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THE ESTATE OFFICER, 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  
15, STRAND ROAD  
(4<sup>th</sup> Floor)  
KOLKATA - 700 001  
\*\*\*\*\*

Court Room At the 2<sup>nd</sup> Floor  
of Kolkata Port Trust's  
Head Office, Old Buildings  
15, Strand Road, Kolkata- 700 001.

REASONED ORDER NO. 18 DT 19.06.2018  
PROCEEDINGS NO. 1552 OF 2017

BOARD OF TRUSTEES OF THE PORT OF KOLKATA  
-Vs-  
**Estate Tarakeswar Pathak (O.P.)**

**F O R M - "B"**

**ORDER UNDER SUB-SECTION (1) OF SECTION 5 OF THE PUBLIC  
PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1971**

WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that **Estate Tarakeswar Pathak, of 3, Nawab Dilarjung Road, Kolkata 700002** are in unauthorized occupation of the Public Premises specified in the Schedule below:

**REASONS**

- 1) That O.P. has failed to liquidate the rental dues of the Port Authority within prescribed period, for a considerable time, despite being requested for its immediate liquidation.
- 2) That O.P. has failed to show any cause against the allegations of erecting unauthorized construction, encroachment into the Port property, and inducting unauthorized sub-tenants.
- 3) That O.P./any other person on behalf of O.P. have failed to make out any case in support of its occupation as "authorised occupation", inspite of sufficient chances being given.
- 4) That O.P. or any other person/s asserting any right through O.P. has failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation", inspite of sufficient chances being provided.
- 5) That the notice to quit dated 21.02.2014 as served upon O.P. by the Port Authority is valid, lawful and binding upon the parties and O.P's occupation, and that of any other occupant of the premises, has become unauthorised in view of Section 2(g) of the P.P Act.
- 6) That O.P. is liable to pay damages for wrongful use and occupation of the Public Premises upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

**Please see on reverse**

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A copy of the reasoned order No. 18 dated 19.06.2018 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 **Estate Tarakeswar Pathak, of 3, Nawab Dilarjung Road, Kolkata 700002** 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 **Estate Tarakeswar Pathak, of 3, Nawab Dilarjung Road, Kolkata 700002** 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

The piece and parcel of Land Msg. about 115.485 Sq.mtrs. at Cossipore, in the presidency town of Kolkata, Thana: North Port Police Station, under Plate No.SB- 483/A. It is bounded on the North by partly Trustees' land allotted to J.N. Singh and partly Nawab Dilarjung Road, On the South by partly Trustees' land allotted to Dinu and Robin Builders and partly strip of open land alongside Trustees' land allotted to Chandrama Pathak, On the East by partly Nawab Dilarjung Road & partly strip of open land alongside Trustees' land allotted to Chandrama Pathak and on the West partly by Trustees' land allotted to J.N. Singh & partly by Trustees' land allotted to Dinu and Robin Builders.

Trustees' mean the Board of Trustees for the Port of Kolkata.

Dated: 19.06.2018



Signature & Seal of the  
Estate Officer.

**COPY FORWARDED TO THE ESTATE MANAGER/CHIEF LAW OFFICER,  
KOLKATA PORT TRUST FOR INFORMATION.**

# Estate Officer, Kolkata Port Trust

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

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### FINAL ORDER

The matter is taken up today for final disposal. It is the case of Kolkata Port Trust (KoPT), applicant herein, that Shri Tarakeswar Pathak originally came into occupation of KoPT's land measuring about 115.485 sqm at Turner Road, Cossipore, comprised under occupation No. SB-483/A, being the Public Premises in question, as a short term lessee on certain terms and conditions. It is submitted by KoPT that Shri Tarakeswar Pathak violated the conditions of grant of tenancy by way of not making payment of rental dues, erecting unauthorized construction, encroachment into the Port property, and also inducting unauthorized sub-tenants. It is strongly argued on behalf of KoPT that Shri Tarakeswar Pathak has no authority under law to occupy the public premises after expiry of the period as mentioned in the notice to quit dated 21.02.2014 and that Shri Tarakeswar Pathak is liable to pay damages for wrongful use and occupation of the Port property upto the date of handing over of vacant possession of the same.

This Forum issued Show Cause notice under Section 4 of the Act (for adjudication of the prayer for issuance of Order of Eviction etc.) and Show Cause Notice/s under 7 of the Act (for adjudication of the prayer for recovery of rental dues, damages, interest etc) all dated 22.03.2017.

It is seen from record that representative of Shri Tarakeswar Pathak contested the matter and filed

*MS*

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two applications on 17.07.2017 and 28.07.2017 with prayer of adjournment of the proceedings. Subsequently on 30.08.2017 Shri Santosh Pathak, claiming to be grandson of Shri Tarakeswar Pathak, filed a death certificate of Shri Tarakeswar Pathak. Taking cognizance of such submission, the instant proceedings was continued against "Estate Tarakeswar Pathak" as O.P. i.e. against the legal heirs/representatives of late Shri Tarakeswar Pathak. Be that as it may, subsequently representative of O.P. filed the Reply to Show Cause on 30.10.2017 followed by a Written Statement on 18.12.2017. Representative of O.P. also filed its Written Notes of Arguments on 29.01.2018 when after hearing the arguments of both the sides, final order was reserved by this Forum.

I have carefully gone through the contentions made by KoPT against the O.P. It is seen that KoPT vide its letter dated 06.03.1992 requested the O.P. to liquidate the rental dues. KoPT vide another letter dated 12.02.1993 requested the O.P. to remove the unauthorized constructions. On 29.11.1995 KoPT again requested the O.P. to remedy the breaches of non-payment of rent and unauthorized construction. It is seen from record that again on 12.06.1996 and 22.09.1997 KoPT requested for remedy of the breaches, with the addition that this time the breach of unauthorized sub-letting/parting of possession was also brought out. It is seen that KoPT again took up with O.P.

*CS*

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vide its Final Notice bearing no. Lnd.12/56/11/652, thereby requesting O.P. for remedy of the above breaches, together with the breach of unauthorized encroachment into the Port property. During the course of hearing, KoPT has placed before me computerised statement of accounts, maintained in official course of business, which fortify the claim of KoPT regarding non-payment of rent by the O.P. within prescribed time. Moreover, as per inspection carried out by KoPT in the subject premises (as reported by KoPT vide its application dated 10.03.2017) a number of unauthorized entities have been found to be operating in the premises. I find nothing to disbelieve the claim of KoPT, in the instant case. Moreover, I find that O.P. in its Reply to Show Cause has practically admitted the charge of non-payment of dues, in the following words-

*"5. The respondent say that the petitioner is not entitled to an order of eviction simply on the ground of alleged default when the respondent is agreeable to pay the arrears actually due and payable by instalments."*

Even in para 6 of the said Reply to Show Cause, O.P. has asked for allowing payment of arrears in instalments, which itself suggests that O.P. was in default of rent.

I find that in the Written Statement as well as Reply to Show Cause, filed by the O.P., O.P. has not specifically denied the charges of erecting unauthorized construction, encroachment into the

*CS*

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Port property, and inducting unauthorized sub-tenants. As per law, denial has to be specific and not evasive. Law does not recognize mere denial. I find that all throughout, O.P. has harped on plain denial rather than any concrete set of facts. As such, I am not inclined to grant any relief to the O.P. In my view, the allegations of KoPT are sufficiently substantiated in the facts and circumstances of the case. As such, I find the action taken by the Port Authority very much logical and within the four corners of the law. In view of the above, I am firm in holding that the Notice to Quit dated 21.02.2014 had been validly issued and served on the O.P. and the same is binding on the parties.

In view of the circumstances, and being satisfied as above, I am left with no other alternative but to issue the Order of Eviction against O.P., as prayed for on behalf of KoPT, on the following grounds/reasons:-

- 1) That O.P. has failed to liquidate the rental dues of the Port Authority within prescribed period, for a considerable time, despite being requested for its immediate liquidation.
- 2) That O.P. has failed to show any cause against the allegations of erecting unauthorized construction, encroachment into the Port property, and inducting unauthorized sub-tenants.
- 3) That O.P./any other person on behalf of O.P. have failed to make out any case in support of its occupation as "authorised occupation", inspite of sufficient chances being given.
- 4) That O.P. or any other person/s asserting any right through O.P. has failed to bear any

*CS*

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witness or adduce any evidence in support of its occupation as "authorised occupation", inspite of sufficient chances being provided.

- 5) That the notice to quit dated 21.02.2014 as served upon O.P. by the Port Authority is valid, lawful and binding upon the parties and O.P's occupation, and that of any other occupant of the premises, has become unauthorised in view of Section 2(g) of the P.P Act.
- 6) That O.P. is liable to pay damages for wrongful use and occupation of the Public Premises 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 the canons of Law till the date of unencumbered 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 can be taken for execution of the order of eviction u/s 5 of the Act, as per Rule made under the Act.

I must mention that KoPT's total claim against O.P. on account of rental dues and charges for

*CS*

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compensation for wrongful use and enjoyment of the property under the concerned Occupation no. for Rs. 11,61,573.02/- upto 01.02.2018 which includes interest (for delayed payment) of Rs. 5,49,476.02/- 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. KoPT is directed to submit a report regarding its claim on account of rent and damages against O.P., indicating there-in, the details of the computation of such rent and damages with the rate of charges so claimed for the respective periods (details of computation with rates applicable for the relevant periods, till the date of taking over of possession) for my consideration in order to assess the rent and damages as per the Act and the Rules made thereunder.

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

  
(G. MUKHOPADHYAY)  
ESTATE OFFICER

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