



REGISTERED POST WITH A/D.
HAND DELIVERY
AFFIXATION ON PROPERTY

**ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT, KOLKATA
(erstwhile KOLKATA PORT TRUST)**

(Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-Central Act)
Public Premises (Eviction of Unauthorized Occupant) Act 1971
OFFICE OF THE ESTATE OFFICER
6, Fairley Place (1st Floor)
KOLKATA - 700 001

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

REASONED ORDER NO. ¹⁸ DT (8.0) 202)
PROCEEDINGS NO. 1296 OF 2012

**BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-
M/S BASDEO SINGH**

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 Basdeo Singh, of 17, Chetla Railway Siding, Kolkata - 700 027 is in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

1. That this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrear of dues/damages etc. as prayed for on behalf of KoPT and the Notice/s issued by this Forum are in conformity with the provisions of the Public Premises (Eviction of Unauthorised Occupant) Act 1971.
2. That proceedings against O.P. is very much maintainable under law and O.P's contention regarding non-maintainability of proceedings in view of Govt. Guideline vide notification dated 08.06.2002 has got no merit for the purpose of deciding the question of "unauthorized occupation" of O.P.
3. That Rent Control Act has its no application to the properties owned and controlled by the Port Authority and your contention with regard to withdrawal of public utility services/Railway facilities etc. has got no merit to support O.P's occupation as "authorized occupation" in the facts and circumstances of the case.
4. That Port Authority is well within its jurisdiction to demand for rental dues and/or charges for occupation into the Public Premises in question in terms of Schedule of Rent Charges notified in the Official Gazette in terms of the provisions of the Major Port Trusts Act, 1963.
5. That O.P. has failed to produce any evidence or document so as to defend the allegations by KoPT of unauthorized construction into the Trustees' land.
6. That O.P. has failed and neglected to pay rental dues in gross violation to the condition of monthly term lease as granted by the Port Authority to O.P.
7. That the ejectment notice dated 19.11.2009 as served upon O.P. is valid,

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Please see on reverse

lawful and binding upon the parties and O.P. is liable to pay damages for wrongful use and enjoyment of Port Property in question upto the date of handing over of clear vacant and unencumbered possession to the Port Authority.

8. That no case has been made out on behalf of O.P. as to how its occupation in the Public Premises could be termed as "authorised occupation" after issuance of notice dated 19.11.2009, demanding possession by the Port Authority and occupation of O.P. has become unauthorized in view of Sec.2(g) of the P.P. Act, 1971

A copy of the reasoned order No. 18 dated 18.01.2021 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 Basdeo Singh, of 17,Chetla Railway Siding, Kolkata – 700 027 and all persons who may be in occupation of the said premises or any part thereof to vacate the said premises within 15 days of the date of publication of this order. In the event of refusal or failure to comply with this order within the period specified above the said M/s Basdeo Singh, of 17,Chetla Railway Siding, Kolkata – 700 027 and all other persons concerned are liable to be evicted from the said premises, if need be, by the use of such force as may be necessary.

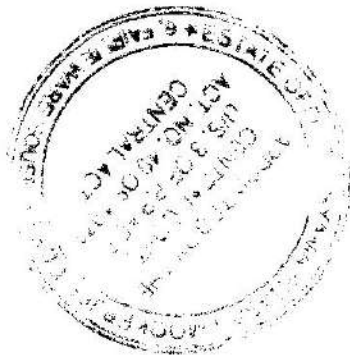
SCHEDULE

Plate no . D-435/1

The said piece or parcel of land Msg 123.561 sq.m. or thereabouts is situated at Chetla Station Yard ,Thana – Chetla, District – 24 Parganas, Registration District – Alipore. It is bounded on the North by the lessor's open space then Chetla Station Road , on the East by the lessor's plate no 16 , on the south by the lessor's road and on the west by the lessor's passage.

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

Dated: 19.01.2021



Signature & Seal of the
Estate Officer.

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

**REGISTERED POST WITH A/D
HAND DELIVERY/AFFIXATION ON
PROPERTY**

**ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT, KOLKATA
(erstwhile KOLKATA PORT TRUST)**

(Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-Central Act)
Public Premises (Eviction of Unauthorised Occupants) Act 1971
OFFICE OF THE ESTATE OFFICER
6, Fairlie Place (1st FLOOR) KOLKATA-700001

Form " E "

PROCEEDINGS NO.1296/R of 2012
ORDER NO. 18 DATED: 18.01.2021

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 Basdeo Singh
17, Chetla Railway Siding,
Kolkata- 700 027.

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

AND WHEREAS, by written notice dated 01.06.2017(Vide Order No 3 dated 16.03.2017) you were called upon to show cause on/or before 27.06.2017 why an order requiring you to pay a sum of Rs. 2,38,616.24/- (Rupees Two Lakhs Thirty Eight Thousand Six Hundred Sixteen and paise Twenty Four only) being the rent payable together with compound interest in respect of the said premises should not be made;

And whereas I have considered your objection and/or the evidence produced by you.

NOW, THEREFORE, in exercise of the powers conferred by sub-section (1) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971, I hereby require you to pay the sum of Rs. 2,38,616.24/- (Rupees Two Lakhs Thirty Eight Thousand Six Hundred Sixteen and paise Twenty Four only) for the period 01.01.1988 to 30.11.2009 (both day inclusive) to Kolkata Port Trust by 05.02.2021.

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PLEASE SEE ON REVERSE

In exercise of the powers conferred by Sub-section (2A) of Section 7 of the said Act, I also hereby require you to pay compound interest at the rate of @15% per annum till 18.09.1996 and thereafter @18% per annum upto 06.04.2011 and thereafter at the rate of 14.25% per annum till it's liquidation of the same from the date of incurrance of liability in accordance with the notification of KoPT issued under Authority of Law as per adjustments of payments made so far by O.P. as per KoPT's books of accounts.

In case the said sum is not paid within the said period or in the said manner, it will be recovered as arrears of land revenue through the Collector.

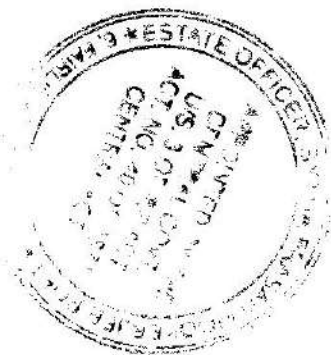
SCHEDULE

Plate no . D-435/1

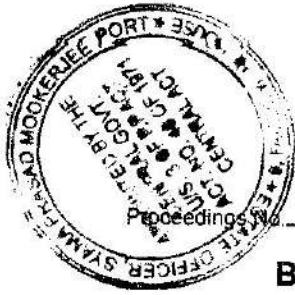
The said piece or parcel of land Msg 123.561 sq.m. or thereabouts is situated at Chetla Station Yard ,Thana - Chetla, District - 24 Parganas, Registration District -Alipore. It is bounded on the North by the lessor's open space then Chetla Station Road , on the East by the lessor's plate no 16 , on the south by the lessor's road and on the west by the lessor's passage.

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

Dated: 14.01.2021



Signature and seal of the
Estate Officer



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

M/s. VS
Basdeo Singh

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18-01-2021

FINAL ORDER

The matter is taken up today for final disposal. It is the case of Syama Prasad Mookerjee Port, Kolkata (erstwhile Kolkata Port Trust, hereinafter referred to as 'KoPT'/'port authority'), the applicant herein, under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (here-in-after referred to as 'the Act') that M/s Basdeo Singh (Prop: Late Basdeo Singh) (hereinafter referred to as 'O.P.') came into occupation of the Port property measuring about 123.561 sq.mtr. at Chetla Railway Yard (Plate No. D-435/1) as a monthly lessee and had defaulted in making payment of KoPT's rents, compensation/ mesne profit/ damages etc., parted with the possession of the premises to rank outsiders and erected unauthorised construction without prior approval, in clear violation of the terms and conditions of the Lease in question.

It is submitted that O.P. has no authority under law to occupy the public premises after issuance of notice to quit dated 19.11.2009 and was required to hand over the peaceful vacant possession of the property in question to KoPT on 30.11.2009 in terms of the notice to quit dated 19.11.2009. My attention is drawn with a strong argument that the cause of action arises upon failure on the part of the O.P. to hand over possession in terms of the said notice dated 19.11.2009 as served upon O.P. and thereafter.

Accordingly, on 01.06.2017 (vide Order no. 3 dated 16.03.2017) this Forum issued a Show Cause Notice upon O.P. u/s 4 of the Act of 1971 for adjudication of the prayer for Eviction etc. On the same date 2 no of Show Cause Notices u/s 7 of the Act were also issued upon O.P. for

[Signature]

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19/01/2021
OFFICE
ESTATE OFFICER
KOLKATA PORT TRUST



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. 1296, 1296/R-D of 2012 Order Sheet No. 22

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Basdeo ^{VS} Singh.

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18.01.2021

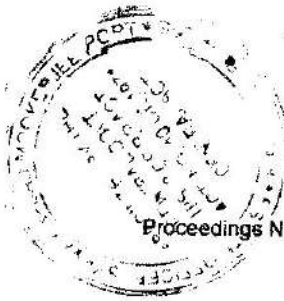
adjudication of the prayer for recovery of the compensation/ mesne profit/ damages etc.

On receipt of Show Cause Notices one Shri Uma Shankar Singh, son of Late Basdeo Singh (O.P. herein) appeared in person before this forum on 18.07.2017. Shri Uma Shankar Singh filed the Reply to Show Cause Notice on 20.06.2017 and a supplementary reply to show cause notice on 17.08.2017 before this Forum. On 16.01.2018, KoPT filed a rejoinder to the said Reply of Shri Uma Shankar Singh. Through the said rejoinder, KoPT has vehemently opposed the submissions of Shri Uma Shankar Singh and tried to substantiate the allegations raised before this forum vide their original application dated 28.04.2010. Thereafter, both parties have filed several applications, such as, O.P.'s applications dated 15.03.2018, 22.05.2018, 09.07.2018 and KoPT's application dated 12.05.2018 etc. After obtaining rival pleadings along with evidence/ documents and hearing both the parties extensively, final order was reserved on 12.06.2018 to avoid further lingering of the matter.

During the course of hearing, Shri Uma Shankar Singh by his objection/reply to the Show Cause Notice has stated that the Proceedings is not maintainable as a "genuine tenant" cannot come under the jurisdiction of this Forum of Law in view of Government Notification, published in the Gazette of India dated 08.06.2002. On the other hand, KoPT has submitted that O.P. cannot be termed as a genuine tenant in order to attract (if at all possible under law) the provisions of the Guideline dated 08.06.2002 as stated on behalf of O.P. It is argued that O.P has failed miserably to make out any case as to how they could be termed as "genuine tenant" when it is proved that O.P. is a defaulter in making payment of rental dues to KoPT. It is the case of

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ESTATE OFFICER
KOLKATA PORT TRUST
19/01/2021



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}
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18-07-2021

KoPT that O.P's tenancy under month to month lease has duly been determined by the Port Authority by valid service of notice to quit dated 19.11.2009 and O.P's occupation is unauthorized right from the expiry of the period as mentioned in the said Notice of Ejectment dated 19.11.2009. Simultaneously, it has been stated by the O.P. that O.P's business had collapsed due to withdrawal of railway facilities by KoPT and basic civic amenities as per the contractual agreement. The O.P. has stated that 'Public Utility Services' cannot be withdrawn even on uneconomical grounds. It is argued on behalf of O.P. that O.P. is entitled to damage @ 25 times of the prevailing rent till the restoration of the Railway Track facilities at Chetla Railway Siding. It is also argued on behalf of O.P. that unwarranted increase of rent is violative of the provisions laid down under Article/s 14, 16 & 19(1)(g) of the Constitution of India. KoPT has, however, pleaded (vide their original application dated 28.04.2010) that O.P. has erected unauthorised construction and made unauthorisedly parting with the possession of the premises to outsiders. In reply, the O.P. has, however, denied the allegations of KoPT and submitted that they have neither parted with the possession of the premises nor erected any unauthorised structure thereupon. It appears that KoPT has communicated the said allegation to O.P. vide their Notice dated 17.06.2009. It has been submitted by KoPT that an inspection at the subject premises reveals that the O.P. has erected unauthorised structures and unauthorisedly inducted one Shri Ravi Ranjan Singh at the subject premises. The O.P., on the other hand, vide application dated 17.08.2017, has submitted that the said Rabi Ranjan Singh is one of the grandson of Late Basdeo Singh and hence the allegation of KoPT does not stand merit in the eyes of law.

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19/07/2021



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.

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Further, it has been mentioned by O.P. that in a Writ Application [being W.P. No. 6269(W) of 2009] preferred by one Chetla Siding Byawasai Samity, represented by its secretary Shri Uma Shankar Singh, the unwarranted increase of rent for the land/premises of KoPT has been challenged before the Hon'ble Calcutta High Court. A copy of the Order dated 10.09.2009 passed in the said Writ Petition has been filed by O.P. under the cover of application dated 20.06.2017. After a careful perusal of the said Order, it appears to this Forum that the Hon'ble Court was pleased to pass a clear direction, inter alia, that ".....The pendency of the petition will not stand in the way of the respondent Port Trust to take appropriate steps against the petitioner in accordance with law". It is also argued on behalf of O.P. that the disputes between the Landlord and tenant in respect of enhancement of rent charges should be decided in terms of the Rent Control Act in West Bengal. It is stated that a Writ Petition being W.P. No.6269 (W) of 2009 is pending before the Hon'ble High Court, Calcutta against KoPT's enhancement of rent charges and as such the matter is subjudice.

It is the case of O.P. that the Notice to Quit dated 19.11.2009 was never served upon O.P. and 1 (one) months' Notice is required in case the O.P. is required to vacate the premises.

An attention-grabbing point has been emerged from the reply filed by O.P. on 20.06.2017 that the premises is being used by the "legal heirs" of O.P. for 'residence' purpose. Through the said reply dated 16.01.2018, KoPT has pointed out the said submission of O.P. KoPT has, thereafter, pleaded that the purpose for which the premises had been leased to O.P. was changed by the O.P. as Shri Uma

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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

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VS
Mr. Basdeo Singh

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18.01.2012

Shankar Singh has himself stated that the legal heirs of O.P. have been using the premises for 'residential' purpose.

Now, while passing the Final Order I must say that I have satisfactorily heard the submissions/arguments advanced by the parties and carefully considered the papers/documents/ evidence produced before this Forum. After due consideration of all relevant papers/documents as brought before me in course of hearing, I find that following issues have come up for my adjudication:-

1. Whether the Proceedings against O.P. is maintainable or not.
2. Whether O.P's contention regarding non-maintainability of the Proceedings in view of Government Guideline vide Notification dated 08.06.2002 has got any merit or not.
3. Whether Rent Control Act has its application in respect of the property belonging to or held by Kolkata Port Trust or not.
4. Whether the contentions of O.P. with regard to withdrawal of public utility services has got any merit or not.
5. Whether withdrawal of railway facilities/basic civic amenities as stated by O.P. constitutes a part of contractual relationship between the parties or not.
6. Whether the contention of O.P. with regard to the non-receipt of Quit Notice dated 19.11.2009 has any merit with regard to facts and circumstances of the case or not.
7. Whether the contention of O.P. regarding requirement of 1 (one) months' Notice for vacation of the premises has got any merit or not.

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19/01/2012



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

M/s. Basdeo Singh ^{VS}

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- 8. Whether the O.P. has parted with possession of the public premises unauthorisedly, or not;
- 9. Whether O.P. has carried out unauthorized construction or not;
- 10. Whether KoPT's enhancement of rent charges on the basis of Notifications published in Calcutta Gazette have any force of law in determining the quantum of dues/charges as payable by O.P. to KoPT or not.
- 11. Whether the notice to quit as issued by the Port Authority to O.P. dated 19.11.2009 is valid and lawful or not.
- 12. Whether O.P is liable to pay damages for wrongful use and enjoyment of the Port property or not.

Issues no.1 & 2 are taken up together for the sake of convenient discussion as the issues are basically related with maintainability of Proceedings. 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 O.P's status as unauthorized occupant in to the public premises with the prayer for order of eviction, recovery of rental dues and damages against O.P. on the plea of issuance of Notice demanding possession from 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

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RECEIVED
THE ESTATE OFFICER
KOLKATA PORT TRUST
DECLINED COPY OF THE ORDER
AS ISSUED BY THE ESTATE OFFICER
ON 18.11.2021
[Signature]
OFFICE OF THE ESTATE OFFICER
KOLKATA PORT TRUST





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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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. To take this view, I am fortified by an unreported judgment of the Hon'ble High Court, Calcutta delivered by Hon'ble Mr. Justice Jyotirmay Bhattacharya on 11.03.2010 in Civil Revisional Jurisdiction (Appellate Side) being C.O. No. 3690 of 2009 (M/s Reform Flour Mills Pvt. Ltd. -Vs- Board of Trustees of the Port of Calcutta) wherein it has been observed specifically that the Estate Officer shall have jurisdiction to proceed with the matter on merit even there is an interim order of status quo of any nature in respect of possession of any public premises in favour of anybody by the Writ Court. Relevant portion of the said order is reproduced below:

"In essence the jurisdiction of the Estate Officer in initiating the said proceedings and/or continuance thereof is under challenge. **In fact, the jurisdiction of the Estate Officer either to initiate such proceedings or to continue the same is not statutorily barred.** As such, the proceedings cannot be held to be vitiated due to inherent lack of jurisdiction of the Estate Officer.

The bar of jurisdiction, in fact, was questioned because of the interim order of injunction passed in the aforesaid proceedings".

Hon'ble Division Bench of Calcutta High Court had the occasion to decide the jurisdiction of the Estate Officer under P.P. Act in Civil Appellate Jurisdiction being MAT No.2847 of 2007 (The Board of Trustees of the Port of Kolkata and Anr -vs- Vijay Kumar Arya & Ors.) reported

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19/01/2021
OFFICER
KOLKATA PORT TRUST



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

M/s. Basdeo Singh VS

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18.01.2021

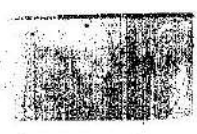
in Calcutta Weekly Note 2009 CWN (Vol.113)-P188 The relevant portion of the judgment (Para-24) reads as follows:-

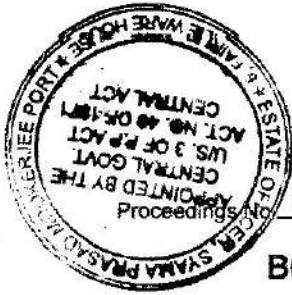
"The legal issue that has arisen is as to the extent of Estate Officer's authority under the said Act of 1971. While it is an attractive argument that it is only upon an occupier at any public premises being found as an unauthorized occupant would he be subject to the Estate Officer's jurisdiction for the purpose of eviction, the intent and purport of the said Act and the weight of legal authority that already bears on the subject would require such argument to be repelled. Though the state in any capacity cannot be arbitrary and its decisions have always to be tested against Article 14 of the Constitution, it is generally subjected to substantive law in the same manner as a private party would be in a similar circumstances. That is to say, just because the state is a Landlord or the state is a creditor, it is not burdened with any onerous covenants unless the Constitution or a particular statute so ordains"

In view of the authoritative decisions as cited above, I have no hesitation in my mind to decide that the proceedings before this Forum of Law within the four corners of P.P. Act is very much maintainable.

Now I have to go into the question of any effect by "guideline" issued by the Central Government Central Government over the position of law as stated hereinbefore. It is the specific case of O.P. that the action of the Port Authority clearly violates the guideline issued by the Govt. of India as published in the Gazette of India dated 8th June 2002. It is submitted that the proceedings is not maintainable under P.P. Act against

[Signature]





Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises
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18.01.2022

O.P. for want of essential ingredients for initiation of proceedings. After hearing/argument of both sides, I am of the view that the guideline issued by the Govt. of India cannot override the specific provision of law. The judgment of the Hon'ble Supreme Court of India reported in (2008) 3 Supreme Court Cases 279 (New India Assurance Co. Ltd. -vs- NUSLI NEVILLE WADIA & ANR.) is instrumental in deciding the question of acceptability of such "guideline". In deciding the question of acceptability of such "guideline" the Hon'ble Supreme Court of India observed that issuance of such guideline is not controlled by statutory provision and the effect thereof is advisory in character being no legal right is conferred upon a tenant. Thus, when the adjudication process before this Forum of Law has been started with service of requisite notice for Showing Cause and ample opportunity is being given to O.P. to establish its authority to occupy the public premises, demolishing the grounds for proposed eviction etc. as mentioned in the Show Cause Notice u/s.4 of the Act, there is no scope for violation of natural justice to anybody. In the process of adjudication, I have to consider as to how O.P. could be termed as "genuine tenant" when the Notice of Ejectment, determining O.P's tenancy under month to month lease has been served by the Port Authority and a considerable sum is due to KoPT for non-payment of rental dues as admitted by O.P. It is worthy to point out that O.P. never disputed the claim of KoPT on account of rental dues, etc. In fact, no right has been taken away from O.P. by serving Show Cause Notice. In my view, the point of maintainability of this proceedings, in view of the "Govt. Guideline" is not acceptable in all sense of law. Hence, the issues are decided accordingly.

[Signature]

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19/01/2022
OFFICER
KOLKATA PORT TRUST



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

M/s. Basdeo ^{VS} *Singh.*

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18.01.2021

to provide basic amenities to O.P. It is my considered view that the contentions in respect of providing services have got no merit in deciding the points at issue. I am firm in holding that O.P. cannot take the plea of non-availability of "service facilities" as a shield for withholding payment of rental dues and/or charges for occupation into the public premises.

In this connection I am fortified by the Order dated 06.08.2018 passed by the Hon'ble Calcutta High Court dismissing the W.P. No.6269 (W) of 2009 with the following observations:

"Tariff is fixed on the basis of the nature of the land and not on the basis of occupants. It cannot be said that the port trust authorities had discriminated against the members of the petitioner by not taking into consideration the occupation of the land rather than the land itself. In fact, it is a wholesome policy to fix the rates on the basis of the nature of the land rather than the occupants.

So far as the withdrawal of facilities as claimed is concerned, it is for the petitioner to decide on continuing with the occupation of the land or not. The so-called withdrawal of railway tracks is of no consequence. The port trust authorities do not provide railway services.

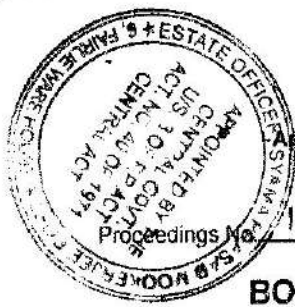
In such circumstances, there is no merit in the present writ petition. WP No.6269(W) of 2009 stands dismissed....."

Hence the issue is decided against O.P.

Issues no.6 & 7 are required to be discussed analogously as the issues are related with the question of ejection

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18/01/2021
19/01/2021



Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises
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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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notice dated 19.11.2009. I have considered the matter seriously. There is no dispute or objection from O.P.'s side regarding status of O.P.'s tenancy under month to month lease. Now the question that arises is how far the question of non-receipt of 'notice to quit' deserves merit in the facts and circumstances of the case. It is claimed by KoPT that the said notice was served upon the O.P. at the recorded address of O.P. at the relevant point of time. KoPT has submitted in their original application dated 28.04.2010 that a copy of the said quit notice dated 19.11.2009 was affixed on a conspicuous part of the subject premises in presence of one Sri Ram Prakash Yadav. In my view, a notice served in official course of business cannot be contradicted/contested by a mere statement denying service of such notice. This takes me to the question of whether a lessee like O.P. can continue in occupation when the lease has been terminated vide a Notice to Quit. As per Transfer of Property Act, 1882, a lessee is under legal obligation to hand over the possession of the property to its landlord/lessor in its original condition after expiration of the period mentioned in the Notice to Quit. The tenancy of the O.P. automatically stands terminated upon expiry of period mentioned in the notice to Quit. During the course of entire proceedings, O.P. failed to justify how they are entitled to enjoy the public premises after expiry of the period mentioned in the notice to quit dated 19.11.2009. No attempt has been made on behalf of O.P. to satisfy this Forum of Law about any consent granted on the part of KoPT in occupying the public premises after expiry of the said Notice period. As such, in my view, the plea of non-receipt of the Notice dated 19.11.2009, assuming and not admitting its veracity, is quite insignificant in the eyes of law and I am not at all impressed by the submission of the O.P. regarding the matter. I take conscious note of the fact that KoPT never recognized O.P. as a lawful user/tenant in

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respect of the property in question after expiry of the period mentioned in the notice to quit and in fact, initiation of the instant proceedings, vide the original application dated 28.04.2010 of KoPT, was a logical culmination of KoPT's intent to obtain vacant and unencumbered possession of the public premises in question. The instant proceedings continued for a fairly long period of time and no intention was found on the part of KoPT to regularize the occupation of the O.P. Further, it is a settled question of law that a lessee like O.P. cannot claim any legal right to hold on to the property after expiry of the period as mentioned in the notice of ejection, unless O.P. succeeds in making a case of "Tenant Holding Over". "Holding Over" means continuance of occupation with the same terms and conditions as per the expired Lease Deed. The essential element of "consent" for constituting the matter of holding over is absent and the O.P. has failed to adduce any evidence or bear any witness in support of its contention regarding holding over. There was no element of "consent" on the part of the Port Authority, expressing the assent for continuance in such occupation after expiry of the period as mentioned in the notice to vacate the premises. No paper/document has been produced by O.P. in support of his contention regarding the requirement of one months' notice for vacation of the premises. In fact the agreement produced by the O.P. under the cover of his application filed on 20.06.2017 deals with a different plot of land measuring 49 square metre whereas the case in hand deals with land measuring 123.561 sqm under occupation plot no D435/1. Nowhere in the reply filed by O.P., O.P. has disputed his tenancy under Lease. As per the provisions of the Transfer of Property Act, 1882 a month to month lease for any purpose other than agricultural or manufacturing is terminable on the part of either lessor or lessee, by fifteen days' notice. Hence the issue is decided against the O.P.

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On **issue no.8** it is seen that the allegation of KoPT against O.P. is that O.P. has parted with the possession of the premises to outsiders in violation of the terms and conditions of the tenancy. It appears from the Notice of KoPT dated 17.06.2009 that KoPT has requested for removal of the unauthorised sub-letting by induction of one Sri Ravi Ranjan Singh within the said premises. It bears mention here that the said 'Final Notice' was issued to O.P. on 17.06.2009, much prior to the issuance of Notice to Quit dated 19.11.2009 and in the said notice it was clearly mentioned that:

"...such subletting and unauthorised construction are major breaches of terms and conditions of the erstwhile lease and should immediately be removed and KoPT shall be constrained to initiate eviction proceeding against you.

You are therefore advise to remedy all the breaches and report compliance to this office within 15 days from the date of this letter."

On the other hand O.P. vide his application dated 17.08.2017 has submitted that Sri Rabi Ranjan Kumar Singh is the son of Sri Rama Shanker Singh and a grandson of Late Basdeo Singh (OP). In support of such contention a copy of the Voter ID card of Sri Rabi Ranjan Kumar Singh has been filed by O.P. under the cover of the said application dated 17.08.2017. It is seen that in the said Voter ID card that the name of father of Sri Rabi Ranjan Kumar Singh is mentioned as Sri 'Rama Shankar Singh'. (However, no document was produced by O.P. establishing the relationship between Late Basdeo Singh and Sri 'Rama Shankar Singh'. As per law, in case of death of a lessee, the legal heirs/representatives are very much liable to bear the

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liabilities of the deceased. In the case in hand, KoPT did not object to the submissions of the said Sri Rabi Ranjan Kumar Singh being one of the legal heirs of Late Basdeo Singh (OP). Hence it cannot be conclude with certainty that O.P. has parted with the possession of the premises to 'rank outsiders' in violation of the terms and conditions of the tenancy in question. Thus the issue is decided accordingly.

On **issue no 9** regarding the question of unauthorised construction into the Port Property, relevance can be drawn from O.P's application filed on 20.06.2017. In the said application, O.P. has clearly stated that "*That your petitioner's legal heirs (OP) have been residing by maintaining the old structure which was made by Basdeo Singh taking prior approval from the authorities concerned*". However, during the course of instant proceedings, O.P. did not produce any such approval from any KoPT office, deemed, as per agreement, to be required for making of structures in the KoPT leased premises. I find from record that the KoPT had been time and again writing to the O.P. with the request to remove the unauthorised construction but no such confirmation/assurance as to affirmative action taken by O.P. has been submitted before this Forum. In my view, it is clearly corroborative of O.P. having carried out such activities during the continuance of the tenancy, at some point of time or the other. As such, I am not inclined to accept the submission of O.P. that it is not guilty of the breaches of unauthorised construction which seem to be inane and indefensible.

It would be convenient to discuss the **issues no. 10,11 and 12** analogously. There is no averment on the part of O.P. that the claim of KoPT in respect of the property in question is not on the basis of KoPT's Schedule of Rent charges. In fact the O.P. has admitted vide reply filed on 20.06.2017,

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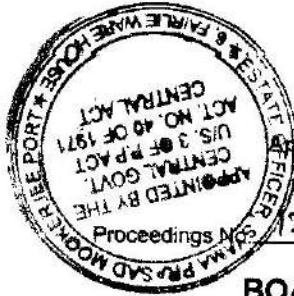
the matter of non-payment of rental dues to KoPT. When KoPT Schedule of Rent charges as time to time published in the Official Gazette in exercise of powers conferred under the provisions of the Major Port Trusts Act, 1963 have been upheld by the Hon'ble High Court, O.P. is bound to pay bound to pay the charges in terms of KoPT's Schedule of Rent charges for occupation and enjoyment of the Port property in question.

A tenant under month to month lease like O.P. is bound to comply with all the terms and conditions for grant of tenancy and failure on the part of O.P. to comply with the fundamental condition for grant of such tenancy which is continuing on month to month basis that is to say non-payment of monthly rent is definitely entitled the Port Authority to exercise its right to serve ejection notice to O.P. A monthly tenancy is continuing on month to month basis on the basis of conduct of both the parties. To clarify the position of such monthly tenant, I must say that O.P. is recognized as a monthly tenant on the basis of renewal of tenancy by monthly demand and O.P. in turn acknowledges such grant by way of making payment to KoPT on the basis of such demand from KoPT's end. As no case has been made out by O.P. with regard to fulfillment of all the conditions of tenancy, Port Authority is free to take action against O.P. by determining such tenancy (continuing on month to month basis) in terms of KoPT's notice to quit dated 19.11.2009. Even at the cost of reiteration, I must say that a tenant like O.P. cannot claim its occupation as "subsisting tenancy" without making payment of monthly rental dues for a particular month on evaluation of the actual aspect involved in this matter.

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In view of the circumstances, it is my considered view that O.P.'s continuance in occupation in the public premises was

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never consented by the Port Authority as there is no demand for monthly rent from O.P, signifying KoPT's assent for such occupation. Decisions against the foregoing paragraphs will certainly lead to the conclusion that O.P. is liable to pay damages as there is no alternative but to hold that the ejection notice dated 19.11.2009 is valid and lawful in all sense of law.

I have deeply gone into the submissions/arguments made on behalf of the parties in course of hearing. The properties of the Port Trust are coming under the purview of "public premises" as defined under the Act. Now the question arises how a person become unauthorized occupant into such Public Premises. As per Section 2 (g) of the 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. The tenancy granted to O.P. was undoubtedly determined by the Port Authority by due service of notice to quit and institution of proceedings against O.P. by KoPT is a clear manifestation of Port Authority's intention to get back possession of the premises. In fact there is no material to prove O.P.'s intention to pay the dues/charges to KoPT and all my intention to narrow down the dispute between the parties has failed.

"Damages" are like "mesne profit" that is to say the profit arising out of wrongful use and occupation of the property in question. I have no hesitation in mind to say that after expiry of the period as mentioned in the said

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Mrs. Basdeo^{YS} Singh.

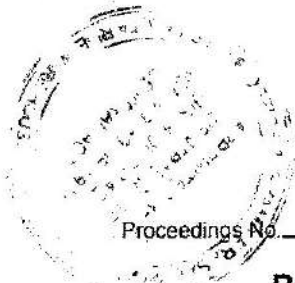
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whose validity for the purpose of deciding the question of law cannot be questioned by O.P. Therefore, there cannot be any doubt that the O.P. was in unauthorized occupation of the premises, once the tenancy which was continuing on month to month basis was duly determined by due service of ejectment notice 19.11.2009.

The Port Authority has a definite legitimate claim to get its revenue involved into this matter as per the KoPT's Schedule of Rent Charges for the relevant period and O.P. cannot claim continuance of its occupation without making payment of requisite charges as mentioned in the Schedule of Rent Charges. To take this view, I am fortified by the Apex Court judgment reported in **JT 2006 (4) Sc 277 (Sarup Singh Gupta -Vs- Jagdish Singh & Ors.)** wherein it has been clearly observed that in the event of termination of lease the practice followed by Courts is to permit landlord to receive each month by way of compensation for use and occupation of the premises, an amount equal to the monthly rent payable by the tenant. In course of hearing, it is submitted on behalf of KoPT that the charges claimed on account of damages is on the basis of the KoPT's Schedule of Rent Charges as applicable for all the tenants/occupiers of the premises in a similarly placed situation and such Schedule of Rent Charges is notified rates of charges under provisions of the Major Port Trusts Act 1963. In my view, such claim of charges for damages by KoPT is based on sound reasoning and should be acceptable by this Forum of Law. As per law, when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew,

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KOLKATA PORT TRUST



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when they made the contract to be likely to result from the breach of it. I have no hesitation to observe that O.P's act in continuing occupation is unauthorized and O.P. is liable to pay damages for unauthorized use and occupation of the Port property in question upto the date of delivering vacant, unencumbered and peaceful possession to KoPT. With this observation, I must reiterate that the ejection notice, demanding possession from O.P. as stated above has been validly served upon O.P. in the facts and circumstances of the case and such notice is valid, lawful and binding upon the parties. In view of the discussions above, the issues are decided clearly in favour of KoPT.

NOW THEREFORE, in view of the above, I am left with no other alternative but to issue order of eviction u/s 5 of the Act against O.P. for the following reasons/grounds :

1. That this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrear of dues/damages etc. as prayed for on behalf of KoPT and the Notice/s issued by this Forum are in conformity with the provisions of the Public Premises (Eviction of Unauthorised Occupant) Act 1971.
2. That proceedings against O.P. is very much maintainable under law and O.P's contention regarding non-maintainability of proceedings in view of Govt. Guideline vide notification dated 08.06.2002 has got no merit for the purpose of deciding the question of "unauthorized occupation" of O.P.

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3. That Rent Control Act has its no application to the properties owned and controlled by the Port Authority and your contention with regard to withdrawal of public utility services/Railway facilities etc. has got no merit to support O.P's occupation as "authorized occupation" in the facts and circumstances of the case.
4. That Port Authority is well within its jurisdiction to demand for rental dues and/or charges for occupation into the Public Premises in question in terms of Schedule of Rent Charges notified in the Official Gazette in terms of the provisions of the Major Port Trusts Act, 1963.
5. That O.P. has failed to produce any evidence of document so as to defend the allegations by KoPT of unauthorized construction into the Trustees' land.
6. That O.P. has failed and neglected to pay rental dues in gross violation to the condition of monthly term lease as granted by the Port Authority to O.P.
7. That the ejectment notice dated 19.11.2009 as served upon O.P. is valid, lawful and binding upon the parties and O.P. is liable to pay damages for wrongful use and enjoyment of Port Property in question upto the date of handing over of clear vacant and unencumbered possession to the Port Authority.
8. That no case has been made out on behalf of O.P. as to how its occupation in the Public Premises could be termed as "authorised occupation" after

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issuance of notice dated 19.11.2009, demanding possession by the Port Authority and occupation of O.P. has become unauthorized in view of Sec.2(g) of the P.P. Act, 1971

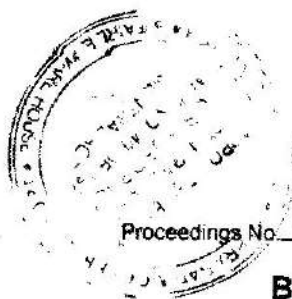
Accordingly, I sign the formal order of eviction under Sec. 5 of the Act as per Rules made thereunder, giving 15 days time to O.P. to vacate the premises. I make it clear that all person/s whoever may be in occupation, are liable to be evicted by this order as their occupation into the Public Premises is/are unauthorized in view of sec. 2(g) of the Act. KoPT is directed to submit a comprehensive status report of the Public Premises in question on inspection of the property after expiry of the 15 days as aforesaid so that necessary action could be taken for execution of the order of eviction u/s. 5 of the Act as per Rule made under the Act.

It is my considered view that a sum of Rs. 2,38,616.24/- (Rupees Two Lakhs Thirty Eight Thousand Six Hundred Sixteen and paise Twenty Four only) for the period from 01.01.1988 up to 30.11.2009 (both days inclusive) is due and recoverable from O.P. by the Port authority on account of arrear rent fees and O.P. must have to pay the rent fees to KoPT on or before 05.02.2021. Such dues attracts compound interest @ 15% per annum upto 18.09.1996 and thereafter 18% per annum upto 06.04.2011 and thereafter at the rate of 14.25% per annum till its liquidation of the same from the date of incurrence of liability in accordance with the notification of KoPT issued under Authority of Law as per adjustment of payments made so far by O.P as per KoPT's books of accounts. I sign the formal order as per Rule, u/s 7 of the Act.

I am not inclined to assess the damages at this stage only. As per law, O.P. is liable to pay damages for unauthorized use and enjoyment of the property right upto the date of

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Basdeo Singh



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handing over of possession of the public premises to KoPT. As such, the damages are to be assessed later, upon issuance of Notice u/s 7 of the Act by this Forum, at the appropriate time. KoPT is directed to submit a report regarding its claim on account of damages against O.P., indicating there-in, the details of the computation of such damages with the rate of charges so claimed for the respective periods (including the date of taking over of possession) for my consideration in order to assess the damages as per the Act and the Rules made thereunder.

The contentions of O.P. regarding payment of Bankers' Cheques to KoPT for Rs 55,000/- and Rs 35,000/- shall be decided at the time of passing of the Order for Compensation/ Damages etc. I must reiterate that KoPT's claim against O.P. on account of compensation for wrongful use and enjoyment of the property which includes interest for delayed payment has received my due attention and I am satisfied that Port Authority has made out an arguable claim based on sound reasoning for such claim against O.P.

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

GIVEN UNDER MY HAND AND SEAL

(A. K. Sarkar)
ESTATE OFFICER

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

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