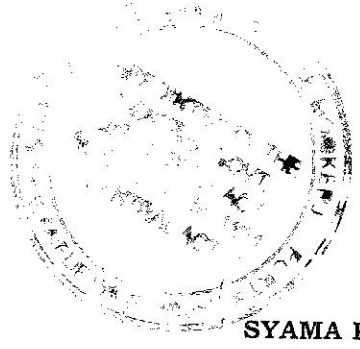


Web-site



**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  
Fairlie Warehouse  
6, Fairley Place, Kolkata- 700 001.

REASONED ORDER NO. 23 DT 04-01-2021.  
PROCEEDINGS NO. 1641 OF 2018

**BOARD OF TRUSTEES OF THE PORT OF KOLKATA  
-Vs-  
M/S Calcutta Tent Mfg Co (O.P.)**

**F O R M - "B"**

J 05-01-2021

**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 Calcutta Tent Mfg Co, 1, Chitpur Ghat Lane, Kolkata- 700002** is in  
unauthorized occupation of the Public Premises specified in the Schedule  
below :

**REASONS**

1. That the O.P has no authority to occupy the port property after determination of such long term lease by way of Quit Notice dated 10.08.2010.
2. That O.P has carried out unauthorized construction in the public premises in question without any lawful authority.
3. That O.P has unauthorisedly inducted subtenants in the said public premises in violation of the condition of such long term lease.
4. 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"
5. That the notice to quit dated 10.08.2010 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.
6. That the O.P is defaulted in payment of monthly rent and taxes in violation of terms of the lease is question.
7. That the 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**

(2)

A copy of the reasoned order No. 23 dated 04.01.2021 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 Calcutta Tent Mfg Co, 1, Chitpur Ghat Lane, Kolkata- 700002** 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 Calcutta Tent Mfg Co, 1, Chitpur Ghat Lane, Kolkata- 700002** 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.

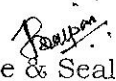
### SCHEDULE

**Plate No.SB-555**

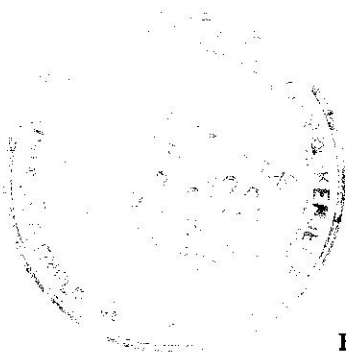
Land msg.534.007 Sq.mtrs at Cossipore, Strand Bank Road, River front, in the presidency town of Kolkata under Plate No.SB-555. It is bounded on the North by Brojodoyal Saha Road, on the South by private property, on the East by private property and on the West by the Trustee's land occupied by Abdul Halim Khan and alongside Strand Bank Road & River Hooghly.

Trustees' means the Board of Trustees' for the Port of Kolkata.

Date- 05-01-2021

  
Signature & Seal of the  
Estate Officer.

COPY FORWARDED TO THE ESTATE MANAGER, SMP, 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 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  
6, Fairlie Place Warehouse

**Form "E"**

PROCEEDINGS NO.1641/R OF 2018  
ORDER NO. 23 DATED: 04.01.2021

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 Calcutta Tent Mfg Co,  
1, Chitpur Ghat Lane,  
Kolkata- 700002

WHEREAS you are in occupation of the public premises described in  
the Schedule below.

AND WHEREAS, by written notice dated 27.07.2018 you are called  
upon to show cause on/or before 24.08.2018 why an order requiring you  
to pay a sum of Rs 10,96,715.00/- (Rupees Ten Lakhs Ninety Six  
Thousand Seven hundred Fifteen only) being the rents 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  
10,96,715.00/- (Rupees Ten Lakhs Ninety Six Thousand Seven hundred  
Fifteen only) for the period 01.04.1992 to 28.02.2011 (both days  
inclusive) to Kolkata Port Trust by 19.01.2021.

PLEASE SEE ON REVERSE

: 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 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.

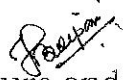
**SCHEDULE**

**Plate No.SB-555**

Land msg.534.007 Sq.mtrs at Cossipore, Strand Bank Road, River front, in the presidency town of Kolkata under Plate No.SB-555. It is bounded on the North by Brojodoyal Saha Road, on the South by private property, on the East by private property and on the West by the Trustee's land occupied by Abdul Halim Khan and alongside Strand Bank Road & river Hooghly.

Trustees' means the Board of Trustees' for the Port of Kolkata.

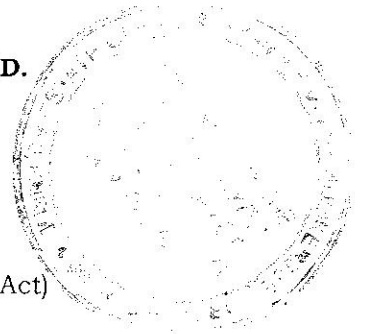
Dated: 05.01.2021

  
Signature and seal of the  
Estate Officer

COPY FORWARDED TO THE ESTATE MANAGER, SMP, KOLKATA FOR INFORMATION.

*Sub.*  
A 05-01-2021

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

PROCEEDINGS NO. 1641/D OF 2018  
ORDER NO.23 DATED: 04.01.2021

**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 Calcutta Tent Mfg Co,  
1, Chitpur Ghat Lane,  
Kolkata- 700002**

J 05.01.2021

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

And whereas by written notice dated 27.07.2018 you are called upon to show cause on/or before 24.08.2018 why an order requiring you to pay damages of Rs. 23,86,628.00/- (Rupees Twenty Three Lakhs Eighty Six thousand Six hundred Twenty Eight only) 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. 23,86,628.00/- (Rupees Twenty Three Lakhs Eighty Six thousand Six hundred Twenty Eight only) assessed by me as damages on account of your unauthorised occupation of the premises for the period from 01.03.2011 to 30.06.2017 (both days inclusive) to Kolkata Port Trust by 19.01.2021.

PLEASE SEE ON REVERS

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 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.SB-555**

Land msg.534.007 Sq.mtrs at Cossipore, Strand Bank Road, River front, in the presidency town of Kolkata under Plate No.SB-555. It is bounded on the North by Brojodoyal Saha Road, on the South by private property, on the East by private property and on the West by the Trustee's land occupied by Abdul Halim Khan and alongside Strand Bank Road & river Hooghly.

Trustees' means the Board of Trustees' for the Port of Kolkata.

*J.P.*

Date 05-01-2021

*P. Roy*  
Signature & Seal of the  
Estate Officer.

COPY FORWARDED TO THE ESTATE MANAGER, SMP, KOLKATA FOR INFORMATION.

# 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. 1641, 1641/R & 1641/D Of 2018 Order Sheet No. 15

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

*M/S. Calcutta Tent Mfg. Co.* **VS**

### FINAL ORDER

The instant proceedings No. 1641, 1641/R, 1641/D of 2018 arose out of an application being No. No.Lnd.4967/9/II/4636 dated 09.11.2011 filed by Syama Prasad Mookerjee Port, Kolkata [erstwhile Kolkata Port Trust], Applicant herein, praying for an order of eviction and payment of arrear rent, taxes, compensation along with interest etc. against M/S Calcutta Tent Mfg Co, 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 534.007 sq.mtrs or thereabout situated at Cossipore, Strand Bank Road (under Plate No.SB-555) River Front, in the Presidency Town of Kolkata, as long term lessee for 20 years with effect from 20.12.1991 on payment of monthly rent on certain terms and conditions as embodied in KoPT's offer/letter for allotment bearing no. LND/4967/Tender/B dated 15.05.1991. KoPT has submitted that while in possession of the port property as lessee, OP violated the condition of such long term lease by way of not making the payment of rent, taxes and other charges 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 09.11.2011.

It is also the case of KoPT that O.P has inducted unauthorised subtenants and erected unauthorized construction without taking any permission from KoPT in gross violation of the terms of said tenancy.

In view of the aforesaid breaches committed by the O.P., KoPT had issued notice to quit being No. Lnd.4967/9/10/1593 dated 10.08.2010 asking the O.P. to hand over clear, vacant, peaceful and unencumbered possession of the property to KoPT on 28.02.2011. 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

23  
04.01.2021

05.01.2021

*[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. 1641, 1641/R & 1641/D Of 2018 Order Sheet No. 16

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

*VS*  
*M/S. Calcutta Trust Mfg. Co.*

*23*  
*04-01-2021*

section 4 and 7 of the Public Premises (Eviction of Unauthorized Occupation) Act, 1971 all dated 27.07.2018 (vide Order No.09 dated 18.07.2018) 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 served through Speed Post to the recorded addresses of O.P. at 2, Chitpur Ghat Lane, Cossipore, Kolkata-700002. It appears from records that the Notice/s sent through speed post were returned back. The report of Process Server dated 30.07.2018 also depicts that said notices were not served upon O.P. personally however, affixation was done on the same day at about 1.30 P.M over the subject premises as per the mandate of the P.P Act.

O.P entered appearance through their Ld. advocate on 24.08.2018 who undertook to file his vokalatnama along with their reply on the next date of hearing. Thereafter on 24.09.2018 O.P's advocate filed his vokalatnama along with a prayer for documents relied upon by KoPT but failed to submit his reply as per the direction of the forum. Finally on 15.02.2019 O.P's Advocate filed his Reply/Written Objections duly signed by G.S Kandoi, Authorised signatory/Managing Partner of O.P company, followed by Letter/Petition dated 12.03.2019, 19.03.2019 and 30.03.2019. Thereafter, KoPT also filed its comments/rejoinder on the said reply/written statement of O.P on 12.03.2019 along with a updated Statement of Accounts to clarify the present dues as on date. Both the parties were heard extensively. Finally on 02.04.2019 rejecting the adjournment petition of O.P and having granted 20 days time to both the parties for filing their respective Written Notes of Argument, the matter was reserved for final order. However, at the time of disposal of this instant matter the Forum found an application of O.P dated 14.05.2019 in the record where O.P sought four weeks time to file their further submission/reply in the light of Writ Petition (being No. W.P 771 of 2012). In

*J. B. 05-01-2021*

*J.B.*



# 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. 1641, 1641/R x 1641/D of 2018 Order Sheet No. 17

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

*M/S. Calcutta Trust Mfg. Co.*  
VS

23  
04.01.2021

view of such application of O.P and on following the principles of natural justice, Forum gave another opportunity to both the parties to clarify the status of such Writ petition and both the parties confirmed that the said Writ Petition has been disposed off. Accordingly, the matter was reserved for passing Final Order on 14.12.2020.

To sum up the allegations of KoPT against O.P, I find that main focal points of KoPT's allegations are three folds i.e non payment of rent and taxes, induction of unauthorised subtenants and unauthorised constructions.

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

- 1) The instant Proceedings as initiated by KoPT is mala fide, misconceived, frivolous and not maintainable against O.P.
- 2) The said application also suffers from mis-joinder of parties and non-joinder of necessary parties.
- 3) The KoPT has no cause of action to justify the present proceeding and the claims carried by the KoPT are absolutely fictitious, extortionate and unfounded.
- 4) The present proceeding is also hit by Doctrine of estoppels, waiver and acquiescence.
- 5) The purported claim of KoPT is hopelessly barred by Law of limitation.
- 6) The fact of determination of the long term lease in question is denied by O.P. The purported Notice to quit dated 10.08.2010 was never served upon the O.P before 24.09.2018 as because the address mentioned in the said notice i.e 2, Chitpur Ghat Lane, P.s-chitpur, Kolkata-700002 is wrong.
- 7) The allegation of KoPT that O.P inducted unauthorised subtenants and made unauthorised construction over the said land are all false. O.P had ever inducted unauthorised subtenant or that any erection of unauthorised construction had taken place over the said land.
- 8) The contents of Schedules B and C of the application of KoPT are bad statements without any backing whatsoever in fact the petitioner has

*1305 no 10 2021*

*Sub.*

# 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. 1641, 1641/R & 1641/D Of 2018 Order Sheet No. 12

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

<sup>VS</sup>  
M/s. Calcutta Trust Mfg. Co.

23  
04-01-2021

not disclosed the basis and the calculation on the basis of which it has arrived at such figures.

Now while passing the final order, upon considering the deliberations of the parties and after carefully going through all the documents placed on record, I find contention of O.P that the instant proceeding is misconceived, malafied frivolous and not maintainable against O.P etc is not tenable in the eye of law. As regards the point of maintainability, I must say that 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 the maintainability of proceedings before this Forum of Law.

With regard to the issue of non payment of KoPT's rent and taxes, O.P has strongly denied the dues on its part vide reply/written objection as filed on 15.02.2019. The categorical submission of O.P in para No.22 of it's reply that... *it is denied that any amounts as in schedules B & C are due to the petitioner from the respondent. Infact the contents of the schedule are bad.* A detailed Statements of Accounts as generated on 08.03.2011 showing outstanding dues in question has already been handed over to O.P on 24.09.2018. There is no reason to disbelief such submission of the statutory authority. 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 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

05-01-2021

2021

# 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. 1641, 1641/R & 1641/D Of 2018 Order Sheet No. 19

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Calcutta Text Mfg. Co. <sup>VS</sup>

23  
04-01-2021

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05-01-2021

Ans.

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.'s plea that KoPT has not disclosed the basis and calculation on basis of which it has arrived at such a figure etc, does not seem to have any justification in this juncture because such statement do not come to the protection of O.P. at all. Thus this Forum holds that the charge of default in payment of rent and taxes is definitely established.

As regards the O.P.'s contention on applicability of estoppels, waiver and acquiescence, I must say that the principles of estoppels, acquiescence, etc are procedural in nature and thus the same will have no application in a case where issues involved are only pure question of law. According to law the question of estoppels arise when one person has, by his declaration, act or omission, **intentionally** caused or **permitted** another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceedings between himself and such person or his representative, to deny the truth of that thing. In other words to constitute an estoppels there must be an intention or permission to believe certain thing. There is no material in O.P.'s objection by which it can be proved that there was any intention or permission on the part of KoPT about O.P.'s occupation in the said public premises in question. Moreover, mere acceptance of an amount tendered by O.P. during pendency of the proceedings cannot be said to be a "waiver" on the part of KoPT. In the present case in hand KoPT actively prosecuted 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. 1641, 1641/R/1641/D Of 2018 Order Sheet No. 20

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

<sup>VS</sup>  
M/S. Calcutta Trust Refg. Co.

23  
04-01-2021

proceedings for ejection against O.P. and as such it cannot be an accepted proposition that the notice to quit/s have been waived by any sense of law.

With regard to O.P's contention regarding applicability of limitation I have borrowed my contention from the several decisions of the Hon'ble Judiciary, in particular the decisions of the Hon'ble Supreme Court, wherein 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 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 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. 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 held that proceedings initiated by an Estate Officer are

5 Dec 2021

23

# 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. 1641, 1641/R & 1641/D Of 2018 Order Sheet No. 21

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

*M/s. Calcutta Tent Mfg. Co.* <sup>VS</sup>

23  
04.01.2021

not in the nature of suit nor the Estate Officer acts as a Court while deciding proceedings before him.

Under such circumstances, I am unable to appreciate the suggestion of the O.P. on this count and 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 and accepting the claim of KoPT on account of rent compensation and other charges. In fact, I have nothing to disbelief in respect of KoPT's claim against O.P. as per statement of accounts maintained regularly in KoPT's office in regular course of business.

28.05.2021

With regards to the allegation of KoPT regarding unauthorized construction and induction of unauthorized subtenant by O.P in violation of lease term, the content of KoPT's letter to O.P dated 19.10.2005(styled as Final Notice) is very much vital in deciding the issues. It reveals that KoPT has given one more opportunity to O.P to remove the breaches before issuing the Ejectment notice dated 10.08.2010, terminating the lease in question. No suitable explanation to KoPT's allegation regarding unauthorized construction and induction of unauthorized sub tenant have been given from O.P's end in it's reply to the Show Cause dated 15.02.2019. KoPT has also come up with specific drawing/sketch Maps being No. 9947-K dated 09.04.2018 and 9080-K dated 25.07.2013 respectively and both the sketches amply proves such unauthorized construction as committed by O.P . Moreover O.P has just denied such allegation by considering those as cock and bull story without giving any cogent reason. 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 10.08.2010 came to be issued by the Port Authority.

Now as regards the induction of unauthorized subtenant, mere claim on behalf of O.P that it had ever inducted

*Sub.*

# 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. 1641, 1641/R & 1641/D Of 2018 Order Sheet No. 22

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

<sup>VS</sup>  
M/s. Calcutta Tent Mfg. Co.

23  
04-01-2021

unauthorised subtenants or that any erection of unauthorised construction had taken place over the said land etc. are, in my view not sufficient to defend this type of serious allegation of induction of unauthorised subtenants. The O.P could have very well produced documents related to their trade or business from that premises but O.P chose to produce nothing. Even the photographic evidence produced by O.P to counter the allegation of KoPT are also doubtful. 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 contention that the purported Notice to quit dated 10.08.2010 was never served upon the O.P before 24.09.2018, my view is that such allegation of O.P has no justification as well. Because it appears from record that such notice was validly issued by way of registered post with acknowledgment due and the same was received by Anju Mishra & H.N Mishra for Calcutta Tent Mfg Co on 23.09.2010. Moreover, for the sake of argument if I admit that O.P's address is wrongly mentioned in the quit notice. Then how O.P appear and contest the instant proceeding on the due date of filing reply i.e on 24.08.2018 when the Show Cause Notice/s are containing the same address. Therefore, in my view such allegation of O.P is also not so material in this regard.

Further in their reply O.P has pleaded that T.S 5180 of 2009 is still pending before the City Civil Court, Calcutta but O.P. has never submitted that this Forum is barred by any interim order passed in the said Title Suit to finally adjudicate the matter. Therefore such issue is also decided in favour of KoPT.

Discussion against the forgoing reveal that as the the notice to quit dated 10.08.2010 is validly issued and served on O.P and the same is 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.

*[Handwritten signature]*

*[Faint circular stamp and handwritten notes]*  
23  
04-01-2021

# Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises  
(Eviction of Unauthorised Occupants) Act 1974

Proceedings No. 1641, 1641/R & 1641/D Of 2018 Order Sheet No. 23

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Calcutta <sup>VS</sup> Tent Mfg. Co.

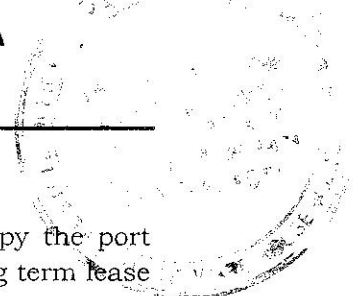
23  
04.01.2021

1. That the O.P has no authority to occupy the port property after determination of such long term lease by way of Quit Notice dated 10.08.2010.
2. That O.P has carried out unauthorized construction in the public premises in question without any lawful authority.
3. That O.P has unauthorisedly inducted subtenants in the said public premises in violation of the condition of such long term lease.
4. 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"
5. That the notice to quit dated 10.08.2010 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.
6. That the O.P is defaulted in payment of monthly rent and taxes in violation of terms of the lease is question.
7. That the 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.

*Joh.*

3/1/21  
SY...  
f. 205 no. 11 2021  
OP...  
Joh...



# 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. 1641, 1641/R & 1641/D Of 2018 Order Sheet No. 24

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Calcutta <sup>VS</sup> Rent Mfg. Co.

23  
04.01.2021

It is my considered view that a sum of Rs.10,96,715.00/- for the period 01.04.1992 to 28.02.2011 (both days inclusive) is due and recoverable from O.P. by the Port authority on account of rent and O.P. must have to pay such dues to KoPT on or before ~~19.01.2021~~ 19.01.2021. The said rental 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 any made so far by O.P., in terms of KoPT's books of accounts.

Likewise, 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 unauthorised occupation. As such, I must say that Rs 23,86,628.00/- as claimed by the Port Authority as damages in relation to the subject premises in question, is correctly payable by O.P. for the period 01.03.2011 to 30.06.2017 (both days inclusive) and it is hereby ordered that O.P. shall also make payment of the aforesaid sum to KoPT by ~~19.01.2021~~ 19.01.2021. The said damages 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 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.

05.01.2021

*Jals.*

I make it clear that KoPT is entitled to claim damages against O.P. for unauthorized 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, and as such the liability of O.P. to pay damages extends beyond 30.06.2017 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 30.06.2017, 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



# 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. 1641, 1641/R x 1641/D Of 2018 Order Sheet No. 25

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

**VS**  
M/S. Calcutta Tent Mfg. Co.

23  
04.01.2021

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 \*\*\*

05.01.2021