as passage.

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

Date- 14.12.2020.


Signature & Seal of the
Estate Officer.

COPY FORWARDED TO THE ESTATE MANAGER/CHIEF LAW OFFICER, 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
6, Fairlie Place Warehouse

Form " E "

PROCEEDINGS NO.1382/R OF 2013
ORDER NO. 31 DATED: 14.12.2020

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

To

Smt.Govinda Devi & Others
67/50, Strand Road,
Kolkata-700007

15.12.2020

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

AND WHEREAS, by written notice dated 30.07.2013 you are called
upon to show cause on or before 04.09.2013 why an order requiring
you to pay a sum of Rs 8,33,849.26 (Rupees Eight Lakhs Thirty Three
Thousand Eight Hundred Forty Nine and paisa twenty six only) being
the rent payable together with compound interest in respect of the
said premises should not be made;

AND WHEREAS I have considered your objections and/or evidence
produced before this Forum.

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
8,33,849.26 (Rupees Eight Lakhs Thirty Three Thousand Eight
Hundred Forty Nine and paisa twenty six only) for the period
01.12.1991 to 31.05.2005 (both days inclusive) to SMP, Kolkata by
28.12.2020.

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 @ 6.20 % per annum on the above sum till its final payment being the current rate of interest as per the Interest Act, 1978.

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.

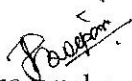
SCHEDULE

Plate No. SB-25/A & SF-181

The said piece or parcel of land msg about 117.058 sq.m or thereabouts is situated on the west side of Strand Road between Jagannath Ghat Cross Road and CIT Road, in the presidency town of Kolkata. It is bounded on the north by the lessor's land leased to Raghunandan Prosad, on the east by Strand Road, on the south by the lessor's godown known as Block-A, Jagannath Gthat godown & on the west by the lessor's land partly open and partly used as passage.

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

Dated: 14.12.2020


Signature and seal of the
Estate Officer

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