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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. 33 DT 07.10.2021
PROCEEDINGS NO. 1667 OF 2018

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-
M/S Soorajmull Baijnath (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
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
27-10-2021
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that **M/S Soorajmull Baijnath of 138, Biplabi Rash Bihari Basu Road, Kolkata-700001 AND ALSO AT 304 Jasmine Tower, 31 Shakespeare Sarani, Kolkata-700017** 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 the lease as granted to O.P. by KoPT had doubtlessly determined by efflux of time, in the facts and circumstances of the case.
3. That O.P. cannot claim renewal of lease from the Port Authority as a matter of right and cannot dictate the terms and conditions of any renewal of lease that may be offered by the Port Authority in terms of their Estate Management Policy.
4. That O.P has parted with possession of the public premises without any authority of law, in facts and circumstances of the case.
5. The O.P or any other person/occupant has failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation".
6. 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 07.06.2017, demanding possession by the Port Authority and O.P's occupation has become unauthorized in view of Sec.2(g) of the P.P. Act, 1971.
7. That right from the date of expiry of the lease, O.P. has lost its authority to occupy the Public Premises and O.P. is liable to pay dues/compensation charges with interest for wrongful use and enjoyment of the Public Property upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

PLEASE SEE ON REVERSE



(2)

A copy of the reasoned order No. 33 dated _____ forms a part of the reasons:

is attached hereto which also

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 Soorajmull Baijnath of 138, Biplabi Rash Bihari Basu Road, Kolkata-700001 AND ALSO AT 304 Jasmine Tower, 31 Shakespeare Sarani, Kolkata-700017** 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 Soorajmull Baijnath of 138, Biplabi Rash Bihari Basu Road, Kolkata-700001 AND ALSO AT 304 Jasmine Tower, 31 Shakespeare Sarani, Kolkata-700017** 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. HL.166/C

The said piece and parcel of Trustees' godown measuring about 5181.04 Sq.mts or thereabouts situated at Ramkristopur, Howrah, P.S: Shibpur, District and Registration District Howrah. It is bounded by on the North partly by the Trustees' road partly by the Trustees' strip of open land alongside Port Trust Railway Siding land and partly by the Trustees' shed occupied by you, on the east partly by the Trustees' Grand Foreshore road and part by the Trustees' shed occupied by you, on the south partly by the Trustees' shed occupied by you and partly by the Trustees' strip of open land alongside northern spur and on the west by the Trustees' strip of open land alongside Port Trust Railway Siding.

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

Date- 26.10.2021


Signature & Seal of the
Estate Officer.

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

By Order of :
ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
ISSUED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
27.10.2021
Head Assistant
ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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
M/S Soorajmull Baijnath

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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 proceeding. It is the case of Syama Prasad Mookerjee Port, Kolkata [erstwhile Kolkata Port Trust], hereinafter referred to as KoPT, Applicant herein, that the land msg. 5181.04 Sq.m or thereabouts situated at Ramkristopur, Howrah, P.S- Shibpur, District & Registration District-Howrah, comprised under occupation Plate No. HL.166/C was allotted to **M/S Soorajmull Baijnath**, O.P. herein, on long term Lease for 30 years with effect from 01.02.1978 without any option of renewal, for the purpose of storage of iron and steel materials, pipes etc. It is argued on behalf of KoPT that after expiry of such lease on 31.01.2008, O.P. preferred to continue in wrongful occupation without paying charges for compensation for use and occupation of the same. It is also the case of KoPT that O.P. has erected unauthorized constructions and parted with possession of the subject premises to rank outsider, in violation of the terms of such tenancy.

Since the O.P. did not hand over the possession of the subject premises after the expiration of such lease and as the aforesaid breaches are committed by O.P. in view of both the facts, KoPT issued vacation notice dated 07.06.2017 to O.P. asking them to hand over clear, vacant, peaceful and unencumbered possession of the said property to KoPT within 21 days from the date of such notice. But O.P. has failed and neglected to vacate/hand over the possession of such premises to KoPT after service of the said vacation Notice and continued possession thereafter.

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By Order of:
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TRUST
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SYAMA PRASAD MOOKERJEE PORT
TRUST
KOLKATA
27-10-2021
Head Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
TRUST
KOLKATA



Estate Officer, Kolkata Port Trust

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S Soorajmull ^{VS} Baisath

33
07.10.2024

By Order of:
THE ESTATE OFFICER
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SYAMA PRASAD MOOKERJEE PORT
07.10.2024.
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

Thus 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 prayer for recovery of compensation etc.) all dated 23.04.2019 (vide Order No.04 dated 23.04.2019).

The said notice/s were sent through Speed Post/hand delivery to the recorded address of O.P. at 138, Biplabi Rash Bihari Basu Road, Kolkata-700001. The Postal Services to the recorded address of O.P. returned undelivered to the Forum with a mark 'addressee Moved' but it reveals from the report of the Process Server dated 30.04.2019 that said notice/s were served upon O.P. personally and due affixation was also made over the subject premises in question as per the mandate of the P.P Act.

On the Scheduled date of appearance and filing reply to the Show Cause i.e on 09.05.2019, O.P did not appear before the Forum to contest the matter therefore, the Forum vide its order dated 09.05.2019 gave a further direction to the Department for affixation of such order upon the subject premises to give chances to O.P. as per the Principles of Natural justice and thereafter on the subsequent date of hearing one Mrs. P. Goswami, expressing herself as a Ld' Advocate of O.P, appeared before the Forum and prayed time to file their reply to the Show Cause. Ld' Advocate of O.P also gave an undertaking before the Forum to file her Vakalatnama on the next date of hearing. Thereafter on 18.06.2019, another one Debasish Basu claiming himself as an employee of O.P. appeared and filed an application dated 18.06.2019 praying further time of one month to file their reply to the Show Cause. The Representative of O.P vide application dated 18.06.2019 has further submitted that

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O.P. would clear all dues of KoPT and in this regard they had already tendered Rs.10,00,000/- to KoPT by way of a Cheque being No.115841 dated 18.06.2019. However, KoPT pressed their prayer for eviction and recovery of dues on the same line as had been made earlier. Hearing the submission of both the parties, Forum gave direction to O.P for filing their reply on the next date of hearing. Thereafter on 09.07.2019, although the representative of KoPT had not enlighten the issue of regularization but the authorized representative of O.P again appeared and submitted that they had applied for regularization of their tenancy before the competent authority of KoPT therefore, a considerable time was needed to them for consideration of such prayer. However, hearing the submission of both the parties, the Forum held negatively and observed that it had no jurisdiction to entertain such prayer of regularization and issue of amicable settlement of the instant matter between the parties and at the same time it gave a further opportunity to O.P for filing their reply to the Show Cause Notice/s along with an affidavit affirming before any First Class Magistrate declaring that Sri Ananda Gupta and Sri Ananda Kumar Gupta was the same and identical person. Subsequently on 16.07.2019 O.P. filed their reply to the Show Cause along with such affidavit sworn before the First Class Magistrate, Alipore copy of which was handed over to the representative of KoPT on the same day. In their reply to the Show Cause O.P denied the claim of KoPT and prayed further renewal or regularization of their tenancy on payment of arrear dues upto the expiry of such lease. On 22.04.2021 denying all the averments of O.P's contentions, KoPT filed their comment on such reply to the Show Cause as filed by O.P on 16.07.2019 and the Forum accordingly giving

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By Order of :

THE ESTATE OFFICER
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27.10.2021
Head Assistant

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SYAMA PRASAD MOOKERJEE PORT



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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S Sooraj^{VS} mull Baijnath

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liberty to O.P for filing their rejoinder on KoPT's comment, reserved the matter for passing final order.

Now, while passing the Final Order, it is seen from the Report of the Process Server dated 05.05.2021 that the last Order dated 22.04.2021 was received by the Darwan of O.P. on 05.05.2021 however, despite of receiving such Order no interest was shown by O.P. for filing their comment on KoPT's rejoinder in connection with the Order dated 22.04.2021 as passed by this Forum. Thus I have carefully considered the documents and the submissions of the parties as on record. After due consideration of those submissions /arguments, I find the following issues for my adjudication/decision:

- I) Whether the petition of KoPT is maintainable or not;
- II) Whether O.P has erected any unauthorized construction or not;
- III) Whether O.P has parted with possession unauthorisedly, or not;
- IV) Whether O.P. can claim automatic renewal of the expired lease, or not,
- V) 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;

As regards the **issue no. I**, 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

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M/s Soorajmull Baijnath VS

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jurisdiction to entertain any matter relating to eviction of unauthorized occupants from the public premises and recovery of rental dues and/or damages, etc. KoPT has come up with an application for declaration of representatives of O.P's status as unauthorized occupant in to the public premises with the prayer for order of eviction, recovery of compensation etc. against O.P. on the ground of termination of authority to occupy the premises as earlier granted to O.P. in respect of the premises in question. So long the property of the Port Authority is coming under the purview of "public premises" as defined under the Act, adjudication process by serving Show Cause Notice/s u/s 4 & 7 of the Act is very much maintainable and there cannot be any question about the maintainability of proceedings before this Forum of Law. In fact, proceedings before this Forum of Law is not statutorily barred unless there is any specific order of stay of such proceedings by any 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.

The issues no. II and III are taken up together, as the issues are related to each other. It is seen from the record that the issue of unauthorized construction as raised by KoPT has already been decided in Title Suit No.71 of 1984(Board of Trustees of the Port of Calcutta vs. M/s Soorajmull Baijnath) Where the Ld' Court of 3rd Assistant District Judge, Howrah has very emphatically decided that issue with following observation:

"Now it is the contention of the plff. that the defdt. has raised unauthorized construction upon the suit land without getting the plan sanctioned by the Calcutta Port

R



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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s Soorajmull Baisnath
VS

33
07.10.2024

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SYAMA PRASAD MOOKERJEE PORT
Head Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

Trust Authority. The raising of construction is admitted by the defdt. The only difference is that according to the plff, the construction unauthorised construction but the defdt. Says that the construction is made as per plan submitted. Be that as it may now the court is towas filed against him. It is in evidence further though there were causes of anger against the defdt. But the plff. is found to have taken no steps against the defdt. when the construction was raised by the defdt.

This implies implied consent of the plff.

Now, totality of the evidence regarding the submission of the plan and/or non-sanction of the same by the plff. the Court finds that the plff. could not refuse defdt.'s statement seeing the galore of evidences regarding the correspondence made by the defdt. to him for the purpose of getting the plan sanctioned by him. It is found that plff. withheld sanction though there is evidence galore to the effect that the defdt. did his best to get plan sanctioned. Nor the plff. was unwilling to sanction the plan submitted by the defdt.

In the light of above spirit of evidence the Court finds that both plff. and defdt. are eager to come to a term. The plff's evidence suggests that they are in a habit of regularising irregularities by way of penalty and imposition of conditions. The evidence of the defdt. also suggests that he is willing to accept the penalty and condition if imposed upon him after regularising his construction.

This is one aspect of the evidence. The other aspect of the evidence is this that the plff. has totally failed to prove that the defdt. has raised construction unauthorisingly. On the otherhand, it appears that the defdt. did make his utmost to get the submitted plan sanctioned by the plff.

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and on getting a scant of formal sanction of his plan he started raising his construction.

In the above view of the evidence, facts and circumstances on record the Court is unable to find that the defdt. has made unauthorized construction violating the terms of the lease agreement."

Therefore, in the aforementioned Title Suit as the issue has already been decided on merit KoPT cannot agitate the same issue of unauthorized construction by filing a subsequent application before this Forum. In my view, this Forum is barred on the ground of resjudicata in dealing with that issue. Therefore, I am not at all inspired by suggestion of KoPT on this count. However, as regards the issue of unauthorized parting with possession, KoPT has filed a copy of letter before this Forum addressing the O.P. (such as letter dated 07.06.2017) whereby KoPT has requested O.P for removal of outsiders/third parties along with other breaches. but inspite of receiving the copy of such letter, O.P apparently did not pay any heed to that matter. This communication amply depicts that O.P has parted with possession to rank outsiders. Moreover, the Comments/rejoinder filed by the Port Authorities on 22.04.2021 also depicts that O.P. has parted with possession of the subject premises to Salasar Enterprise who is partly using the premises for manufacturing of cloth. This Letter/application filed by a Statutory Authority like KoPT cannot be disbelieved. Further O.P has not made any specific submission regarding this issue. Mere denial of unauthorized parting on behalf of the O.P is in my view not sufficient to defend this type of serious allegation. The O.P could not produce any document to defend his position. As such it is very difficult to accept the mere claim of the O.P which is

(Signature)

By Order of:

THE ESTATE OFFICER

SYAMA PRASAD MOOKERJEE PORT TRUST

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ISSUED BY THE ESTATE OFFICER

SYAMA PRASAD MOOKERJEE PORT TRUST

27.10.2021
Head Assistant

OFFICE OF THE LD. ESTATE OFFICER

SYAMA PRASAD MOOKERJEE PORT TRUST



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M/s Sooramull Baiznath ^{VS}

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bereft of any cogent reason. Moreover, induction of a third party without the approval of KoPT is also against spirit of tenancy. Therefore, the issue of unauthorized parting with possession is decided in favour of KoPT.

On **issue no. IV**, it is evident from the Lease Deed dated 10.09.1982 executed between KoPT and O.P. that the lease was for a period of 30 years with effect from 01.02.1978. Therefore, there can be no doubt that the lease in question expired on 31.01.2008 due to efflux of time. There were no clauses for renewal of the lease, rather Clause 11 of the registered lease deed reads as follows:

"11. AND will at the expiration or sooner determination of the said term quietly and peacefully yield up vacant possession of the demised land as a whole unto the Trustees with all buildings and erections, if any, erected thereon that shall not have been previously removed by the Lessees".

However, even after expiry of the said lease period, O.P. did not yield up vacant possession of the demised land to KoPT which necessitated Port Authority to serve a vacation notice dated 07.06.2017 demanding possession of the premises. It is therefore clear that the KoPT never intended to renew the lease or grant a fresh lease to O.P.

Notable here is that O.P. by its reply dated 16.07.2019 during the course of this proceedings submitted that "after expiry of the lease agreement Kolkata Port Trust was given letter multiple times for regularization of lease and rent to which they kept and maintained complete silence."

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From the facts cited as above, it is undoubtedly established that the lease in question stood determined on 31.01.2008 due to efflux of time, and that there is no scope for automatic renewal of the lease in the facts and circumstances of the case. Now, so far as the prayer of the O.P. for grant of regularization of lease agreement is concerned, I must say that O.P. as former lessee cannot dictate the terms and conditions for grant of any renewal by the Port Authority and KoPT as landlord of the premises has every authority under law to impose terms and conditions for grant of renewal of lease in terms of their estate management policy. As per law, the terms and conditions as embodied in a lease deed had lost all its force of law on the expiry of the contractual period of such lease, in the facts and circumstances of the case. Moreover, there was no option of renewal of such lease, as such, this Forum has nothing to consider in respect of the prayer of the O.P. for "renewal" of the lease. The issue IV is thus decided against the O.P.

As regards the **issue no. V**, as on the basis of the notice to quit dated 27.04.1983 the Title Suit No. 71 of 1984 filed by KoPT has already been decreed, Hence, no reliance can be placed by KoPT on the said notice to quit dated 27.04.1983 in the present proceeding and the issue of validity/ legality of the said notice to quit has been kept out of the zone of consideration by this Forum. However, as per settled proposition of law, I must say that a lessee like O.P. cannot claim any legal right to hold the property after expiry of the period of lease. O.P. has failed to satisfy this Forum about any consent on the part of KoPT in occupying the public premises. I am consciously of the view that KoPT never recognized O.P. as a lawful

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TRUST
07.10.2021
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M/S Soorajmull Baisnath
VS

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user/tenant in respect of the property in question after expiry of the period of such long term lease. 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 also a settled question of law that O.P, occupier cannot claim any legal right to hold the property after expiry of the lease, without any valid grant or allotment from KoPT's side. Moreover, as per the Transfer of Property Act, 1882, a lessee is under legal obligation to hand over possession of the property to its landlord/lessor in its original condition after expiration of tenancy under lease. The tenancy of the O.P. automatically stands terminated upon expiry of the lease-hold period and no additional Notice is required in the eye of law on the part of the landlord to ask the O.P. to vacate the premises. In other words, in case of a long term lease having a specific date of expiration, there is no legal compulsion on the landlord to issue any Notice to Quit. The landlord is, however, free to issue such a Notice as a reminder or as an act of gratuity. In the instant case, the landlord i.e. KoPT adopted such a course and claims to have issued a Notice to O.P. dated 07.06.2017 asking

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for vacation of the premises said premises within 21 days. 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 after expiry of such lease which it had failed to do. Therefore, O.P's occupation is unauthorized.

"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 lease, O.P. has lost its authority to occupy the public premises and O.P. is liable to pay damages for such unauthorized use and occupation.

To come into such conclusion, I am fortified by the decision/observation of the Hon'ble Supreme Court in Civil Appeal No.7988 of 2004, decided on 10th December 2004, reported (2005)1 SCC 705, para-11 of the said judgment reads as follows.

Para:11-" under the general law, and in cases where the tenancy is governed only by the provisions of the Transfer of Property Act 1882, once the tenancy comes to an end by determination of lease u/s.111 of the Transfer of Property Act, the right of the tenant to continue in possession of the premises comes to an end and for any period thereafter, for which he continues to occupy the premises, he becomes liable to pay damages for use and occupation at the rate at which the landlord would have let out the premises on being vacated by the tenant. "

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 as "authorized occupation" without making payment of requisite charges. I am fortified by the Apex Court

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

Proceedings No. 1667 Of 2018 Order Sheet No. 37

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S Soorajmull Baisnath
VS

33
07.10.2021

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

COPIED COPY OF THE ORDER
ISSUED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
Head Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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 my view, the case in hand is very much relevant for the purpose of determination of damages upon the guiding principle as laid down by the Hon'ble Apex Court in the above case. 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 expired by efflux of time and party continues their occupation unauthorisedly, the another party who suffers by such violation is entitled to receive, from the party who has violated the terms of the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such violation of the terms, or which the parties knew, when they made the contract to be likely to result from the such violation. O.P. failed to substantiate as to how its occupation could be termed as "authorised" in view of Sec. 2(g) of the P.P Act, after expiry of the period as mentioned in the KoPT's notice dated 07.06.2017, demanding possession from O.P. I have no hesitation to observe that O.P's act in continuing occupation after expiry and determination of

Estate Officer, Kolkata Port Trust

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



Proceedings No. 1667 Of 2018 Order Sheet No. 3

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
M/S Soorajmull Baigmath

33
07.10.2021

the lease 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.

I find that this is a fit case for passing order of eviction against O.P and hence, being satisfied as above I hereby, pass 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 the lease as granted to O.P. by KoPT had doubtlessly determined by efflux of time, in the facts and circumstances of the case.
3. That O.P. cannot claim renewal of lease from the Port Authority as a matter of right and cannot dictate the terms and conditions of any renewal of lease that may be offered by the Port Authority in terms of their Estate Management Policy.
4. That O.P has parted with possession of the public premises without any authority of law, in facts and circumstances of the case.
5. The O.P or any other person/occupant has failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation".
6. 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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ISSUED BY THE ESTATE OFFICER
PRASAD MOOKERJEE PORT
TRUST
Head Assistant
07.10.2021
OFFICE OF THE LD. ESTATE OFFICER
PRASAD MOOKERJEE PORT

(Handwritten mark)



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. 1667 Of 2018 Order Sheet No. 39

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
MB Soorasmull Bairnath

33
07.10.2021

By Order of:
THE ESTATE OFFICER
S. YAMINA PRASAD MOOKERJEE PORT

CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
S. YAMINA PRASAD MOOKERJEE PORT

Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
S. YAMINA PRASAD MOOKERJEE PORT

issuance of notice dated 07.06.2017, demanding possession by the Port Authority and O.P.'s occupation has become unauthorized in view of Sec.2(g) of the P.P. Act, 1971.

7. That right from the date of expiry of the lease, O.P. has lost its authority to occupy the Public Premises and O.P. is liable to pay dues/compensation charges with interest for wrongful use and enjoyment of the Public Property upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

ACCORDINGLY, I sign the formal order of eviction u/s 5 of the Act as per Rule made there under, giving 15 days time to O.P. and any person/s whoever may be in occupation to vacate the premises. I make it clear that all person/s whoever may be in occupation are liable to be evicted by this order and the Port Authority is entitled to claim damages for unauthorized use and enjoyment of the property against O.P. in accordance with Law up to the date of recovery of possession of the same. KoPT is directed to submit a comprehensive status report of the Public Premises in question on inspection of the property after expiry of the 15 days as aforesaid so that necessary action could be taken for execution of the order of eviction u/s. 5 of the Act as per Rule made under the Act.

I find that KoPT has made out an arguable claim against O.P., founded with sound reasoning, regarding the damages/compensation to be paid for the unauthorised occupation. I make it clear that KoPT is entitled to claim damages against O.P. for unauthorized use and occupation of the public premises right upto the date of

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 Soorajmull Baisnath
VS

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07.10.2024

recovery of clear, vacant and unencumbered possession of the same in accordance with Law, as the possession of the subject premises is still lying unauthorisedly with the O.P. Notice u/s 7 has already been issued by this Forum on 23.04.2019 on the basis of KoPT's claim on account of damages for the unauthorised use and occupation of the subject premises by O.P. It appears that the claim has been made by KoPT from 01.06.1983 to 18.03.2019, as in terms of Notice to Quit dated 27.04.1983 the O.P was directed to clear vacate surrender the unencumbered possession on 01.06.1983. Now at the time an amount is required to be assessed as damage /compensation /mesne profit, the period from which any person is in unauthorised occupation shall be taken into account. The Title Suit No. 71 of 1984 filed by KoPT has already been decreed, hence, no reliance can be placed by KoPT on the said notice to quit dated 27.04.1983 in the present proceeding and the issue of validity/ legality of the said notice to quit has been kept outside the domain of consideration by this Forum.

Hence it cannot be said that O.P is in unauthorized occupation from 01.06.1983. Therefore, it is not justified to account for the O.P. for compensation, damages on & from 01.06.1983. It is my considered view that KoPT is entitled to lodge its claim on account of damages for the unauthorized use and occupation of the public premises from the date the lease would have been expired had the Quit Notice dated 27.04.1983 not been issued to the O.P. Thus KoPT is directed to file proper calculation of dues from the date of deemed expiry of such lease (in case the lease was allowed to continue instead of issuance of such Quit Notice) after incorporating proper periods for which such dues are payable by O.P. Accordingly, KoPT is directed to submit a statement comprising details of its

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THE ESTATE OFFICER
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FILED COPY OF THE ORDER
BY THE ESTATE OFFICER
PRASAD MOOKERJEE PORT
27.10.2024
Head Assistant
ESTATE OFFICER
PRASAD MOOKERJEE PORT



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. 1667 Of 2018 Order Sheet No. 41

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S Soorajmull Baisnath ^{VS}

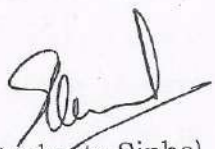
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07.10.2021

calculation of damages, 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


(Satyabrata Sinha)
ESTATE OFFICER

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

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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ISSUED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

27.10.2021
Head Assistant
OFFICE OF THE D. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT