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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  
(4<sup>th</sup> Floor)  
KOLKATA - 700 001  
\*\*\*\*\*

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

REASONED ORDER NO.58 DT. 23.12.2013  
PROCEEDINGS NO.809 of 2006

BOARD OF TRUSTEES OF THE PORT OF KOLKATA  
-Vs-  
M/s. Shree Narayan & Co.

**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. Shree Narayan & Co. of 174, Mahatma Gandhi Road, Kolkata - 700 007 and 9, Transport Depot Road, Kolkata - 700 027 And also C/o, M/s. S.F.I. Pvt. Ltd., 159, Dharmatala Street, Ground Floor, (Opposite Jyoti Cinema) Kolkata - 700 013 is in unauthorized occupation of the Public Premises specified in the Schedule below:

**REASONS**

- i) That this Forum of Law is very much competent to adjudicate upon the rights and liabilities of the parties in respect of the Public Premises in question.
- ii) That the Port Authority has definite cause/s of action to proceed against yourselves for recovery of possession of the Public Premises after expiry of the contractual period of lease, particularly when you are occupying the property previously under lease upon service of notice, demanding possession against the will/ consent of the Port Authority.
- iii) That you have failed to bear any witness or adduce any evidence in support of your "authorized occupation".
- iv) That you have failed to make out any case in support of your contention regarding "authorized Occupation".
- v) That you are in default in making payment of charges on account of interest for delayed payment which is also forming a part of the "consideration" payable periodically for consideration of any occupation as "authorized occupation" and your contention regarding payment of interest @ 6% per annum is not acceptable on evaluation of the facts and circumstances of the case.
- vi) That you have failed to regularize your occupation into the Public Premises inspite of considerable period of time being afforded to yourselves and as such your occupation has become unauthorised in view of Sec.2 (g) of the P.P. Act.
- vii) That the notice demanding possession from Kolkata Port Trust as issued to yourselves dated 31.08.2005 is valid, lawful and binding upon the parties and you are liable to pay damages for unauthorised use and enjoyment of the Port Property in question upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

A copy of the Reasoned Order No. 58 Dt. 23.12.2013 is attached hereto which also forms a part of the reasons.

*Emilia*

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 M/s. Shree Narayan & Co. of 174, Mahatma Gandhi Road, Kolkata - 700 007 and 9, Transport Depot Road, Kolkata - 700 027 And also C/o, M/s. S.F.I. Pvt. Ltd., 159, Dharmatala Street, Ground Floor, (Opposite Jyoti Cinema) Kolkata - 700 013 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, M/s. Shree Narayan & Co. of 174, Mahatma Gandhi Road, Kolkata - 700 007 and 9, Transport Depot Road, Kolkata - 700 027 And also C/o, M/s. S.F.I. Pvt. Ltd., 159, Dharmatala Street, Ground Floor, (Opposite Jyoti Cinema) Kolkata - 700 013 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 msg. 4319.62 Sq.m. which is situated at Off Transport Depot Road, Thana: Taratala Police Station, Kolkata, Dist.: South 24 Parganas, Regn. Dist.: Alipore. It is bounded On the North partly by the Trustees' Strip of open land beyond which EJC boundary wall and partly Trustees' land occupied by M/s. Balmer Lawrie & Co. Ltd.. On the East by the Trustees' open land, On the South partly by Trustees' Strip of open land and partly by the Trustees' land occupied by M/s. Eveready Industries Ltd. and On the West by the Trustees' land occupied by M/s. Eveready Industries Ltd.

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

02.01.2014  
Dated: ~~23.12.2013~~



*Amal*  
Signature & Seal of the  
Estate Officer.

COPY FORWARDED TO THE LAND MANAGER/LEGAL ADVISER/LABOUR ADVISOR AND INDUSTRIAL RELATIONS OFFICER, KOLKATA PORT TRUST FOR INFORMATION.

# Estate Officer, Kolkata Port Trust

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

Proceedings No.

809, 809/R of 2006 Order Sheet No. 52

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s Shree Narayan & Co  
VS

## FINAL ORDER

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23.12.2013

The matter is taken up today for delivering final order. It is the case of Kolkata Port Trust (KoPT), Applicant herein that M/s. Shree Narayan & Company (O.P.) came into occupation of the Public Premises being KoPT's land Msg. about 4319.67 Sq. m situated at Transport Depot Road under occupation No. D-274/33 as a long term lessee for 30 years without any option for renewal commencing from 02.01.1967 and such lease expired on and from 01.01.1967. It is a matter of fact that O.P. was permitted by KoPT to induct subtenant in the premises comprised under occupation no. D-274/33 on payment of certain fees (subletting fees) under separate charge head being SF-100/62. It is argued that O.P. prefers to continue in occupation of the Public Premises wrongfully after expiry of the period of the lease and that too after demand for possession vide KoPT's notice to quit dated 31.08.2005. A ground for nonpayment of rental dues is also agitated against O.P. This Forum of Law formed its opinion to proceed against O.P. under relevant provisions of the Act and issued Show cause notice u/s 4 of the Act (for adjudication of the prayer for order of eviction) and Show Cause Notice u/s 7 of the Act (for adjudication of the prayer for realisation of

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Omaha

# 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. 809, 809/R of 2006 Order Sheet No. 53

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

H/S Shree Narayan & Co  
VS

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23.12.2013

From pre-page:

realisation of arrear rental dues) as per the rules made under the Act both dated 03.07.2006. Another Show Cause Notice u/s 7 of the Act was issued to O.P. as per rule dated 20.11.2006 for adjudication of KoPT's prayer for realisation of damages. O.P. entered appearance to its Advocate and contested matter by filing written objection/petitions/Reply to the Show Cause Notice/s.

I have duly considered Show Cause Reply on behalf of O.P. filed on 28.08.2006, petition affirmed by Santosh Shroff on behalf of O.P. filed on 08.02.2010, supplementary Affidavit of O.P. filed on 09.03.2010, Affidavit filed on 20.09.2011 and petition of O.P. filed on 10.09.2012. I have also duly considered the KoPT's Application/Reply dated 09.03.2010, 02.08.2010 and 15.11.2011. After careful consideration of the submissions / arguments made on behalf of the parties and after due consideration of the papers/documents as brought before me in course of hearing, I find that following issues have come up for adjudication/decisions.

- (1) Whether this Forum of Law has jurisdiction to entertain the matters

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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. 809,809/R of 2006 Order Sheet No. 54

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA VS

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from pre-page:

matters relating to these proceedings or not.

- (2) Whether O.P. can claim renewal of lease in question as a matter of right or not.
- (3) Whether O.P.'s occupation could be termed as tenant 'holding over' after expiry of the contractual period of lease on and from 1.1.1997 or not.
- (4) Whether O.P. was in default in making payment of rental dues to KoPT or not.
- (5) Whether claiming of 18% interest per annum is permissible under law or not.
- (6) Whether O.P. is liable to pay interest for delayed payment from the date of its knowledge i.e. to say from 16.7.2007 when KoPT first raised demand for compensation or not.
- (7) Whether the point taken by O.P. with regard to rate of interest on the basis of order no. 103 of 9.3.2009 in Hind Sugar case passed in P.P. Act Proceedings Nos. 253 of 1998 and order no. 19 of 31.3.2009 for Proceedings No. 759 of

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## Estate Officer, Kolkata Port Trust

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

Proceedings No. 209, 209/R of 2006 Order Sheet No. 55

### BOARD OF TRUSTEES OF THE PORT OF KOLKATA VS

M/S Shree Narayan & Co.

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23.12.2013

from pre-page:

Proceedings No. 759 of 2006 in Meghraj Brijmohan's case read with Division Bench of Hon'ble Calcutta High Court's order dated 1.2.2011 in F.M.A. No.51 of 2006 are at all relevant for the purpose determining the question of rate of interest in the case in hand or not.

- (8) Whether this Forum of Law is bound to award interest at the simple rate of interest not exceeding the current rate of interest u/s 7 (2A) of the P.P. Act (read with Interest Act) or not;
- (9) Whether the notice to quit dated 31.8.2005 is enforceable or not.
- (10) Whether O.P's occupation into the public premises has become unauthorised for want of valid grant from KoPT in accordance with Section 2(g) of the P.P. Act or not.
- (11) Whether O.P. is liable to pay damages for unauthorised use and occupation of the Port property 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. 809, 809/R Of 2006 Order Sheet No. 56

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA VS

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23.12.2013

from pre-page:

With regard to issue No.1, I must say that the properties owned and controlled by the Port Authority has been declared as "public premises" by the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and Section-15 of the Act puts a complete bar on Court's jurisdiction to entertain any matter relating to eviction of unauthorized occupants from the public premises and recovery of rental dues and/or damages, etc. KoPT has come up with an application for declaration of O.P's status as unauthorized occupant in to the public premises with the prayer for order of eviction, recovery of rental dues and damages against O.P. on the plea of revocation of licence as earlier granted to O.P. in respect of the premises in question. So long the property of the Port Authority is coming under the purview of "public premises" as defined under the Act, adjudication process by serving Show Cause Notice/s u/s 4 & 7 of the Act is very much maintainable and there cannot be any question about the maintainability of proceedings before this Forum of Law. In fact, proceedings before this Forum of Law is not statutorily barred unless there is any specific

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*Ommani*



# 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. 809, 809/R Of 2006 Order Sheet No. 57

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA VS

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from pre-page:

any specific order of stay of such proceedings by any competent court of law. To take this view, I am fortified by an unreported judgment of the Hon'ble High Court, Calcutta, delivered by Hon'ble Mr. Justice Jyotirmay Bhattacharya on 11.03.2010 in Civil Revisional Jurisdiction (Appellate Side) being C.O. No. 3690 of 2009 (M/s Reform Flour Mills Pvt. Ltd. -Vs- Board of Trustees' of the Port of Calcutta) wherein it has been observed specifically that the Estate Officer shall have jurisdiction to proceed with the matter on merit even there is an interim order of statusquo of any nature in respect of possession of any public premises in favour of anybody by the Writ Court.

Relevant portion of the said order is reproduced below:

"In essence the jurisdiction of the Estate Officer in initiating the said proceedings and/or continuance thereof is under challenge. **In fact, the jurisdiction of the Estate Officer either to initiate such proceedings or to continue the same is not statutorily barred.** As such, the proceedings cannot be held to be vitiated due to inherent lack of jurisdiction of the Estate Officer.

*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.

809,809/R

Of

2006

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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from pre-page:

of the Estate Officer. The bar of jurisdiction, in fact, was questioned because of the interim order of injunction passed in the aforesaid proceedings".

Hon'ble Division Bench of Calcutta High Court had the occasion to decide the jurisdiction of the Estate Officer under P.P. Act in Civil Appellate Jurisdiction being MAT No.2847 of 2007 (The Board of Trustees of the Port of Kolkata and Anr. -vs- Vijay Kumar Arya & Ors.) reported in Calcutta Weekly Note 2009 CWN (Vol.113)-P188 The relevant portion of the judgment (Para-24) reads as follows:-

"The legal issue that has arisen is as to the extent of Estate Officer's authority under the said Act of 1971. While it is an attractive argument that it is only upon an occupier at any public premises being found as an unauthorized occupant would he be subject to the Estate Officer's jurisdiction for the purpose of eviction, the intent and purport of the said Act and the weight of legal authority that already bears on the subject would require such argument to be repelled. Though the state in any capacity cannot be arbitrary and its decisions have

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D. Mallu

# 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. 809, 809/R of 2008 Order Sheet No. 59

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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decisions have always to be tested against Article 14 of the Constitution, it is generally subjected to substantive law in the same manner as a private party would be in a similar circumstances. That is to say, just because the state is a Landlord or the state is a creditor, it is not burdened with any onerous covenants unless the Constitution or a particular statute so ordains".

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

On issue no. 2 with regard to "renewal of lease", it is evident from the photocopy of the registered lease deed dated 15.2.1969 that the purpose of lease was of a factory and godown for a period of **30 years without any option for renewal commencing from 2.1.1967**. Admittedly, there was no specific assurance on the part of the Port Authority to grant lease for further period to O.P. after expiry of the contractual period of lease on and from 2.1.1997. As there is no option on the part of O.P. in exercising renewal of lease, it cannot be said that Port Authority was under was under any legal obligation to grant them lease for a further period. Now the question

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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. 809, 800/R Of 2006 Order Sheet No. 60

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA VS

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the question arises about the intention of the Port Authority for grant of lease to O.P. It transpires that an exercise was taken place to check the status of the property by way of inspection of the property from KoPT's end and KoPT by its letter dated 27.9.1999 bearing no. Lnd.4268/7/II asked O.P. to remove the unauthorised construction standing upon the land in question indicating the unauthorised portion of construction in a plan shown in red hatch mark. It was also notified by letter dated 15.10.1999 that the property will be inspected further on 9.11.1999 at 11.00 AM instead of 8.10.1999. Earlier KoPT by letter dated 13.8.1999 requested O.P. to remove the unauthorised structures within 21 days with an intimation to KoPT. The issue of carrying out of unauthorised construction was taken up by the Port Authority to O.P. by their letter to O.P. dated 27.6.1997, 29.7.1997, 1.9.1997, 19.11.1997 and the matter was duly brought to the notice of O.P. on the basis of a plan showing the unauthorised portion in red hatch mark with the request to remove the same. All the exchange of letters from KoPT's side and O.P's side as well must lead to the conclusion that KoPT was not sitting idle over the issue of granting fresh lease

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*Enamati*

# 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. 809, 809/R Of 2006 Order Sheet No. 5061

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA VS

M/S Shree Narayan & Co.

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fresh lease to O.P. upon expiry of the period of lease in question but KoPT was unable to process the matter of granting lease for want of removal of unauthorised construction as detected by the Port Authority. I do not find any irregularity or illogical act on the part of KoPT in requisitioning the removal of unauthorised portion of construction. Hence, KoPT cannot be blamed for its act as landlord of the premises. It is true that O.P. expressed its intension to KoPT to get grant of lease in respect of the Public Premises in question before expiry of the lease period in question but such expression of interest to get grant of lease from KoPT is not sufficient. I am taking a note of the matter that as per Transfer of Property Act, O.P. as lessee is bound to handover possession of the leased out property to KoPT (lessor) on expiry of the contractual period of lease. It cannot be an acceptable proposition that O.P. is entitle to get a lease from KoPT without complying the legitimate requirement made from KoPT's end. More particularly when it is found that there is no latches on the part of KoPT in processing the application of O.P. for grant of lease. Hence, the issue is decided accordingly.

*D. N. Maiti*

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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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809, 8091R of 2006 Order Sheet No. 62

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA VS

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Now the point which survives for my adjudication under issue No. 3 is whether the O.P's tenancy could be termed as tenant "Holding Over" or not. Even for the sake of argument, if it is accepted (not admitted) that there is "Holding Over", the conduct of O.P. is of paramount importance. It is not the case of O.P. that they have all along paid the rental dues per month to KoPT as per the rates specified in the Lease Deed in question. Though the Lease Deed specifically provides a liability upon a lessee to pay the rental dues, whether demanded or not, to the lessor, there is no material to show that O.P. has tendered such amount of rental dues at least, to the Port Authority. "Holding Over" means continuance of occupation with the same terms and conditions as per the expired Lease Deed. Evaluation of factual aspect and the papers/documents brought before me in course of hearing leaves no room for doubt that the KoPT never consented in O.P's occupation into the public premises after expiry of the period as mentioned in the lease deed or after expiry of the period as mentioned in the notice to quit dated 31.08.2005. The lease deed specifically provides under lessees covenant regarding yielding up of the demise land at the expiry or determination of

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# Estate Officer, Kolkata Port Trust

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

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## BOARD OF TRUSTEES OF THE PORT OF KOLKATA VS

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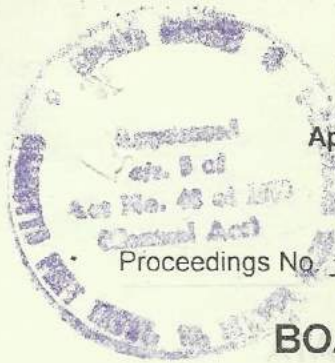
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determination of the term of the lease. The effect of "Holding Over" as per Sec.116 of T.P. Act clearly leads to the conclusion that O.P. cannot take the shelter of tenant "Holding Over" as there was an agreement to the contrary, executed and Registered by and between the parties. The essential element of "consent" for constituting the matter of holding over is absent and O.P. has failed to adduce any evidence or bear any witness in support of its contention regarding "holding over". To take this view I have borrowed my support from the Apex Court judgment reported in Judgment Today 2006 (4) SC Page- 277 wherein it was observed by the Hon'ble Supreme Court as follows:

"A somewhat similar situation arose in the case of Santi Prasad Devi and Anr. -vs- Shankar Mahato & Ors. That was a case where the landlord accepted rent even on expiry of the period of lease. A submission was argued on behalf of the tenant in that case that Section 116 of the Transfer of Property Act was attracted and there was a deemed renewal of the lease. Negating the contention the Court observed that mere acceptance of rent for subsequent months in which the lessee continued to occupy

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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. 809, 809/R Of 2006 Order Sheet No. 64

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA VS

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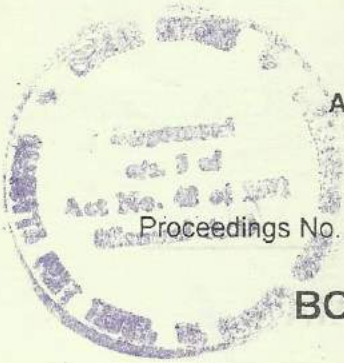
to occupy the premises even after the expiry of the period of lease, cannot be said to be a conduct signifying his assent to the continuing of the lease even after expiry of the lease period. Their Lordship noticed the conditions incorporated in the Agreement itself, which provided for renewal of the lease and held those conditions having not been fulfilled, the mere acceptance of rent after expiry of the period of lease did not signify assent to the continuance of the lease."

In the instance 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 as mentioned in the notice to vacate the premises. In view of the ratio of judgment of the Hon'ble Supreme Court of India, I do not find any scope to consider the matter of "Holding Over" as advocated by O.P. in the facts and circumstances of the case.

No evidence has been laid on behalf of O.P. by way of producing any Receipt for acceptance of any payment wherefrom it could at least be inferred that the Port Authority has any

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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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**VS**

M/S Shree Narayan & Co.

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has any intention to the continuance in occupation by accepting any amount as rent for such occupation. I must say with my clear observation that granting of allotment of property is subject to fulfillment of the terms and conditions on the part of O.P. as per demand from KoPT/ land lord and violation of any terms and conditions like unauthorized construction disentitled O.P. to claim further allotment from KoPT's side. Even if, there is provision for exercising option for renewal, no one can claim enforcement of the Option Clause for grant of lease as a matter of right unless there is any material to show that somebody has deprived of his legitimate right to claim so. There is no material to show that the Port Authority has willfully or deliberately denied the O.P's right to get fresh allotment. It should be borne in mind that in the case in hand there is no provision for exercising any option for renewal on the part of O.P. The Port Authority has a definite legitimate claim to get its revenue involved into this matter as per usual practice and procedure followed in respect of other Tenant/occupier of the Port premises in similar placed situation and demand for removal of any breaches to the condition of tenancy, previously under lease. KoPT's Schedule of Rent Charges.

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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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In view of the discussions above, I do not find any substance to the argument made on behalf of O.P. in the context of the clear provisions regarding carrying out of unauthorized construction.

The judgment of the Hon'ble Apex Court reported in JT 2006 (4) SC 277 (Sarup Singh -Vs- S. Jagdish Singh & Ors.) is very much instrumental in dealing with such issues and can be accepted as a guiding principle for deciding such matter. The relevant portion of the judgment reads as follows:

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In our view, mere acceptance of rent did not by itself constitute an act of the nature envisaged by sec.113 Transfer of Property Act showing an intention to treat the lease as subsisting. The fact remains that **even after accepting the rent tendered, the landlord did file a suit for eviction and even while prosecuting the suit accepted rent which was being paid to him by the tenant, it cannot, therefore, be said that by accepting rent, he intended to waive the notice to quit and to treat the lease as subsisting**

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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. 809,809/12 of 2006 Order Sheet No. 67

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA VS

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It cannot, therefore, be said that mere acceptance of rent amounts to waiver of notice to quit unless there be any other evidence to prove or establish that the landlord so intended. In the instant case, we find no other fact or circumstances to support the plea of waiver. On the contrary, the filing of a prosecution of the eviction proceedings by the landlord suggests otherwise."

In the case in hand, there is no case of accepting of rent from O.P. by KoPT rather the Port Authority prefers to institute instant proceedings against O.P. for order of eviction against O.P. under the P. P. Act which is the only remedy available to KoPT in respect of the property, being the public premises in question as defined under the P.P. Act. This clearly indicates the intention of the Port Authority to proceed against O.Ps for recovery of possession on the basis of the notice, demanding possession and KoPT's act cannot be considered as waiver of notice to quit as served against O.P. Hence, the issue is decided in favour of KoPT.

Issues No. 4, 5, 6, & 7 are taken up together for the shake convenience as the issues are related with each other. True to say in order to avoid repetition of discussion, clubbing of these issues is necessary.

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# Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises  
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The matter of non-payment of principal amount of rent is not required to be considered seriously as I do not consider it necessary for determination of the rights and liabilities of the parties due to involvement of a negligible amount. Moreover, there is no averment on the part of KoPT to deny the statement made on behalf of O.P. regarding payment of all rent charges as shown under Schedule "B" of the KoPT's application dated 30.05.2005 that is upto the date of expiry the date of period of lease. The statements made against paragraphs No. g) and 8 of the Show Cause Reply of O.P. filed on 28.08.2006 together with its Annexure Marked "E" have received my attention. Even if there is default on the part of O.P. in making payment of principal amount rental dues (negligible amount) in time, such default should not be taken as ground for determination of an important civil right of O.P. to hold the property, particularly when such ground for non-payment of rental dues was not taken at the time of serving notice to quit dated 31.08.2005 by KoPT. However, the question falls for determination whether rental dues as payable to KoPT involves interest for delayed payment, at which rate O.P. is liable to pay interest for delayed payment and

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# Estate Officer, Kolkata Port Trust

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payment and from which date such interest is recoverable from O.P. in case of default in making payment of charges on account of compensation equivalent to monthly rental dues as per KoPT's Schedule of Rent Charges for the relevant period.

The plea taken by O.P. for denial of KoPT's claim on account of interest is required to be adjudicated seriously as the issue involves mixed question of fact and law as well. It is the case of Kolkata Port Trust that claim of interest for delayed payment is in accordance with the Schedule of Rent Charges which has been published in the Calcutta Gazette as per provision of the Major Port Trusts Act 1963, after obtaining sanction of the Central Govt. as per provision of the said Act. It is contended that notification published under Authority of Law has statutory force of law and O.P. cannot deny the claim of KoPT on the strength of such notification. It is further contended that O.P. was informed about its liability towards payment of interest for delayed payment by various notifications in Official Gazette and continuing in occupation of the public premises must necessarily mean that O.P. is under legal obligation to pay such charges on account of

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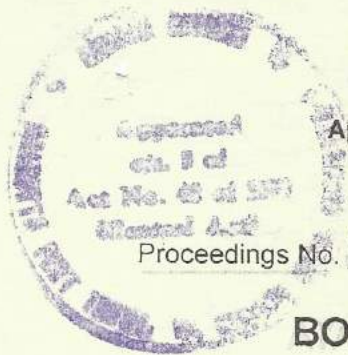
account of interest also in case of failure to pay KoPT's demand as per Schedule of Rent Charges.

It is, however, the contention of O.P. that there is no agreement for payment of interest with KoPT and as such O.P. is not liable to pay any interest as per KoPT's demand. It is also contended that O.P.'s liability towards payment of interest on compensation is required to be calculated strictly from the date of its knowledge that is to say from the date of demand on account of compensation charges on and from 16.07.2007 not before that.

I have duly considered the submissions/arguments made on behalf of the parties. It is my considered view that payment of interest is a natural fall out and one must have to pay interest in case of default in making payment of the principal amount due to be payable. Now the question arises whether there is any obligation on the part of O.P. to pay interest to KoPT even there is no existence of any formal agreement between the parties. For occupation and enjoyment of Port property, the charges leviable upon the tenants/occupiers are based on the Schedule of Rent Charges as applicable for a tenant/occupier in respect of respective zone as indicated in such Schedule of Rent Charges. Every tenant/occupier of the Port

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the Port property is under obligation to pay such charges for occupation and it has been specifically mentioned in 1976 Schedule of Rent Charges (notified in Calcutta Gazette dated 7.2.1976) that tenant/occupier must have to pay interest @15% per annum for default in making payment of rental dues. As per Major Port Trusts Act 1963 (prior to its amendment in 1997), Rent Schedule was framed by the Board of Trustees of the Port of Kolkata u/s.49 of the said Act and sanction of the Central Govt. was obtained u/s.52 of the said Act before publication/notification in Official Gazette in 7.2.1976. I am firm in holding that such notification has a statutory force of law and tenants/occupiers cannot deny the charges on account of interest as per notification in the Calcutta Gazette dated 7.2,1976. Subsequently, notifications in Official Gazette were issued by the Port Authority effective from 31.03.1988, 19.09.1996 (for interest @ 18% per annum) and thereafter effective from 07.04.2011 for interest @14.25% per annum. ( It may be mentioned that as per Major Port Trusts Act Schedule of Rent Charges will be effective right from the date of its publication of the same in Calcutta Gazette and shall continue until there is any modification of such charges by subsequent

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**subsequent notification of the Schedule of Rent Charges, undergoing the process of law as per provision of the Major Port Trust Act 1963.** To come into such conclusion, I must say that Hon'ble Supreme Court of India had the occasion to speak on the validity of a notification in Subhas Ramkumar Baid alias Vakil and Anr. -Vs- State of Maharashtra reported in (2003) 1 SCC 506 which reads as follows:

"Para 20.....  
.....  
Notification in common English acceptance means and implies a formal announcement of a legally relevant fact and in the event of a statute speaking of a notification being published in the Official Gazette, the same cannot but mean a notification published by Authority of Law in Official Gazette. ....  
....."

Now question arises regarding what will be the natural outcome for default in making payment of rental dues and how far the claim of KoPT on account of interest is sustainable in absence of a written agreement for payment of the same. Hon'ble Supreme Court's decision in Alope Shanker Pandey -Vs- Union of India reported in (2007)3 SCC 545 is very much instrumental in

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instrumental in deciding the issue of payment of interest as disputed/denied by O.P. The relevant portion of the judgment of the Hon'ble Apex Court in Para-9 is reproduced below:

"it may be mentioned that there is a misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital. For example if A had to pay B a certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that amount to B 10 years ago, B would have invested that amount somewhere and earned interest thereon, but instead of that A has kept that amount with himself and earned interest on it for this period. Hence, equity demands that A should not only pay back the principal amount but also the interest thereon to B."

The ratio of decision in Alope Shanker Pandey's case is followed by the Division Bench of Calcutta High Court reported in (2010)1 CAL LT 661 (HC) on the question of awarding interest. It is my firm and considered view, that O.P. had due notice for its liability towards payment of interest as per KoPT's claim and O.P. cannot deny the applicability and/or enforceability of

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enforceability of interest upon publication of the rate of such interest in Official Gazette dated 7.2.1976. I, therefore, firm in holding that although there is no formal agreement on the basis of offer and acceptance of the same, legally O.P. cannot deny payment of interest @ 15% per annum as per KoPT's demand and @18% per annum as per KoPT's notification in Calcutta Gazette published on 19.9.1996 (effective from date of its publication) in view of the facts and circumstances of the case. I must add few more words that O.P. preferred to continue in occupation upto the date of vacating the premises in question knowing fully well about the rate of interest to be paid for non-payment of rental dues apart from constructive notice for imposition of rate of interest by notification dated 7.2.1976 and by notification dated 31.03.1988, 19.9.1996 and 07.04.2011. In my view, there is an implied agreement by conduct between the parties regarding payment of interest for default in making payment of charges on the strength of notification, published under authority under law and O.P. by holding/enjoying the property cannot deny its liability towards payment of interest as such act on the part of O.P., if allowed will certainly create a differential treatment between a regular

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