

Scan Copy



Kolkata Port Trust has been renamed as
Syama Prasad Mookerjee Port, Kolkata
(GSR No. S.O. 2020 (E) dated 24.6.2020)

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

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
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.29 DT 24.07.2020
PROCEEDINGS NO. 1609 OF 2017

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-
Divisional Railway Manager, Eastern Railway, Howrah, (O.P.)

F O R M - "B"

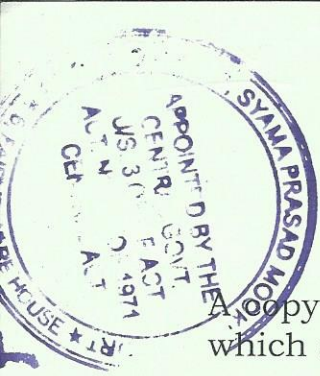
**ORDER UNDER SUB-SECTION (1) OF SECTION 5 OF THE PUBLIC
PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1971**

WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that **Divisional Railway Manager, Eastern Railway, Howrah-711101**, is in unauthorized occupation of the Public Premises specified in the Schedule below :

REASONS

1. That O.P. has violated the condition of long term lease as granted by the Port Authority by way of not making payment of rental dues and taxes to KoPT, for a prolonged period of time.
2. That The term of Lease has been expired by efflux of time therefore, O.P has no right to continue possession of the subject premises.
3. That O.P has parted with possession of the public premises without any authority of law, in facts and circumstances of the case.
4. The O.P or any other person/occupant have failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation"
5. That the notice to quit dated 22.04.1991 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 Sec.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 up to the date of handing over the clear, vacant and unencumbered possession to the port authority.

PLEASE SEE ON REVERSE



(2)

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A copy of the reasoned order No. 29 dated 24.07.2020 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 **Divisional Railway Manager, Eastern Railway, Howrah-711101**, 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 **Divisional Railway Manager, Eastern Railway, Howrah-711101** 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-230/2

The said piece or parcel of land msg.1086.59 sq.m or thereabouts situated on the North side of the Cowies Ghat Road, Spur Road, Thana-Shibpur, Dist and Registration District -Howrah.

North : Trustees' low land beside their tank.


East: Partly by the Trustees' low land besides their tank and partly by the Trustees' Boat Registration Office.

South: By the Trolley lines on the Trustees' land known as Cowies Ghat Spur.

West: By the Trustees' land leased to Bird & Co.(Pvt.) Ltd.

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

Date- 31-07-2020


Signature & Seal of the
Estate Officer.

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



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Public Premises (Eviction of Unauthorized Occupant) Act 1971
1st Floor, 6, Fairlie Place Warehouse,
Kolkata-700001

Court Room At the 1st Floor
6, Fairlie Place Warehouse

Form " E "

PROCEEDINGS NO.1609/R OF 2017
ORDER NO. 29 DATED: 24.07.2020

Form of order under Sub-section (1) and (2A) of Section 7 of the Public
Premises (Eviction of Unauthorised Occupants) Act,1971.

To
**Divisional Railway Manager,
Eastern Railway,
Howrah-711101.**

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

AND WHEREAS, by written notice dated 19.02.2018 you are called
upon to show cause on/or before 23.03.2018 why an order requiring you
to pay a sum of Rs 64,952.11 (Rupees Sixty Four Thousand Nine
hundred Fifty two and paisa Eleven only) being the rent payable together
with compound interest in respect of the said premises should not be
made;

AND WHEREAS you have not made any objections or produced any
evidence on/or before the said date and failed to represent the instant
proceedings inspite of repeated chances being given to 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
64,952.11 (Rupees Sixty Four Thousand Nine hundred Fifty two and
paisa Eleven only) for the period 01.04.1974 to 16.08.1991(both days
inclusive) to Kolkata Port Trust by 13.08.2020.

PLEASE SEE ON REVERSE



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: 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) from the date of incurrance of liability till its final payment in accordance with Kolkata Port Trust's Notification published in official Gazette/s.

In the event of your refusal or failure to pay the rent within the said period or in the manner aforesaid, the amount will be recovered as an arrear of land revenue through the Collector.

SCHEDULE

Plate No.HL-230/2

The said piece or parcel of land msg.1086.59 sq.m or thereabouts situated on the North side of the Cowies Ghat Road, Spur Road, Thana-Shibpur, Dist and Registration District -Howrah.

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West: By the Trustees' land leased to Bird & Co.(Pvt.) Ltd.

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

Dated: 31.07-2020

Signature and seal of the
Estate Officer

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PROCEEDINGS NO.1609/D OF 2017
ORDER NO.29 DATED : 24.07.2020

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
**Divisional Railway Manager,
Eastern Railway,
Howrah-711101.**

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 19.02.2018 you are called upon to show cause on/or before 23.03.2018 why an order requiring you to pay damages of Rs. 38,93,557.77 (Rupees Thirty Eight Lakhs Ninety Three thousand Five hundred Fifty Seven and paisa Seventy seven only) together with [compound interest] for unauthorised use and occupation of the said premises, should not be made.

And whereas I have considered your objections and/or evidence produced before this Forum.

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. 38,93,557.77 (Rupees Thirty Eight Lakhs Ninety Three thousand Five hundred Fifty Seven and paisa Seventy seven only) assessed by me as damages on account of your unauthorised occupation of the premises for the period from 17.08.1991 to 30.06.2017 (both days inclusive) to Kolkata Port Trust by 13.08.2020.


PLEASE SEE ON REVERS



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: 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) from the date of incurrance of liability till its final payment in accordance with Kolkata Port Trust's Notification published in official Gazette/s.

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 through the Collector.

SCHEDULE

Plate No.HL-230/2

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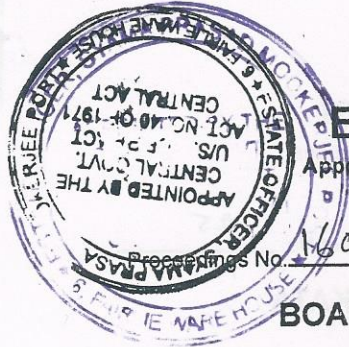
West: By the Trustees' land leased to Bird & Co.(Pvt.) Ltd.

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

Date 31.07.2020


Signature & Seal of the
Estate Officer.

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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

Proceedings No. 1609, 1609/R, 1609/D of 2017 Order Sheet No. 24

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

(Plate no. HL-230/2)

Divisional Railway Manager (ER Howrah) VS

29
24.07-2020

FINAL ORDER

The instant proceedings No. 1609, 1609/R & 1609/D of 2017 arose out of an application being No. Lnd.4361/II/15/25 dated 02.04.2015 filed by Kolkata Port Trust (KoPT), Applicant herein, praying for an order of eviction and payment of arrear rent, taxes, compensation along with interest etc. against Divisional Railway Manager, Eastern Railway, Howrah, the O.P. herein, under relevant provisions of the Public Premises (Eviction of Unauthorised Occupant) Act 1971. The facts of the case is summarised here under.

O.P. came into occupation of the port property being land measuring about 1086.59 sq.mtrs or thereabout situated at Cowies Ghat Spur Road, Shibpur, Howrah (under Plate No.HL-230/2), as a long term lessee for a period of 30 years with effect from 17.08.1961 on payment of monthly rent on certain terms and conditions as embodied in KoPT's offer/letter for allotment. KoPT has submitted that while in possession of the port property as lessee, OP violated the condition of such lease by way of not vacating the Public Premises in question after expiry of such lease by efflux of time commencing from 17.08.1991 and by way of not making the payment of arrear rent, taxes, compensation along with interest etc, for use and enjoyment of the Port property in question the details of which has been given in 'Schedule-'B' and 'C' of the KoPT's application dated 02.04.2015.

It is also the case of KoPT that O.P has unauthorisedly parted with possession of the said premises to third party in gross violation of the terms of that tenancy.

In view of the aforesaid breaches committed by the O.P., KoPT had issued notice to quit being No. Lnd.4361/II dated 22.04.1991 asking the O.P. to hand over clear, vacant, peaceful and

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

2

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Estate Officer, Kolkata Port Trust

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(Eviction of Unauthorised Occupants) Act 1971

Proceedings No. 1609, 1609/R, 1609/D of 2017 Order Sheet No. 25

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Divisional Railway Manager ^{VS} (ER Howrah)

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24.07.2020

unencumbered possession of the property to KoPT on 17.08.1991. But O.P has failed and neglected to vacate/ hand over the possession of such premises to KoPT after service of the said Notice to Quit.

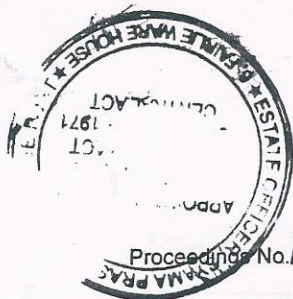
Considering the submission advanced by KoPT and the documents on record, Notice/s to Show Cause under section 4 and 7 of the Public Premises (Eviction of Unauthorized Occupation) Act, 1971 all dated 19.02.2018 (vide Order No.04 dated 19.02.2018) were issued by this forum to O.P. The Notice/s were issued in terms of the said provisions of the Act calling upon the O.P. to appear before this forum in person or through authorized representative capable of answering all material questions in connection with the matter along with the evidence which the opposite party intends to produce in support of their case.

The said notice/s were served through Speed Post to the correct recorded addresses of O.P. at Howrah, 711102. It appears from records that the Notice/s sent through speed post were returned back with an endorsement "insufficient address". However, it appears from the report of Process Server dated 06.03.2018 that said notices were served upon O.P personally and affixation was also done on the same day at about 12 P.M over the subject premises as per the mandate of the P.P Act. But O.P has failed to appear before the forum on 2nd call. Thereafter, following the principles of natural justice, forum allowed another chances to O.P. for appearance. On the basis of submission of KoPT dated 06.04.2018, after making necessary correction in the name of O.P from **General Manager, Divisional Railway Manager, Howrah** to **Divisional Railway Manager, Eastern Railway, Howrah**, Forum made further attempt to serve

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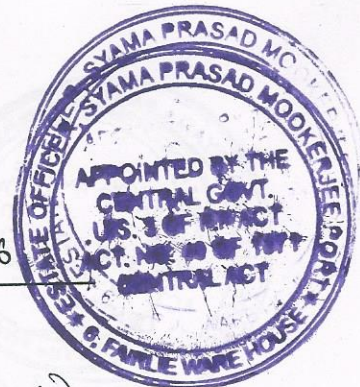
Head Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

9



Estate Officer, Kolkata Port Trust

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



Proceeding No. 1609, 1609/R, 1609/D of 2017 Order Sheet No. 26

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Divisional Railway Manager (ER Howrah) ^{VS}

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24.07.2020

such notice upon O.P. Thereafter, O.P entered appearance on 27.04.2018 through its Ld' advocate by filing Vokalatnama. However, it is seen that during the course of hearing, without filing reply/Written objection, O.P's Advocate take time and made some specific prayer which has been then and there adjudicated by this forum. Finally on 20.06.2019, O.P filed his Reply/Written Objections duly signed by Divisional Engineer, E. Railway, Howrah. Followed by written notes of arguments filed on 17.12.2019. Thereafter, KoPT also filed its arguments and counter-arguments through letters/applications on various dates. Both the parties were heard extensively.

Now while passing the final order, upon considering the deliberations of the parties and after carefully going through all the documents placed on record, I find that the allegations of KoPT against the O.P are two folds i.e non payment of rent and taxes, and unauthorized parting with possession to third party/s in violation of the lease condition and without prior approval of KoPT.

With regard to the issue of non payment of KoPT's rent and taxes, although O.P has denied his liability before this Forum, KoPT has filed copies of several letters addressing the O.P (such as letter dated 16.08.1991, 09.05.1992, 10.05.1993) etc. whereby KoPT repeatedly requested O.P for liquidation of their arrear dues but inspite of receiving the copy of such letters, O.P apparently did not pay any heed to that matter. More so, KoPT has filed detailed Statement of Accounts, which clearly indicates the huge dues on the part of the O.P. The Statements have been handed over to O.P vide applications/comments dated 08.07.2019. There is no reason to disbelief such submission of the statutory authority. O.P in para 3 of his reply has claimed that the alleged

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ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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(Eviction of Unauthorised Occupants) Act 1971

Proceedings No. 1609, 1609/R, 1609/D Of 2017 Order Sheet No. 27

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

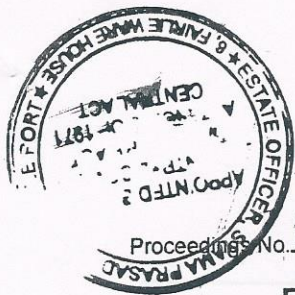
Divisional Railway Manager (ER Howrah) ^{VS}

29
24.07-2020

dispute initiated by KoPT is wholly without jurisdiction...My view is that So long as 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 regarding jurisdiction 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, O.P's plea that KoPT has already taken over such land with effect from 17.08.1991 or claiming rent and imposing taxes on flimsy ground does not seem to have any justification in this juncture because such statement do not come to the protection of O.P. at all. O.P has failed to produce any documents in support of the same. Further, I may add that this Forum, in pursuance of Section 114 T.P Act has given opportunity to O.P to liquidate the dues of KoPT but O.P never succeeded in complete and full discharge of such dues taxes and interest. Thus this Forum holds that the charge of default in payment of rent and taxes is definitely established.

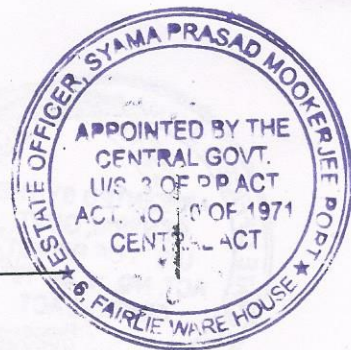
Now as regards unauthorized parting with possession, O.P claimed that the possession of such property is already with KoPT and the occupants as alleged by KoPT are simply intruders having no legal status. Simultaneously Eastern Railway is not liable to take any responsibility for that. in my view this plea of O.P is not sufficient to defend this type of serious allegation such as unauthorized parting with possession. The O.P could have very well produced documents relating to that but O.P has failed to do that. Even O.P did not produce any single photographic evidence to counter the allegation of KoPT. As such it is very difficult to accept the mere claim of the O.P which

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Head Assistant
ESTATE OFFICER
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



Proceeding No. 1609, 1609/R, 1609/D of 2017 Order Sheet No. 28

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Divisional Railway Manager (ER Howrah) ^{VS}

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24.07.2020

is bereft of any cogent reason. More over induction of a third party without the approval of KoPT is also against spirit of tenancy.

Apart from all the above issues, O.P in para-6 of his reply has submitted that as per registered lease dated 11.02.1971 as executed between both KoPT and O.P herein all dispute and differences are governed under arbitration. and therefore proceeding cannot be initiated before Estate Officer. However, my view is that it is the specific case of KoPT that O.P is unauthorisedly occupying the subject premises and has failed to pay the dues for occupying the premises. Since the Estate Officer has been empowered by way of a special statute enacted by the Central Legislature to deal the issue relating to eviction and recovery of dues involving public premises, any arbitration clause entered by a private contract (lease deed) between parties cannot override the central Act.

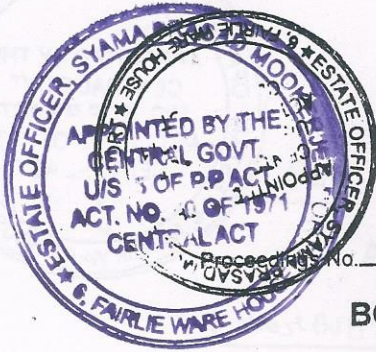
Discussion against the forgoing reveal that notice to quit dated 22.04.1991 is validly issued and served on O.P and the same is binding and very much enforceable, in the facts and circumstances of the case. Thus being satisfied as above, I am left with no other alternatives but to issue the order of eviction against O.P as prayed for on behalf of KoPT, on following grounds/reasons.

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

1. That O.P. has violated the condition of long term lease as granted by the Port Authority by way of not making payment of rental dues and taxes to KoPT, for a prolonged period of time.
2. That The term of Lease has been expired by efflux of time therefore, O.P has no right to continue possession of the subject premises.

[Handwritten signature]

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Proceeding No. 1609, 1609/R, 1609/D of 2017 Order Sheet No. 29


BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
Divisional Railway Manager (ER Howrah)

29
24.07.2020

3. That O.P has parted with possession of the public premises without any authority of law, in facts and circumstances of the case.
4. The O.P or any other person/occupant have failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation".
5. That the notice to quit dated 22.04.1991 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 Sec.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 up to the date of handing over the 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.

It is my considered view that a sum of Rs.64,952.11 for the period 01.04.1974 to 

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Proceedings No. 1609, 1609/R, 1609/D of 2017 Order Sheet No. 30

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Divisional Railway Manager (ER Howrah) ^{VS}

29
24.07-2020

16.08.1991 (both days inclusive) is due and recoverable from O.P. by the Port authority on account of rental dues and O.P. must have to pay the rental dues to KoPT on or before 13.08.2020 Such dues attract 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 KoPT's books of accounts.

Likewise, 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 unauthorised occupation. As such, I must say that Rs 38,93,557.77 as claimed by the Port Authority as damages in relation to the subject premises in question, is correctly payable by O.P. for the period 17.08.1991 to 30.06.2017(both days inclusive) and it is hereby ordered that O.P. shall also make payment of the aforesaid sum to KoPT by 13.08.2020 The said damages shall attract 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 KoPT's books of accounts. I sign the formal orders u/s 7 of the Act.

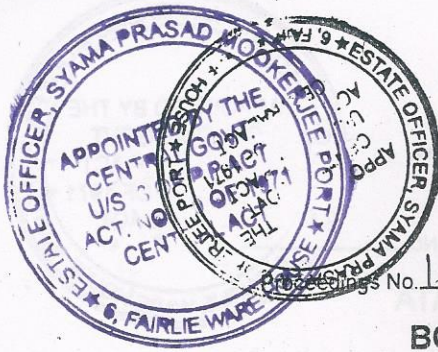
I make it clear that KoPT is entitled to claim damages against O.P. for unauthorized use and occupation of the public premises right upto the date of recovery of clear, vacant and unencumbered possession of the same in

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
31-07-2020
Head Assistant
OFFICE OF THE 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



Process No. 1609,1609/R,1609/D of 2017 Order Sheet No. 31

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Divisional Railway Manager (ER Howrah) ^{VS}

29
24.07.2020

accordance with Law, and as such the liability of O.P. to pay damages extends beyond 30.06.2017 as well, till such time the possession of the premises continues to be under the unauthorised occupation with the O.P. KoPT is directed to submit a statement comprising details of its calculation of damages. after 30.06.2017, 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

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

24.07.2020
Hdmt
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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