



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. 1740/D Of 2019 Order Sheet No. 11

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s Nepal ^{VS} Carriers

16
28.09.2021

FINAL ORDER

The instant proceedings No. 1740/D of 2019 arises out of application bearing No. Lnd.4699/IV (Loose-2)/18/147 dated 17.04.2019 filed by the **Syama Prasad Mookerjee Port, Kolkata** [erstwhile Kolkata Port Trust, hereinafter referred to as '**SMP, Kolkata**'], the applicant herein, praying for an order of recovery of dues etc. along with accrued interest thereon in respect of the subject public premises, against **M/s Nepal Carriers**, (hereinafter referred to as **O.P.**), under the relevant provisions of **Public Premises (Eviction of Unauthorized Occupants) Act, 1971** (hereinafter referred to as '**the Act**').

The fact of the case in a nutshell is that the O.P. came into occupation of the port property of piece or parcel of land measuring 4213.615 sqm or thereabouts situated at Circular Garden Reach Road (Near Netaji Subhas Dock, Gate No 9), comprised under occupation no D-168/8, on Licence basis. Thereafter, on the ground of non-payment of rental dues and violation of the conditions of Licence, the Licence was terminated by SMP, Kolkata through the notice to quit dated 22.12.1987. As the O.P. did not vacate the land, a proceeding was initiated by SMP, Kolkata before my predecessor Estate Officer bearing Proceeding no 168 of 1993, wherein ultimately an Order of eviction of O.P. was passed in terms of Order dated 22.03.1999 (vide Order no 15 dated 24.02.1999). Thereafter, O.P. vide its letter dated 28.06.2017 expressed its intention to surrender the plot of land to SMP, Kolkata. In response to the said letter of O.P., the possession of the Land was taken over by SMP, Kolkata on 16.10.2017 in peaceful, vacant and unencumbered condition. Now, SMP, Kolkata vide applications dated



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17.04.2019 and 05.07.2019 has submitted its claim on account of compensation/ mesne profit/ damage charges alongwith the accrued interest on account of both rent and compensation, which reportedly was due and recoverable from the O.P. for its use and enjoyment of the port property in question. After considering the claim of SMP, Kolkata, this Forum formed its opinion to proceed against the O.P. and issued Show Cause Notice dated 20.11.2019 (vide Order-07 dated 20.11.2019) u/s 7 of the Public Premises (Eviction of Unauthorized Occupation) Act, 1971. The Notice was issued calling upon the O.P. to show cause as to why an order requiring payment of arrear compensation/ mesne profit/ damage together with interest would not be made against the O.P. The O.P. was also called upon to appear before this forum in person or through authorized representative/s, capable to answer all material questions connected with the matter, along with the evidence which the O.P. intends to produce in support of this case.

The said Notice was sent through 'Speed Post' to the recorded addresses of O.P. at 'P- 15, India Exchange Place, Extension (Todi Mansion), Kolkata- 700 073', however, the notice was returned undelivered by the Postal Department with the remark 'Insufficient Address'. The 'Process Server' attached with this Forum for service of such Notices/ Orders etc. has submitted a report dated 25.11.2019 stating that the O.P. was not found at the above address. Under such circumstances, Department was directed to serve the Show cause to O.P. once gain by hand in terms of Order dated 13.12.2019 and 27.12.2019. Accordingly, it appears from the Report of Process Server dated 06.01.2020 that the Process Server went into the address of O.P. for service of such



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notice by hand to O.P. on 06.01.2020, however such effort remained futile as the O.P. was not found at the address. At then a decision was taken (vide Order dated 24.01.2020) to publish a notice in a widely circulated daily newspaper for a notice to all concerned about the pendency of the instant proceeding in order to give a chance to the O.P. to appear before this Forum and to represent their case. Such notice was published in 'The Times of India (Kolkata edition)' on 01.02.2020 fixing the date for the O.P's appearance, filing reply to Show Cause on 21.02.2020 at 3 pm. However, on 21.02.2020, when the matter was taken up for hearing, neither O.P. nor anyone interested in the property made a contact or approached the Forum in connection with the Show Cause Notice issued by this Forum. Considering the situation that the attendance of O.P. could not be procured by this Forum at any point of time inspite of every possible efforts being made, even after the publication of a Notice in the English daily newspaper and even thereafter, I am inclined to proceed ex-parte against the O.P.

I find that SMP, Kolkata has produced detailed statement of accounts dated 18.06.2019 filed under the cover of SMP, Kolkata's application dated 05.07.2019 in respect of the said premises in question. It appears from the said statements of accounts that no payment, whatsoever, was made by O.P. in respect of the premises in question for years altogether. In my view, such statements maintained by a statutory authority/ SMP, Kolkata in its usual course of business has definite evidentiary value, unless challenged with fortified documents/evidences etc, ready to bear the test of legal scrutiny. During the course of hearing, I am given to understand by SMP, Kolkata that the rent as well as mesne



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profit/compensation/ damages 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. Non-payment of dues by O.P. for decades together is very much prominent and established, as discussed above. Hence, I have no bar to accept the claim of SMP, Kolkata on account of rent and damages/compensation/ mesne profit etc. I have nothing to disbelief in respect of SMP, Kolkata's claim against O.P. as per statement of accounts maintained regularly in SMP, Kolkata's office in regular course of business.

Thus, it is my considered view that a sum of Rs 2,04,44,882.44 (Rupees Two Crore Four Lakhs Forty Four Thousands Eight Hundred Eighty Two and paisa Forty Four only) for Plate no D 168/8 is due and recoverable from the O.P. for the period from 01.03.1988 to 27.10.2017 by the Port authority on account of compensation/ mesne profit/ damage charges.

O.P. must have to pay such dues to SMP, Kolkata on or before _____. Such dues attracts 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 SMP, Kolkata's books of accounts.

The formal order u/s 7 of the Act is signed accordingly.

I make it clear that in the event of failure on the part of O.P. to pay the dues/charges as aforesaid; SMP, Kolkata



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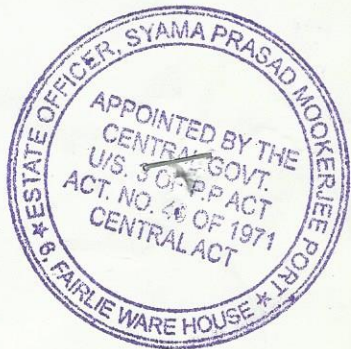
is at liberty to recover the dues etc. in accordance with
law.

All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL

(PABITRA MUKHOPADHYAY)
ESTATE OFFICER.

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



OK
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. 16 DT 28.09.2021
PROCEEDINGS NO. 1740/D OF 2019

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 Nepal Carriers,
P-15, India Exchange Place,
Extensiuon (Todi Mansion),
Kolkata- 700 073**

13388

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

And whereas by written notice dated 31.01.2020 (Vide Order No 12 dated 24.01.2020) you were called upon to show- cause on/or before 21.02.2020 why an order requiring you to pay a sum of Rs 2,04,44,882.44 (Rupees Two Crore Four Lakhs Forty Four Thousands Eight Hundred Eighty Two and paisa Forty Four only) for Plate no D 168/8 being damages payable together with compound interest for unauthorised use and occupation 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 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 2,04,44,882.44 (Rupees Two Crore Four Lakhs Forty Four Thousands Eight Hundred Eighty Two and paisa Forty Four only) for Plate no D 168/8 for the period from 01.03.1988 to 27.10.2017 assessed by me as damages on account of your unauthorised occupation of the premises to Kolkata Port Trust, by 18.10.2021.

Please see on reverse



OK

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)
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6, Fairley Place (1st Floor)
KOLKATA - 700 001



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And whereas you have not made any objections or produced any evidence before the said date;

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 2,04,44,882.44 (Rupees Two Crore Four Lakhs Forty Four Thousands Eight Hundred Eighty Two and paisa Forty Four only) for Plate no D 168/8 for the period from 01.03.1988 to 27.10.2017 assessed by me as damages on account of your unauthorised occupation of the premises to Kolkata Port Trust, by 18.10.2021.

Please see on reverse



:2:

In exercise of the powers conferred by Sub-section (2A) of Section 7 of the said Act, I also hereby require you to pay compound interest @ 6.20 % per annum, 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) on the above sum with effect from the date of incurrence of liability, till its final payment in accordance with Notification Published in Official Gazette/s.

A copy of the reasoned order no. 16 dated 28.09.2021 is attached hereto.

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.

SCHEDULE

Plate no - D 168/8

The piece or parcel of land Msg. 4213.615 Sq.m or thereabouts is situated at Diverted Circular Garden Reach Road opposite to Gravel siding, Thana- South Port Police Station, Calcutta, Dist : 24 Parganas, Registration District- Alipore. It is bounded on the North by Trustees' Land lease to Overseas Corporation Ltd. on the East by the Trustees' Roadway on the South and West by the Trustees' Land.

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

Dated: 01.10.2021

Signature and seal of the
Estate Officer.

COPY FORWARDED TO THE ESTATE MANAGER, KOLKATA PORT TRUST FOR INFORMATION.