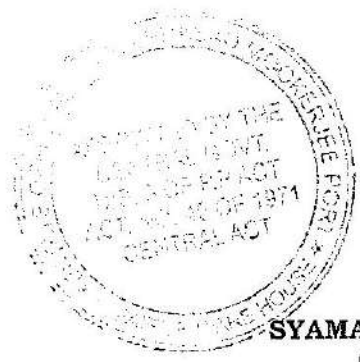


Web-site



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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. 18 DT 15.01.2021
PROCEEDINGS NO. 1659 OF 2018

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-
M/S Kashi Timber Trading Co (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

By Order of
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
KOLKATA
19.01.2021
OFFICE OF THE ESTATE OFFICER
6, FAIRLEY PLACE, KOLKATA

WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that **M/S Kashi Timber Trading Co of 67/10, Strand Road, Kolkata-700006** 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. 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"
4. That O.P or any other person/occupant have made unauthorised construction & unauthorised encroachment over the premises in question in violation of lease term.
5. That the O.P has parted with Possession of the subject premises to third party in violation of the condition of such lease.
6. That the notice to quit dated 07.04.2017 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.

PLEASE SEE ON REVERSE

Sub

A copy of the reasoned order No. 18 dated 15.01.2021 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 Kashi Timber Trading Co of 67/10, Strand Road, Kolkata-700006** 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 Kashi Timber Trading Co of 67/10, Strand Road, Kolkata-700006** 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-225/1

All that the said piece or parcel of land msg 147.995 sq.m or thereabouts is situated at Maharshi Debendra Road, Nimtollah, Thana- Jorabaghan Police Station in Presidency Town of Kolkata. The said plot is bounded on the North by the Trustees' land presently vacant, on the East by the Maharshi Debendra Road, on the South partly by the Trustees' land occupied by Estate Ram Lall Poddar and partly by the Trustees' land occupied by Paramount Timber & Engineering Co and on the West by the Trustees' land occupied by M/S Paramount Timber & Engineering Co. Trustee's means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata.)

Date- 18.01.2021

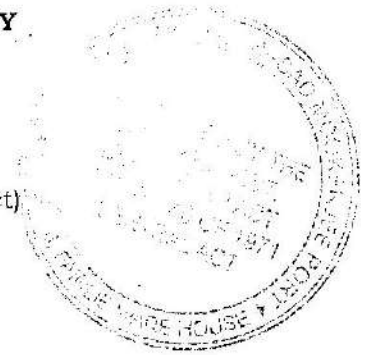
Signature & Seal of the
Estate Officer.

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 Unauthorised Occupant) Act 1971
OFFICE OF THE ESTATE OFFICER
6, Fairley Place (1st Floor)
KOLKATA - 700 001



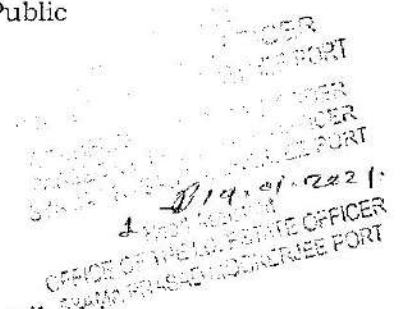
Court Room At the 1st Floor
6, Fairlie Place Warehouse

Form "E"

PROCEEDINGS NO.1659/R OF 2018
ORDER NO. 18 DATED: 15.01.2021

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 Kashi Timber Trading Co
67/10, Strand Road,
Kolkata-700006



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

AND WHEREAS, by written notice dated 03.07.2018 you are called
upon to show cause on or before 27.07.2018 why an order requiring you
to pay a sum of Rs 24,380/- (Rupees Twenty Four Thousand Three
Hundred Eighty 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 24,380/-
(Rupees Twenty Four Thousand Three Hundred Eighty only) for the
period 01.02.2011 to 01.03.2011 (both days inclusive) to SMP, Kolkata
by 01-02-2021.

Sud

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-225/1

All that the said piece or parcel of land msg 147.995 sq.m or thereabouts is situated at Maharshi Debendra Road, Nimtollah, Thana- Jorabaghan Police Station in Presidency Town of Kolkata. The said plot is bounded on the North by the Trustees' land presently vacant, on the East by the Maharshi Debendra Road, on the South partly by the Trustees' land occupied by Estate Ram Lall Poddar and partly by the Trustees' land occupied by Paramount Timber & Engineering Co and on the West by the Trustees' land occupied by M/S Paramount Timber & Engineering Co.

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

Dated: (13-01-2021)

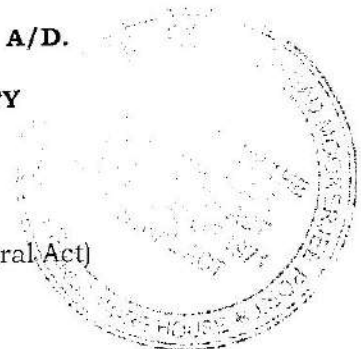

Signature and seal of the
Estate Officer

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 Unauthorised Occupants) Act 1971
OFFICE OF THE ESTATE OFFICER
6, Fairlie Place (1st FLOOR) KOLKATA-700001



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

PROCEEDINGS NO. 1659/D OF 2018
ORDER NO.18 DATED : 15.01.2021

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 Kashi Timber Trading Co
67/10, Strand Road,
Kolkata-700006.

ORDER
15.01.2021
OFFICE OF THE ESTATE OFFICER
6, FAIRLIE PLACE, MOOKERJEE PORT

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 03.07.2018 you are called upon to show cause on/or before 27.07.2018 why an order requiring you to pay damages of Rs. 20,80,186 (Rupees Twenty Lakhs Eighty thousand One hundred Eighty Six 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. 20,80,186 (Rupees Twenty Lakhs Eighty thousand One hundred Eighty Six only) assessed by me as damages on account of your unauthorised occupation of the premises for the period from 02.03.2011 to 30.04.2017(both days inclusive) to SMP, Kolkata by 01.02.2021.

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.

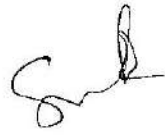
In the event of your refusal or failure to pay the damages within the said period or in the manner aforesaid, the amount will be recovered as an arrear of land revenue through the Collector.

SCHEDULE

Plate No. SB-225/1

All that the said piece or parcel of land msg 147.995 sq.m or thereabouts is situated at Maharshi Debendra Road, Nimtollah, Thana- Jorabaghan Police Station in Presidency Town of Kolkata. The said plot is bounded on the North by the Trustees' land presently vacant, on the East by the Maharshi Debendra Road, on the South partly by the Trustees' land occupied by Estate Ram Lall Poddar and partly by the Trustees' land occupied by Paramount Timber & Engineering Co and on the West by the Trustees' land occupied by M/S Paramount Timber & Engineering Co. Trustee's means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata.)

Date 18.01.2021


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. 1659, 1659/R/1659/D of 2018 Order Sheet No. 18

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S. Kashi Timber Trading Co. ^{VS}

FINAL ORDER

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, the Applicant herein, that land msg. 147,995 Sq.m or thereabouts situated at Maharshi Debendra Road, Nimtollah, Thana- Jorabaghan Police Station, in the presidency town of Kolkata, comprised under Plate No. SB-225/1 was allotted to M/S Kashi Timber Trading Co, O.P. herein, on long term Lease for 30 years with effect from 02.03.1981, on certain terms and conditions. It is argued on behalf of KoPT that after expiry of such lease by efflux of time, said O.P. remained on the premises unauthorisedly on and from 02.03.2011 and neglected to pay monthly rent and taxes/ compensation and also accrued interest thereon, unauthorisedly erected structures and also parted with possession of the said premises to rank outsider, in violation of the terms of such tenancy.

In view of the aforesaid breaches committed by the O.P., KoPT had issued notice to quit being No. Lnd.4/30/17/624 dated 07.04.2017 asking the O.P. to hand over clear, vacant, peaceful and unencumbered possession of the property to KoPT on 08.05.2017. 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/s u/s 7 of the Act (for adjudication of the

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15.01.2021

OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
15.01.2021

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. 1659, 1659/P, 1659/D Of 2018 Order Sheet No. 19

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Kashi Timber Trading Co. ^{VS}

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prayer for recovery of rental dues and compensation etc.)
all dated 03.07.2018 (vide Order No.01 dated
03.07.2018).

The said notice/s were sent through Speed Post/hand
delivery to the recorded address of O.P. at 67/10, Strand
Road, Kolkata-700006. Notice sent through speed post
was returned back to the Forum with an endorsement
'N/C'. The report of the Process Server dated 11.07.2018
also depicts that said notice/s were not served upon O.P
as the door was closed however, due affixation was made
over the subject premises in question as per the mandate
of the P.P Act.

On the schedule date of appearance i.e on 27.07.2018,
no one appeared on behalf of O.P. to file reply to the
Show Cause however, One Sri Ratnesh Tiwari, claiming
himself as a partner of O.P Company, appeared through
his Ld' Advocate by filing Vokalatnama. On appearing
before the Forum, said Advocate of O.P prayed for some
more time to file his reply to the Show Cause. Thereafter
on 12.09.2018, said O.P filed an application with a
prayer for supply of certain documents on which KoPT
relies. After having been failed to file such reply on two
more occasion, finally On 24.09.2018 O.P filed their reply
to the Show Cause. Thereafter the matter was assigned
to undersigned and on 10.01.2019. KoPT filed their
rejoinder to such reply on 28.01.2019. I have duly
considered the applications of such O.P as filed on
05.09.2018, 12.09.2018, 24.09.2018, 05.03.2019,
26.04.2019, 13.05.2019 and written notes of arguments
dated 27.06.2019. 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 :

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15-01-2021

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Estate Officer, Kolkata Port Trust

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

Proceedings No. 1659,1659/R/1659/D Of 2018 Order Sheet No. 20

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
M/S. Kashi Timber Trading Co.

18
15.01.2021.

OFFICE OF THE ESTATE OFFICER
KOLKATA PORT TRUST
SINGAPORE ROAD, MOOKERJEE PORT

- 1) Whether the proceedings under P.P. Act is maintainable or not;
- 2) Whether the present proceeding is maintainable in view of the State of W.B Gazette Notification dated 29th January 2019 or not;
- 3) Whether O.P has violated the fundamental condition of such long term lease or not;
- 4) Whether O.P. has defaulted in making payment of rental dues to KoPT, or not;
- 5) Whether the O.P. has parted with possession of the public premises unauthorisedly, or not;
- 6) Whether O.P has erected any unauthorized construction or not;
- 7) Whether after alleged expiry of such long term lease 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;

The issue no 1 and 2 are taken up together, as the issues are related with each other, 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

Sd/-

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. 1659, 1659/R & 1659/D Of 2018 Order Sheet No. 21

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S. Kaste^{VS} Timber Trading Co.

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Sud

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 competent court of law. Moreover, the O.P cannot claim any legal right after determination of such long term lease by efflux of time. Therefore, this Issue is thus decided accordingly in favour of KoPT. As regards the issue of Gazette Notification of State of W.B dated 29th January 2019 as annexed by O.P with the application dated 05.03.2019, I must say that such notification is not relevant today because being aggrieved by the said Notification dated 29.01.2019, KoPT has preferred a Writ Petition being W.P. No. 74 of 2019 before the Hon'ble Calcutta High Court and Hon'ble High Court has already vide its Judgement dated 10.08.2010 allowed such W.P. No 74 of 2019 by setting aside such Notification dated 29th January 2019 with the following observations:-

"..... A) that the original notice dated 25th October, 2018 was both subject and purpose specific.

B) That the contents of the original notice dated 25th October, 2018 had the effect of enticing the Board to take a legal position qua Municipal Premises number 68 and 69 comprising in all 12 Bighas and 7 Cottahs of land.

C) In a well thought out manoeuvre by the State respondents the Board was allowed to hold on its position over a Lot A, while, simultaneously unleashing the provisions of the 2012 Act declaring the surprise Board to be a persona non grata qua Lots B1 and B2.

D) Finding itself outmanoeuvre, the Board has pressed this action by claiming title also in respect of several

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. 1659, 1659/R x 1659/D Of 2018 Order Sheet No. 22

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
M/S. Kashi Timber Trading Co.

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15.01.2021

properties in Lots B1 and B2 in respect of which neither the KMC has measured nor declared the Municipal Premises No. to fulfill the conditions precedent of an inquiry inherent in the 2012 Act.

E) The KMC decided to aid the arbitrary state action by failing to identify and/or correlate the Municipal Premises Nos. of the property in issue with its corresponding area/boundary.

In the backdrop of the above discussion, this Court is persuaded to interdict the passage of the Royal Horse. This Court finds the action impugned of the Respondents to be foundationally flawed and accordingly sets it aside....."

Therefore, I am firm in holding that this Forum being empowered under PP Act has every jurisdiction to deal with and dispose of this instant matter in accordance with Law.

The issue No.3, for its adjudication requires brief analysis of the instant matter once again. It is the case of KoPT that the land in question was granted to one M/S Kashi Timber Trading Co, On long term lease with effect from 02.03.1981 on certain terms and conditions as embodied in KoPT's offer/letter for allotment dated 05.05.1981. Thereafter, such long term lease was expired by efflux of time and KoPT decided to terminate such lease and issued Quit notice dated 07.04.2017 to M/S Kashi Timber Trading Co forth with determining the lease and requiring the said M/S Kashi Timber Trading Co to quit and vacate the premises on 08.05.2017. Since this did not yield any response, KoPT filed the application dated 19.05.2017 before this Forum, culminating into the present proceedings. During the course of hearing, the O.P appeared before this Forum and KoPT argues that the occupation of O.P is unauthorized after expiry of such lease. Now I must say that as the lease was granted to O.P on long term basis, O.P cannot claim any legal

OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MUKHERJEE PORT
19.01.2021

Sud

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. 1659, 1659/RA/1659/D Of 2018 Order Sheet No. 23

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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19-01-2021

Sud

right after expiry of such lease therefore, any attempt to establish any claim of occupation in the property by the O.P is also not valid.

In view of the above I have no doubt that such sitting occupant has no authority to remain in occupation and as such are unauthorised occupants into the public premises after expiry of such lease. 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. Therefore, Port Authority has every right to determine such lease by due notice to O.P. or other interested party. Here in this instant case KoPT's notice dated 07.04.2017 as issued to O.P., demanding possession from them is therefore, valid, lawful and very much enforceable in accordance with law.

As regards the issue no.4, KoPT, states that O.P. has not made any payment since long. Although, the sitting occupant/s vide their reply dated 24.09.2018 and also by their application dated 27.06.2019 has denied their outstanding dues on account of rent and taxes, but I must say that this statement of O.P does not seem to have any justification against the outstanding dues claimed by KoPT. Moreover, during the course of hearing KoPT has filed an updated Statement of Accounts dated 18.01.2019 in respect of said occupation, which clearly

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. 1659, 1659/R & 1659/D Of 2018 Order Sheet No. 24

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
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OFFICE OF THE ESTATE OFFICER
KOLKATA PORT TRUST
19.01.2021

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 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.

Sub

The issue no 5 and 6 are taken up together, as the issues are related with each other. The sitting occupant has specifically denied all the allegations vide their reply to the Show Cause dated 24.09.2018. But KoPT has come up with a specific drawing/sketch Maps being No. 8719K dated 15.09.2011 highlighting the unauthorized

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. 1659, 1659/R A 1659/D Of 2018 Order Sheet No. 25

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S. Kashi Timber Trading Co. ^{VS}

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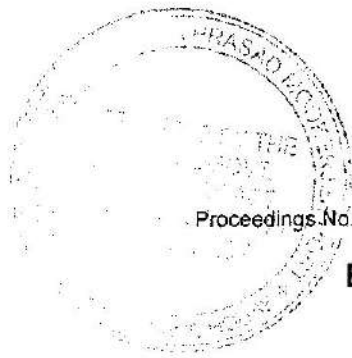
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construction in red hatch but O.P has failed to explain as to how this construction can be said to be authorized in nature. As per the P.P Act 1971, once the Notice U/S-4 is issued, burden is on the O.P to Show Cause and/or produce evidence but in this case O.P or the sitting occupant 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 07.04.2017 came to be issued by the Port Authority. Further I must say that 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 07.04.2017 therefore claim of such sitting occupant has no meaning at present day. As regards the unauthorized parting with possession, mere denial on behalf of the O.P is in my view not sufficient to defend this type of serious allegation. 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 issue No.7, 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 07.04.2017, 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



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. 1659, 1659/R & 1659/D Of 2018 Order Sheet No. 26

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

M/s. Kashi Timber Trading Co.

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15.01.2021

RECEIVED
ESTATE OFFICER
KOLKATA PORT TRUST
15.01.2021
OFFICE OF THE ESTATE OFFICER
KOLKATA PORT TRUST

Sent

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 07.04.2017. 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 cannot claim any legal right to hold the property after expiry of the period mentioned in the Notice to Quit dated 07.04.2017, 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

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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 07.04.2017 asking for vacation of the premises on 08.05.2017. 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.

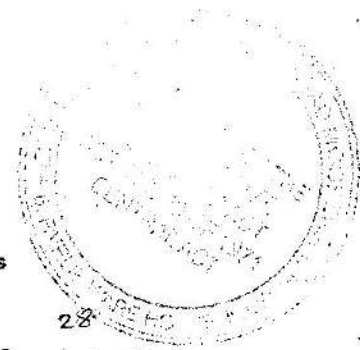
In view of the discussions above, the issues are decided firmly in favour of KoPT. I find that this is a fit case for passing order of eviction against O.P or other interested Party whoever in occupation, and hence, being satisfied as above I hereby, passing Order of eviction under Section 5 of the Act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

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. 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"
4. That O.P or any other person/occupant have made unauthorised construction & unauthorised encroachment over the premises in question in violation of lease term.
5. That the O.P has parted with Possession of the subject premises to third party in violation of the condition of such lease.

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6. That the notice to quit dated 07.04.2017 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.

OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOONERJEE PORT

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.

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It is my considered view that a sum of Rs.24,380/- for the period 01.02.2011 to 01.03.2011 (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 01.02.2021. Such dues attract compound interest @ 6.20 % per annum, which is the current rate of interest as

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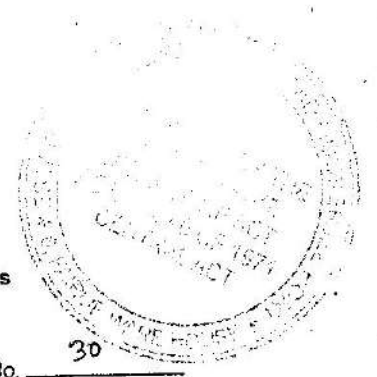
per the Interest Act, 1978 (as gathered by me from the official website of the State Bank of India) from the date of incurrence of liability, till the liquidation of the same, as per the adjustment of payments, if any made so far by O.P., in terms of KoPT's books of accounts.

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 20,80,186/- 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 02.03.2011 to 30.04.2017 (both days inclusive) and it is hereby ordered that O.P. shall also make payment of the aforesaid sum to KoPT by 01-02-2021. 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.

I make it clear that KoPT is entitled to claim further damages against O.P. for unauthorized use and occupation of the public premises right upto the date 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 30.04.2017 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

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calculation of damages after 30.04.2017, 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 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

(Sourav Mitra)
ESTATE OFFICER

OFFICE OF THE ESTATE OFFICER
DWARA PRASAD, KOLKATA PORT
+ B 19.01.2021

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