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Estate Officer, Calcutta Port Trust

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

Proceedings No. 454 & 454/R Of 2003 Order Sheet No. 9

BOARD OF TRUSTEES OF THE PORT OF CALCUTTA

VS

M/s. JALAN INDUSTRIES (P) LTD.

10
7.11.2003

Contd.....from pre-page
case for stay of these proceedings. The only
point taken up by O.P. is the pendency of the
Appeal and this will certainly not create any
bar to proceed with these matters as any action
taken by the Port Authority must abide by the
decision of any competent Court of Law. Hence,
the petitions for stay of proceedings as moved
by O.P. are rejected. Mr. Ghosh, Advocate further
prays for time to produce certain documents on
behalf of O.P. which is also rejected on the ground
that several opportunities have already been given
to O.P. to represent their case and allowing further
time without any valid reason will definitely lead
to frustrate the purpose of the enactment (P.P.Act).
Hearing is conducted. Final Order is reserved.

Bandyopadhyay
Estate Officer

11
13.11.2003

FINAL ORDER

The matters are taken up together for final disposal
as the issues involved into these proceedings are
inter-related. Factual aspect involved into these
two proceedings are so simple that I do not find it

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Estate Officer, Calcutta Port Trust

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(Eviction of Unauthorised Occupants) Act 1971

Proceedings No. 454 & 454/R Of 2003 Order Sheet No. P-10

BOARD OF TRUSTEES OF THE PORT OF CALCUTTA
VS

M/s. JALAN INDUSTRIES (P) LTD.

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13.11.2003

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it necessary to extend it by elaborate discussions. I just put some changes of events leading to these proceedings to link up the matters. It is the case of Kolkata Port Trust (KoPT) that the O.P. was a tenant under monthly term lease as granted by the Kolkata Port Trust in respect of Port Trust's Godown known as T.G. Shed No.7 measuring about 2694.187 sq.mts. (29,000 sq.ft.) situated at Hoboken Depot under South Port Police Station, Kolkata. It is also the case of KoPT that O.P. has failed to pay the rental dues, violating the fundamental condition for grant of tenancy under lease and after service of ejectment notice dated 7.2.1989 to O.P., there is no authority on the part of O.P. to occupy the public premises in question. Both the parties relied upon the terms and conditions of a compromise Decree dated 4.7.81 in Suit No.3 of 1975 instituted by the Commissioners for the Port of Calcutta against M/s. Jalan Industries Pvt. Ltd. (the O.P. herein) before the 8th Court of Subordinate Judge at Alipore and the O.P.'s contentions centered round the question of justifiability of KoPT's demand for rental dues and on maintainability

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Estate Officer, Calcutta Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises

(Eviction of Unauthorised Occupants) Act 1971.

Proceedings No. 454 & 454/R Of 2003 Order Sheet No. P-11

BOARD OF TRUSTEES OF THE PORT OF CALCUTTA

VS

M/s. JALAN INDUSTRIES (P) LTD.

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13.11.2003

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maintainability of the proceedings on the basis of eviction notice dated 7.2.1989. Admitted position is this that the property in question is a public premises as defined under the P.P.Act and O.P. never denied the fact that they were served with a notice for ejection on behalf of KoPT. A Show Cause Notice U/S.4 of the Act was issued to O.P. in respect of proceedings No.454 of 2003 on 14.1.2003 (for eviction proceedings). Another notice U/S.7 of the Act in respect of proceedings No.454/R of 2003 (for recovery of rent) was issued to O.P. on 14.1.2003. The O.P. contested the proceedings through Advocate on 5.2.2003 and prayer for adjournment was allowed to file Show Cause/Objection. On 5.3.03 O.P. filed Show Cause for proceedings No.454/R of 2003 and filed Show Cause/Written objection for proceedings No.454 of 2003 on 12.5.2003 enclosing the copy of the lease Deed and compromise Decree in question. Earlier, O.P's prayer for further time for submissions of document with Show Cause/Written Objection for eviction proceedings was allowed on 4.4.2003. Thereafter, both the parties were allowed to file necessary reply.

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(Eviction of Unauthorised Occupants) Act 1971



Proceedings No. 454 & 454/R Of 2003 Order Sheet No. 12

BOARD OF TRUSTEES OF THE PORT OF CALCUTTA

VS

M/s. JALAN INDUSTRIES (P) LTD.

11
13.11.2003

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reply. Earlier O.P's prayer for further time for submission of document with Show Cause/Written objection for eviction proceedings was allowed on 4.4.2003. Thereafter, both the parties were allowed to file necessary reply. I have duly applied my mind on the submissions and arguments made on behalf of the parties and after careful consideration of the matter and on the basis of the materials brought before me, I find that the contentions of O.P. regarding point of jurisdiction to initiate proceedings on the basis of eviction notice dated 7.2.1989 is not tenable and/or acceptable as per law. The limitation Act is applicable for Suits/Proceedings for Court constituted under the Civil procedure Code and not to the quasi-judicial Authority like the Estate Officer Constituted under the P.P.Act. In other words Limitation Act has no application to the proceedings before this Forum of Law. For taking this view I am fortified by the Judgement/decision reported in A.I.R. 1980 M.P.196(D.B.)-L.S.Nair -vs- Hindusthan Steel Ltd., Bhilai and Others. Even if it is assumed for the sake of argument that Limitation Act is applicable, still to my reckoning, the instant

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Estate Officer, Calcutta Port Trust

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

Proceedings No. 454 & 454/R Of 2003 Order Sheet No. 13

BOARD OF TRUSTEES OF THE PORT OF CALCUTTA
VS

M/s. JALAN INDUSTRIES (P) LTD.

11

13.11.2003

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instant proceeding is not barred by limitation.

Almost 14 years have been taken to initiate this proceeding since eviction notice but the delay was not on the part or fault of KoPT. They were inhibited by the fact that O.P. filed cases- for the similar grounds with contranion objective i.e. to stall their eviction. Limitation Act itself provides for deduction of the said period under suit from period in which limitation sets in. Thus, I categorically deprecate the plea of O.P. to the effect that the instant proceeding is barred by limitation.

Another issue has been raised up by the O.P. where they have taken the plea that Court of E.O. under P.P.Act is not the proper forum for agitation of matters under question. O.P. has not disputed that subject premises is owned by KoPT. If that is the case, the property in question is a public premises as defined in P.P.Act and under Section 15 of the said Act, it is the Forum of Law for KoPT to seek legal redressal. ^{far} ~~As per~~ as eviction of O.P. is ^{concerned,} ~~continued.~~ I consider argument of O.P. in this regard is baseless and inane. This takes me to the next question whether the terms and conditions for the

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Estate Officer, Calcutta Port Trust

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

Proceedings No. 454 & 454/R Of 2003 Order Sheet No. 14

BOARD OF TRUSTEES OF THE PORT OF CALCUTTA
VS

M/s. JALAN INDUSTRIES (P) LTD.

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the compromise Decree in question is applicable for payment of rental dues to the Kolkata Port Trust by O.P. or not. In course of hearing, both the parties relied upon the terms of compromise entered into before the Civil Court earlier. In fact, both the parties acted upon the said terms of compromise Decree and it is the averment made by the O.P. that they faithfully discharged their duties as per the said compromise Decree and paid rental dues as per KoPT's demand upto March, 1988. It is however, specifically agitated by O.P. that KoPT wrongfully realized monthly rent @ Rs.19,468.73P. per month from July, 1987 to March, 1988. KoPT on the other hand has submitted that they were rightfully claiming rental dues from O.P. as per Schedule of rent charges published under authority of law as the rent schedules of Kolkata Port Trust have come into operation for the relevant period under due process of law as provided under the Major Port Trust Act 1963. My attention is drawn to this specific provision of the compromise Decree in question which reads as follows.:

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Estate Officer, Calcutta Port Trust

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

Proceedings No. 454 & 454/R Of 2003 Order Sheet No. 15

BOARD OF TRUSTEES OF THE PORT OF CALCUTTA
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follows :

"That if the entire decretal dues including other of the plaintiff due to the defendant be amicably paid in instalment as aforesaid the decree for possession will be deemed to have been satisfied and the defendant shall be recognised by the plaintiff as a tenant on terms and conditions which will be agreed upon by and between the parties and/or on such terms and condition as will be prevailing in the administration of the plaintiff at the relevant point of time."

It is to be mentioned here that KoPT instituted the Suit being T.S.No.3 of 1975 against the O.P. before the Alipore Judges Court for recovery of Khas possession etc. It was the contention of KoPT that this provision of compromise Decree leaves no room for doubt about the competency of KoPT for demanding rent charges from O.P. as per Schedule of rent charges then inforce and O.P. is correctly under obligation for payment of the rental dues as per KoPT's demand as per the said compromise Decree.

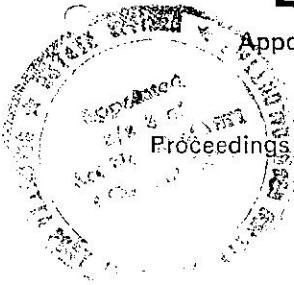
It is finally argued KoPT that the question of

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Estate Officer, Calcutta Port Trust

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(Eviction of Unauthorised Occupants) Act 1971.



Proceedings No. 454 & 454/R Of 2003 Order Sheet No. 16

**BOARD OF TRUSTEES OF THE PORT OF CALCUTTA
VS**

M/s. JALAN INDUSTRIES (P) LTD.

11
13.11.2003

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realizing any amount wrongfully as alleged is
neither supported by law nor supported by fact.

I have gone through the terms and conditions of
the compromise Decree in question and duly

considered the arguments and counter arguments
leveled by the conflicting parties. I am

satisfied with the submissions and argument made
on behalf of KOPT regarding interpretation of

Clause(h) of the compromise petition signed by
both the parties which constitutes a part of the

compromise Decree passed in T.S.No.3 of 1975
before the 8th Court of Subordinate Judge at

Alipore for enforcing their right to recover
possession and arrear rental dues recoverable

from O.P. as per the said enabling provision of
the compromise Decree. The said compromise decree

enabled KOPT to demand rent as prevailing at the
relevant point of time. By not paying as per KOPT's

rent schedule, the O.P. flouted compromise terms
and thus, is liable to be evicted in terms of the

said compromise. No evidence has been laid on behalf
of O.P. to show the illegality/unjustifiability on

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Estate Officer, Calcutta Port Trust

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(Eviction of Unauthorised Occupants) Act 1971.

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BOARD OF TRUSTEES OF THE PORT OF CALCUTTA

VS

M/s. JALAN INDUSTRIES (P) LTD.

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13.11.2003

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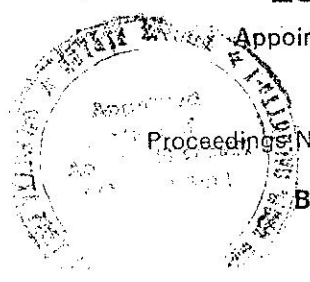
on the part of the Kolkata Port Trust for demanding rental dues in the instant case and hence the question of paying rental dues in excess does not arise at all. No document/paper is produced in spite of repeated chances to O.P. to make out any case about the authorised possession of O.P. into the public premises excepting the argument for pendency of an appeal before the High Court without any order of restraint against the Kolkata Port Trust. After careful consideration of the materials on record and the submission/argument made on behalf of the parties, I am firm in holding that the service of ejection notice by KOPT on the ground of non payment of rental dues for enjoyment of the public premises in question is totally within the authority of Kolkata Port Trust and the O.P. has failed to establish its authority to occupy the public premises in spite of repeated chances. Id. Advocate of O.P. on 7.11.2003 further sought time citing pending Kolkata High Court case filed by them against Lower (Alipore) Court order. He also prayed for time for filing further documents on which he wants to rely upon. Unfortunately, his such prayer was nothing

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Estate Officer, Calcutta Port Trust

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Proceedings No. 454 & 454/R Of 2003 Order Sheet No. 18

BOARD OF TRUSTEES OF THE PORT OF CALCUTTA
VS

M/s. JALAN INDUSTRIES (P) LTD.

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13.11.2003

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nothing new. Pending High Court case found mention in O.P.'s written objection to show cause and no new or further development of the case has been highlighted.

I find the High Court imposed no fetters on this proceedings. O.P. has failed to produce before me any such order. Regarding submission of further documents, request of Id. Advocate of O.P. was

entertained on earlier occasions, ~~XXXXXXXXXXXXXXXXXXXX~~

~~XXXXXXXXXXXXXXXXXXXX~~ when he was given opportunity to come up with. But nothing so far has been presented. I

can not entertain any request on this issue further.

I perceive his plea is nothing but a play to waste time and linger the proceedings. Therefore acceding to his supplication any further, would have defeated the fundamental objective of expeditious disposal of proceedings for which P.P.Act was instituted. Id.

Advocate for O.P. has deliberately or otherwise confused and lost sight of the line of distinction between CPC and P.P.Act. After considering the relevant facts I

find that sum of Rs. 2,65,477.00 is due

and recoverable from O.P. on account of non-payment of rental dues to Kolkata Port Trust for the period

1.10.74 to 31.3.1989 together with
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Estate Officer, Calcutta Port Trust

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

Proceedings No. 454 & 454/R Of 2003 Order Sheet No. 19

BOARD OF TRUSTEES OF THE PORT OF CALCUTTA

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M/s. JALAN INDUSTRIES (P) LTD.

11
13.11.2003

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with interest @ ~~12~~ ¹² (twelve) % per annum. It is worthy to mention here that the reply to the Show Cause Notice U/S.7 of the Act is almost same compared to the reply to the Show Cause U/S.4 of the Act and the O.P. never put forward any additional argument for Sec.7 Notice. Hence the logical conclusion which could be arrived at that the O.P. is an unauthorised occupant and liable to be evicted on the following grounds/reasons.

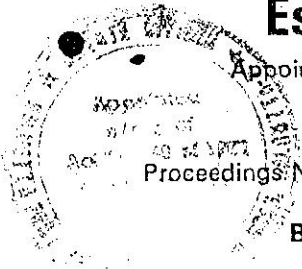
1. That O.P. has failed to establish its authority to occupy the Public Premises in spite of repeated chances.
2. That no evidence has been laid on behalf of O.P. in support of their contention regarding authorised occupation into the premises.
3. That O.P. has failed and neglected to pay the rental dues to the Kolkata Port Trust in gross violation of the fundamental conditions for grant of tenancy under lease.
4. That the ejection Notice dated 7.2.1989 as served upon O.P. by the Port Authority is valid, lawful and binding upon the parties.

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Estate Officer, Calcutta Port Trust

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



Proceedings No. 454 & 454/R Of 2003 Order Sheet No. 20

BOARD OF TRUSTEES OF THE PORT OF CALCUTTA

VS

M/s. JALAN INDUSTRIES (P) LTD.

11
13.11.2003

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parties.

5. That O.P. has lost its authority to occupy the public premises on and from 1st April, 1989 that is after expiry of the period as mentioned in the said notice of ejection.

6. That O.P. is liable to pay damages for its unauthorized use and occupation of the Public Premises upto the date of handing over clear vacant and peaceful possession to Kolkata Port Trust or upto the date of recovery of possession.

ACCORDINGLY, Department is directed to draw up formal order of eviction U/S.5 of the Act as per Rule made thereunder giving 15 days time to O.P. to vacate the Public Premises. I make it clear that liberty is given to the Port Authority to claim damages against O.P. for unauthorised use and occupation of the Public Premises in accordance with Law. Order U/S.7 of the Act for recovery of rental dues is required to be issued to O.P. giving 30 days time for payment to Kolkata Port Trust. A certified copy of this final order is required to be enclosed which also forms a

~~part of the order and to be submitted to the Hon'ble Member, Calcutta Port Trust for his consideration and approval.~~

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Estate Officer, Calcutta Port Trust

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

Proceedings No. 454 & 454/R Of 2003 Order Sheet No. 29

BOARD OF TRUSTEES OF THE PORT OF CALCUTTA
VS
M/s. JALAN INDUSTRIES (P) LTD.

11
13.11.2003

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also forms
/ part of the ground/reasons for, eviction order against
O.P. All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL

M. Bandyopadhyay
(M. Bandyopadhyay)
Estate Officer.

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

12
21.6.2004

Present : S.R.Giri, Asstt. Land Manager
&
S.De, Asstt. Land Manager(Legal) for KOPT

It is submitted on behalf of Kolkata Port Trust that
the O.P. has failed to comply with my order regarding
payment of rental dues . Enquired into the matter.
Let a certificate U/S.14 of the Act be issued to the
Collector, South 24-Parganas with the request to
proceed to recover the same as arrears of land
revenue.

GIVEN UNDER MY LAND & SEAL.

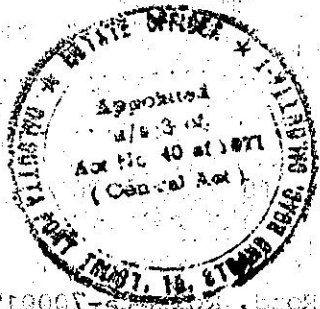
M. Bandyopadhyay
(M. Bandyopadhyay)
Estate Officer.

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

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THE ESTATE OFFICER, CALCUTTA PORT TRUST
(Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-Central Act)
Public Premises (Eviction of Unauthorised Occupants) Act 1971

OFFICE OF THE ESTATE OFFICER
15, STRAND ROAD
(4th Floor)
CALCUTTA-700001



REASONED ORDER NO. 11 OF 13.11.2003
PROCEEDINGS NO 4546454/ROF 1993

BOARD OF TRUSTEES OF THE PORT OF CALCUTTA
-Vs-

M/S. JALAN INDUSTRIES PVT. LTD.

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 Shri/Smt./Km/M/s. **Jalan Industries Pvt. Ltd., 62, Ballygunj Circular Road, Kolkata-700019 and also at 12, Burdwan Road, Kolkata-700027** is/are in unauthorised occupation of the Public Premises specified in the Schedule below :

R E A S O N S

THAT YOU HAVE FAILED TO ESTABLISH YOUR AUTHORITY TO OCCUPY THE PUBLIC PREMISES INSPITE OF REPEATED CHANCES. THAT NO EVIDENCE HAS BEEN LAID ON BEHALF OF YOU IN SUPPORT OF YOUR CONTENTION REGARDING AUTHORISED OCCUPATION INTO THE PREMISES. THAT YOU HAVE FAILED AND NEGLECTED TO PAY THE RENTAL DUES TO THE KOLKATA PORT TRUST IN GROSS VIOLATION OF THE FUNDAMENTAL CONDITIONS FOR GRANT OF TENANCY UNDER LEASE. THAT THE EJECTMENT NOTICE DATED 7.2.1989 AS SERVED UPON YOU BY THE PORT AUTHORITY IS VALID, LAWFUL AND BINDING UPON THE PARTIES. THAT YOU HAVE LOST YOUR AUTHORITY TO OCCUPY THE PUBLIC PREMISES ON AND FROM 1ST APRIL, 1989 THAT IS AFTER EXPIRY OF THE PERIOD AS MENTIONED IN THE SAID NOTICE OF EJECTMENT. THAT YOU ARE LIABLE TO PAY DAMAGES FOR ITS UNAUTHORISED USE AND OCCUPATION OF THE PUBLIC PREMISES UPTO THE DATE OF HANDING OVER CLEAR VACANT AND PEACEFUL POSSESSION TO KOLKATA PORT TRUST OR UPTO THE DATE OF RECOVERY OF POSSESSION. A CERTIFIED COPY OF THE ORDER DATED 13.11.2003 IS ENCLOSED WHICH ALSO FORMS A PART OF THE REASONS.

b
Recd.
Kool
28/01/04
JALAN INDUSTRIES (P) LTD

PLEASE SEE ON REVERSE.

4

NOW, THEREFORE, in exercise of the powers conferred on me under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, I hereby order the said Shri/Smt./Km/M/s. **Jalan Industries (Pvt) Ltd., 62, Ballygunj Circular Road, Kolkata-700019 and also 12, Burdwan Road, Kolkata-700027**

and all person 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 Shri/Smt./Km./M/s. **Jalan Industries (P) Ltd., 62, Ballygunj Circular Road, Kolkata-700019 and also 12, Burdwan Road, Kolkata-700027**

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 Trustees' Godown known as T.G. Shed No.7 msg. 2694.187 sq.mts. (29,000.00 sq.ft.) or thereabouts is situate at Hoboken Depot in Mouza in Mouza Sonai, Thana-South Port ~~Raxx~~ Police Station, Kolkata, South 24-Parganas. Trustees means Board of Trustees of the Port of Kolkata.



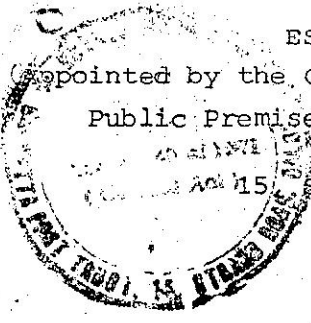
28/12

Dated: 29.12.2003

Bandyopadhyay
Signature & Seal of the Estate Officer.

COPY FORWARDED TO THE LAND MANAGER, KOLKATA PORT TRUST/~~LEGAL~~ ADVISER & INDUSTRIAL RELATIONS OFFICER, KOLKATA PORT TRUST FOR INFORMATION.

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ESTATE OFFICER, KOLKATA PORT TRUST

(Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-Central Act)
Public Premises (Eviction of Unauthorised Occupants) Act 1971
OFFICE OF THE ESTATE OFFICER
Act 15, STRAND ROAD (4TH FLOOR) KOLKATA-700001

FORM "E"

PROCEEDINGS NO. 454/R OF 1993
ORDER NO. 11 DATED 13.11.2003

To
Shri/Smt./Km./M/s.....
Jalan Industries Pvt. Ltd.,
62, Ballygunj Circular Road,
Kolkata-700019 AND ALSO.....
12, Burdwan Road,
Kolkata-700027.....
.....

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

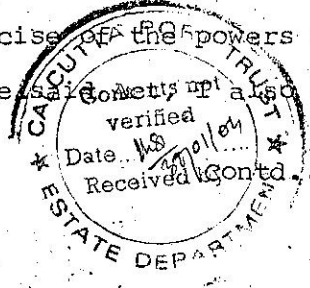
AND WHEREAS, by written notice dated 14.1.2003 you are ~~are~~ called upon to show cause on/or before 5.2.2003 why an order requiring you to pay a sum of Rs. 13,64,248.74 (Rupees Thirteen lakhs sixty-four thousand two hundred forty-eight and paise seventy-four) only being the rent payable together with simple interest in respect of the said premises should not be made;

AND WHEREAS I have considered your objections and/or the evidence produced by you;

~~As you have not produced any evidence before me on or before the said date~~

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. 2,65,477.00 (Rupees two lakhs sixty-five thousand four hundred seventy-seven) only to Kolkata Port Trust by 28.2.2004.

IN exercise of the powers conferred by Sub-section(2A) of Section 7 of the said Act, I also hereby require you to pay simple



PLEASE SEE ON REVERSE

JALAN INDUSTRIES (P) LTD
28/11/03

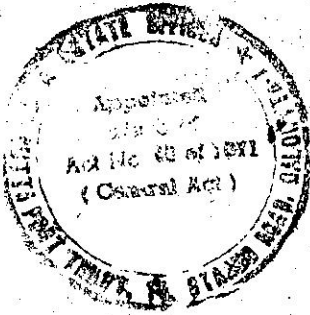
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simple interest @ Rs. ^{12%}..... per annum on the above sum with effect from ^{10.1.2003}..... till its final payment.

In case the said sum is not paid within the said period or in the said manner, it will be recovered as arrears of land revenue through the Collector.

SCHEDULE

The Trustees' Godown known as T.G. Shed No.7 msg. 2694.187 Sq.mts. (29,000.00 sq.ft.) or thereabouts is situate at Hoboken Depot in Mouza Sonai, Thana-South Port Police Station, Kolkata, South 24-Parganas. Trustees means Board of Trustees of the Port of Kolkata.



Dated: 8.1.2004

[Handwritten Signature]
Signature and seal of the
Estate Officer.