



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.29 DT 28.10.2010
PROCEEDINGS NO.864 OF 2007

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

73331

-Vs-

M/S. BADRI PRASAD ASHOK KUMAR.

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. BADRI PRASAD ASHOK KUMAR, "HONG KONG" HOUSE, 31, B. B. D. BAG,
DALHOUSIE SQUARE (SOUTH), KOLKATA-700001 is in unauthorized occupation of the
Public Premises specified in the Schedule below:

REASONS

- i) That you have violated the fundamental conditions for grant of lease (upon deed of assignment of the Mother lease in question) in respect of the public premises.
- ii) That you have no authority under law to occupy the public premises after expiry of the period of the Mother lease in question on and from 8.8.2001.
- iii) That your contention regarding "Tenant Holding Over" is not at all supported by fact and law as well.
- iv) That your act in recognizing M/s. Saket Enterprises as permitted sub-tenant in place of M/s. Atmaram & Co. is highly irregular and such act is in clear violation of the condition of tenancy under lease as granted by the Port Authority.
- v) That your right to occupy the public premises upon demand for possession from KoPT's side ceases on and from 8.8.2001 and notice demanding possession or to quit dated 26.7.2002 and 16.11.2005 issued from KoPT's side are valid, lawful and binding upon the parties.
- vi) That your reply to the Show Cause Notice u/s.4 of the Act fails to disclose any right to occupy the public premises after expiry of the lease period in question.
- vii) That you have failed to bear any witness or adduce any evidence in support of your occupation as "authorized occupation".
- viii) That your occupation is unauthorized in view of Sec.2(g) of the P. P. Act.
- ix) That you are liable to pay damages to KoPT for wrongful use and occupation of the public premises as per KoPT's Schedule of Rent Charges as notified in Calcutta Gazette (applicable for all occupants/tenants of KoPT in a similarly placed situation) in accordance with the provisions of the Major Port Trusts Act, 1963 (prior to amendment with effect from 9.1.1997) for the relevant period upto the date of handing over of clear, vacant and unencumbered possession to Port Authority.

A copy of the reasoned order No.29 dated 28.10.2010 is attached hereto which also forms a part of the reasons.

Please see on reverse

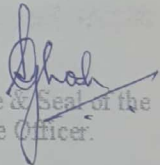
NOW, THEREFORE, in exercise of the powers conferred on me under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order the said M/S. BADRI PRASAD ASHOK KUMAR, "HONG KONG" HOUSE, 31, B. B. D. BAG, DALHOUSIE SQUARE (SOUTH), KOLKATA-700001 and 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. BADRI PRASAD ASHOK KUMAR, "HONG KONG" HOUSE, 31, B. B. D. BAG, DALHOUSIE SQUARE (SOUTH), KOLKATA-700001 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

Piece or parcel of land comprising 4802.35 sq.m. or thereabout (1st belt lying within 30.50 mtrs from road) and 3214.93 sq.m. or thereabouts (2nd belt land lying beyond 30.40 mtrs from road) altogether measuring 8017.28 sq.m. or thereabouts situated at Sonai, Thana S.P.P.S., Dist: South 24 Parganas, Registration District: Alipur. It is bounded on the north by the Commissioners land leased to M/s. Imperial Tobacco Co. of India Ltd., on the east by Sonai Road, on the South by the Commissioners land previously leased to M/s. Machinery Manufacturers Corporation Ltd. and on the west partly by Commissioners' Sale Yard and partly by land leased to M/s. Imperial Tobacco Co. of India Ltd.

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

Dated: 2.11.2010


Signature & Seal of the
Estate Officer.

COPY FORWARDED TO THE LAND MANAGER/ LEGAL ADVISER, KOLKATA PORT TRUST FOR INFORMATION.

CONTENTS NOT VERIFIED
Legal Department
Kolkata Port Trust

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 - 700 001 AND
COURT ROOM AT THE 2ND FLOOR (OLD BLDG.)
15 STRAND ROAD, KOLKATA - 700 001

PROCEEDINGS NO. **864** OF **2007**
ORDER NO. **29** DATED **28.10.2010**

FORM "G"

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

To

Shri / Smt. / Km. / M/s.
M/s. Badri Prasad Ashok Kumar,
"HONG KONG" House,
31, B.B.D. Bag, Dalhousie Square (South)
Kolkata-700001.

Whereas I, the undersigned, am satisfied that you are / were in unauthorised occupation
of the Public Premises mentioned in the Schedule below :

An whereas by a written notice dated **27.2.2007** you are called upon to
show-cause on or before **29.3.2007** why an order requiring you to pay of
Rs. **64,55,502.00** (Rupees **Sixty four Lakhs fifty five thousand**)
five hundred two only)
being damages payable together with simple 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.

~~And whereas you have not made any objections or produced any evidence before the~~
~~said date~~

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. **64,55,502.00** (Rupees **Sixty four Lakhs fifty five**
thousand five hundred two only)) assessed by me as damages on account of your
unauthorised occupation of the premises to Kolkata Port Trust by **31.12.2010**

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 at the rate of **15%** per annum on
the above sum w.e.f. upto **19.9.96** and thereafter @ **18%** per annum till
its final payment in accordance with Kolkata Port Trust's Notification Published in Calcutta
Gazettee/s as per Kolkata Port Trust's Rule.

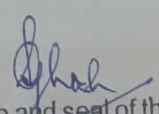
PLEASE SEE ON REVERSE.

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

S C H E D U L E

Piece or parcel of land comprising 4802.35 sq.m. or thereabout (1st belt lying within 30.50 mtrs from road) and 3214.93 sq.m. or thereabouts (2nd belt land lying beyond 30.40 mtrs. from road) altogether measuring 8017.28 sq.m. or thereabouts situated at Sonai. Thana S.P.P.S, Dist South 24 Parganas, Registration District: Alipore. It is bounded on the north by the Commissioners land leased to M/s. Imperial Tobacco Co. of India Ltd., on the east by Sonai Road, on the south by the Commissioners land previously leased to M/s. Machinery Manufactures Corporation Ltd. and on the west partly by Commissioners' Sale Yard and partly by land leased to M/s. Imperial Tobacco Co. of India Ltd. Trustees' means the Board of Trustees for the Port of Kolkata.

Dated: 02.11.2010


Signature and seal 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. 864, 864/D of 2007 Order Sheet No. 26

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s Badri Prasad ^{VS} Ashoke Kumar

29

FINAL ORDER

28.10.2010



BY ORDER OF
THE ESTATE OFFICER
KOLKATA PORT TRUST

BY ORDER OF
THE ESTATE OFFICER
KOLKATA PORT TRUST

Head Assistant
Office of the Ld. Estate Officer
KOLKATA PORT TRUST

The factual matrix 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 measuring 8017.28 sq.m. at Sonai, Thana: South Port Police Station, Dist: South 24 Parganas, West Bengal comprised under Occupation No.D-223/4/A was allotted to M/s. Badri Prasad Ashok Kumar, O.P. herein, for a period upto 7.8.2001 on the strength of a long term lease and O.P. has no authority under law to occupy the Port property after expiry of the period of lease in question AND O.P. is under obligation to pay damages for its wrongful use and occupation of the Port property. It may be recalled that the Deed of Lease in question was executed by and between the predecessors in interest of O.P. and the erstwhile Commissioners for the Port of Kolkata for a period of 35 years with effect from 8th August 1966 without any option for renewal and O.P. became a lessee in respect of the public premises in question for the unexpired portion of the lease by virtue of a Deed of Assignment for the said unexpired period of lease in favour of O.P. on the same terms and conditions as embodied in 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. 864/846 864/D of 2007 Order Sheet No. 27

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s Badri Prasad ^{VS} Ashoke Kumar

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29
28.10.2010

in the original lease (Mother lease). It is also the case of KoPT that O.P. has parted with possession of the public premises unauthorisedly in contravention to the permission for creation of sub-tenancy under Plate No.SF-100/73 which clearly speaks for creation of sub-tenancy in favour of 1) M/s. Banshidhar Sew Bhagwan and Co. 2) M/s. Atmaram & Co.,3) M/s. Umed Bhai & Co. & 4) M/s. S. K. Manibhai & Co. only and not to others. It is alleged on behalf of KoPT that O.P. has encroached upon KoPT's khas property. However, in course of hearing, KoPT did not press upon the matter of "encroachment" and emphatically relied upon the admitted position of expiry of period of lease for declaration of O.P's occupation as unauthorized. It is noticed that encroachment of KoPT's property was taken as a point in KoPT's application dated 22.3.2006 and O.P. denied the allegation of encroachment. But no specific reply in connection with encroachment has been made on behalf of O.P. though a sketch plan showing the details of "encroachment" was provided to Madhurima Das, Advocate of M/s. Singvi & Co., Advocates, acting on behalf of O.P. on 18.12.2007. This Forum of Law formed its opinion to proceed against O.P. under the relevant provisions of the

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Head Assistant
Office 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

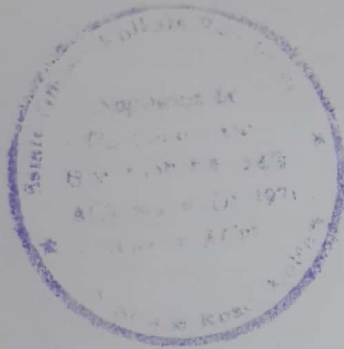
Proceedings No. 864, 864/D
846, 846/D of 2007 Order Sheet No. 28

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s Badni Prasad Ashoke Kumar ^{VS}

29

28.10.2010



BY ORDER OF
THE ESTATE OFFICER
KOLAKATA PORT TRUST

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

Head Assistant
of the Estate Officer
KOLAKATA PORT TRUST

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of the Act and Rules made thereunder for adjudication of KoPT's prayer for order of eviction and recovery of damages. Accordingly, Show Cause Notice u/s.4 of the Act (for order of eviction) and Show Cause Notice u/s.7 of the Act (for realization of damages) both dated 27.2.2007 were issued to O.P. to file reply to the Show Cause Notices and hearing etc. O.P. entered into appearance and contested the matter through its Advocate by filing written objection on 21.6.2007 and supplementary objection as filed on 4.10.2007. In course of hearing, in order to adjudicate upon KoPT's prayer for incorporation of additional grounds to the Show Cause Notice u/s.4 of the Act dated 27.2.2007, another Show Cause Notice u/s.4 of the Act was issued to O.P. on 29.10.2007. Reply to the Show Cause Notice u/s.4 of the Act incorporating the additional ground of carrying out unauthorized construction etc., another reply to the Show Cause Notice has been filed on behalf of O.P. on 6.12.2007. I have duly considered the rejoinder/reply from KoPT's side as filed on 12.7.2007, 18.12.2007 and petition on behalf of O.P. as filed on 28.7.2008 and KoPT's reply dated 27.11.2008. In course of hearing, Mr. Jishnu Saha, Advocate for O.P. submits that 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. 864, 864/D of 2007 Order Sheet No. 29

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s Badvi Prasad ^{VS} Ashoke Kumar

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that the lease in question had not expired on and from 5.12.2005 as mentioned in the Show Cause Notice and upon expiry of the period of lease with effect from 7.8.2001 there can only be a case of "Tenant Holding Over" from the period 7.8.2001 to 5.12.2005. It is contended that there should not be any question of making payment on account of damages as per Sec.7 notice. KoPT on the other hand argued that question of "Holding Over" does not arise as Port Authority never consented in O.P's occupation after expiry of the lease period in question on and from 8.8.2001. It is argued with great emphasis that Show cause Notice u/s.4 of the Act discloses the causes of action on the part of KoPT in connection with ejectment notice dated 16.11.2005 and KoPT's petition as filed on 22.3.2006 forms a part of the notice u/s.4 of the Act. It is submitted that issuance of Show Cause Notice u/s.4 of the Act is the initiation of adjudication process and there cannot be any denial on the part of O.P. regarding expiry of the lease period in question on and from 8.8.2001 without any option for renewal. This Forum of Law by order dated 26.7.2007 made it clear that both parties are at liberty to deal with the factual aspect involved into this matter for effective

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OFFICE OF THE
ESTATE OFFICER
KOLKATA PORT TRUST

For and on behalf of the Order,
Signed by the Estate Officer
Kolkata

Head Assistant
Office of the Ld. Estate Office
KOLKATA

Estate Officer, Kolkata Port Trust

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

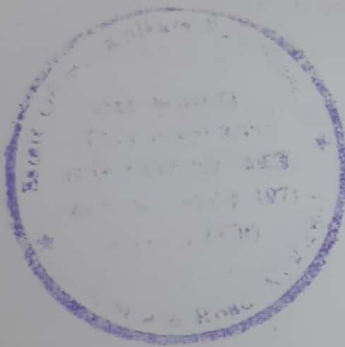
Proceedings No. 864, 864/D of 2007 Order Sheet No. 30

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s Badri Prasad Ashoke Kumar ^{VS}

29

28.10.2010



BY ORDER OF
ESTATE OFFICER
KOLKATA PORT TRUST

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Passed by the Estate Officer
Kolkata Port Trust

Head Assistant
Office of the Estate Officer
KOLKATA PORT TRUST

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effective adjudication of the matter and formation of opinion by this Forum of Law on any factual aspect may be rectified at any stage of hearing to reach to its finality/satisfaction as per procedure laid down in the P. P. Act itself. In course of hearing, Mr. Saha, Advocate denied the KoPT's allegation regarding unauthorized creation of sub-tenancy and carrying out of unauthorized construction. Finally, it is argued on behalf of KoPT that the sole ground of expiry of the contractual period of lease in question is sufficient for obtaining order of eviction u/s.5 of the Act. Mr. Saha, Advocate states and submits that unauthorized parting with possession by O.P. (Referring to Para-11 of the supplementary objection) is not a fact. It is submitted that name of M/s. Atmaram Co. has been changed in the name of M/s. Saket Enterprises with the knowledge of KoPT. KoPT however, states that change of name and/or induction of M/s. Saket Enterprises was not within the knowledge of KoPT. Mr. Saha, Advocate argued that the ejection notice of KoPT recognized the existence of relationship between KoPT and O.P. upto 14.12.2005 and O.P. paid Rs.77,056.46 to KoPT as per demand and O.P.'s entitlement to get the renewal of lease is established beyond doubt.

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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. 864, 864/D of 2007 Order Sheet No. 30

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s Badri Prasad Ashoke Kumar VS

29

28.10.2010



BY ORDER OF
THE ESTATE OFFICER
KOLKATA PORT TRUST

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Passed by the Estate Officer
Kolkata Port Trust

Head Assistant
Office of the Estate Officer
KOLKATA PORT TRUST

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effective adjudication of the matter and formation of opinion by this Forum of Law on any factual aspect may be rectified at any stage of hearing to reach to its finality/satisfaction as per procedure laid down in the P. P. Act itself. In course of hearing, Mr. Saha, Advocate denied the KoPT's allegation regarding unauthorized creation of sub-tenancy and carrying out of unauthorized construction. Finally, it is argued on behalf of KoPT that the sole ground of expiry of the contractual period of lease in question is sufficient for obtaining order of eviction u/s.5 of the Act. Mr. Saha, Advocate states and submits that unauthorized parting with possession by O.P. (Referring to Para-11 of the supplementary objection) is not a fact. It is submitted that name of M/s. Atmaram Co. has been changed in the name of M/s. Saket Enterprises with the knowledge of KoPT. KoPT however, states that change of name and/or induction of M/s. Saket Enterprises was not within the knowledge of KoPT. Mr. Saha, Advocate argued that the ejection notice of KoPT recognized the existence of relationship between KoPT and O.P. upto 14.12.2005 and O.P. paid Rs.77,056.46 to KoPT as per demand and O.P.'s entitlement to get the renewal of lease is established beyond doubt.

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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. 864, 864/D of 2007 Order Sheet No. 31

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s Badri Prosad ^{VS} Ashoke Kumar

29
28.10.2010



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ESTATE OFFICER
KOLKATA PORT TRUST

Head of the Order,
Estate Officer
Kolkata Port Trust

Head Assistant
of the Estate Office
KOLKATA PORT TRUST

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After careful consideration of all the objections/replies to the Show Cause Notice/s and rejoinder/reply from KoPT's side together with all the papers/documents as brought before me in course of hearing together with the written notes of submissions/arguments as filed on behalf of the parties, I find that following issues have come up for adjudication.

1. Whether the mother lease dated 15.9.1967 executed and registered by Badri Prosad Poddar (Predecessor in interest of O.P) and erstwhile Commissioners for the Port of Calcutta, which was subsequently assigned (unexpired portion of the lease) in favour of O.P., contains any provision for exercising option for renewal or not.
2. Whether statement on behalf of O.P. regarding institution of Suit for specific performance of contract and service of notice to KoPT under Section 120 of the Major Port Trusts Act, 1963 has got any relevance in deciding any issue before this Forum of Law 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

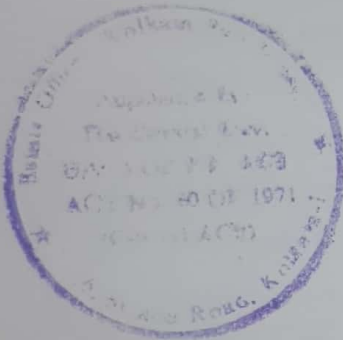
Proceedings No. 864, 864/D of 2007 Order Sheet No. 32

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s Badhi Prasad ^{VS} Ashoke Kumar

29

28.10.2010



BY ORDER OF
THE ESTATE OFFICER
KOLKATA PORT TRUST

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Passed by the Estate Officer
Kolkata Port Trust

Head Assistant
Office of the Estate Officer
KOLKATA PORT TRUST

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3. Whether the contention of O.P. with regard to "Tenant Holding Over" under Section 116 of the Transfer of Property Act has got any merit or not.
4. Whether after expiry of the contractual period of lease (mother lease), there is any authority under law to occupy the public premises by O.P. or not.
5. Whether O.P. has violated conditions of tenancy under lease by way of carrying out unauthorized construction and by way of encroaching upon KoPT's property or not.
6. Whether O.P. has parted with possession of the public premises by way of inducting unauthorized sub-tenant or not.
7. Whether notice demanding possession of the Port property by Port Authority dated 16.11.2005 is valid, lawful and binding upon the parties or not.
8. Whether O.P. is liable to pay damages for its wrongful occupation right from the date of expiry of the period of lease on and from 8.8.2001 or not.

With regard to issue No.1 it was submitted on behalf of O.P. that statement of KoPT regarding expiry of the period of lease (mother lease) on

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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

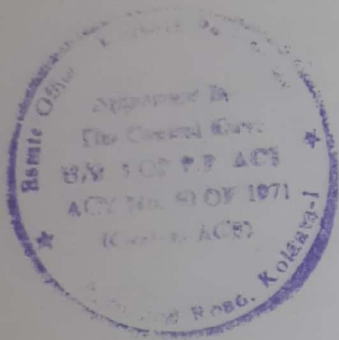
Proceedings No. 864, 864/D of 2007 Order Sheet No. 33

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s Badvi Prasad ^{VS} Ashoke Kumar

29

28.10.2010



BY ORDER OF
ESTATE OFFICER
KOLKATA PORT TRUST

For and on behalf of the Order/s
issued by the Estate Officer
Kolkata Port Trust

Head Assistant

Estate Officer

Kolkata Port Trust

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on and from 7.8.2001 without any option for renewal is not a fact. However, the matter is substantiated by KoPT through production of the photocopy of the original lease deed in question. It is found that the lease terms and conditions do not provide any clause for exercising option for renewal by O.P. The factual aspect is however not contradicted by the Advocate for O.P. As such, I do not find any necessity to discuss the matter elaborately. Hence, the issue is decided accordingly.

On issue No.2, I must say that P.P. Act provides a complete code for adjudication of the matter of unauthorized occupation and recovery of arrear rental dues and damages, etc. in respect of the public premises in question within the four corners of the Act. Entertaining any matter with regard to adjudication of prayer/s connected with the subject matter in dispute is not statutorily barred in any event particularly in view of bar in Court's jurisdiction to entertain any matter with regard to the disputes between the parties in respect of the public premises in question under Section 15 of the Act. Everyone has the liberty under law to ventilate his

[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

Proceedings No. 864, 864/D of 2007 Order Sheet No. 34

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/c Badri Prasad VS Ashoke Kumar

29

28.10.2010



BY ORDER OF
THE ESTATE OFFICER
KOLKATA PORT TRUST

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Passed by the Estate Officer
Kolkata Port Trust
Head Assistant
Office of the Estate Officer
KOLKATA PORT TRUST

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his grievance before the appropriate Forum of Law for reliefs. In a situation where KoPT has come up with application for relief/s before this Forum of Law, I do not find that the statement of O.P. under issue No.2 has got any relevance at this stage. The issue is decided accordingly.

Issues No.3 & 4 are taken up together for convenient discussion as the issues are related with each other. In course of hearing the Advocate for O.P. strongly submits with argument that Show Cause Notice under Section 4 of the Act clearly speaks for determination of lease by KoPT by service of notice dated 16.11.2005 and O.P. was holding the property as a "Tenant Holding Over" for the period 8.8.2001 to 5.12.2005 and there is no question of unauthorized occupation by O.P. during such period. It is submitted that O.P. has paid rent as per KoPT's demand for Rs.77,056.46 and O.P. is holding the property with the knowledge and consent of KoPT. A strong reliance is placed upon Section 116 of the T.P. Act in order to constitute a clear case of holding over in favour of O.P. Earlier by order of this Forum of Law it was made clear that the issuance of Show Cause

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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. 864, 864/D of 2007 Order Sheet No. 35

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s Badri Prasad ^{VS} Ashoke Kumar

29

28.10.2010



BY ORDER OF
THE ESTATE OFFICER
KOLKATA PORT TRUST

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

Head Assistant
of the Estate Office

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Show Cause Notice under Section 4 of the Act, incorporating certain grounds for declaration as "unauthorized occupant" to a Noticee like O.P. is the initiation of adjudication process as envisaged under the P.P. Act and in order to reach to the subjective satisfaction over a fact, enquiry under the Act is in process. It is evident from the Show Cause Notice itself that issuance of Ejectment Notice by KoPT dated 16.11.2005 bearing No.Lnd.4499/IV/05/5051 itself constitutes KoPT's causes of action. The grounds mentioned in the Ejectment Notice of KoPT dated 16.11.2005 constitutes the foundation of formation of my opinion to proceed against O.P. under Section 4 of the Act. During the period of enquiry process, for effective adjudication of the matter from 'opinion' to 'satisfaction', parties are at liberty to put forward any matter/contention to support their case. The fact remains whether O.P. can claim a "Tenant Holding Over" in the facts and circumstances of the case or not. A survey on factual aspect reveals that the mother lease did not contain any right on the part of O.P. for exercising option for renewal of the lease. It reveals that KoPT by letter No.Lnd.4499/II dated 26.7.2002 demanded possession of the public

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Estate Officer, Kolkata Port Trust

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(Eviction of Unauthorised Occupants) Act 1971

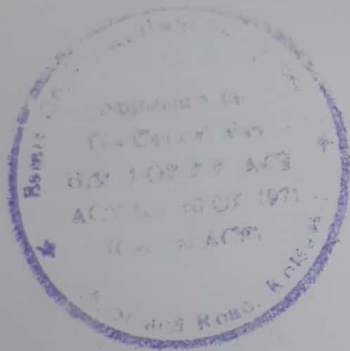
Proceedings No. 864, 864/D of 2007 Order Sheet No. 36

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s Badri Prasad VS Ashoke Kumar

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public premises from O.P. on the ground of expiry of the lease period in question earlier to the service of notice dated 16.11.2005. A conjugal reading of these two letters will definitely lead to the conclusion that the element of consent for occupation in the Port property on the part of the Port Authority was absent. Moreover, KoPT has come up with an application for recovery of possession of the Port property. Now the legal aspect in deciding a question of "Tenant Holding Over" is very important. In order to constitute holding over there must be the element of consent on the part of the landlord/lessor like KoPT or acceptance of rent by KoPT and at the same time the provision under Section 116 of P.P. Act could be attracted only in case where there is no agreement to the contrary. Now there is no material to show that KoPT had accepted rent from O.P. for the period after expiry of the contractual period of lease on and from 8.8.2001. The period for which relationship as lessor/landlord and lessee/tenant was in existence, rent demands were made and there is nothing wrong on the part of KoPT as landlord of the premises in accepting payment of Rs.77,056.46 as rental dues from O.P. I am firm in holding that such

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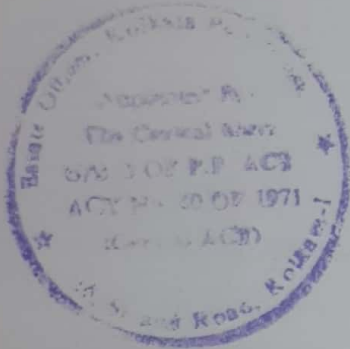
Proceedings No. 864, 864/D of 2007 Order Sheet No. 37

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s Badri Prosad ^{VS} Ashoke Kumar

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such acceptance of rent by KoPT does not constitute consent on the part of KoPT in holding /occupying the premises by O.P. Moreover, the mother lease deed in question specifically provides for yielding up of the demised land at the expiry or determination of the term by O.P. The provision under lessee's covenant with KoPT as per the mother lease deed reads as follows:

"AND will at the expiration or sooner determination of the said term quietly and peacefully yield up vacant possession of the demised land as a whole unto the Commissioners with all buildings, erections and other structures, if any, erected thereon that shall not have been previously removed by the lessee".

Needless to mention that O.P. came into occupation on the strength of a deed of assignment of the unexpired portion of the mother lease dated 15.9.1967 granted in favour of Badri Prosad Poddar by the Port Authority and O.P. is bound by the terms and conditions of the said mother lease. Moreover, the lessee's liability as provided in the Transfer of Property Act clearly speaks for handing over of possession of

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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of the land in question in its original condition to KoPT/lessor after determination of the lease by efflux of time limited thereby. In view of the discussion above, I do not find any merit to the submissions/arguments on behalf of O.P. regarding "Tenant Holding Over". O.P. cannot claim allotment/grant of lease from the Port Authority as a matter of right. The matter of allotment of property by a landlord/KoPT cannot be dictated by O.P. and the right of a landlord like KoPT in dealing with its property should not be interfered. It is a settled question of law that O.P. has no legal right to occupy the property after expiry of the lease period in question and I am left with no other alternative but to hold that a lessee like O.P. has no authority under law to occupy the public premises after expiry of the contractual period of the mother lease in question. Hence, the issues are decided against O.P.

Deliberations on issues No.5 & 6 may not be necessary in view of discussions against issues No.4 & 5 as the matter of induction of unauthorized sub-tenant and carrying out of unauthorized construction was not seriously

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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seriously pressed upon by KoPT though the allegations of unauthorized construction and unauthorized creation of sub-tenancy were initially raised on behalf of KoPT. However, for adjudication of the matter before me, I feel it urgent to discuss on the issues for the ends of justice. It is the case of KoPT that permission for creation of sub-tenancy was granted to O.P. in respect of 4 sub-tenants including M/s. Atmaram & Co. and not in respect of occupation of M/s. Saket Enterprises. In contradiction to the KoPT's case, it is argued on behalf of O.P. that name of M/s. Atmaram & Co. was subsequently changed to M/s. Saket Enterprises and the matter of such change was within the knowledge of KoPT. It is submitted that the permission for creation of sub-tenancy in favour of 4 no. of sub-tenants was obtained from KoPT and O.P's right to sublet 4 portions in the said premises cannot be either denied or interfered with by KoPT. In support of O.P's contention, a letter written to M/s. Atmaram & Co. by O.P. dated 15.2.2001 used as Annexure-A to the supplementary objection as filed by O.P. on 4.10.2007 is relied upon. KoPT on the other hand submits that change of name from M/s. Atmaram & Co. to M/s. Saket Enterprises as

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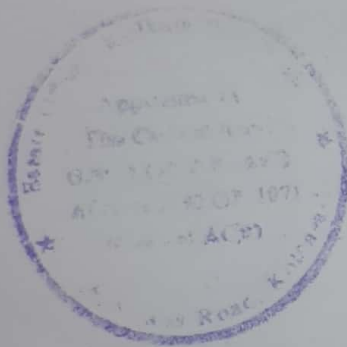
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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
M/s Badvi Prasad Asthokee Kumar

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as stated by O.P. was not within the knowledge of KoPT. I have duly considered the conflicting arguments on behalf of the parties. In my view the letter dated 15.2.2001 issued by O.P. to M/s. Atmaram & Co. cannot be considered as a conclusive proof of change of name and the matter of change of name cannot be claimed to be within the knowledge of KoPT. In such an event when O.P. did not inform KoPT about the change of name of the sub-tenant in question with supporting papers/documents for effecting such change of name, it is very difficult to accept the contention of O.P. in this regard. I fail to understand how O.P. was prevented to bring the matter of "change of name" to KoPT though the matter was within the knowledge of O.P. as per letter dated 15.2.2001 to M/s. Atmaram & Co. Continued silence on the part of O.P. to deal with the matter regarding "change of name" is inexplicable and I have no bar to accept the contention of KoPT so far as it relates to unauthorized creation of sub-tenancy in favour of M/s. Saket Enterprises at this stage. Regarding carrying out of unauthorized construction, O.P. has relied upon payment of damages for construction of hutments for labourers in the premises as per demand of KoPT

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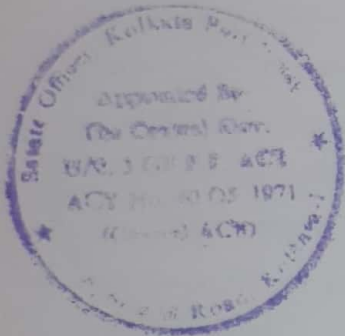
Proceedings No. 864, 864/D of 2007 Order Sheet No. 41

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s Badvi Prasad ^{VS} Ashoke Kumar

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KoPT vide letter No.Lnd.4499/II dated 14.2.2001 in pursuance of order of the Estate Officer dated 27.12.2000 in Proceedings No.219 of 1994 between the same parties in dispute. In course of hearing, I find no specific averment on the part of KoPT to prove that the area of construction alleged to have been carried out unauthorizedly by O.P. does not cover the area for which damages for unauthorized construction was accepted by KoPT for regularization of the same as per demand of KoPT. It is contended that allegation for carrying out of unauthorized construction is baseless and the allegation/complaint to the Dy. Commissioner of Police, Port Division does not give any particulars whatsoever. It is the case of O.P. that Dy. Commissioner of Police pursuant to the complaint from KoPT did not take any steps and such complaint has no leg to stand upon. After careful consideration of the material facts and papers/documents brought before me, I am of the view that allegation of carrying out of unauthorized construction by O.P. is not proved beyond doubt. As such the issues are decided accordingly.

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s Badvi Prasad ^{VS} Ashoke Kumar

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Issues No.7 &8 are required to be discussed analogously as each issue has direct impact over the other. The discussion against the foregoing paragraphs leaves no room for doubt about unauthorized occupation of O.P. right from the date of expiry of the period of the Mother lease in question. It is worthy to mention that mere demand for possession of the property after expiry of the lease period in question is sufficient and no formal ejection notice is required for recovery of possession by KoPT/landlord/lessor of the premises. It is further to mention that earlier to the notice demanding possession dated 16.11.2005, KoPT issued notice demanding possession from O.P. dated 26.7.2002 bearing No.Lnd.4499/II. A notice by lessor/KoPT must have to be considered as a whole in order to constitute its real sense meaning. The decision/observation of the Hon'ble Supreme Court of India reported in AIR 1977 SC 1020 in Bhagwan Das's case is very much instrumental in deciding a question on sufficiency of notice. The test of sufficiency of a notice is not what it would mean to a stranger ignorant of all the facts and circumstances touching the holding to which it refers, but what would mean to a tenant presumably conversant with all the facts and

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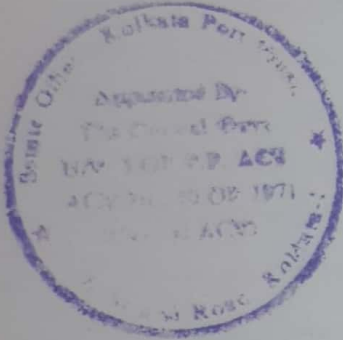
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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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facts and circumstances. A notice to quit must be construed not with a desire to find faults in it, which would render it defective, but it must be construed in a common sense way. The notice dated 16.11.2005, demanding possession from O.P. by KoPT clearly speaks for expiry of the lease period in question on 7.8.2001 and earlier notice to quit dated 26.7.2002 to O.P. also speaks for expiry of the period of lease on 7.8.2001 without any option for renewal. As such, O.P.'s occupation has become unauthorized on and from 8.8.2001 and the contentions on behalf of O.P. regarding "Holding Over Tenant" cannot be substantiated on the facts and circumstances of the case in hand.

The discussions against the foregoing issues are bound to dominate the matter with regard to "damages". 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 how a person become unauthorized occupant into such public premises. As per Section 2 (g) of the Act the

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s Badri Prasad ^{VS} Ashoke Kumar

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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 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. As per Transfer of Property Act, a lease of immovable property determines either by efflux of time limited thereby or by implied surrender or on expiration of notice to determine the lease or to quit or of intention to quit, the property leased, duly given by one party to another. Here, the tenancy of O.P. under long term lease in question has duly been determined by efflux of time limited in the Mother Lease in question. KoPT did not recognize O.P. as tenant by way of not issuing rent demand for the period after expiry of the period of lease. "Damages" are like "mesne profit" that is to say the profit arising out of wrongful use and occupation of the property in question. O.P. has lost its authority to occupy the public premises upon expiry of the lease period on and from 8.8.2001 and O.P. is liable to

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S Badri Prasad ^{VS} Ashoke Kumar

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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 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.

Undoubtedly, the tenancy under lease is governed by the provisions of the Transfer of Property Act 1882 and there is no scope for denial of the same.

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s Badni ^{VS} Prosad Ashoke Kumar

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In course of hearing, the representatives 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 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 question of "Holding Over" cannot arise in the instant case as the Port Authority never consented to the occupation of O.P.

In the instant case there was no consent on the part of the Port Authority either by way of accepting rent from O.P. or by any other mode, expressing the assent for continuance in such occupation after expiry of the period of lease. 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. To take this view, I am fortified by the Apex Court judgement reported in JT 2006 (4) Sc 277 (Sarup Singh

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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(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. 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. It is pleaded on behalf of O.P. that O.P. is under obligation to pay arrear outstanding rent to KoPT in respect of the premises @ Rs.3743/- per month and sub-letting fees of Rs.1,888/- per month. I do not find any merit to the submissions made on behalf of O.P. as contractual relationship between O.P. and KoPT is over after expiry of the period of the Mother lease in question. Moreover, as per law O.P. is bound to deliver up vacant and peaceful possession of the public premises to KoPT either

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s Badri Prasad Ashoke Kumar ^{VS}

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KoPT either after expiry of the period of lease or after expiry of the period as mentioned in the notice to Quit in its original condition (subject to applicability in view of the foregoing discussion). I have no hesitation to observe that O.P's act in 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 have 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 issues are decided in favour of KoPT.

NOW THEREFORE, I think it is a fit case for issuing order of eviction u/s.5 of the Act against O.P. on the following reasons/grounds

1. That O.P. has violated fundamental condition for grant of lease (upon Deed of Assignment of the Mother lease in question) in respect of the public premises.

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s Badri Prasad ^{VS} Ashoke Kumar

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2. That O.P. has no authority under law to occupy the public premises after expiry of the period of the Mother lease in question on and from 8.8.2001.
3. That O.P's contention regarding "Tenant Holding Over" is not at all supported by fact and law as well.
4. That O.P's act in recognizing M/s. Saket Enterprises as permitted sub-tenant in place of M/s. Atmaram & Co. is highly irregular and such act is in clear violation of the condition of tenancy under lease as granted by the Port Authority.
5. That O.P's right to occupy the public premises upon demand for possession from KoPT's side ceases on and from 8.8.2001 and notice to quit issued from KoPT's side dated 26.7.2002 and 16.11.2005 are valid, lawful and binding upon the parties
6. That O.P's occupation is unauthorized in view of Sec.2(g) of the P.P. Act.
7. That O.P. is liable to pay damages to KoPT for wrongful use and occupation of the premises as per KoPT's Schedule of Rent Charges as notified in Calcutta Gazette (applicable for all

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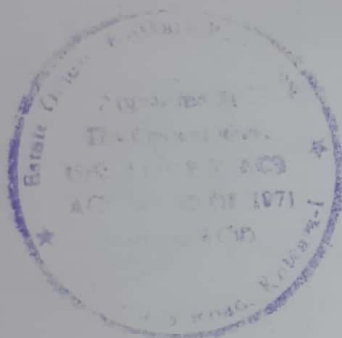
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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s Badri Prasad Ashoke Kumar
VS

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occupants/tenants of KoPT in a similarly placed situation) in accordance with the provisions of the Major Port Trusts Act 1963 (prior to amendment with effect from 9.1.1997) for the relevant period upto the date of handing over of clear, vacant and unencumbered possession to Port Authority.

ACCORDINGLY, Department is directed to draw up formal order of eviction u/s.5 of the Act as per Rules made thereunder, 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 occupation of the property against O.P. in accordance with Law up to the date of recovery of possession of the same.

Department is directed to draw up formal order for damages to be payable by O.P. for unauthorized use and occupation of the public

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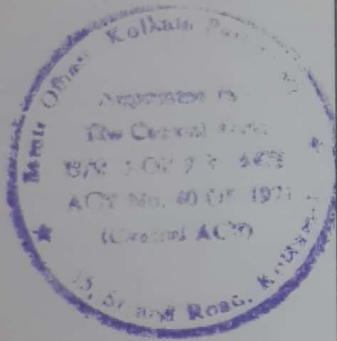
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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s Badni Prasad ^{VS} Ashoke Kumar

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public premises for the period 8.8.2001 to 31.12.2005 for Rs.64,55,502/-. This amount is also payable by O.P. with accrued interest from the date of incurrance of their liability @ 18% per annum as per KoPT's Rule till its final payment. Accordingly, Department is directed to draw up formal order u/s.7 of the Act for recovery of such damages as per Rule. O.P. must have to pay the amount of such damages to Kolkata Port Trust by 31.12.2010. It is made clear that O.P. is also liable to pay damages for the period beyond 31.12.2005 till recovery of possession of the premises by Kolkata Port Trust. In my considered view, KoPT's claim for damages may be payable 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 Trust Act 1963. I make it clear that Kolkata Port Trust is 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. KoPT is accordingly directed to submit a statement comprising details of its calculation of

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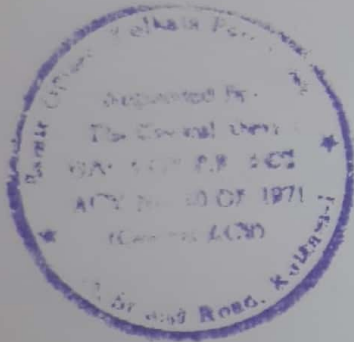
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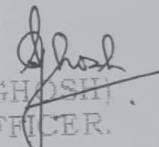
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KOLKATA PORT TRUST

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calculation of damages indicating therein 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. All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL


(S. GHOSH)
ESTATE OFFICER.

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