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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
(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. 17 DT 03.08.2018
PROCEEDINGS NO. 1558 OF 2017

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-
Estate Narottam Adhikary & Asto Adhikary (O.P.)

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 **Estate Narottam Adhikary & Asto Adhikary, of 67/23, Strand Road, Cross Road no. 14, Nimtollah, Kolkata 700007, AND also of Village & P.O. Dasnagar (Shanpur) Howrah 711105** are in unauthorized occupation of the Public Premises specified in the Schedule below:

R E A S O N S

- 1) That O.P. had failed to liquidate the rental dues of the Port Authority within prescribed period, for a considerable time, despite being requested for its immediate liquidation.
- 2) That the lease granted to O.P. for 10 years (without any option for renewal) had expired on 07.09.2003, in all sense of law.
- 3) That O.P. has failed to file any specific denial regarding the submissions of KoPT.
- 4) That occupation of O.P. is not entitled for any protection, even for the sake of natural justice.
- 5) That O.P./any other person on behalf of O.P. have failed to make out any case in support of their occupation as “authorised occupation”, inspite of sufficient chances being given.
- 6) That O.P. or any other person/s asserting any right through O.P. has failed to bear any witness or adduce any evidence in support of its occupation as “authorised occupation”, inspite of sufficient chances being provided.

Please see on reverse



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- 7) That the notice to quit dated 31.10.2005 as served upon O.P. by the Port Authority is valid, lawful and binding upon the parties and O.P's occupation, and that of any other occupant of the premises, has become unauthorised in view of Section 2(g) of the P.P Act.
- 8) That O.P. is liable to pay damages for wrongful use and occupation of the Public Premises upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

A copy of the reasoned order No. 17 dated 03.08.2018 is attached hereto which also forms a part of the reasons.


NOW, THEREFORE, in exercise of the powers conferred on me under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order the said **Estate Narottam Adhikary & Asto Adhikary, of 67/23, Strand Road, Cross Road no. 14, Nimtollah, Kolkata 700007, AND also of Village & P.O. Dasnagar (Shanpur) Howrah 711105** 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 Narottam Adhikary & Asto Adhikary, of 67/23, Strand Road, Cross Road no. 14, Nimtollah, Kolkata 700007, AND also of Village & P.O. Dasnagar (Shanpur) Howrah 711105** 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

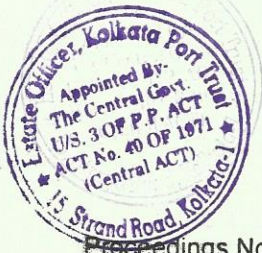
The said piece or parcel of Land msg. about 105.72 sqm or thereabouts situated on the South side of Cross Road no. 14 at Nimtollah in the presidency town of Kolkata. It is bounded on the North by the Trustees' Cross Road no. 14, on the East by the Trustees' land occupied by Balmukund Lachminarayan, on the South by the Trustees' land occupied by Mohanlal Agarwalla & on the West by the Trustees' land occupied by Harimoti Paul & Ors.

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

Dated: 03.08.2018


Signature & Seal of the
Estate Officer.

**COPY FORWARDED TO THE ESTATE MANAGER/CHIEF LAW OFFICER,
KOLKATA PORT TRUST FOR INFORMATION.**



Estate Officer, Kolkata Port Trust

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

Proceedings No. 1558, 1558/R, 1558/D Of 2017 Order Sheet No. 18

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Estate Narottam Adhikary ^{VS} Austo ~~Austo~~ Adhikary

17

03-08-2018

FINAL ORDER

The matter is taken up today for final disposal. It is the case of Kolkata Port Trust (KoPT), Applicant herein, that Shri Narottam Adhikary & Shri Asto Adhikary came into occupation of the Public Premises in question, being land Msg. about 105.724 Sq.m or thereabouts, at the south side of Cross Road no. 14 at Nimtollah, Kolkata (Occupation no. SB-294/A) on long term lease (10 years) without any option of renewal, and the said lessee violated the fundamental condition for grant of tenancy under lease by way of not making payment of monthly rent for a considerable period. It is the submission of KoPT that said lessee has no authority to occupy the land in question after expiry of the lease on 07.09.2003, as more fully described in the Notice to Quit dated 31.10.2005 issued by KoPT to the said lessees. It is also argued that O.P. is liable to pay damages for wrongful 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.

This Forum of law formed its opinion to proceed against O.P. and issued Show Cause Notice/s u/s 4 of the Act (for adjudication of the prayer for order of eviction against O.P. etc.) and u/s 7 of the Act (for adjudication of the prayer for recovery of arrear rental dues, damages etc.) all dated 08.11.2017. It is seen from record that the notice/s sent through registered post were returned undelivered, with one bearing the endorsement "deceased". However, the Notice/s were affixed on the property in question



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. 1558, 1558/R, 1558/D Of 2017 Order Sheet No. 19

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Estate Narottam Adhikary ^{VS} Asto
S. Asto Adhikary

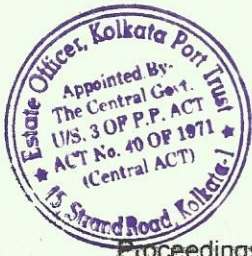
17

03.08.2018

through the Process Server. Finally an application dated 03.01.2018 was filed on 29.01.2018 by the legal representatives of Shri Narottam Adhikary & Shri Asto Adhikary, with the submission that said lessees have expired and as such the said legal representatives have no objection if the tenancy is transferred in the name of Babua Adhikary, purported to be son of Shri Narottam Adhikary. This Forum is bound in terms of the P.P. Act to hear the submissions of the legal heirs/representatives of any deceased lessee, and as such the proceedings was continued as "Estate Narottam Adhikary & Asto Adhikary" as O.P. It is seen from record that numerous adjournment was sought by O.P. and finally on 09.05.2018, a Written Objection was filed on behalf of O.P. The matter was heard for final time on 04.07.2018 when after hearing the arguments of the parties, final order was reserved by me, with liberty to the parties to file their respective Written Notes of Arguments, which was complied with by O.P. by filing Written Notes of Arguments on 12.07.2018

I have carefully gone through the materials on record. During course of hearing, no executed lease deed was produced before me by any of the parties. However, neither party denied the existence of the long term lease of 10 years. As such, there is no bar in accepting the status of O.P. as a long-term lease holder from 08.09.1993. As regards the governing terms and conditions of such a lease, the offer letter dated 07.05.2001 issued by KoPT (which was accepted by O.P. vide letter dated 29.05.2001) is

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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. 1558, 1558/R, 1558/P Of 2017 Order Sheet No. 20

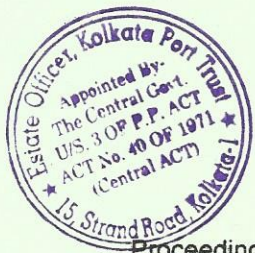
BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Estate Narottam Adhikary ^{VS} Auto Auto Adhikary

17
03.08.2018

very much relevant. The said offer letter clearly mentions that the grant of lease was for a period of 10 years without any option of renewal, with effect from 08.09.1993. Thus, there is no doubt of confusion as to the validity of the long term lease. During course of hearing, representatives of O.P. never disputed that the lease had expired; on the contrary submission has been made that the Port Authority did not extend the lease despite being approached for the purpose. In my view, such submission is very much futile as the Port Authority is not at all bound to renew/extend the lease, in the facts and circumstances of the case. As such, when there is no doubt or confusion about the expiry of the lease due to efflux of time, the status of O.P. is nothing but "unauthorised" within the meaning of Sec. 2 (g) of the P.P. Act 1971. As per said section, the "unauthorized occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. In my view, said provision is squarely attracted in the instant case and O.P. has failed to justify why it should be held otherwise. In fact, the Written Objection filed by the O.P. is very much evasive and there is plain denial of all allegations of KoPT although law requires such a Reply to be specific and complete with all material particulars. In such a situation, I

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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. 1558, 1558/R, 1558/A Of 2017 Order Sheet No. 21

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Estate Narattam Adhikary ^{VS} Ansto Adhikary

17
03.08.2018

have no bar in accepting the submission of the Port Authority regarding expiry of lease.

Now, when the status of the O.P. is found to be "unauthorised" as above, any discussion as to rental dues before expiry of lease is purely academic. However, since KoPT has relied on default of rent as well, in the Notice to Quit dated 31.10.2005, I find it prudent to discuss the said allegation before concluding the proceedings. It is seen from record that KoPT vide its letter dated 08.07.2003 requested the O.P. to liquidate the rental dues, which were apparently in default. I have also gone through the detailed statement of accounts maintained in official course of business by KoPT. I find that the rental dues were not satisfied by O.P. within the time prescribed. I am not satisfied with mere claim of O.P. that it was not in default of rent, inasmuch as O.P. failed to produce a single scrap of paper substantiating its claim. In my view, the statement of accounts produced by a statutory authority has definite evidenciary value which cannot be ignored by this Forum of law. As such, I am firm in holding that the O.P. was also in arrears of rent, at the time of expiry of the lease in question. Consequently, I must also hold that the occupation of the O.P. is not entitled to any protection, even for the sake of natural justice.

Thus, as the matter stands, the allegations of KoPT are sufficiently substantiated in the facts and circumstances of the case. As such, I find the action taken by the Port Authority is logical and within the four corners of the law. In view of the above, I am



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. 1558, 1558/R, 1558/P Of 2017 Order Sheet No. 22

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Estate Narattam Adhikary VS Ansto Adhikary

17
03.08.2018

firm in holding that the Notice to Quit dated 31.10.2005 had been validly issued and served on the O.P. and the same is binding on the parties.

In view of the circumstances, and being satisfied as above, I am left with no other alternative but to issue the Order of Eviction against O.P., as prayed for on behalf of KoPT, on the following grounds/reasons:-

- 1) That O.P. had failed to liquidate the rental dues of the Port Authority within prescribed period, for a considerable time, despite being requested for its immediate liquidation.
- 2) That the lease granted to O.P. for 10 years (without any option for renewal) had expired on 07.09.2003, in all sense of law.
- 3) That O.P. has failed to file any specific denial regarding the submissions of KoPT.
- 4) That occupation of O.P. is not entitled for any protection, even for the sake of natural justice.
- 5) That O.P./any other person on behalf of O.P. have failed to make out any case in support of their occupation as "authorised occupation", inspite of sufficient chances being given.
- 6) That O.P. or any other person/s asserting any right through O.P. has failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation", inspite of sufficient chances being provided.
- 7) That the notice to quit dated 31.10.2005 as served upon O.P. by the Port Authority is valid, lawful and binding upon the parties and O.P's occupation, and that of any other occupant 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. 1558, 1558/R, 1558/D Of 2017 Order Sheet No. 23

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Estate Narattam Adhikary ^{VS} Austo Adhikary

17
03.08.2018

the premises, has become unauthorised in view of Section 2(g) of the P.P Act.

- 8) That O.P. is liable to pay damages for wrongful use and occupation of the Public Premises upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

ACCORDINGLY, I sign the formal order of eviction u/s. 5 of the Act as per Rule made there under, giving 15 days time to O.P. and any person/s whoever may be in occupation to vacate the premises. I make it clear that all person/s whoever may be in occupation are liable to be evicted by this order and the Port Authority is entitled to claim damages for unauthorized use and enjoyment of the property against O.P. in accordance with Law up to the date of recovery of possession of the same. KoPT is directed to submit a comprehensive status report of the Public Premises in question on inspection of the property after expiry of the 15 days as aforesaid so that necessary action could be taken for execution of the order of eviction u/s 5 of the Act as per Rule made under the Act.

I make it clear that I am not inclined to assess the damages at this stage as the Notice u/s 7(2) was issued only for a particular period whereas the O.P. is liable to pay damages for unauthorized use and enjoyment of the property right upto the date of handing over of possession of the public premises to KoPT. I further make it clear that I have not gone into the merits of the submissions of the parties regarding the quantum/assessment of damages and all points raised by the parties in relation thereto are



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. 1558, 1558/R, 1558/D Of 2017 Order Sheet No. 24

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Estate Narattam Adhikary ^{VS} Austo Adhikary

17
03.08.2018

kept open, to be decided upon issuance of fresh Notice u/s 7(2) of the Act by this Forum, at the appropriate time. KoPT is directed to submit a report regarding its claim on account of damages against O.P., indicating there-in, the details of the computation of such damages with the rate of charges so claimed for the respective periods (including the date of taking over of possession) for my consideration in order to assess the damages as per the Act and the Rules made thereunder.

I further make it clear that in the event of failure on the part of O.P. or sitting occupant/s to hand over possession of the public premises to KoPT as aforesaid, Port Authority is entitled to proceed further for recovery of possession in accordance with law.

All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL

(G.MUKHOPADHYAY)

ESTATE OFFICER

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