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ofc

REGISTERED POST WITH A/D.

HAND DELIVERY/AFFIXATION ON PROPERTY

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

15, STRAND ROAD (4TH FLOOR) KOLKATA-700001

COURT ROOM AT THE 2ND FLOOR (OLD BLDG.)

15, STRAND ROAD, KOLKATA-700 001

Form "G" PROCEEDINGS NO.870/D OF 2007
ORDER NO.36 DATED:16.05.2018

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

To

M/s. Fab Leathers Ltd.,
1/C, Mandeville Gardens,
Kolkata-700019.



Whereas I, the undersigned, am satisfied that you were in unauthorised occupation of the public premises mentioned in the Schedule below:

And whereas by written notices dated 29.03.2007 and 18.05.2017 you were called upon to show- cause on/or before 10.05.2007 and 12.06.2017 respectively why an order requiring you to pay a total sum of Rs.1,57,81,539.76/- (Rupees One Crore Fifty Seven Lakhs Eighty One thousand Five hundred Thirty Nine and paise Seventy Six only.) being damages payable together with compound interest for unauthorised use and occupation of the said premises, should not be made.

And whereas I have considered your objection and/or the evidence produced by you.

Now, therefore, in exercise of the powers conferred on me by Sub-section (2) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971, I hereby order you to pay the sum of Rs.1,57,81,539.76/- (Rupees One Crore Fifty Seven Lakhs Eighty One thousand Five hundred Thirty Nine and paise Seventy Six only.) for the period 08.11.2003 to 20.04.2016 assessed by me as damages on account of your unauthorised occupation of the premises to Kolkata Port Trust by 15.06.2018.

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 interest @ 18% per annum upto 06.04.2011 and thereafter @ 14.25% per annum on the above sum with effect from the date of incurrance of liability, till its final payment in accordance with Kolkata Port Trust's Notification Published in Official Gazette/s as per Rule.

PLEASE SEE ON REVERSE



: 2 :

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

SCHEDULE

The said piece or parcel of land measuring 2373.021 sq.m. or thereabouts in the 1st belt (land lying within 50 mtrs. from the road) and 2008.934 sq.m. or thereabouts in the 2nd belt (Land lying beyond 50 mtrs. from the road) altogether measuring 4381.955 sq.m. or thereabouts situated at Hide Road Extension near its junction with Sonapur Road. Thana: West Port Police Station. Dist. 24 Parganas Registration District. Alipore. It is bounded on the north by Sonapur Road, on the east by Hide Road Extension, on the south by the Trustees' strip of open land beyond which there is drain and on the west by the Trustees' strip of open land reserved as margin of safety alongside their way track. Trustees' means the Board of Trustees for the Port of Kolkata.

Dated: 16.05.2018

cct c.l.o-

Signature and seal of the
Estate Officer.

सम्मान विना जाँज
Contents not Verified
विधि विभाग
Legal Department
कोलकाता पोर्ट ट्रस्ट
Kolkata Port Trust
18/5/18

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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. 870, 870/D of 2017 Order Sheet No. 36

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s Fab Leathers ^{VS}

36
16-05-2018

FINAL ORDER

The instant proceedings no. 870, 870/D arose out of an application dated 10.07.2006 filed by KoPT, Applicant herein, praying for eviction, recovery of damages etc. against M/s Fab Leathers Ltd, the O.P. herein, under relevant provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. On the basis of KoPT's application, this Forum issued Notice/s u/s 4 & 7 of the Act on 29.03.2007. O.P. contested the matter through its Ld Advocates and it came out that O.P. has filed 2 Writ Petitions being no. 217 of 2006 & 1773 of 2005, before Hon'ble High Court, Calcutta. Both the said Writ Petitions came to be dismissed on 15.02.2016. It also came out that a Title Suit bearing no. 231 of 2005 has been filed by the O.P. before the Ld Alipore Court. The said case is said to be still pending, without any order of restraint on this Forum. Be that as it may, during continuance of the proceedings, O.P. handed over vacant and peaceful possession of the public premises in question to KoPT on 20.04.2016, and KoPT then came up with an application dated 05.05.2016 claiming damages/compensation for the period of unauthorised occupation of the O.P. On the basis of said application, this Forum, on 18.05.2017 issued another Notice u/s 7(2) of the Act on the O.P., for the balance period of its unauthorised occupation, i.e. from 01.02.2006 to 20.04.2016. It was made clear in the Order no. 24 dated 10.05.2017 that this Notice is in addition to the earlier Notice u/s 7 (2) of the Act dated 29.03.2007 claiming damages/compensation charges for the period of unauthorised occupation from 08.11.2003 to 31.01.2006.

BY ORDER OF
THE ESTATE OFFICER
KOLKATA PORT TRUST
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
KOLKATA PORT TRUST
18-05-2018
OFFICE OF THE ESTATE OFFICER
KOLKATA PORT TRUST

2014



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

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O.P. contested the matter and filed an application on 10.07.2017. O.P. also filed a Reply to the Show Cause on 06.11.2017. It is seen from record that KoPT placed on record the updated statement of accounts, indicating clearly the dues/damages claimed from the O.P. As is recorded in Order no. 29 dated 23.08.2017 of this Forum, said statement of accounts has been handed over to O.P. on 02.08.2017. On 03.01.2018, after hearing both the parties, this Forum proceeded to reserve the final order.

I have carefully considered the submissions of the parties in the light of the materials available on record. It is a settled principle of law that after expiry of the lease, the occupation becomes "unauthorised" in terms of Sec. 2 (g) of the P.P. Act, 1971. As per the said Section, 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. Moreover, it is seen that O.P. has failed to obtain any fresh tenancy from the Port Authority, after expiry of lease earlier granted to it. Therefore, there cannot be any doubt or ambiguity regarding the treatment of the occupation of the O.P. as "unauthorised" right from the date of expiry of the lease in question.

It is also a settled principle of law that a person is liable to compensate the landowner, in case of unauthorised occupation of land. As per law, O.P. is

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THE ESTATE OFFICER
KOLKATA PORT TRUST

CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
KOLKATA PORT TRUST

HEAD ASSISTANT
OFF. OF THE ESTATE OFFICER
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



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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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bound to deliver up vacant and peaceful possession of the public premises in its original condition to KoPT after expiry of the contractual period of lease, which the O.P. had ostensibly failed to do. "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 lease in question, O.P. had lost its authority to occupy the public premises, 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 (Atma Ram's case) of the said judgement 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, 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.

Now, the question arises at what rate O.P. is/was liable to pay the compensation/damages. KoPT has submitted that during the period of unauthorised occupation, O.P. is liable to pay damages/compensations as per rates notified in the

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KOLKATA PORT TRUST
16.05.2018
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

2019



Proceedings No. 870, 870/D of 2017 Order Sheet No. 39

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S Fab Leathers VS

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16.05.2018

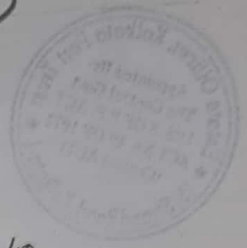
Official Gazette from time to time by the Tariff Authority for Major Ports (TAMP). It is the submission of KoPT that such rates are uniformly applicable on all users of the port property and an unauthorised occupant like that of the O.P. cannot claim any preferential treatment. In my view, with the expiry of the lease in question, the rates, if any, mentioned in the lease deed have lost their relevance, and O.P. cannot claim to be governed by such old rates which have expired in all sense of law. I take note of the fact that in 1997, Sec. 52 of the Major Port Trusts Act, 1963 was repealed and a different mechanism was evolved by dint of which the power to fix rent was given to the Tariff Authority for Major Ports. Sec. 49 of said Act was also amended by the Port Laws (Amendment) Act, 1997 in 1997. The validity of these provisions of the said 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 such a situation, I find that the rates notified by the said TAMP has statutory force and is binding on all concerned. KoPT has produced detailed statement of accounts, regarding computation of the damages for each month of unauthorised occupation, based on the rates notified by the TAMP and I find that such calculations in order. During course of the hearing, O.P. did not question the validity of such submissions of KoPT. On the other hand, O.P. insisted that the hearings be adjourned/deferred in view of pendency of T.S. 231/2005 before the Ld Alipore Court. In my view, such submission of O.P. is devoid of merit, inasmuch as Sec. 15 of the P.P. Act puts an explicit and complete



BY ORDER OF
THE ESTATE OFFICER
KOLKATA PORT TRUST
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
KOLKATA PORT TRUST
HEAD ASSISTANT
OFFICE OF THE ESTATE OFFICER
KOLKATA PORT TRUST
18.05.2018

[Handwritten 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

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16.05.2018

bar on Court's jurisdiction to entertain any matter relating to eviction of unauthorized occupants from the public premises and recovery of dues and/or damages, etc. KoPT has come up with an application for recovery of damages, interest etc. from the O.P. on the ground of unauthorised occupation of the public 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 serving Show Cause Notice u/s 7 of the Act is very much maintainable and there cannot be any question about the maintainability of proceedings before this Forum of Law. During course of hearing, the parties did not communicate any order of stay/restraint on this Forum, from any other competent Court of Law. As such, I am unable to accede to such request of the O.P.

In view of the discussions above, I have no hesitation to conclude that the calculations of monthly damages/compensation amounts by KoPT are correct and just and O.P. is liable to pay such amounts to KoPT. I may add that O.P. is also liable to pay interest, for default in payment of damages, as per the rates mentioned in the Gazette Notifications of the TAMP from time to time.

NOW THEREFORE, I hereby assess the damages payable by the O.P. for wrongful and unauthorised occupation of the public premises in question, for the period 08.11.2003 to 20.04.2016 [taking into account the two Notice/s u/s 7(2) of the Act, issued on 29.03.2007 and 18.05.2017 respectively] as Rs 1,57,81,539.76/- (principal amount). The O.P. is directed to pay the said amount to KoPT by

BY ORDER OF
THE ESTATE OFFICER
KOLKATA PORT TRUST
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
KOLKATA PORT TRUST
S. D. 05-2018
HEAD ASSISTANT
OFFICE OF THE LD. ESTATE OFFICER
KOLKATA PORT TRUST

Damages
[Signature]



Estate Officer, Kolkata Port Trust

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

2017

Proceedings No. 870, 870/D Of 2017 Order Sheet No. 41

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s Fab Leathers ^{VS}

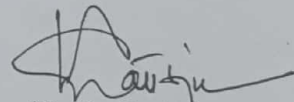
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16.05.2018

15.06.2018. O.P. shall be liable to pay simple interest @ 18% per annum till 06.04.2011 and thereafter @14.25% per annum on the above sum from the date of incurrance of liability viz. since 08.11.2003 till its final payment in accordance with the relevant notification/s published in the Official Gazette. The formal order u/s 7 of the Act is signed accordingly.

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


(K. Chatterjee)
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

CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
KOLKATA PORT TRUST

HEAD ASSISTANT
OFFICE OF THE ESTATE OFFICER
KOLKATA PORT TRUST
12/05.2018