

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

291
Court Room At the 2nd Floor
of Kolkata Port Trust's
Head Office, Old Buildings
15, Strand Road, Kolkata- 700 001.

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REASONED ORDER NO. 21 DT 26.10.2012
PROCEEDINGS NO.908 OF 2007



BOARD OF TRUSTEES OF THE PORT OF KOLKATA

-Vs-

ESTATE RADHESHYAM SHAW REPRESENTATED BY RADHA DEVI SHAW
& ORS. (THE LEGAL HEIRS OF LATE RADHESHYAM SHAW)

F O R M - "B"

37503 ORDER UNDER SUB-SECTION (1) OF SECTION 5 OF THE PUBLIC
PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1971

WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that
ESTATE RADHESHYAM SHAW REPRESENTATED BY RADHA DEVI SHAW &
ORS. OF Plot No. 35, C.P.T. Taratala Staff Colony, Taratala Road, Kolkata -
700 088 is in unauthorized occupation of the Public Premises specified in the
Schedule below:

REASONS

- (i) That Estate Radheshyam Shaw represented by the legal heirs of Late Radheshyam Shaw has failed to file effective reply to the Show Cause Notice u/s 4 of the Act inspite of sufficient chances.
- (ii) That no right has been disclosed by Estate Radheshyam Shaw represented by the legal heirs of Late Radheshyam Shaw [recorded tenant of Kolkata Port Trust (KoPT)] to occupy the Public Premises either by bearing witness or by adducing any evidence.
- (iii) That Estate Radheshyam Shaw represented by the legal heirs of Late Radheshyam Shaw had defaulted in making payment of rental dues to KoPT in gross violation to the condition tenancy as granted under the monthly term lease at the time of serving ejection notice dated 08.11.2005 by the Port Authority.
- (iv) That Estate Radheshyam Shaw represented by the legal heirs of Late Radheshyam Shaw has no authority under law to occupy the Public Premises after expiry of the period as mentioned in the notice of ejection dated 08.11.2005 as the legal heirs had accepted/acknowledged their status as unauthorised occupant/s by making payment of KoPT's demand on account of unauthorized use and occupation of the Public Premises in question.
- (v) That Estate Radheshyam Shaw represented by the legal heirs of Late Radheshyam Shaw is an unauthorised occupant in view of Sec 2(g) of the P.P. Act.
- (vi) That Deonarian Shaw being the younger brother of Late Radheshyam Shaw has got no right to hold the property as authorized occupant as per provision u/s 2(g) of the P.P. Act.
- (vii) That the legal heirs of Late Radheshyam Shaw has got no right to hold the property as authorised occupant as per provision u/s 2 (g) of the P.P. Act as there is no valid grant/allotment in their favour by the Port Authority.
- (viii) That the legal heirs of Late Radheshyam Shaw are under obligation to pay damages to KoPT upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority as per provision of the P.P. Act.

A copy of the reasoned order No.21 dated 17.10.2012 is attached hereto which also forms a part of the reasons.

Please see on reverse

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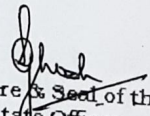
NOW, THEREFORE, in exercise of the powers conferred on me under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order the said **ESTATE RADHESHYAM SHAW REPRESENTATED BY RADHA DEVI SHAW & ORS. OF Plot No. 35, C.P.T. Taratala Staff Colony, Taratala Road, Kolkata - 700 088** and all persons who may be in occupation of the said premises or any part thereof to vacate the said premises within 15 days of the date of publication of this order. In the event of refusal or failure to comply with this order within the period specified above the said **ESTATE RADHESHYAM SHAW REPRESENTATED BY RADHA DEVI SHAW & ORS. OF Plot No. 35, C.P.T. Taratala Staff Colony, Taratala Road, Kolkata - 700 088** 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

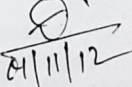
The Piece or Parcel of land msg. 33.445 sq.m or there about which is situated at the Western end of the Trustees' Staff Colony at Taratala Road in Mouza: Naskarpur, Thana: Taratala Police Station, Kolkata, Dist.: South 24 Parganas, Regn. Dist.: Alipore. It is bounded on the North by the Trustees' open land, On the East by the Trustees' land occupied by Radheshyam Shaw (since deceased) on the South by the Trustees' Road and on the West by the Trustees' land occupied by Radheshyam Shaw (since deceased).

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

Dated: 30.10.2012


Signature & Seal of the
Estate Officer.

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


24/11/12

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

Radheshyam Shaw (Estate) VS Radheshyam Shaw Represented
by the legal heirs of late Radha Devi Shaw & others

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26.10.2012

FINAL ORDER

The matter is taken up today for delivering final order. Land msg. 33.445 Sq.m, Plot No: 35 situated at the Western end of Kolkata Port Trust's (KoPT) Staff Colony at Taratala Road under Taratala Police Station, Kolkata comprised under plate No. D-378/9/1 was leased to Radheshyam Shaw (since deceased), O.P. herein on monthly term lease basis and the lessee violated the condition for grant of tenancy under monthly term lease by way of not paying rental dues to KoPT. It is also the case of Kolkata Port Trust, the applicant herein that O.P. has parted with possession of the Public Premises unauthorisedly and has no authority to occupy the Public Premises after expiry of the period as mentioned in the ejectment notice dated 08.11.2005. It is contended that O.P. is liable to pay damages for unauthorized use and enjoyment of the Port Property upto the date of handing over of clear, vacant and unencumbered possession to KoPT. This Forum of Law formed its opinion to proceed against O.P. and issued Show Cause Notice u/s 4 of the Act (for adjudication of the prayer for issuance of order of eviction u/s 5 of the Act) and show cause Notice u/s 7 of the Act (for adjudication 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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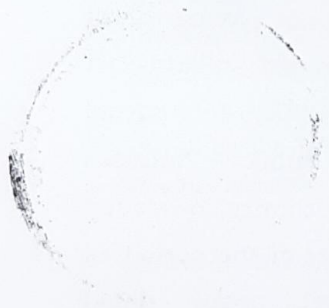
BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Radheshyam Shaw vs Estate Radheshyam Shaw
Represented by Radha Devi Shaw & others

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of the prayer for recovery of rental dues) both dated 02.10.2007. In course of hearing Smt. Radha Devi Shaw, widow of Late Radheshyam Shaw entered appearance though its Advocate and contested the matter. It reveals from record that names of the legal heirs of Radheshyam Shaw being Smt. Radha Debi Shaw, Smt. Manju Gupta, Smt. Usha Gupta, Smt. Saroj Gupta, Mr. Sanjoy Kumar Shaw, Smt. Sunita Jaiswal, Smt. Sabita Jaiswal and Mr. Rajesh Kumar Shaw were added as party to this proceedings and proceedings was being continued against Estate Radheshyam Shaw representative by Smt. Radha Debi Shaw and 7 Ors. It also reveals Sanjoy Kumar Shaw being the son of Late Radheshyam Shaw also appeared before this Forum of Law on 25.09.2008. It is seen that Deonaraian Shaw claiming to be the younger brother of Late Radheshyam Shaw filed an application on 13.12.2007 wherein it is stated by Deonaraian Shaw that due to financial crisis he was unable to comply with the formalities as asked by KoPT vide letter No. LM 2669/3/10 dated 28.01.2081 regarding Transfer of Tenancy in his favour. It transpires that no effective reply to the show Cause Notice/s has been filed either



BY ORDER OF
THE BOARD OF TRUSTEES
KOLKATA PORT TRUST

CERTIFIED COPY
FOR
EVIDENCE

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Estate Officer, Kolkata Port Trust

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Radheshyam Shaw (Estate of Radheshyam Shaw represented by Radha Devi Shaw & others) VS Radheshyam Shaw represented by Radha Devi Shaw & others

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filed either by Smt. Radha Debi Shaw or by any of the legal heirs of late Radheshyam Shaw inspite of sufficient chances. Only Deonaraian Shaw by his application filed on 13.12.2007 tried to make out a case in his favour regarding his "authorized occupation" on the plea that the ejection notice dated 08.11.2005 is served upon a dead person which is invalid under law.

After due consideration of all relevant papers/documents as brought before me in course of hearing, I find that following issues have come up for adjudication :

1. Whether default in making payment of rental dues by Estate Radheshyam Shaw, represented by the legal heirs is proved beyond doubt or not;
2. Whether the allegation of KoPT regarding unauthorized parting with possession against Radheshyam Shaw (since deceased) has got any merit or not;
3. Whether the monthly term tenancy under lease in favour of Radheshyam Shaw (since deceased) has duly been determined by service of ejection notice dated 08.11.2005 or not;

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BY ORDER OF THE BOARD OF TRUSTEES OF THE PORT OF KOLKATA



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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

Radheshyam Shaw (S Estate Radheshyam Shaw)
Represented by Radha Devi Shaw & others

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26.12.2012

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4. Whether the legal heirs of Late Radheshyam Shaw (Estate Radheshyam Shaw, represented by his legal heirs) have got any right to occupy the Public Premises or not;
5. Whether Deonarain Shaw has got any right to hold the property or not;
6. Whether Deonarain Shaw can claim transfer of tenancy under monthly term lease in favour of him as matter of right or not;
7. Whether the legal heirs of Radheshyam Shaw (since deceased) are liable to pay damages for unauthorized use and enjoyment of the Port Property upto the date of handing over of clear, vacant and unencumbered possession or not;

With regard to issue no. 1, there is no contradictory statement on behalf of the heirs of Radheshyam Shaw (since deceased). As there is no effective reply to the show cause notice u/s 4 of the Act to demolish the grounds as mentioned therein, I have no other alternative but to accept the statement made on behalf of KoPT regarding default in making payment of rental dues by Radheshyam Shaw (since deceased). However, I

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BY ORDER
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

Radheshyam Shaw's Estate Radheshyam Shaw
Represented by Radha Devi Shaw (Wife)

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26.12.2012

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However, I find that O.P. made certain payments, lastly through Banker's cheque dated 25.05.2007 for Rs.1,83,000/- issued by United Bank of India, Taratala Branch favouring KoPT. It reveals that taking into account of the amounts deposited so far by O.P, subsequent to the period of serving ejectment notice dated 08.11.2005, the amount payable by O.P. upto December,2007 (excluding interest for delayed payment) has been liquidated and nothing is due from O.P. on account of rental dues. Such being the case, it is evident that at the time of serving the ejectment notice by KoPT there was certain amount of rental dues payable by O.P. to KoPT which was subsequently cleared off by O.P. The issue is decided accordingly.

On the question of unauthorized parting with possession, under issue No. 2, I do not find any evidence on the part of KoPT to establish the statement of unauthorized parting with possession by Radheshyam Shaw (since deceased). The Photo copies of the papers used as annexures to the application of Deonarain Shaw filed on 13.12.2007 clearly leads to a doubtful situation about unauthorized parting with possession on appraisal of the conduct of

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Radheshyam Shaw (vs State Radheshyam Shaw represented by Radha Devi Shaw & others)

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conduct of KoPT on the proposal of transfer of tenancy in favour of Deonarian Shaw (younger brother of late Radheshyam Shaw) who was looking after a Grocery-cum-Chakki Shop on the basis of mutual settlement with Radheshyam Shaw (since deceased). In such a situation the allegation of KoPT with regard to unauthorised parting with possession is not tenable under law. In fact nothing has been shown or brought to me to substantiate the statement of KoPT in connection with unauthorized parting with possession. Hence the issue is decided against KoPT.

Issues No. 3 & 4 are taken up together for convenient discussion. There is no effective reply to the Show Cause Notice u/s 4 of the Act by the legal heirs of Radheshyam Shaw (since deceased) to demolish the grounds as mentioned therein inspite of sufficient chances and as such there cannot be any question about the validity of serving such notice dated 08.11.2005. In fact nobody can assert any right through Radheshyam Shaw (since deceased) to occupy the Public Premises and validity of serving such notice cannot be challenged by the legal heirs without contradicting the claim of KoPT in

BY ORDER OF
THE ESTATE OFFICER
KOLKATA PORT TRUST

(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

Radheshyam Shaw & Sons (Estate Radheshyam Shaw)
Represented by Radya Devi Shaw & others

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26.12.2012

KoPT in respect of the premises in question by filling appropriate reply to the Show Cause Notice u/s 4 of the Act. In my view, nobody can assert any right through Radheshyam Shaw (since deceased) to occupy the Public Premises and validity of serving such notice cannot be challenged by the legal heirs without paying the requisite charges for occupation and enjoyment of the Port Property. In fact enjoyment of Public premises without paying requisite charges for occupation is opposed to public policy. It transpires from the statement of accounts as prepared by KoPT that accumulated interest for delayed payment right from date of incurrance of liability on account of rental dues and compensation charges is lying outstanding. It reveals that legal heirs of Late Radheshyam Shaw accepted their status as unauthorized occupant by making payment of KoPT's demand for compensation on account of unauthorized use and occupation of the Public Premises in question. After acknowledging their status as "unauthorized occupant" by their own admission, the legal heirs of Radheshyam Shaw (since deceased) cannot claim their occupation as "authorized occupation". In fact, I do not find



BY ORDER
THE ESTATE OFFICER
KOLKATA PORT TRUST
Certified copy of the Order
Filed in the Court
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Estate Officer, Kolkata Port Trust

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Radheshyam Shaw vs (Estate Radheshyam Shaw
Represented by Radha Devi Shaw & others)

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I do not find any scope to adjudicate upon the matter when there is an admission on the part of the legal heirs as admitted fact need not be proved. Such being the case, the issues are clearly decided against O.P/added parties.

Issues No. 5 & 6 are also required to be discussed analogously as the issues are related with each other. It appears that a proposal for transfer of tenancy in favour of Deonarain Shaw was under consideration of the Land Manager, KoPT and Deonarain Shaw failed to comply with the requirement of KoPT for such consideration in time. It reveals from record that Deonarain Shaw being the younger brother of Late Radheshyam Shaw was running Grocery-cum-Chakki Shop on the Public Premises in question and the proposal for such transfer of tenancy in favour of him is not matured till the date of filling application before this Forum of Law by KoPT. Now the question arises whether Deonarain Shaw can claim transfer of tenancy in favour of him from the Port Authority as matter of right or not. It is clear from the paper/document as brought before me in course of hearing that Deonarain Shaw cannot claim



BY ORDER OF
THE ESTATE OFFICER
KOLKATA PORT TRUST

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Estate Officer, Kolkata Port Trust

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(Eviction of Unauthorised Occupants) Act 1971

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Radheshyam Shaw vs (Estate Radheshyam Shaw
Represented by Radha Devi Shaw & others)

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cannot claim leasehold interest of Late Radheshyam Shaw (since deceased) as legal heir of the deceased. No right has been disclosed as to how Deonarian Shaw can claim his occupation as 'authorised occupant' in view of Sec. 2 (g) of the P.P. Act when proposal for transfer of tenancy in his favour is not at all matured upto the date of delivering this order. I must say that nobody can claim transfer of tenancy in his favour as matter of right as in case of Deonarian Shaw. Hence the issues are decided accordingly.

On issue no. 7, I must say that discussion against the foregoing paragraphs are bound to dominate this issue and as per provision of the P.P. Act the legal heirs are bound to liquidate the amount as payable to KoPT by the Estate Radheshyam Shaw, represented by the legal heirs named herein. As such, the legal heirs of Radheshyam Shaw (since deceased) are liable to pay rental dues and damages in terms of the provision under P.P. Act upto the date of delivering vacant and peaceful possession to KoPT.

NOW THEREFORE, I think it is a fit case for

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BY ORDER OF
THE ESTATE OFFICER
KOLKATA PORT TRUST

Original copy of this Order
placed in the file of the case
Radha Devi Shaw

Final Order
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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

Radheshyam Shaw & Estate Radheshyam. Shaw
Representated by Radha Devi Shaw & others)

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a fit case for allowing the prayer for eviction u/s 5 of the Act as prayed for on behalf of KoPT for the following reasons/grounds :

1. That Estate Radheshyam Shaw represented by the legal heirs has failed to file effective reply to the show Cause Notice u/s 4 of the Act inspite of sufficient chances.
2. That no right has been disclosed by Estate Radheshyam Shaw represented by the legal heirs to occupy the Public Premises either by bearing witness or by adducing evidence.
3. That Estate Radheshyam Shaw has defaulted in making payment of rental dues to KoPT in gross violation to the condition of tenancy as granted under the monthly term lease at the time of serving ejectment notice dated 08.11.2005 by the Port Authority.
4. That Estate Radheshyam Shaw represented by the legal heirs has no authority under law to occupy the Public Premises after expiry of the period as mentioned in the Notice of ejectment



BY ORDER 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
Radheshyam Shaw's (Estate Radheshyam Shaw
Represented by Radha Devi Shaw & others)

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notice of ejection dated 08.11.2005 as the legal heirs have accepted their status as unauthorized occupant by making payment of KoPT's demand on account of unauthorized use and occupation of the Public Premises in question.

5. That Estate Radheshyam Shaw represented by the legal heirs is an unauthorized occupant in view of Sec.2 (g) of the P.P. Act.
6. That Deonarian Shaw being the younger brother of Late Radheshyam Shaw has got no right to hold the property as authorized occupant as per provision u/s 2 (g) of the P.P. Act.
7. That Estate Radheshyam Shaw represented by the legal heirs are under obligation to pay damages to KoPT upto the date of handing over of clear, vacant and unencumbered possession to KoPT.
8. That occupation of the legal heirs of Radheshyam Shaw (since deceased) has become unauthorized in view of Sec.2 (g) of the P.P. Act as there is no valid grant/allotment in their favour by the Port Authority.

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STAMPED AREA
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
Radheshyam Shaw vs (Estate Radheshyam Shaw
Representated by Radha Devi Shaw 20lters)

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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 occupation of the property against O.P. in accordance with Law up to the date of recovery of possession of the same.

In my opinion KoPT's claim for damages upto June,2009 for Rs.3,53,426.67 (which includes interest for delayed payment of Rs.2,93,205.67) 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 to claim damages against O.P. for unauthorized use and occupation of the public premises upto 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

BY ORDER 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

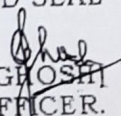
Radheshyam Shaw VS (Estate Radheshyam Shaw
Representated by Radha Devi Shaw & others)

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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. However, having regard to the facts and circumstances of the case, I am of the view that Port Authority may consider any proposal from the end of the legal heirs of Radheshyam Shaw (since deceased) for recording their name in place of Radheshyam Shaw (since deceased) in respect of the Public Premises in question upon payment of all the dues/charges as payable to KoPT in terms of the existing practice and procedure followed by the Port Authority in dealing with such cases in order to administer fair play and natural justice to the legal heirs. 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***

BY ORDER
THE ESTATE OFFICER
KOLKATA PORT TRUST

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