

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. 1594,1594/D Of 2017 Order Sheet No. 12

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Estate Basudeb Karak & Ors VS

FINAL ORDER

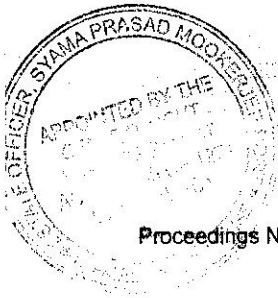
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14.09.2020

The instant proceedings No. 1594,1594/D of 2017 arises out of the application bearing No. Lnd.705/15/15/2593 dated 19.11.2015 filed by the Kolkata Port Trust (KoPT), the applicant herein, praying for an order of eviction and all well as realization of all dues and compensation/damages and other charges etc. along with accrued interest in respect of the public premises as defined in the Schedule of said application, against Estate Basudeb Karak represented by i) Smt. Gitarani Karak, ii) Shri Janardhan Karak and all legal heirs of Basudeb Karak (O.P. no. 1) and Shri Om Prakash Singh (O.P. no. 2) the O.P herein, under relevant provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

The fact of the case in a nutshell is that the O.P. came into occupation of the port property being land measuring 198.988 sq.mtrs. or thereabout at North Side Banstalla Ghat Road (at the junction of Foreshore road), Ramkristopur, Howrah (under Plate No.HL-157) as a Lessee on month to month, morefully described in the Schedule 'A' of the KoPT's application dated 19.11.2015. The allegations levelled by KoPT against the O.P is that while in possession of Port property as Lessee, the O.P has defaulted in payment of monthly rent, Compensation/damages and also accrued interest thereon the details of which has given in 'Schedule-B' of the KoPT's application dated 19.11.2015.

It is also the case of KoPT that O.P. has erected unauthorised construction and unauthorizedly parted with possession of the premises to Shri Om Prakash Singh who changed the purpose of the lease in violations of the terms and conditions of the lease in question and without taking the prior approval of KoPT. It is further the case of KoPT that the said lease with O.P. was determined by way of a Quit Notice dated 19.02.1983 and the O.P. was asked to vacate the premises on 01.04.1983 but O.P failed and neglected to vacate/ hand over the possession of the premises after service of the said Notice to Quit.

S. De
16.09.2020



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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Estate Basudeb Karak & Ors. ^{VS}

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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 23.10.2017 (vide order No.04 dated 23.10.2017) 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 to answer 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 was served through Speed Post to the correct recorded address of O.P.s at Chandrakona Road, P.O. Sat Bankura, Gorbeta, Dist- Midnapur West, West Bengal and Banstalla Ghat Road, Howrah- 711 101. It appears from records that the Notice/s sent to the address of O.P. at Chandrakona Road, P.O. Sat Bankura, Gorbeta, Dist- Midnapur West, West Bengal was not returned back but the Notice/s sent to the address of O.P. at Banstalla Ghat Road, Howrah- 711 101 came back endorsing as "incomplete address: Hence Not Known". The Notice/s have also been sent to the occupation of O.P. by hand delivery. It appears from the report of the Process Server dated 27.10.2017 that the order could not have been served upon O.P as the O.P. was not found at the said address. However, the copy of the said Notice/s have been affixed on the property under schedule on the same day at about 11:30 A.M. in compliance of the provisions of the Act. On the day fixed for appearance and filing of reply to the Show Cause by the O.P. dated 13.11.2017, it reveals from the record that on 31.10.2017 a petition have been filed by Sri Jay Prakash Singh younger brother of Opposite party no. 2 praying for time to file the reply to the show cause notice. On 15.12.2017, the Ld. Advocate for the Opposite party no. 2 filed his Vakalatnama to represent the matter before the Forum and also prayed for time to file reply to the Show Cause on behalf of his client. However during the course of hearing the representative of KoPT submitted that the legal heirs of Opposite party no.1 have unauthorisedly parted with the subject premises to one Sri Om Prakash Singh who is Opposite party no.2 in this instant proceeding.

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Estate Officer, Kolkata Port Trust

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(Eviction of Unauthorised Occupants) Act 1971

Proceedings No. 1594, 1594/D Of 2017 Order Sheet No. 14

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Estate Basudeb Karak & Ors ^{VS}

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On 08.01.2018 the Advocate on behalf of Opposite party no.2 appeared and filed the reply to the show cause notice where categorically submits that the Late Basudeb Karak by a Registered Deed dated 08.06.1971 sold the structure standing on the plot of land to Om Prakash Singh and also allowed to carry on the business of the said plot of land. Opposite party no.2 also contended that Sri Bhagbat Prosad Singh was carrying on the business on Fire Wood and after his demise his eldest son Sri Om Prakash Singh carries on the same business.

It is also contained in the reply to the show cause that after the death of Sri Bhagbat Prosad Singh on 2nd August 2006, his younger son Sri Joy Prokash Singh And eldest son Sri Om Prakask Singh runs the joint family business. However the trade licence of the said business on the said plot of land had been granted to Sri Om Prakash Singh.

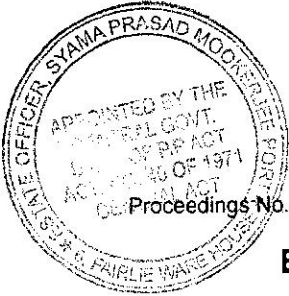
It is requested to favour the Opposite party no.2 to waive the interest, to allow 30(thirty) monthly instalments to clear the pending dues etc.

On 31.01.2018 KoPT vide its application no. Lnd.705/15/18/4380 dated 30.01.2018 filed its comments against the reply to the show cause notice. It stated that after the demise of Basudeb Karak on or about 25th July 1960, the above Trustees' Land were occupied by the legal heirs of the deceased Basudeb Karak. Thereafter, the said lease was terminated by the petitioner KoPT vide quit notice dated 19.02.1983 with effect from 01.04.1983 for non-payment of dues, unauthorised parting with possession to Sri Om Prakash Singh, unauthorised construction and also changing the purpose of the lease.

KoPT stated that since the monthly lease of the original lease had already been terminated by KoPT and the Opposite party no.2 in the instant proceeding is merely an unauthorised occupant on the subject land, having no right whatsoever.

Handwritten:
S. DE
16.09.2020

Handwritten signature:



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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KoPT stated in its comments that the monthly lease was between KoPT and Basudeb Karak and with Opposite party no.2, i.e., with Om Prakash Singh KoPT did not had any legal/jural relationship. The original lease was wrongfully parted with the possession of the Trustees' land to Opposite party no.2 without any knowledge/approval of KoPT.

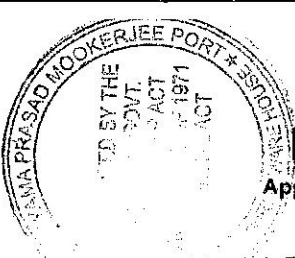
On 28.02.2018, Ld Advocate on behalf of Sri Jay Prakash Singh appeared and filed the written notes of argument. Representatives of KoPT submits that they have already dealt with all the issues raised by the sitting occupants. At this juncture hearing was concluded. As none appeared on behalf of Opposite Party No.1 in spite of repeated chances and affixation of the Notice/s on subject premises, the matter was finally reserved for passing Order on 28.02.2018.

Now, after carefully considering all the documents on record and the final submissions of both the parties, my considered view is that in this instant proceeding I have left with no other alternative but to accept that Paper/documents produced on behalf of O.P., contradicting/ disputing the claim of KoPT are baseless and have no weightage in the eye of Law, therefore this Forum was not constrained to proceed with the matter. I am consciously of the view that KoPT never recognized O.P. as a lawful user/tenant in respect of the property in question after expiry of the period mentioned in the Notice to Quit dated 19.02.1983. Further the occupation of O.P. beyond the period of Quit Notice is unauthorized in view of Sec. 2 (g) of the Public Premises Act in question; In view of the deliberations mentioned above, I am left with no other alternative but to issue an order of eviction u/s 5 of the Act against O.P. on the following grounds/reasons :-

1. That occupation of O.P. beyond the period of 'Quit Notice' is unauthorized in view of Sec. 2 (g) of the Public Premises Act in question.
2. That O.P. has failed to bear any witness or adduce any evidence in support of their occupation as "Authorized Occupation" despite sufficient chances.

S.D.E.
16.09.2020

J



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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3. That the Quit notice dated 19.02.1983 as served upon O.P. by the Port authority is valid, lawful and binding upon the parties.
4. That O.P. has failed to make out any case in support of its occupation as "authorised occupation".
5. That O.P. is liable to pay damages/mense profit along with accrued interest thereon for wrongful enjoyment of the Port Property in question upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

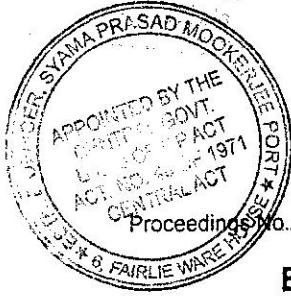
ACCORDINGLY, Department is directed to draw up formal order of eviction u/s.5 of the Act as per Rule made there under, giving 15 days time to O.Ps' and any person/s whoever may be in occupation to vacate the premises.

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 unauthorised use and enjoyment of the property against O.Ps' in accordance with Law up to the date of recovery of possession of the same.

It is my considered view 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. 6,27,243.20/- as claimed by the Port Authority as damages on account of unauthorised use and occupation in relation to the subject premises in question, is correctly payable by O.P. for the period 31.05.1983 to 30.06.2017 and it is hereby ordered that O.P. shall also make payment of the aforesaid sum to KoPT by ~~29.09.2020~~ 29.09.2020. 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

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Estate Officer, Kolkata Port Trust

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terms of KoPT's books of accounts. I sign the formal orders u/s 7 of the Act.

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, KoPT is at liberty to recover the compensation/Damages etc. 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***

16-09-2020
16-09-2020



**REGISTERED POST WITH A/D.
HAND DELIVERY
AFFIXATION ON PROPERTY**

ESTATE OFFICER,
Syama Prasad Mookerjee Port, Kolkata((SMP.KOLKATA)
(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
Syama Prasad Mookerjee Port, Kolkata (SMP.KOLKATA)
Fairlie Warehouse
6, Fairley Place, Kolkata- 700 001.

REASONED ORDER NO. 10 DT 14.09.2020
PROCEEDINGS NO. 1594 OF 2017

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-
**ESTATE BASUDEB KARAK
SMT. GITARANI KARAK
SHRI JANARDHAN KARAK
SHRI OM PRAKASH SINGH ... 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 Basudeb Karak** represented by **Smt. Gitarani Karak and Shri Janardhan Karak all legal heirs of Basudeb Karak of Chandrakona Road, P.O. Sat Bankura, Gorbeta Dist. Midnapur West, West Bengal AND Shri Om Prakash Singh OF Banstalla Ghat Road, Howrah-711 101** is in unauthorized occupation of the Public Premises specified in the Schedule below :

REASONS

1. That occupation of O.P. beyond the period of 'Quit Notice' is unauthorized in view of Sec. 2 (g) of the Public Premises Act in question.
2. That O.P. has failed to bear any witness or adduce any evidence in support of their occupation as "Authorized Occupation" despite sufficient chances.
3. That the Quit notice dated 19.02.1983 as served upon O.P. by the Port authority is valid, lawful and binding upon the parties.
4. That O.P. has failed to make out any case in support of its occupation as "authorised occupation".
5. That O.P. is liable to pay damages/mense profit along with accrued interest thereon for wrongful enjoyment of the Port Property in question upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

PLEASE SEE ON REVERSE



Kolkata, 14.09.2020
Estate Manager,
SMP.KOLKATA

(2)

A copy of the reasoned order No. 10 dated 14.09.2020 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 **Estate Basudeb Karak represented by Smt. Gitarani Karak and Shri Janardhan Karak all legal heirs of Basudeb Karak of Chandrakona Road, P.O. Sat Bankura, Gorbeta Dist. Midnapur West, West Bengal AND Shri Om Prakash Singh OF Banstalla Ghat Road, Howrah-711 101**, 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 Basudeb Karak represented by Smt. Gitarani Karak and Shri Janardhan Karak all legal heirs of Basudeb Karak of Chandrakona Road, P.O. Sat Bankura, Gorbeta Dist. Midnapur West, West Bengal AND Shri Om Prakash Singh OF Banstalla Ghat Road, Howrah-711** 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.157

The said piece or parcel of land msg. 198.998 sq.m. or thereabouts is situate at North side of Banstalla Ghat Road (at the junction of Foreshore road), Ramkristopur, Howrah, P.S. Howrah P.S., District- Howrah. It is bounded on the North by the KoPT's land previously leased to Ramen Behari Singh, on the East by the said Trustees' Banstalla Ghat Road, on the South by the Trustees's land occupied by Radheyshyam Upadhyay and on the West by the said Trustees land for railway.

Trustees' means the Board to Trustees' Syama Prasad Mookerjee Port, Kolkata, (SMP.KOLKATA) (Erstwhile Board of Trustees' for the Port of Kolkata)

Date- 14.09.2020


Signature & Seal of the
Estate Officer.

SERVICE TO THE SYAMA PRASAD MOOKERJEE PORT, KOLKATA, (SMP.KOLKATA) (ERSTWHILE BOARD OF TRUSTEES' FOR THE PORT OF KOLKATA) THROUGH ESTATE MANAGER/CHIEF LAW OFFICER, (SMP.KOLKATA) AT 15, STRAND ROAD, KOLKATA-700 001 FOR INFORMATION.



REGISTERED POST WITH A/D.
HAND DELIVERY
AFFIXATION ON PROPERTY

ESTATE OFFICER,
Syama Prasad Mookerjee Port, Kolkata((SMP.KOLKATA)
(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, Fairlie Place (1st Floor)
KOLKATA - 700 001

Court Room At the 1st Floor

Syama Prasad Mookerjee Port, Kolkata
(SMP, Kolkata)

Fairlie Warehouse

6, Fairlie Place, Kolkata- 700 001.

PROCEEDINGS NO. 1594/D OF 2017

ORDER NO.10 DATED : 14.09.2020

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

ESTATE BASUDEB KARAK

represented by

1)Smt. Gitarani Karak

2)Shri Janardhan Karak

all legal heirs of Basudeb Karak of Chandrakona Road,

P.O. Sat Bankura, Gorbeta Dist. Midnapur West,

West Bengal AND

Shri Om Prakash Singh

OF Banstalla Ghat Road, Howrah-711 101,

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 23.10.2017 you are called upon to show cause on/or before 13.11.2017 why an order requiring you to pay damages of Rs. 6,27,243.20 (Rupees Six Lakhs Twenty Seven thousand Two hundred Forty Three and paise Twenty only) 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 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 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. 6,27,243.20 (Rupees Six Lakhs Twenty Seven thousand Two hundred Forty Three and paise Twenty only) assessed by me as damages on account of your unauthorised occupation of the premises for the period from 31.05.1983 to 30.06.2017 (both days inclusive) to Kolkata Port Trust by 28.09.2020.

PLEASE SEE ON REVERS



: 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.157

The said piece or parcel of land msg.198.998 sq.m. or thereabouts is situate at North side of Banstalla Ghat Road (at the junction of Foreshore road), Ramkristopur, Howrah, P.S. Howrah P.S., District- Howrah. It is bounded on the North by the KoPT's land previously leased to Ramen Behari Singh, on the East by the said Trustees' Banstalla Ghat Road, on the South by the Trustees's land occupied by Radheyshyam Upadhyay and on the West by the said Trustees land for railway.

Trustees' means the Board to Trustees' Syama Prasad Mookerjee Port, Kolkata, (SMP.KOLKATA) (Erstwhile Board of Trustees' for the Port of Kolkata)

Date 14.09-2020


Signature & Seal of the
Estate Officer.

SERVICE TO THE SYAMA PRASAD MOOKERJEE PORT, KOLKATA, (SMP.KOLKATA) (ERSTWHILE BOARD OF TRUSTEES' FOR THE PORT OF KOLKATA) THROUGH ESTATE MANAGER/CHIEF LAW OFFICER, (SMP.KOLKATA) AT 15, STRAND ROAD, KOLKATA-700 001 FOR INFORMATION.