

Estate Officer, Kolkata Port Trust

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

904/D

Of

2007

Order Sheet No.

51

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

M/s. Industrial Minerals & Mills Store Trade (P) Ltd.

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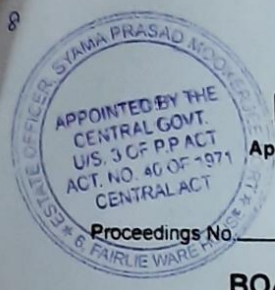
29.01.2021

FINAL ORDER

The instant proceedings No. 904/D of 2007 arises out of the application bearing No. Lnd.4091/Q/1/13/4426 dated 28.02.2013 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 and other charges etc. along with accrued interest in respect of the subject public premises, against **M/s Industrial Minerals & Mills Stores Traders Pvt. Ltd.**, (hereinafter referred to as **O.P.**), under 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 godown space measuring about 334.58 sqm situated at SMP, Kolkata's shed no 8, Section C at Hoboken Depot, comprised under occupation no HS 27, on monthly license basis. Thereafter, O.P. has defaulted in making payment of SMP, Kolkata's dues/charges. Notice of revocation of license was issued by SMP, Kolkata to O.P. on 12.08.1985. Thereafter, proceeding was initiated by SMP, Kolkata before this Forum against the O.P. under relevant provisions of the Act, which was numbered as Proceeding No 904, 904/R, 904/D of 2007. The O.P. appeared before this Forum and contested the case. Thereafter, the Final Order of eviction and payment of dues by the O.P. was passed on 07.05.2012. It appears that thereafter SMP, Kolkata vide application dated 28.02.2013 has intimated that the possession of the premises was taken over by the O.P. on 28.05.2012 in terms of the said Order of eviction dated 07.05.2012. It has also been intimated by SMP, Kolkata vide the said application dated 28.02.2013 that huge amount of damages/compensation/ mesne profit was still due and recoverable from the O.P. After considering the allegations levelled by SMP, Kolkata against the O.P. that while in possession of Port property, the O.P. has defaulted in making payment of damages/compensation and taxes and also

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accrued interest thereon, this Forum being prima facie satisfied with the claim of SMP, Kolkata has issued Notice to Show Cause dated 24.12.2019 (vide Order-35 dated 24.12.2019) upon the O.P. u/s 7 of the Public Premises (Eviction of Unauthorized Occupation) Act, 1971 to show cause as to why an order requiring to pay arrear damages/compensation together with interest should 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 capable to answer of material question connected with the matter along with the evidence which the opposite party intends to produce in support of this case.

It is the case of SMP, Kolkata that the O.P. was asked to pay damages/compensation upto 28.05.2012 as because the subject premises was taken over by SMP, Kolkata on 28.05.2012.

The said notice was served through Speed Post as well as by hand delivery to the recorded addresses of O.P. at Mercantile Buildings, Lal Bazar, Kolkata- 700 001 and also to 93, Dakshindari Road, Kolkata -700 048. It appears from record that said Notice sent to Mercantile Buildings, Lal Bazar, Kolkata- 700001 was returned back due to possible insufficient addresses of O.P, however, the notice sent to 93, Dakshindari Road, Kolkata -700048 was not returned back. The report of the Process Server dated 07.01.2020, however, depicts that the said Notice could not be served upon the O.P. as the O.P. was not found at such recorded addresses at the time of a visit thereon. Thereafter, certain number of hearings have taken place on different dates, but no one appeared on behalf of O.P. or any other person interested in the property in response to such Show Cause Notice. Thereafter, following the principles of natural justice, this Forum made further attempt to serve the Notices upon the O.P. by directing SMP, Kolkata to provide alternative address, if any, of the O.P. However, SMP, Kolkata has submitted that no other alternative address

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s available with them. It appears that inspite of such efforts being made, the appearance of O.P. could not be procured in order to contest the claim of SMP, Kolkata, by usual course of business followed by this Forum and such efforts remained futile. Accordingly, a decision was taken to publish a notice in a widely circulated newspaper for a notice to all concerned about the pendency of the instant proceeding in order to give further 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 05.11.2020 fixing the last date for the O.P's appearance on 24.11.2020 but, all the efforts went into vain as the O.P. failed to appear before the Forum despite publication of such notice in the newspaper.

Now, in view of the spirit laid down in the Public Premises Act, 1971 for speedy and summary disposal of cases and further considering the continuous non-appearance of the O.P. inspite of sufficient opportunities being given and after exhaustion of all the available means of service, this Forum finds no need to keep the matter pending and the final Order was reserved in the matter on 24.11.2020. Now this Forum has decided to adjudicate the matter ex-parte.

As no one from O.P's side appears and no reply to the Show Cause Notice u/s 7 of the Act has been filed as yet, I have no bar to accept the claim of SMP, Kolkata on account of damages/compensation/ mesne profit etc. In fact, 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.

It is my considered view that a sum of Rs.14,32,895.74 for the period 01.02.2006 to 28.05.2012 is due and recoverable from O.P. by the Port authority on account of damages/compensation/ mesne profit and O.P. must have to pay such dues to SMP, Kolkata on or before _____ Such dues attracts Compound interest @

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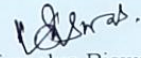
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6.20 % per annum, which is the current rate of interest as per the Interest Act, 1978 (as gathered by me from the official website of the State Bank of India) from the date of incurrence of liability, till the liquidation of the same, as per the adjustment 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.

Department is directed to draw up formal order as per Rule u/s 7 of the Act. 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 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


(Nirmalya Biswas)
ESTATE OFFICER.

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