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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. 42 DT 11-01-2011
PROCEEDINGS NO. 1138 OF 2011

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-

M/S A.K Mitter & Brothers (O.P.)

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 A.K Mitter & Brothers of 23, Sarat Bose Road, Kolkata-700020** 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 dues/damages etc. as prayed for on behalf of KoPT.
2. That O.P. has violated the condition of long 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.
3. That O.P has failed to file any reply to the Show Cause Notice/S issued by this Forum.
4. 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 O.P or any other person/occupant have made unauthorised construction & unauthorised encroachment over the premises in question in violation of lease term.
6. That the O.P has parted with Possession of the subject premises to third party in violation of the condition of such lease.
7. That the instant Proceeding is not barred by the Law of West Bengal Premises Tenancy Act, 1997.

PLEASE SEE ON REVERSE

(2)

8. That the notice to quit dated 08.07.2003 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.
9. 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.

A copy of the reasoned order No. 42 dated 11.01.2021 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 A.K Mitter & Brothers of 23, Sarat Bose Road, Kolkata-700020** 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 A.K Mitter & Brothers of 23, Sarat Bose Road, Kolkata-700020** 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.

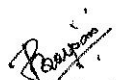
SCHEDULE

Plate No. SB-60/1, SF-198 & SB-60/2

The said piece or parcel of land msg. 43.20 sq.m or thereabouts is situated on the west side of Strand Basnk Road at Jaganath Ghat in the presidency town of Kolkata. It is bounded on the north by KoPT's footpath and KoPT's link road, on the south by KoPT's footpath & then KoPT's leased out land to Metro Trading Corporation, on the east by KoPT's passage and KoPT's land leased out to Binode Kumar & Niranjnlal, Amit Traders & Sandhya Traders and on the west by KoPT's footpath and then KoPT's road.

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

Date- 11.01.2021


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 1st Floor
6, Fairlie Place Warehouse

Form "E"

PROCEEDINGS NO.1138/R OF 2011
ORDER NO. 42 DATED: 11.01.2021

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 A.K Mitter & Brothers
23, Sarat Bose Road,
Kolkata-700020

12.01.2021

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

AND WHEREAS, by written notice dated 08.06.2011 you are called
upon to show cause on or before 29.06.2011 why an order requiring you
to pay a sum of Rs 29,579/- (Rupees Twenty Nine Thousand Five
Hundred Seventy Nine only) being the rent payable together with
compound interest in respect of the said premises should not be made;

AND WHEREAS you have not made any objections or produced any
evidence before the said date.

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 29,579/-
(Rupees Twenty Nine Thousand Five Hundred Seventy Nine only) for the
period 01.09.1993 to 31.07.2003 (both days inclusive) to SMP, Kolkata
by 25.01.2021.

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.

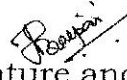
SCHEDULE

Plate No. SB-60/1, SF-198 & SB-60/2

The said piece or parcel of land msg. 43.20 sq.m or thereabouts is situated on the west side of Strand Basnk Road at Jaganath Ghat in the presidency town of Kolkata. It is bounded on the north by KoPT's footpath and KoPT's link road, on the south by KoPT's footpath & then KoPT's leased out land to Metro Trading Corporation, on the east by KoPT's passage and KoPT's land leased out to Binode Kumar & Niranjnlal, Amit Traders & Sandhya Traders and on the west by KoPT's footpath and then KoPT's road.

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

Dated: 11-01-2021


Signature and 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. 1138 & 1138/R Of 2011 Order Sheet No. 43

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

M/S. A. K. Mitter & Brothers.

{ SB-60/1
SF-198
SB-60/2 }

FINAL ORDER

42
11.01.2021

f. 12.01.2021

The matter is taken up today for final disposal. The factual aspect involved in this matter is required to be put forward in a nutshell in order to link up the chain of events leading to this proceedings. It is the case of Syama Prasad Mookerjee Port, Kolkata [erstwhile Kolkata Port Trust], hereinafter referred to as KoPT, Applicant herein, that land msg. 43.20 Sq.m or thereabouts situated on the west side of Strand Bank Road at Jagannath Ghat, Thana- N.P.P.S, Calcutta, comprised under Plate No. SB-60/1, SF-198 & SB-60/2 was allotted to M/S A.K Mitter & Brothers., O.P. herein, on long term Lease for 30 years with effect from 18.09.1973, on certain terms and conditions. It is argued on behalf of KoPT that the O.P. has (a) defaulted in payment of monthly rent and taxes and also accrued interest thereon (b) has unauthorisedly erected structures (c) made unauthorized encroachment in the lease hold land and (d) parted with possession of the said premises to rank outsider, in violation of terms of such tenancy.

In view of the aforesaid breaches committed by the O.P., KoPT had issued notice to quit being No.Lnd.6/83/II dated 08.07.2003 asking the O.P. to hand over clear, vacant, peaceful and unencumbered possession of the property to KoPT on 31.07.2003. 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. This Forum of Law formed its opinion to proceed against O.P. and issued Show Cause Notice u/s 4 of the Act (for adjudication of the prayer for order of eviction etc.) and Show Notice u/s 7 of the Act (for adjudication of the

2021

Estate Officer, Kolkata Port Trust

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

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
M/S. A.K. Mitra & Brothers.

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11.01.2012

12-01-2012

prayer for recovery of rental dues etc.) both dated 08.06.2011 (vide Order No.03 dated 25.05.2011).

The said notice/s were sent through Registered Post/hand delivery to the recorded address of O.P. at 23, Sarat Bose Road, Kolkata-700020. The report of Process Server dated 10.06.2011 as well as the postal acknowledgement as received by this Forum depicts that said notice/s were received by one Raj Kumar Agarwal on behalf of O.P and affixation was also done over the subject premises in question as per the mandate of the P.P Act.

On the schedule date of appearance & filing of reply to the Show Cause, O.P fails to appear & one Raj Kumar Agarwal (Prop. M/S Hari Ram Raj Kumar), the sitting occupant, claiming himself as a sub-lessee of O.P, appeared through his Advocate. He contested the matter by filing an application dated 03.08.2011 with a prayer for adding him as a party to such proceeding. He further submitted that he is willing clear up all dues of O.P as payable to KoPT as he is doing business over the said property for a considerable years. However, as per the principles of natural justice Forum allowed further opportunity to the O.P for contesting the matter and finally on 24.08.2011, O.P appeared before the Forum through their representative Nandini Das who claimed herself as sister of A.K Mitra and answering Opposite Party of this instant proceeding. Advocate of Smt. Das along with the application/petition dated 21.09.2011 produced copies of Death Certificate of A.K Mitra and a Power of Attorney before the Forum to support her contention as a constituted Attorney of Shri Tapan Kumar Mitra and Shri Tarun Kumar Mitra. Answering O.P has further submitted that she has relinquished all the rights in favour of Raj Kumar Agarwal (Prop. M/S

mf

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. 1138 & 1138/R Of 2011 Order Sheet No. 45

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S. A.K. Mehta & Brothers
VS

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J.B. 12.01.2021

Harirarm Rajkumar) therefore, not willing to continue occupation of the public premises in question. However, the Forum rejected such plea of the answering O.P. Thereafter, except the sitting occupant, answering O.P. never appeared before the Forum. Be that as it may, such sitting occupant was added as an interested party to the proceeding. On 30.05.2018 such sitting occupant files their reply/written objection to the Show Cause as an Added Party(Occupier). They claimed to have in occupation of the subject premises for a considerable period as a subtenant of O.P on permission of KoPT. O.P further prayed for regularization of tenancy in their favour on consideration of payment deposited by them. KoPT also filed their rejoinder to such reply on 24.08.2018. I have duly considered the application of O.P and such sitting occupant/interested Party as filed on 03.08.2011, 21.09.2011, 28.04.2016, 10.08.2016 and 30.05.2018. After due consideration of the submissions/arguments made on behalf of the parties, I find that following issues have come up for my adjudication/decision :

1. Whether the proceedings under P.P. Act is maintainable or not;
2. Whether KoPT's notice dated 8th July 2003 as issued to representative of O.P., demanding possession from them is valid and lawful or not;
3. Whether O.P. has defaulted in making payment of rental dues to KoPT, or not;
4. Whether O.P erected any unauthorized structure or not;
5. Whether the O.P. has parted with possession of the public premises unauthorisedly, or not;

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. 1138 & 1138/R Of 2011 Order Sheet No. 46

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^{VS}
M/S. A.K. Mitter & Brothers

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11-01-2021

6. Whether O.P has encroached upon the said public premises or not;
7. Whether the proceeding is barred by the Law of West Bengal Premises Tenancy Act, 1997 or not;
8. Whether O.P.'s occupation could be termed as "unauthorised occupation" in view of Sec.2 (g) of the P.P. Act and whether O.P. is liable to pay damages to KoPT during the period of its unauthorised occupation or not;

As regards Issue No.1, I must say that the properties owned and controlled by the Port Authority has been declared as "public premises" by the Public Premises (Eviction of Unauthorised 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 representatives of O.P's status as unauthorized occupant in to the public premises with the prayer for order of eviction, recovery of compensation etc against O.P. on the ground of termination of authority to occupy the premises as earlier granted 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, 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. In fact, proceedings before this Forum of Law is not statutorily barred unless there is any specific order of stay of such proceedings by any

12-01-2021

DR.

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. 1138 X 1138/R Of 2011 Order Sheet No. 47

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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competent court of law. Moreover, the interested party/sitting occupant although admitted that they are in occupation and enjoyment of the subject premises for a considerable period, however, they cannot claim any legal right after determination of such long term lease. Moreover, such interested Party/ sitting occupant has no locus standi to raise those contentions as because the original long term lease has already been expired on September, 2003 by efflux of time. The Issue is thus decided accordingly in favour of KoPT.

Issue no 2 and 8 are taken up together, as the issues are related with each other. I must say that a lessee like O.P. cannot claim any legal right to hold the property after expiry of the period as mentioned in the Notice to Quit. O.P. has failed to satisfy this Forum about any consent on the part of KoPT in occupying the public premises. Rather it is a case of KoPT that by notice dated 08.07.2003, O.P. was directed to hand over possession of the premises to KoPT. A letter/notice issued in official course of business has definitely got an evidentiary value unless there is material, sufficient to contradict the case of KoPT on the basis of such letter. Further, I am consciously of the view that KoPT never recognized O.P., as a lawful user/tenant in respect of the property in question after expiry of the period mentioned in the Notice to Quit dated 08.07.2003. 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

J. B. 12-01-2021

sd.

Estate Officer, Kolkata Port Trust

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

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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M/s. Miller & Brothers.

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expired or has been determined for any reason whatsoever. Further, as per the Transfer of Property Act, a lease of immovable property determines either by efflux of time limited thereby or by implied surrender or on expiration of notice to determine the lease or to quit or of intention to quit, the property leased, duly given by one party to another. It is a settled question of law that O.P. cannot claim any legal right to hold the property after expiry of the period mentioned in the Notice to Quit dated 08.07.2003, without any valid grant or allotment from KoPT's side. Moreover, as per the Transfer of Property Act, 1882, a lessee is under legal obligation to hand over possession of the property to its landlord/lessor in its original condition after expiration of tenancy under lease. The tenancy of the O.P. automatically stands terminated upon expiry of the lease-hold period and no additional Notice is required in the eye of law on the part of the landlord to ask the O.P. to vacate the premises. In other words, in case of a long term lease having a specific date of expiration, there is no legal compulsion on the landlord to issue any Notice to Quit. The landlord is, however, free to issue such a Notice as a reminder or as an act of gratuity. In the instant case, the landlord i.e. KoPT adopted such a course and claims to have issued a Notice to O.P. dated 08.07.2003 asking for vacation of the premises on 31.07.2003. Whether such Notice has been received by O.P. or not is quite immaterial inasmuch as O.P. was duty bound to hand over possession to KoPT which it had failed to do. Therefore, both the issues are decided in favour of KoPT.

22.

As regards the Issue No.3, KoPT, states that O.P. or his legal heirs have not made any payment since long. Although, the sitting occupant/s vide their reply dated

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. 1138/1138/B Of 2011 Order Sheet No. 49

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

M/S. A. K. Mithal & Brothers

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11.01.2021

J 12.01.2021

J.P.

30.05.2018 and also by their application dated 28.04.2016 have claimed that no arrear is due at present or they have already paid Rs.25,000/-out of Rs.5,25,000/-towards the outstanding dues, but I must say that this statement of Sitting occupant does not seem to have any justification in this juncture because such statement do not come to the protection of Added Party/sitting occupant at all. It is a settled law that during the course of hearing if anything is received by KoPT from O.P that should be treated as occupational charges for unauthorised occupation and not as rent. In this instant case KoPT has received payment from the sitting occupant not as rent but as occupational charges and such occupational charges have been tendered on behalf of O.P. Moreover, during the course of hearing KoPT has filed an updated Statement of Accounts dated 27.05.2011, 24.08.2011 and 10.04.2012 in respect of said occupation, which clearly indicates the huge dues on the part 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. 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 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

Estate Officer, Kolkata Port Trust

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

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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.

The issue no 4, 5 and 6 are taken up together, as the issues are related with each other. Although the sitting occupant has specifically denied all the allegations vide their reply to the Show Cause but O.P did not mentioned anything in their application. Moreover, KoPT has come up with Joint Inspection Report dated 10.09.2016 and specific drawing/sketch Maps being No. 6538 dated 26.04.2002 highlighting the unauthorized construction & encroachment of 4.08 sq.m area in red hatch but the said sitting occupant submitted that whatever structure had been found was existing prior to their coming into occupation but they failed to explain as to how this construction can be said to be authorized in nature. 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 or the Added Party(occupier) has hopelessly failed to do so. In my view, the O.P./Added Party(Occupier) 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 08.07.2003 came to be issued by

12-01-2021

SP.

Estate Officer, Kolkata Port Trust

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

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the Port Authority. Further I must say that in the letter dated 02.04.1987, it is specifically mentioned as a condition of such sub-letting that "The Sub-lease will be subject to the terms and condition of your existing tenancy with the Trustee" as the present long term lease has already been expired by efflux of time and the said tenancy is also determined by quit notice dated 08.07.2003 such sub-letting has no meaning in present day. As regards the unauthorized parting with possession, further I must say that although O.P was permitted by Letter dated 02.04.1987 to sub-let 27.60 Sq.mtrs of O.P's structure on payment of permission fees. However, it appears from the Joint Inspection Report dated 10.09.2016 that the entire property is presently occupied by such sitting occupant. This is nothing but a clear case of parting with possession. O.P has inducted the present sitting occupant without prior approval of KoPT which is against the spirit of such tenancy. Thus these issues are also decided in favour of KoPT.

As regards the issue No.7, I must say that the erstwhile Commissioners for the Port of Kolkata (now known as Kolkata Port Trust by virtue of Major Port Trusts' Act-1963) is the owner of landed property beside River Hooghly in an around Kolkata. The landed property of the Port Authority is exempted from the purview of The West Bengal Premises Tenancy Act being a Local Authority as defined under the General Clauses Act - 1897 and The West Bengal General Clauses Act -1899. When statute by its own wisdom exempted the Port Properties from the purview of the Premises Tenancy Act-1997, it is futile to assert tenancy right without any grant in respect of the property in favour of O.P or other interested Party.

J 12-01-2021

SR-

Estate Officer, Kolkata Port Trust

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

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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As regards the issue No.8, I must say that it is a settled question of law that a lessee like O.P. cannot claim any legal right to hold the property after expiry of the period as mentioned in the Notice to Quit. O.P. has failed to satisfy this Forum about any consent on the part of KoPT in occupying the public premises. Rather it is a case of KoPT that by notice dated 08.07.2003, O.P. was directed to hand over possession of the premises to KoPT. A letter/notice issued in official course of business has definitely got an evidentiary value unless there is material, sufficient to contradict the case of KoPT on the basis of such letter. Further, I am consciously of the view that KoPT never recognized O.P. as a lawful user/tenant in respect of the property in question after expiry of the period mentioned in the Notice to Quit dated 08.07.2003. 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. Further, as per the Transfer of Property Act, a lease of immovable property determines either by efflux of time limited thereby or by implied surrender or on expiration of notice to determine the lease or to quit or of intention to quit, the property leased, duly given by one party to another. It is a settled question of law that O.P./A.P, occupier cannot claim any legal right to hold the property after expiry of the period mentioned in the Notice to Quit dated 08.07.2003, without any valid grant or allotment from KoPT's side. Moreover, as per the

SP.

Estate Officer, Kolkata Port Trust

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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11.01.2021

Transfer of Property Act, 1882, a lessee is under legal obligation to hand over possession of the property to its landlord/lessor in its original condition after expiration of tenancy under lease. The tenancy of the O.P. automatically stands terminated upon expiry of the lease-hold period and no additional Notice is required in the eye of law on the part of the landlord to ask the O.P. to vacate the premises. In other words, in case of a long term lease having a specific date of expiration, there is no legal compulsion on the landlord to issue any Notice to Quit. The landlord is, however, free to issue such a Notice as a reminder or as an act of gratuity. In the instant case, the landlord i.e. KoPT adopted such a course and claims to have issued a Notice to O.P. dated 08.07.2003 asking for vacation of the premises on 31.07.2003. Whether such Notice has been received by O.P. or not is quite immaterial inasmuch as O.P. was duty bound to hand over possession to KoPT which it had failed to do.

In view of the discussions above, the issues are decided firmly in favour of KoPT. I find that this is a fit case for passing order of eviction against O.P or other interested Party whoever in occupation, and hence, being satisfied as above I hereby, passing Order of eviction under Section 5 of the Act on following grounds.

- g.v.*
1. That this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrear dues/damages etc. as prayed for on behalf of KoPT.

Estate Officer, Kolkata Port Trust

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

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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2. That O.P. has violated the condition of long 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.
3. That O.P has failed to file any reply to the Show Cause Notice/S issued by this Forum.
4. 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 O.P or any other person/occupant have made unauthorised construction & unauthorised encroachment over the premises in question in violation of lease term.
6. That the O.P has parted with Possession of the subject premises to third party in violation of the condition of such lease.
7. That the instant Proceeding is not barred by the Law of West Bengal Premises Tenancy Act, 1997.
8. That the notice to quit dated 08.07.2003 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.
9. 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

JK.

Estate Officer, Kolkata Port Trust

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

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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.29,579/- for the period 01.09.1993 to 31.07.2003 (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 the rental dues to KoPT on or before 25.01.2021 Such dues attract compound interest @ 6.20 % per annum, which is the current rate of interest as per the Interest Act, 1978 (as gathered by me from the official website of the State Bank of India) from the date of incurrance of liability, till the liquidation of the same, as per the adjustment of payments, if any made so far by O.P., in terms of KoPT's books of accounts.

I 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 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 as the possession of the premises

12.01.2021

J.P.

Estate Officer, Kolkata Port Trust

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

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is still lying unauthorisedly with the A.P./occupier. KoPT is directed to submit a statement comprising details of its calculation of damages, indicating therein, 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 ***

Handwritten note: ✓ 12-01-2021

Handwritten mark: J.P.