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**REGISTERED POST WITH A/D.
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
15, STRAND ROAD
(4th Floor)
KOLKATA - 700 001

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

REASONED ORDER NO.22 DT 27.03.2017
PROCEEDINGS NO.1348 OF 2012

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-

**M/s. Indian Container Terminal Pvt. Ltd.
(now known as M/s. ICT Infrastructures (P) 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 **M/s. ICT Infrastructures (P) Ltd. of Turner Morrison Building, Mazzenine Floor, 6, Lyons Range, 2nd Gate, Kolkata - 700 001 and Mukherjee House, 2nd Floor, 17, Brabourne Road, Kolkata - 700 001** are in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

- (i) That this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrear rental dues/damages etc. as prayed for on behalf of Kolkata Port Trust(KoPT).
- (ii) That your contention regarding grant of "irrevocable license" by the Port Authority has got no merit in the facts and circumstances of the case.
- (iii) That there is no foundation or basis to your contention regarding revocation of license as granted to yourselves by the Port Authority only on the ground of "requirement of the premises" by the Port Authority.
- (iv) That while you are in possession and enjoyment of the Port Property and while you are acknowledging the jural relationship as debtor to KoPT, you cannot take the shield of "time barred claim" under Limitation Act.
- (v) That you have failed to make out any case regarding your entitlement to go on making payment to KoPT at the rate of rent you were paying earlier to the notification of the Tariff Authority of Major Ports, effective from 07.04.2011. In fact, you have admitted the fact of non-payment of rental dues as per KoPT's demand on the basis of KoPT's rent schedule notified in the Official Gazette with effect from 07.04.2011 as per provisions of the Major Port Trusts Act 1963.
- (vi) That no case has been made out on your behalf as to how your occupation in the Public Premises could be termed as "authorised occupation" after issuance of notice dated 24.05.2012, demanding possession by the Port Authority,
- (vii) That you have failed to bear any witness or adduce any evidence in support of your contention regarding "authorised occupation" and your occupation has become unauthorized in view of Sec.2(g) of the P.P. Act.

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(viii) That right from the date of expiry of the period as mentioned in the said notice to quit dated 24.05.2012, you have lost your authority to occupy the Public Premises and you are liable to pay damages for wrongful use and enjoyment of the Port Property upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

A copy of the reasoned order No.22 dated 27.03.2017 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 **M/s. ICT Infrastructures (P) Ltd. of Turner Morrision Building, Mazzenine Floor, 6, Lyons Range, 2nd Gate, Kolkata - 700 001 and Mukherjee House, 2nd Floor, 17, Brabourne Road, Kolkata - 700 001** 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 **M/s. ICT Infrastructures (P) Ltd. of Turner Morrision Building, Mazzenine Floor, 6, Lyons Range, 2nd Gate, Kolkata - 700 001 and Mukherjee House, 2nd Floor, 17, Brabourne Road, Kolkata - 700 001** 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 or parcel of land Msg. 1984.03 Sq.m or thereabouts situated at Dhobitala Container Park. It is bounded on the North by Trustees' land occupied by "Indian Container Terminal Pvt. Ltd., On the South by the Trustees' land occupied by "M/s. Balmer Lawrie Co. Ltd.", On the East by Trustees' road at Dhobitala land, On the West by Trustees' land occupied by CWC.

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

Dated: 28-03-2017.


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

Proceedings No. 1348, 1348/R of 2012 Order Sheet No. -1-

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S ICT Infrastructures (P) Ltd VS Ad

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27.03.2017.

FINAL ORDER

The factual aspect involved in this matter is required to be put forward in a nutshell in order to link up the chain of events leading to this proceedings. It is the case of Kolkata Port Trust (KoPT), Applicant herein that land msg. 1984.03 Sq.m situated at Dhobitala Container Park, Thana : West Port Police Station, Kolkata, Dist : South 24 Parganas, comprised under occupation No. D-300/52 was allotted to M/s. Indian Container Terminal Pvt. Ltd. (now known as ICT Infrastructures Pvt. Ltd.) O.P herein on month to month license basis and O.P. violated the condition of licence as granted by the Port Authority by way of not making payment of arrear license fees/rental dues on demand. KoPT demanded possession of the Public Premises from O.P. by notice to quit dated 24.05.2012 and after expiry of the period as mentioned in the said notice, O.P. has no authority under law to occupy the Public Premises. It is contended that O.P. is liable to pay damages for wrongful use and enjoyment of the Port Property as per KoPT's Schedule of rent charges in course together with interest accrued thereon for delayed payment. This Forum of Law formed its opinion to proceed against O.P. and issued

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**IN ORDER BY
THE ESTATE OFFICER
KOLKATA PORT TRUST**

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Certified copy of the Order
Passed by the Estate Officer
Kolkata Port Trust

27.03.2017
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Seal of the Estate Officer
KOLKATA PORT TRUST



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3-2017*

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. 1348, 1348/P Of 2012 Order Sheet No. -2-

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S. I.C.T Infrastructures (P) Ltd. VS

22
27-03-2017



BY ORDER OF
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issued Show Cause Notice u/s 4 of the Act (for adjudication of the prayer for order of eviction etc.) and Show Notice u/s 7 of the Act (for adjudication of the prayer for recovery of arrear rental dues etc.) both dated 19.01.2016. The subject proceedings follows certain court cases which deserve a brief mention:

a) A Writ Petition being W.P. No. 740 of 2011, questioning the Notification dated 02.03.2011 of the Tariff Authority for Major Ports(TAMP) which had enhanced the schedule of rent for land and buildings of KoPT in exercise of the powers conferred on the Authority by S.49 of the Major Port Trusts Act, 1963 was moved against KoPT. The Hon'ble High Court by Order dated 03.08.2011 in W.P. 740 of 2011 was against passing an interim order of stay on such notification.

b) O.P. filed a writ petition being W.P. 15104 (W) of 2011 mentioning issues more or less identical to those involved in W.P. No.740 of 2011 with an additional grievance concerning possession of the premises. On 14.12.2011, the Hon'ble Justice Jayanta Kumar Biswas passed Order admitting the writ petition on the same terms and conditions on which W.P. No.

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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. 1348, 1348/B of 2012 Order Sheet No. -3-

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S. IET Infrastructures (P) Ltd. ^{VS}

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27.03.2017



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W.P. No. 740 of 2011 was admitted. As regards possession of the property in question liberty was given to the parties to get the issue decided by appropriate Court or Forum according to law.

c) O.P. preferred an appeal vide MAT No. 318 of 2012 and CAN No. 2473 of 2012 against the Order dated 14.12.2011 passed by the Hon'ble Justice Jayanta Kumar Biswas. O.P. prayed for Order to set aside TAMP's notification dated 02.03.2011 and liberty to pay rates or rent as granted earlier to them with reasonable enhancement. The appeal was taken up for hearing before the Hon'ble Chief Justice and the Hon'ble Justice Joymalya Bagchi on 07.03.2014. After hearing their Lordships were pleased to dismiss the appeal on merit.

d) O.P. had also challenged KoPT's rent schedule before the Rent Controller at Alipore which is still pending.

e) O.P. submitted Reply dated 23.02.2016 to the Show Cause Notice u/s 4 & 7 of the Act both dated 19.01.2016 and subsequently, a petition is filed on 24.05.2016 in the prayer to allow O.P. to examine the documents in

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KOLKATA PORT TRUST
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Estate Officer
Kolkata Port Trust

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. 1348, 1348/R of 2012 Order Sheet No. -4-

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S ICT Infrastructures (P) Ltd. ^{VS}

22
27.03.2017



BY ORDER OF
THE ESTATE OFFICER
KOLKATA PORT TRUST

Secretary of the Office
Present at the Office
Kolkata

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KOLKATA PORT TRUST

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the documents in question like Postal receipts of quit notice etc. and such prayer from O.P's side was rejected by order dated 24.05.2016.

f) Thereafter O.P. submitted a petition filed on 24.05.2016, praying for a stay of eviction proceedings and the same was rejected by this Forum by order dated 05.09.2016.

g) O.P. submitted an application dated 25.10.2016 seeking dismissal of proceedings on the ground of Limitation under Article 137 of the Limitation Act 1963 and the same is rejected by order dated 30.01.2017.

O.P. entered appearance through its Advocate and contested the matter by filling reply to the Show Cause Notice on 23.02.2016. I have duly considered the application of O.P. as filed on 24.05.2016 and 25.10.2016. After due consideration of the submissions/arguments made on behalf of the parties, I find that following issues have come up for my adjudication/decision:

1. Whether the proceedings under P.P. Act is maintainable or not;
2. Whether the plea taken by O.P. regarding unilateral satisfaction for issuance of notice to Show Cause u/s 4 of the Act has got any merit or not.

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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. 1348, 1348/P Of 2012 Order Sheet No. 5

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. ICT Infrastructures (P) Ltd. ^{VS}

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27.03.2017



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KOLKATA PORT TRUST

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KOLKATA PORT TRUST

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3. Whether the plea of O.P. that the license in favour of O.P. in question cannot be revoked/terminated without the requirement of the premises by KoPT has got any merit or not.
4. Whether O.P. is holding an "irrevocable license" as granted by the Port Authority in respect of the Public Premises in question or not.
5. Whether the plea taken by O.P. regarding "non-service of notice" for revocation of license or demand for possession from O.P. dated 24.05.2012 has got any merit for determination of the points at issue or not.
6. Whether O.P. has defaulted in making payment of rental dues to KoPT or not;
7. Whether the plea taken by O.P. with regard to fixation of "fair rent" by the Rent Controller under the West Bengal Premises Tenancy Act, 1997 has got any merit or not.
8. Whether O.P.'s contentions regarding payment of rental dues on the basis of KoPT's 1996 Rent Schedule and non-payment of rental dues on the basis of KoPT's 2011 Rent Schedule have any bearing to decide the question of payment of rental dues to KoPT or not;
9. Whether O.P. can take the shield of time barred claim under Limitation Act to contradict the claim of KoPT on account of rental dues while in possession and enjoyment of the Port Property in question or not.

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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. 1348, 1348/P of 2012 Order Sheet No. -6-

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. ICT Infrastructures (P) Ltd. ^{VS}

22

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30-03-2017
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Kolkata Port Trust

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10. Whether KoPT's notice dated 24.05.2012 as issued to O.P., demanding possession from O.P. is valid and lawful or not;
11. Whether O.P's occupation could be termed as "unauthorised occupation" in view of Sec.2 (g) of the P.P. Act and O.P. is liable to pay damages to KoPT during the period of its unauthorised occupation or not;

With regard to issue No.1, I must say that the properties owned and controlled by the Port Authority has been declared as "public premises" by the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and Section-15 of the Act puts a complete bar on Court's jurisdiction to entertain any matter relating to eviction of unauthorized occupants from the public premises and recovery of rental dues and/or damages, etc. KoPT has come up with an application for declaration of O.P's status as unauthorized occupant in to the public premises with the prayer for order of eviction, recovery of rental dues and damages against O.P. on the ground of revocation of licence or termination of authority to occupy the premises as earlier granted to O.P. in respect of the premises in question. So long the property of the Port Authority is coming under the purview of "public premises" as defined under the Act, adjudication process by

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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. 1348, 1348/PB of 2012 Order Sheet No. -7-

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S. ICT Infrastructures (P) Ltd. ^{VS}

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S. De
30.03.2017

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process by serving Show Cause Notice/s u/s 4 & 7 of the Act is very much maintainable and there cannot be any question about the maintainability of proceedings 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.

It is the case of O.P. that the action of the Port Authority clearly violates the guideline issued by the Govt. of India. It is submitted that the proceedings is not maintainable under P.P. Act against O.P. for want of essential ingredients for initiation of proceedings. KoPT on the other hand argued that the guideline is applicable for genuine tenant and a defaulter like O.P. cannot claim as a "genuine tenant" and the guideline has not been issued by the Central Govt. to a Statutory Authority like Kolkata Port Trust in pursuance of section 111 of the Major Port Trust Act 1963. After prolonged hearing/ argument of both sides, I am of the view that the guideline issued by the Govt. of India cannot override the specific provision of law. The judgement of the Hon'ble Supreme Court of India reported in (2008) 3 Supreme Court Cases 279 (New India Assurance Co. Ltd. -vs- NUSLI NEVILLE WADIA & ANR.) is instrumental in deciding the question of acceptability of such "guideline". In deciding the

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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. 1348, 1348/R2 of 2012 Order Sheet No. -8-

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. ICT Infrastructures (P) Ltd. ^{VS}

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27-03-2017



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General Manager of the Trust
Kolkata

S. De
30.03.2017

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deciding the question of acceptability of a "guideline" the Hon'ble Supreme Court of India observed that issuance of such guideline is not controlled by statutory provision and the effect thereof is advisory in character being no legal right is conferred upon a tenant. Thus, when the adjudication process before this Forum of Law has been started with service of requisite notice for showing cause and ample opportunity is being given to O.P. to establish its authority to occupy the public premises, demolishing the grounds for proposed eviction etc. as mentioned in the Show Cause Notice u/s 4 of the Act, there is no scope for violation of natural justice to anybody. In my view, the point of maintainability of this proceedings in view of the "Govt. Guideline" is not acceptable in all sense.

In view of the authoritative decisions as cited above, I have no hesitation in my mind to decide the issue in favour of the Port Authority.

On Issue No. 2, the decision of Hon'ble Calcutta High Court reported in 2002(1) CHN 641(Otafallons Forwarders Pvt. Ltd. vs. Kolkata Port Trust) with reference to judgement of the Hon'ble Apex Court of India in Jiwan Das vs LIC reported in 1994(Suppl) 3 SCC 694 is very important in deciding the authority of the

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A. Ghosh

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. 1348, 1348/12 of 2012 Order Sheet No. 7

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S. ICT Infrastructures (P) Ltd. ^{VS}

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of the Estate Officer under PP Act. Paragraph 15 of the said Judgement of Calcutta High Court reads as follows:-

"The Statute herein has admittedly given a wide powers to the Public Authority under Public Premises Act, 1971 to determine the tenancy and it has already been held by the Supreme Court of India in case of Jiwan Das (supra) that it was not permissible to cut down the width of the powers by reading into it the reasonable and justifiable grounds for initiating actions for termination of tenancy. Authorities under the PP Act, 1971 are empowered to act in Public interest and entitled to determine the tenancy or leave or license before taking into action under Section 5 of the Act which has been specifically held in Jiwan Das(supra)"

The provisions U/Ss 4 & 5 of the P.P Act deal with the procedure for eviction of unauthorised occupants and must be read together. It would be seen that prima facie satisfaction of the Estate Officer is a sine qua non for issuance of the Show cause notice. The scope of issuing Show Cause Notice and the legality of serving such Show Cause Notice was subject matter of

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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

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S. JET Infrastructures (P) Ltd. ^{VS}

22
27.03.2017



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f S.D.
Date: 30.03.2017

Signature of the Estate Officer

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matter of discussion before the Hon'ble Delhi High Court in Safari Air Ways case. This judgement of Hon'ble Delhi High Court reported in AIR, 1983 Del 347, is instrumental to decide the extent of Estate Officer's authority in issuing Show Cause Notice. **It was the case before Hon'ble Delhi High Court that the notice is required to be quashed on the ground that Estate Officer has not disclosed to them in the notice the material on which he has formed his opinion.** According to the judgement, the Estate Officer may form the opinion rightly or wrongly. But what is important is that he must give an opportunity to the persons in occupation of the Public Premises to show cause against the proposed order of eviction. In truth and substance, it is the opinion formed by the Estate Officer which becomes the subject matter of enquiry before him. The observation made by the Hon'ble Delhi High Court are as follows:

"Safari Airways can show to the Estate Officer that the opinion formed by him is incorrect and that they are not liable to be evicted from the Public Premises. "Opinion" is different from "order". No eviction order is passed unless and

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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. 1348, 1348/P Of 2012 Order Sheet No. -11-

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S. ICT Infrastructures (P) Ltd. ^{VS}

22
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S. De
20-03-2017
Estate Officer
KOLKATA PORT TRUST

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and until a show cause notice is issued to the occupant of public premises and unless he is heard. The question of formation of opinion by the Estate Officer and of the nature of materials before him loses all importance in view of the fact that Show Cause Notice gives a full opportunities to the occupant to dispute the opinion, the facts and allegations against him in the enquiry which follows the service of notice. The petitioners are not entitled to ask this court to quash the notice or that matter the proceedings themselves at their very threshold. The reason is that the notice gives them an opportunity to Show Cause against the proposed order of eviction. Before issuing Show Cause Notice U/S 4, Estate Officer has to form a tentative opinion. Opinion means estimation, not decision. If a man is to form an opinion he must form it himself of such reasons and grounds as seem good to him. Those reasons may be good or bad. But, he does not arrive at a definite conclusion because he has not heard the affected party so far. There are no counter-allegations before him at the stage of formation of opinion. Invested as he is with quasi-judicial power he has to follow the principle of natural justice.

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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. 1348, 1348/R of 2012 Order Sheet No. -12-

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. ICT Infrastructures (P) Ltd. ^{VS}

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He must hear the occupant and decide whether he is there on the premises with or without authority. Then he arrives at the decision. And his decision is appealable U/S 9 of the act to the District Judge. The appeal is a judicial re-hearing".

It is worthy to mention here that after amendment of the P.P. Act by the Amending Act of 2015 (Act No. 2 of 2015) the Estate Officer is empowered to issue Show Cause Notice u/s 4 of the Act upon receipt of information regarding unauthorised occupation any Public Premises .

In view of the decision of the Hon'ble Delhi High Court and elaborate discussion on the scope of the power of the Estate Officers in issuing Show Cause Notice, I do not find any scope to discuss the matter further as all the questions regarding authority of the Estate Officer in issuing Show Cause Notice has been decided authoritatively by the Hon'ble Delhi High Court in the aforesaid judgement.

In view of the discussions above, the issue is decided accordingly against O.P.

Issues No.,3,4, 5 & 6 are taken up together for convenient discussion as the issues are related

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Estate Officer
KOLKATA PORT TRUST

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. 1348, 1348/R of 2012 Order Sheet No. -13-

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S. JCT Infrastructures (P) Ltd. ^{VS}

22
27-03-2017.



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KOLKATA PORT TRUST

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related with each other and each issue has direct impact over the other. I have duly considered the submissions of O.P. and the arguments made on behalf of the parties in course of hearing. KoPT's case is based upon revocation of license as granted to O.P. and non-payment of rental dues/license fees to KoPT as a condition for grant of such license. In course of hearing it has been brought to my notice by KoPT that the terms and conditions as applicable for such grant of license is similar to that of the terms of conditions as applicable in case of grant of license to O.P. by the Port Authority in respect of land Msg. 2025.01 Sq.m at the same area under proceedings No. 1349 of 2012 (Board of Trustees' of the Port of Kolkata -vs- O.P.) and the Public Premises in question was allotted to O.P. by KoPT as additional land in Dhobitala area. My attention is drawn to O.P.'s letter to KoPT dated 21.02.1984 & 08.02.1984 and KoPT's letter to O.P. dated 05.01.1984, 18.11.1983 and offer for allotment bearing terms and conditions dated 04.08.1983

It transpires that O.P. by its own stated that dispute arose upon KoPT's demand for monthly rent/ license fees on the strength of notification issued by the Tariff Authority of Major Ports dated 07.04.2011 and they have paid all dues/charges prior to 07.04.2011. There is no material to substantiate O.P.'s contention that KoPT cannot

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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

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. ICT Infrastructures (P) Ltd. ^{VS}

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27-03-2017



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30.03.2017
KOLKATA PORT TRUST

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cannot terminate the license without requirement of the premises by KoPT. When a strong case has been made out on behalf of KoPT regarding O.P.'s failure to pay the monthly License fees as agreed upon on the basis of the conditions for grant of License, it is futile to assert anything about irrevocable License in favour of O.P. Though the Easement Act is not applicable in the State of West Bengal, the provisions under the Indian Easement Act are accepted as guiding principles for deciding any question involving the rights and liabilities of the parties. The observation made by Hon'ble Calcutta High Court in this regard would not be out of scope where it is observed that Easement Act is not applicable to the State of West Bengal and only its broad principles are applicable(2002 [3] CHN 567).

Section 60 of the Indian Easements Act provides as follows :-

60. License when revocable.- A license may be revoked by the grantor, unless

- (a) it is coupled with a transfer of property and such transfer is in force;
- (b) the licensee, acting upon the license, has executed a work of a permanent character and incurred expenses in the execution.

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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

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S. IET ^{VS} Infrastructures (P) Ltd.

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27-03-2017



BY ORDER OF
THE ESTATE OFFICER
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The Hon'ble Supreme Court of India [AIR 1987 SC 1242 - Ram Swarup Gupta Vs Vishnu Narayan Inter College] had the occasion to deliver Judgement on the question of irrevocability of License. The relevant portion of the Judgement reads as follows:

"Section 60 enumerates the condition under which a License is irrevocable. Firstly, the License is irrevocable if it is coupled with transfer of property and such right is enforced and secondly, if the licensee acting upon the licence executes work of permanent character and incurs expenses in execution. Sec. 60 is not exhaustive. There may be a case where the grantor of licence may enter into agreement with the licensee making the license irrevocable, even though none of the two clauses as specified in Sec. 60 are fulfilled. Similarly, even if two clauses of Sec.60 are fulfilled to render the license irrevocable, yet it may not be so if the parties agreed to the contrary. In Muhammad Ziaul Haque -vs- Standard Vacuum Oil Co., the Calcutta High Court held that where a licence is prima facie irrevocable either because it is coupled with a grant or interest or because the licensee erected the work of permanent nature, there is

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S. ICT Infrastructures (P) Ltd. ^{VS}

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there is nothing to prevent the parties from agreeing expressly or by necessary implication that license nevertheless shall be revocable.

.....
.....
.....
The parties may agree expressly or impliedly that a license which is prima facie revocable not falling within either of the two categories of license is contemplated by Sec. 60 of the Act shall be irrevocable. Such agreement in writing or otherwise its terms and conditions may be express or implied. A license may be oral also, in that case, terms, conditions and the nature of the license can be gathered from the purpose of which the license is granted coupled with the conduct of the parties and circumstances which may have led to the grant of the license."

In the instant case, any proposition for carrying out work of permanent character by anybody cannot arise when the license was continuing on month to month basis and that too terminable by 7 days notice from grantor (KoPT). The condition for grant of license also speaks for entire prohibition for erection of

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M/S. ICT ^{VS} Infrastructures (P) Ltd.

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erection of permanent structure as per clause (xiv) of the terms and conditions for grant of license which reads as follows :

“No structure on the land will be allowed except temporary structures which may be required for stuffing and stripping of containers during inclement weather and a small site office”

The condition for grant of license in favour of O.P. by the Port Authority as per clause No. (xvi) also speaks for resumption of land by the KoPT within 5 years on payment of compensation. Nowhere in the condition of agreement there is any stipulation for grant of irrevocable license to O.P. and no stretch of imagination could permit that the grant of license on month to month basis (terminable by 7 days notice) as specifically agreed upon by and between the parties could be termed as irrevocable license in favour of O.P. on evaluation of the factual aspect involved in this matter. An attempt has been made on behalf of O.P. in para -6 of O.P's reply to the Show Cause filed 23.02.2016 that license was issued by the Land Manager, KoPT through a letter dated 28.05.1989 vide no. LM 4728/V/VI. But a mere reading of the letter/ communication to

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S. ICT Infrastructures (P) Ltd. ^{VS}

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KOLKATA PORT TRUST
Dated this 30th day of March 2017
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communication to O.P. dated 28.05.1989 as
aforesaid leaves no room for doubt that the said
letter is meant for enhancement of license fees
from 31.03.1988 as per "Scale of Rates" notified
in Calcutta Gazette dated 31.03.1988. This has
no bearing with the terms of conditions of
license except as it relates to imposition of
charges effective from 31.03.1988. It is my well
considered view that the terms and conditions
for grant of licence to O.P. by the Port
Authority never put any restriction to KoPT's
authority for revocation of license as granted to
O.P. only in case of requirement of the
Property by KoPT. It is evident from the
contractual provision for grant of license that
the monthly term license is continuing on
month to month basis upon the conduct of the
parties that is to say sending bills/demand
from KoPT's end and payment of the same by
O.P. in turn as licensee of the premises. In the
strict sense O.P. cannot claim a valid grant of
license without receiving a monthly demand
note from KoPT's side.

Now the question arises how far the contention
regarding non-service of notice of revocation of
license in question as raised by O.P. deserves
any merit. It has been held by the Hon'ble

A. N. Ghosh

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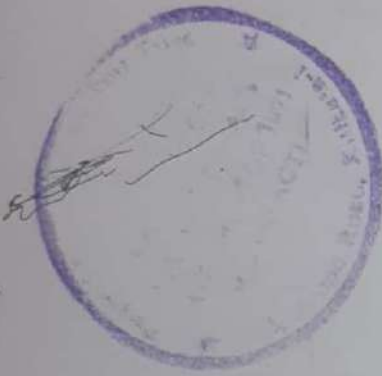
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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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Hon'ble Calcutta High court that a demand for possession of the land is not a pre-condition of the revocation or filing a suit for eviction of licensee (AIR 1971 CAL 435 - Soyambari -vs- Dwiypada). Institution of this proceedings against O.P. by the Port authority for recovery of possession is sufficient demonstration of KoPT's intention to get back possession and a license unlike a lease can be revoked without prior notice. It is not necessary for the licensor to countermand his license to effectuate revocation. It will stand revoked if the licensor does any act which shows the determination for example where the licensor files a suit for possession against the licensee (AIR 1956 CAL 79,82 DB- Ragupati Roy -vs- Dabu Karmakar). Admittedly, O.P. defaulted in making payment of rental dues/license fees to KoPT as would be evident from the statement of O.P. as per Para 13 of its reply to the Show Cause Notice u/s 4 of the Act as filed on 23.02.2016, which reads as follows:

"The allegations made in Paragraph 3 is false and it is denied that respondent default in payment of arrear rent as the respondent has been paying as per Schedule of 1996 as the rate of rent of 2011 has been challenged for its

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for its unfairness before the Rent Controller being RC Case No. 138/17 of 2012 for determination of fair rent".

There is no doubt about non-payment of rental dues from O.P's end as per KoPT's demand. However, it is very much relevant to point out that O.P. moved writ application\$ being W.P. 15104 (W) of 2011 against KoPT and others, questioning the notification dated 02.03.2011 and to set aside the notification of the Tariff Authority of Major Ports u/s 49 of the Major Port Trust's Act 1963 etc. regarding enhancement of rent/charges for occupation of the Port Property in question. Another Writ Application was moved against KoPT's enhancement of Rent Charges as per notification dated 02.03.2011 issued by the Tariff Authority of Major Ports. The relevant portion of the order dated 3rd August,2011 passed in W.P. No. 740 of 2011 is as under:

".....
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..... I do not see how the two decisions cited to me can entitle the petitioner to a restraining order. The balance of convenience and inconvenience is entirely against passing a restraining order. In case of a restraining order the petitioner will

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S. ICT ^{VS} Infrastructures (P) Ltd.

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petitioner will not be required to deposit according to the notified scale of rates and if petition fails, it may be impossible to recover the amount that she might be found liable to pay. On the other hand, if the petitioner succeeds, order can always be made directing the Port Trust to refund excess payment, if any.

For these reasons, I admit the petition keeping the question of maintainability open and order that if the petitioner succeeds, then order will be made for refund of the excess payment, if any, made by her under the increased scale of rates".

Hon'ble Mr. Justice Jayanta Kumar Biswas by order dated 14.12.2011 in W.P. No. 15104(W) of 2011 quoted the text of the order 3rd August, 2011 passed in W.P. No. 740 of 2011 while admitting the writ petition, the relevant portion of the said order is reproduced below :

"This W.P. is admitted on the same terms and conditions on which W.P. No. 740 of 2011 has been admitted. The question of maintainability of the W.P. is kept open. Nothing concerning possession of the property in question will be decided in this W.P. and the parties will be free to get the issue decided by appropriate Court or Forum according to law."

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Being dissatisfied with the order dated 14.12.2011, preferred an appeal being MAT No. 318 of 2012 and the said appeal stand dismissed on merit by the Division Bench headed by Hon'ble Chief Justice of Calcutta High Court on 07.03.2014.

In view of the circumstances, in my opinion O.P. failed to comply with the order passed by the Writ Court regarding payment to KoPT as per notified scale of rates of the Tariff Authority of Major Ports on the basis of which KoPT issued its rent demand notes to O.P. at the enhanced rate.

In the case in hand O.P. disputed KoPT's demand for monthly license fees and failed to pay of monthly license fees on demand from KoPT which is sufficient for coming into conclusion of a monthly term license and no notice for revocation of license in necessary as the license continuing on month to month basis has come to an end where the licensee(O.P.) defaults in payment of license fees inspite of demand from the licensor (KoPT). To take this view, I am fortified by decision of the Hon'ble Apex Court of India

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S ICT INFRASTRUCTURES (P) LTD ^{VS}

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Hon'ble Apex Court of India reported in AIR 1965 SC 610 (M.N. Clubwala -vs- Fida Hussen Sheb). It is evident from the order dated 29.05.2012 passed by His Lordship Hon'ble Mr. Justice Harish Tandon in W.P. No. 11217(W) of 2012 (O.P. -vs- Kolkata Port Trust) that **service of notice for termination of license by the Port Authority in question was the subject matter of consideration before the Hon'ble High Court, Calcutta and as such O.P.** cannot take the plea of "non service of notice" in any event. In my view, the contentions raised by O.P. under the issues deserve no merit. Hence, the issues are decided against O.P.

Issue No. 7 & 8 are required to be discussed analogously for the sake of convenience. It is worthy to point out the followings:

- a) Kolkata Port Trust is the Successor in Interest of the erstwhile Commissioners for the Port of Kolkata which is a Local Authority as defined under the General Clauses Act, 1897 (Section 3) and West Bengal General Clauses Act, 1899 (Section 3(23)).
- b) On the application of The Major Port Trusts Act, 1963, all properties, Assets and Funds etc vested in the Central Government or as the case may be, any other Authority (Commissioners for the

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for the Port Of Calcutta constituted under the Bengal Act) for the purpose of Port immediately before such day shall vest in the Board (KoPT Board under Section 29 of the MPT Act).

c) The Rent Control Act is applicable to **“premises” which means any building** or part of a building or any hut or part of a hut let separately and includes:

(i) the gardens, grounds and out-houses, if any, appertaining thereto, and

(ii) any furniture supplied by the landlord or any fittings or fixtures affixed, for the use of the tenant in such building or part of a a building or hut or part of a hut, but does not include a room in a hotel or a lodging house;

The Rent Control Act never dealt with fair rent in respect of land. In the instant case M/s. ICT Infrastructures Pvt. Ltd.(O.P) was licensee in respect of **land measuring 1984.03 sq. mt** at Dhobitala Container Park. The Rent Control Act specifically **excludes** premises let out for **non-residential purposes** which carries monthly rent for more than Rs. 10,000/- within the limit of KMC and HMC. In the instant case the land was allotted to O.P. for the purpose of storage and repairs of empty containers and the Companies/ applicant used to pay more than Rs. 10,000/- as monthly licence fees without any dispute whatsoever.

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d) The proposition for fixation of "fair rent" by the rent controller under the Rent Control Act in respect of Public Premises is not supported by law particularly when the Major Port Trust's Act 1963 prescribes a different mode for fixation of rent for use and enjoyment of the Port Properties being the Public Premises as defined under P.P. Act.

e) The proposition for fixation of "fair rent" by the Rent Controller under the Rent Control Act clearly hits the constitutional mandate under Article 254 of the Constitution of India.

By earlier order dated 05.09.2016, O.P's prayer for stay of proceedings was rejected by elaborate order.

Fixation of rent charges in respect of Port Properties by the Tariff Authority of Major Ports under the Major Port Trusts Act 1963 was the subject matter of consideration before the Hon'ble Apex Court of India. The Port Trust Authority from time to time by notification in the Official Gazette fixed scale of rates on which lands and structures belonging to Port Authority to be let out. U/s 52 of the Major

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Major Port Trusts Act 1963, the Central Government was to approve such rate before it was made applicable. In 1997, Sec. 52 was repealed and different mechanism was evolved by which power to fix rent was given to the Tariff Authority of the Major Ports. Sec. 49 of M.P.T Act was also amended by the Port Laws (Amendment) Act 1997 with effect from 09.01.1997. The validity of these provisions of the MPT Act was upheld by the Hon'ble Supreme Court in the case of **Luga Bay Shipping Corporation -Vs- Board of Trustees of the Port of Cochin and Ors. Reported in AIR 1997 SC 544 = 1997(1) SCC 631.**

In view of the circumstances, I do not find any merit to the contentions of O.P. regarding fixation of "Fair Rent" by the Rent Controller under the West Bengal Premises Tenancy Act at this stage and also do not find any substance to the contentions of O.P. regarding non-payment of rental dues on the basis of KoPT's 2011 Rent Schedule (notified by the Tariff Authority of Major Ports). I do not find any justification to consider any bar to come into conclusion that O.P. has failed to pay the rental dues/license fees to Kolkata Port Trust (KoPT) as per KoPT's demand. I make it clear

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M/S ICT Infrastructures^{VS} (P) Ltd.

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clear that my findings as above regarding non-payment of rental dues by O.P. is valid and enforceable, until or unless there is any order to the contrary from any competent Court or Forum of Law.

Since the Sec.4 proceedings is for adjudication of KoPT's prayer for eviction and Sec. 7 proceedings is for adjudication of KoPT's prayer for realisation of arrear rent etc., I am well within my jurisdiction to adjudicate upon the matters under P.P. Act. Hence the issues are decided against O.P.

Issue No. 9, regarding time barred claim under the Limitation Act requires serious consideration of fact and law as well. Admittedly, O.P is in occupation and enjoyment of the Public Premises after expiry of the contractual period of license as granted by the Port Authority. The written objection/reply as filed by O.P on 23.02.2016 (Affidavit of Siddhartha Ghosh, Vice-President of O.P), clearly demonstrate that O.P is admitting their liability towards payment of occupational charges to the Port Authority for the period of their occupation into the Port property, subject to payment at the old rate, after expiry of the contractual period of license in question. The

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M/S IET Infrastructures (P) Ltd. ^{VS}

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The relevant portion of the para 13 of the Reply to the Show Cause Notice on behalf of O.P. filed on 23.02.2016, reads as follows:

"The allegations made in Paragraph 3 is false and it is denied that respondent default in payment in arrear rent *as the respondent has been paying as per Schedule of 1996* as the rate of rent of 2011 has been challenged for its unfairness before the Rent Controller being RC Case No. 138/17 of 2012 for determination of fair rent"

Thus O.P is in clear and open admittance of their liability towards payment of charges for occupation but merely disputing KoPT's claim as per KoPT's demand on the basis of notification issued by the Tariff of Authority of Major Ports with effect from 07.04.2011. Admittedly, O.P is disputing KoPT's claim at the enhanced rate with the contentions that such claims are unreasonable etc. No argument has been advanced on behalf of O.P as to how their claim for payment at the old rate of rent, after expiry of the contractual period of license, is valid under authority of law. On the contrary, it is the contention of KoPT that the charges for occupation have been claimed against O.P on the basis of

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basis of Schedule of Rent charges in force for the relevant period. I am taking note of the fact that KoPT's enhancement of rent charges is on the basis of notified rate of rent as per notification issued by the authority of law as per provisions of the Major Port Trusts Act, 1963, as amended from time to time. In course of hearing, it is submitted with argument that such notified rates of rent (Rent Schedule) has been upheld by the Hon'ble High Court Calcutta and the Hon'ble Apex Court as well and that any dispute/question relating to unreasonableness/ arbitrariness with regard to enforceability of such notified rates of rent charges, is beyond the jurisdiction/scope of this forum of law and the matter has already been dealt with by order of this Forum dated 05.09.1216. It is also argued that even Limitation Act does not permit O.P to take the plea of "time barred claim", while in occupation and enjoyment of the property as per Sec.22 of the Limitation Act as continuing breaches on the part of O.P after expiry of the contractual period of license. It is submitted with argument that as per law, O.P was under obligation to hand over possession of the property to KoPT in vacant and unencumbered

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unencumbered condition and failure on the part of O.P to discharge such statutory liability is a breach of contract. It is my well considered view that unless there is any material/argument to substantiate O.P's claim regarding their entitlement to pay old rated charges/dues for occupation into the public premises, mere statement contradicting KoPT's claim is not acceptable under law. It is very futile to assert that O.P can restrict their liability to pay the old rated dues/charges for occupation and enjoyment of the Port property subsequent to the publication of notification by the Tariff Authority of Major Ports (effective from 07.04.2011) in exercise of their power under the Major Port Trusts Act 1963. In fact O.P. cannot claim differential treatment from other occupier/user of the Port Property for making payment of charges in terms of the notification effective from 07.04.2011 in a similarly placed situation. Now the question survives whether O.P can take the plea of time barred claim under Limitation Act, while in possession and enjoyment of the property, particularly when the liability towards payment of rental dues/charges for such occupation has been admitted by O.P. Even

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Even without considering (for the sake of argument), the question of liability towards payment of dues/charges at the enhanced rate as per claim of KoPT, it is my considered view that O.P cannot escape their liability towards payment of rental dues on the plea of "limitation" as per Sec. 25 of the Indian Contract Act, while acknowledging the jural relationship as debtor. No attempt has been made on behalf of O.P as to how O.P's occupation could be termed as "authorised" in view of Sec. 2(g) of the P.P Act, after expiry of the period as mentioned in the KoPT's notice dated 24.05.2012, demanding possession from O.P.

The core submissions made on behalf of KoPT regarding non-applicability of the Limitation Act in proceedings before this Forum is based on various decisions of the Hon'ble Apex Court of India and Calcutta High Court, wherein it has been decided that Limitation Act has no application before quasi-judicial authorities like this Forum of Law which is not a civil court to be governed by the Civil Procedure Code.

With the introduction of Sec 15 of the P.P. Act, 1971, there is no scope for the courts to

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courts to entertain any matter regarding recovery of arrear rental dues and damages etc arising out of the public premises. In the present scenario, when the statute, in its own wisdom, has imposed a restriction upon the civil court, to adjudicate upon such matter it would be very difficult to accept the contention of O.P. with regard to application of Limitation Act in the proceedings before this Forum of law, which is not a civil court to be governed by the civil procedure code.

The judgment of the Hon'ble Apex Court of India reported in New India Assurance Case - 2008 (3) SCC 279 = AIR 2008 SC 876 is very much relevant in deciding the question whether this Forum is a court or not. It was decided by the Supreme Court that Civil Procedure Code and Indian Evidence Act are not applicable for proceedings before the Estate Officer under P.P. Act which provided a complete code. The Limitation Act applies to "suits" to be governed by CPC and Indian Evidence Act. When the basic elements for adjudication of a "suit" are totally absent for proceedings under P.P. Act, 1971, it is futile to advance any argument for its application. The judgments of different High Courts including

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BY ORDER OF
THE ESTATE OFFICER
KOLKATA PORT TRUST

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Kolkata Port Trust

S.D.
30.03.2017
Estate Officer
Kolkata Port Trust

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. 1348, 1348/R of 2012 Order Sheet No. 33 -

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S ICT Infrastructures (P) Ltd.
^{VS}

22

27.03.2017



BY ORDER OF
THE ESTATE OFFICER
KOLKATA PORT TRUST

Signature of the Estate Officer
Kolkata Port Trust

S. De
30.03.2017
Estate Officer
KOLKATA PORT TRUST

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including that of Delhi High Court could be accepted as a guiding principle. In this connection, I am fortified by a judgment of the Hon'ble High Court, Calcutta in S.N. BHALOTIS -VS- L.I.C.I. & Ors. reported in 2000(1) CHN 880 with reference to the judgment reported in AIR 1972 Tripura 1 (Hemchandra Charkraborty -Vs- Union of India) wherein, it was clearly held that proceedings initiated by an Estate Officer are not in the nature of suit nor the Estate Officer acts as a Court while deciding proceedings before him.

It is worthy to record that there is no prescribed period of limitation in the Limitation Act itself for recovery of "damages".

It would not be out of scope to mention that Limitation Act bars the remedy by way of "suit" but not the entitlement. In my view, there is a clear distinction between 'rent' and 'damages'. So long both the parties admit their relationship as licensor/landlord and tenant/licensee, the question of paying damages does not arise. In other words, if the tenant/licensee is asked to pay rent by the landlord/licensor, the element of authorized occupation could be inferred but in case of demand for damages,

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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. 1348, 1348/R Of 2012 Order Sheet No. 34-

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S ICT Infrastructures (P) Ltd. ^{VS}

22
27.03.2017



BY ORDER OF
THE ESTATE OFFICER
KOLKATA PORT TRUST

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Kolkata Port Trust

S.D.
30.03.2017
Estate Officer
Kolkata Port Trust

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damages, there is element of unauthorized use and enjoyment of the property (1996) 5 SCC 54 (Shangrila Food Products Ltd. & Anr vs Life Insurance Corporation of India & Another).

It is very much relevant to point out that as per Section 7(1) of the said Act, the word used is 'rent payable' whereas in Section 7(2) it is in respect of 'recovery of damages', having regard to the principle of assessment of damages. Thus the interpretation of the powers under Section 7(1) for recovery of arrears of rent has a wide range of difference between the powers exercised under Section 7(2) of the P.P Act, as there is nothing like the term 'rent payable' as used under Section 7(1) of the P.P Act in Section 7(2) of the P.P Act, 1971. Moreover, the legislative intention for recovery of damages for any time and the power conferred upon the Estate Officer is very much embedded in Section 7(2) of the Act which reads as follows:-

"Where any person is, or has at any time been, in unauthorised occupation of any Public Premises, the Estate Officer may, having regard to such principles for assessment of damages as may be prescribed, assess the damages on account of use and occupation of such

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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

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S ICT Infrastructures^{VS}(P) Ltd.

22
27.03.2017



**BY ORDER OF
THE ESTATE OFFICER
KOLKATA PORT TRUST**

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Date: 30.03.2017

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30.03.2017
Estate Officer
KOLKATA PORT TRUST

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of such premises and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order".

In view of the discussion above, I am of the view that this Forum of Law is very much competent under law to adjudicate the claim of KoPT against O.P. and Limitation Act has no application to the proceedings before the Estate Officer which is a quasi-judicial authority under P.P. Act and is neither a Civil Court to be governed by the Civil Procedure Code nor a "court" within the scheme of the Indian Limitation Act.

The applicability of the Limitation Act before the quasi-judicial authority like this forum of law was, the subject-matter of consideration before the Hon'ble Apex Court of India. By the judgment delivered by the Hon'ble Supreme Court of India on 23.4.2015 in Civil Appeal No. 4367 of 2004 (M.P. Steel Corporation -vs- Commissioner of Central Excise) reported in (2015) 7 SCC 58 it was emphatically observed in para 16 that

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On a plain reading of the provisions of the

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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

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s IET Infrastructures (P) Ltd.
^{VS}

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27.03.2017



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THE ESTATE OFFICER
KOLKATA PORT TRUST**

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30.03.2017

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of the Limitation Act, it becomes clear that suits, appeals and applications are only to be considered (from the limitation point of view) if they are filed in courts and not in quasi-judicial bodies".

Para-19 of the said judgment is an authority for decision that Limitation Act does not apply to quasi-judicial bodies like this Forum of Law. The relevant portion of the judgment reads as follows :

"A series of decisions of this court have clearly held that the Limitation Act applies only to courts and does not apply to quasi-judicial bodies. Thus, in Town Municipal Council, Athani -VS- Presiding Officer, Labour Court, (1969) 1 SCC 873 a question arose as to what applications are covered under Art. 137 of the Schedule of the Limitation Act.
.....
....."

At Para-26, a reference to judgment in Consolidated Engg. Enterprises -v- Principal Secretary, Irrigation Department, (2008) 7 SCC 169 has been made. The observations made by the Hon'ble Apex Court are authoritative

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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. 1348, 1348/R of 2012 Order Sheet No. 37-

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S ICT Infrastructures^{IVS} (P) Ltd.

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27.03.2017



BY ORDER OF
THE ESTATE OFFICER
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Kolkata Port Trust

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are authoritative and an excerpt of the said observation is reproduced below :-

"A 3- Judges Bench of this court was asked to decide whether Section 14 of the Limitation Act would apply to Section 34(3) of the Arbitration and Reconciliation Act 1996. After discussing the various provisions of the Arbitration Act and the Limitation Act, this court held :

"23. At this stage it would be relevant to ascertain whether there is any express provision in the Act of 1996, which excludes the applicability of Section 14 of the Limitation Act. On the review of the provisions of the Act of 1996 this Court finds that there is no provision in the Act which excludes the applicability of the provisions of Section 14 of the Limitation Act to an application submitted under section 34 of the said Act. **On the contrary, this Court finds that Section 43 makes the provisions of the Limitation Act, 1963 applicable to arbitration proceedings.** The proceedings under Section 34 are for the purpose of challenging the award whereas the proceeding referred to under

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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. 1348, 1348/R of 2012 Order Sheet No. -38-

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S ICT Infrastructures (P) Ltd. ^{VS}

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27.03.2017



BY ORDER OF
THE ESTATE OFFICER
KOLKATA PORT TRUST

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Kolkata Port Trust

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Head Assistant
30.03.2017
KOLKATA PORT TRUST

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under Section 43 are the original proceedings which can be equated with a suit in a court".

"44. It may be noticed at this juncture that the Schedule of the Limitation Act prescribes the period of Limitation only to proceedings in Courts and not to any proceedings before a tribunal or quasi-judicial authority. **Consequently Section 3 and 29(2) of the Limitation Act will not apply to proceedings before the tribunal. This means that the Limitation Act will not apply to appeals or applications before the tribunals, unless expressly provided.**"

There is no scope for deciding the matter otherwise after observations made by the Apex Court in M.P. Steel Corporation case at Para 27 which reads as follows :

"Obviously, the ratio of Mukti Gopalan does not square with the observation of 3 judge Bench in Consolidated Engineering Enterprise. In the latter case, this court has unequivocally held that Paterson Tool is an authority for proposition that the Limitation Act will not apply to quasi-judicial bodies or Tribunals. To the

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Estate Officer, Kolkata Port Trust

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Proceedings No. 1348, 1348/R Of 2012 Order Sheet No. 39-

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S IET Infrastructures (P) Ltd.

22

27.03.2017



BY ORDER OF
THE E. O. OFFICE
KOLKATA PORT TRUST.

Seen & verified by the Order
Passed by the Estate Officer
Kolkata

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30.03.2017
KOLKATA PORT TRUST

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To the extent that Mukti Gopalan is in conflict with the Judgment of Consolidated Engineering Enterprises case, it is no longer good law".

In my view, Hon'ble Supreme Court's judgement in M.P. Steel Corporation Case (Supra) has gone to the root of the question regarding applicability of the Limitation Act before quasi-judicial proceedings.

Thus, the plea taken by O.P. regarding applicability of Limitation Act in the proceedings before the Estate Officer under P.P. Act has, to my considered view, got no merit. I have taken a note of Sec.29 of The Limitation Act, 1963 read with Sec.25 of the Indian Contract Act, 1872. It is my well considered view that even if for the sake of argument, Limitation Act is taken to apply to the proceedings before the Estate Officer (not admitting), Sec.25 of the Indian Contract Act will definitely come into play against O.P's plea for "time barred" claim under Limitation Act. I am of the view that O.P. acknowledged its relationship as debtor and Sec.25 of the Contract Act debars O.P. to take the plea of "barred by limitation", in the facts and circumstances of the case. Hence, the issue is decided in favour of KoPT.

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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. 1348, 1348/R of 2012 Order Sheet No. -40-

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s ICT Infrastructures (P) Ltd. ^{VS}

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Issues No10 & 11, are also required to be discussed analogously. Discussion against the foregoing paragraphs will certainly lead to the conclusion that that the notice for revocation of license dated 24.05.2012 as issued by the Port Authority, demanding possession from O.P. is very much valid, lawful and binding upon the parties. I have deeply gone into the submissions/ arguments made on behalf of the parties in course of hearing. The properties of the Port Trust are coming under the purview of "public premises" as defined under the Act. Now the question arises as to how a person become unauthorized occupant into such public premises. As per Section 2 (g) of the Act the "unauthorized occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. The license granted to O.P. was undoubtedly revoked by the Port Authority by due service of

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BY ORDER OF
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KOLKATA PORT TRUST

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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. 1348, 1348/R of 2012 Order Sheet No. -41-

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s ICT Infrastructures ^{VS} (P) Ltd.

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Secretary of the Colony
Kolkata Port Trust

30.03.2017
KOLKATA PORT TRUST

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service of notice for revocation of licence and institution of proceedings against O.P. by KoPT is a clear manifestation of Port Authority's intention to get back possession of the premises. In such a situation, I have no bar to accept KoPT's contentions regarding revocation of licence by notice dated 24.05.2012, on evaluation of the facts and circumstances of the case. "Damages" are like "mesne profit" that is to say the profit arising out of wrongful use and occupation of the property in question. I have no hesitation in mind to say that after expiry of the period as mentioned in the said notice to Quit dated 24.05.2012, O.P. has lost its authority to occupy the public premises, on the evaluation of factual aspect involved into this matter and O.P. is liable to pay damages for such unauthorized use and occupation. To come into such conclusion, I am fortified by the decision/observation of the Hon'ble Supreme Court in Civil Appeal No.7988 of 2004, decided on 10th December 2004, reported (2005)1 SCC 705, para-11 of the said judgment reads as follows.

Para:11-" under the general law, and in cases where the tenancy is governed only by the provisions of the Transfer of Property Act 1882,

J. Das

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S ICT Infrastructures (P) Ltd.
^{VS}

22

27.03.2017



BY ORDER
OF THE ESTATE OFFICER
KOLKATA PORT TRUST

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Kolkata Port Trust

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Head Assistant
30.03.2017
Estate Officer, Kolkata Port Trust

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Property Act 1882, once the tenancy comes to an end by determination of lease u/s.111 of the Transfer of Property Act, the right of the tenant to continue in possession of the premises comes to an end and for any period thereafter, for which he continues to occupy the premises, he becomes liable to pay damages for use and occupation at the rate at which the landlord would have let out the premises on being vacated by the tenant.

.....”
Undoubtedly, the tenancy under licence is governed by the Principles of the Indian Easement Act and there is no scope for denial of the same. Though the judgment referred above is in respect of under tenancy governed by Transfer of Property Act, the same principle is applicable in case of license also.

In course of hearing, the representative of KoPT states and submits that Port Authority never consented in continuing O.P's occupation into the public premises and never expressed any intention to accept O.P as tenant. It is contended that KoPT's intention to

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

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S ICT Infrastructures (P) Ltd. ^{VS}

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27.03.2017



BY ORDER OF
THE ESTATE OFFICER
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Estate Officer
KOLKATA PORT TRUST

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intention to get back possession is evident from the conduct of the Port Authority and O.P. cannot claim its occupation as "authorized" without receiving any rent demand note. The licence was doubtlessly revoked by the landlord by notice, whose validity for the purpose of deciding the question of law cannot be questioned by O.P. Therefore, there cannot be any doubt that the O.P. was in unauthorized occupation of the premises, once the license was revoked. In my opinion, institution of this proceedings against O.P. is sufficient to express the intention of KoPT to obtain an order of eviction and declaration that KoPT is not in a position to recognize O.P. as tenant under monthly license.

The Port Authority has a definite legitimate claim to get its revenue involved into this matter as per the KoPT's Schedule of Rent Charges for the relevant period and O.P. cannot claim continuance of its occupation without making payment of requisite charges as mentioned in the Schedule of Rent Charges. It has been held by the Hon'ble Apex Court of India that a person continuing in possession of

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S ICT Infrastructures (P) Ltd.

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27.03.2017



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S.D.
30/03/2017

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Office of the Estate Officer
KOLKATA PORT TRUST

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possession of the premises after termination, withdrawal or revocation of license continues to occupy it as a trespasser or as a person who has no semblance of any right to continue in occupation of the premises. Such person by no stretch of imagination can be called a licensee. Moreover, a person continue in occupation of such premises after revocation of the license is still liable to pay compensation or damages for their use and occupation and if, at any time, such compensation has been paid or accepted, it cannot undo the effect of the revocation of license(AIR 1976 SC 2340-D.H.Maniar -vs- Waman Laxman Kudav). I am fortified by the Apex Court judgment reported in JT 2006 (4) Sc 277 (Sarup Singh Gupta -Vs- Jagdish Singh & Ors.) wherein it has been clearly observed that in the event of termination of lease the practice followed by Courts is to permit landlord to receive each month by way of compensation for use and occupation of the premises, an amount equal to the monthly rent payable by the tenant. In my view, the case in hand is very much relevant for the purpose of determination damages upon the guiding principle as laid down by the Hon'ble Apex Court in the above two cases. In course

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

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S IET Infrastructures (P) Ltd.

22

27.03.2017



ESTATE OFFICER
THE PORT OF KOLKATA
KOLKATA PORT TRUST

Received by the Estate Officer
Kolkata Port Trust

30.03.2017

KOLKATA PORT TRUST

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In course of hearing, it is submitted on behalf of KoPT that the charges claimed on account of damages is on the basis of the KoPT's Schedule of Rent Charges as applicable for all the tenants/occupiers of the premises in a similarly placed situation and such Schedule of Rent Charges is notified rates of charges under provisions of the Major Port Trusts Act 1963. In my view, such claim of charges for damages by KoPT is based on sound reasoning and should be acceptable by this Forum of Law. As per law, when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract to be likely to result from the breach of it. Moreover, as per law O.P. is bound to deliver up vacant and peaceful possession of the public premises to KoPT after expiry of the period as mentioned in the notice to Quit in its original condition. As such, the issues are decided in favour of Kolkata Port Trust. I have no hesitation to observe that O.P's act in continuing

[Signature]

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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

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S ICT Infrastructures (P) Ltd.
^{VS}

22
27.03.2017



BY ORDER OF
THE ESTATE OFFICER
KOLKATA PORT TRUST

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Kolkata Port Trust

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30.03.2017
Head Assistant
Office of the Estate Officer
KOLKATA PORT TRUST

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continuing occupation is unauthorized and O.P. is liable to pay damages for unauthorized use and occupation of the Port property in question upto the date of delivering vacant, unencumbered and peaceful possession to KoPT. With this observation, I must reiterate that the ejection notice, demanding possession from O.P. as stated above has been validly served upon O.P. in the facts and circumstances of the case and such notice is valid, lawful and binding upon the parties. In view of the discussions above, the issue are decided in favour of KoPT.

NOWTHEREFORE, I think it is a fit case for allowing KoPT's prayer for eviction against O.P. u/s 5 of the Act for the following grounds/reasons :

1. That this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrear of rental dues/damages etc. as prayed for on behalf of KoPT.
2. That O.P's contention regarding grant of "irrevocable license" by the Port Authority has got no merit in the facts and circumstances of the case.

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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 1348, 1348/R of 2012 Order Sheet No. 47-

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s ICT Infrastructures (P) Ltd. ^{VS}

22
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3. That there is no foundation or basis to the contention of O.P. regarding revocation of license as granted to O.P. only on the ground of requirement of the premises by the Port Authority.
4. That O.P. while in possession and enjoyment of the Port Property and while acknowledging the jural relationship as debtor to KoPT cannot take the shield of time barred claim under Limitation Act.
5. That O.P. has failed to make out any case regarding their entitlement to go on making payment to KoPT at the rate of rent they were paying earlier to the notification of the Tariff Authority of Major Ports, effective from 07.04.2011. In fact O.P. has admitted the fact of non-payment of rental dues as per KoPT's demand on the basis of KoPT's rent schedule notified in the official Gazette with effect from 07.04.2011 as per provisions of the Major Port Trusts Act 1963.
6. That no case has been made out on behalf of O.P. as to how its occupation in the Public Premises could be termed as "authorised occupation" after issuance of notice dated 24.05.2012, demanding possession by the Port Authority.
7. That O.P. has failed to bear any witness or adduce any evidence in support of their contention regarding "authorised occupation" and O.P's occupation has become unauthorized in view of Sec.2(g) of the P.P. Act.

[Signature]

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ESTATE OFFICER
THE BOARD OF TRUSTEES
KOLKATA PORT TRUST

Secretary of the Office
Estate Officer
Kolkata

S. De
30.03.2017
Office of the
ESTATE OFFICER

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. 1348, 1348/R of 2012 Order Sheet No. 48-

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S ICT Infrastructures (P) Ltd. ^{VS}

22
27.03.2017



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8. That right from the date of expiry of the period as mentioned in the said notice to quit dated 24.05.2012, O.P. has lost its authority to occupy the Public Premises and O.P. is liable to pay damages for wrongful use and enjoyment of the Port Property 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.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. Needless to mention that any action taken by the Port Authority on the strength of this order must abide by the decision of any competent Court or Forum of law, if any. 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

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THE ESTATE OFFICER
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Head Assistant
Office of the Estate Officer
KOLKATA PORT TRUST

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. 1348, 1348/R Of 2012 Order Sheet No. 49-

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S ICT Infrastructures (P) Ltd.
^{VS}

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27.03.2017

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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.

KoPT is directed to submit a report regarding its claim on account of damages against O.P., indicating therein the details of the computation of such damages with the rate of charges so claimed for the respective period (details of computation with rates applicable for the relevant period) for my consideration in order to assess the damages as per the Act and the Rules made thereunder. All concerned are directed to act accordingly.

In my opinion KoPT's claim for damages upto January, 2017 for Rs. 95,78,882/- (excluding interest for delayed payment) for wrongful occupation may be payable by O.P. as it is gathered in course of hearing that the charges so claimed by KoPT is on the basis of the Schedule of Rent Charges published under the Authority of Law as per provisions of the Major Port Trusts Act 1963. In course of hearing, I find that KoPT has made out an arguable claim against O.P., founded with sound reasoning. I make it clear that Kolkata Port Trust is entitled

J. M. Das

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BY ORDER OF
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KOLKATA PORT TRUST

Secretary of the Board
Kolkata Port Trust

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Secretary of the Board
KOLKATA PORT TRUST

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 1348, 1348/R of 2012 Order Sheet No. 50-

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S ICT Infrastructures (P) Ltd. ^{VS}

22
27.03.2017



**BY ORDER OF
THE ESTATE OFFICER
KOLKATA PORT TRUST**

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Kolkata Port Trust

f.s.De
30.03.2017
Head of the Estate Office
KOLKATA PORT TRUST

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entitled to claim damages against O.P. for unauthorized use and occupation of the public premises upto the date of recovery of clear, vacant and unencumbered possession of the same in accordance with Law and KoPT is entitled to claim interest upon dues/charges right from the date of incurrance of liability by O.P. as per KoPT's Rule. KoPT is accordingly directed to submit a statement comprising details of its calculation of damages indicating there in the details of the rate of such charges together with the basis on which such charges are claimed against O.P. for my consideration for the purpose of assessment of damages as per Rule made under the Act.

I must reiterate that KoPT's total claim against O.P. on account of dues/charges for compensation for wrongful use and enjoyment of the property for Rs.1,09,99,811.50 upto January,2017 which includes interest for delayed payment of Rs. 14,20,929.50 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.

f.s.De

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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

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s I.C.T Industries vs (P) Add.

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I make it clear that in the event of failure on the part of O.P. to pay the amounts to KoPT as aforesaid, Port Authority is entitled to proceed further for recovery of its claim in accordance with law.

All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL


(A. Chaudhuri)
ESTATE OFFICER.

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



BY ORDER OF
THE ESTATE OFFICER
KOLKATA PORT TRUST

One copy of the Order
Filed by the Estate Officer
Kolkata Port Trust

f s-de
30.03.2017
Head of the Office
KOLKATA PORT TRUST