

Scanned copy.
On 09.12.2019
at 5 P.M.

**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
6, Fairley Place (1st Floor)
KOLKATA - 700 001

Court Room At the 1st Floor
of Kolkata Port Trust's
Fairlie Warehouse
6, Fairley Place, Kolkata- 700 001.

REASONED ORDER NO.18 DT 04.12.2019.
PROCEEDINGS NO. 1215 OF 2011

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-

Md. Arif (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
**Md. Arif of Hawker's Stall No. 21, Block-'B', 52, Circular Garden Reach
Road, Kolkata-700023** is in unauthorized occupation of the Public Premises
specified in the Schedule below:

REASONS

1. That this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrear rental dues/damages etc as prayed for on behalf of KoPT.
2. That O.P. has failed to pay the rental dues to KoPT, in clear violation to the condition of the license as granted to O.P. by the Port Authority.
3. That O.P. has unauthorisedly parted with possession of the public premises to rank outsiders.
4. That O.P. has failed to file reply to the show cause notice u/s 4 of the Act inspite of sufficient chances.
5. That no case has been made out on behalf of O.P. as to how its occupation in the Public premises could be termed as authorised occupation after issuance of notice dated 09.12.2003, demanding possession by the Port Authority.



PLEASE SEE REVERSE

6. That O.P's occupation has become unauthorised in view of Sec.2(g) of the P.P. Act and 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 of the public premises to the Port Authority.

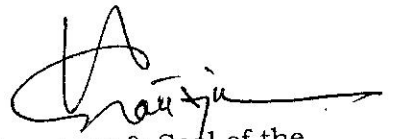
A copy of the reasoned order No. 18 dated 04.12.2019 is attached hereto which also forms a part of the reasons.

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 **Md. Arif of Hawker's Stall No. 21, Block-'B', 52, Circular Garden Reach Road, Kolkata-700023** 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 **Md. Arif of Hawker's Stall No. 21, Block-'B', 52, Circular Garden Reach Road, Kolkata-700023** 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. about 4.09 sq.m is situated at Circular Garden Reach Road being the Hawker Stall No. 21, Block No.-'B', Plate No. D-574, Thana-SPPS, Dist. 24 Parganas, Reg. District- Alipore. It is bounded on the North by the Trustees' road name C.G.R. Road, on the east by the Trustees' leased out land, on the West by the Trustees' open passage leased to CDLB, on the South by the Trustees' land leased to CDLB. Trustees' means the Board of Trustees' of the Port of Kolkata.

Date- 04.12.2019.


Signature & Seal of the
Estate Officer.

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

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THE ESTATE OFFICER, KOLKATA PORT TRUST
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Public Premises (Eviction of Unauthorized Occupant) Act 1971
1st Floor, 6, Fairlie Place Warehouse,
Kolkata-700001

Court Room At the 1st Floor
6, Fairlie Place Warehouse
Kolkata- 700 001.

Form " E "

PROCEEDINGS NO.1215/R OF 2011
ORDER NO. 18 DATED: 04.12.2019

Form of order under Sub-section (1) and (2A) of Section 7 of the Public
Premises (Eviction of Unauthorised Occupants) Act, 1971

To

**Md. Arif,
Hawker's Stall No. 21,
Block-'B',
52, Circular Garden Reach Road,
Kolkata-700023.**

WHEREAS you are in occupation of the public premises described in
the Schedule below. (Please see on reverse).

AND WHEREAS, by written notice dated 14.08.2015 you were called
upon to show cause on/or before 24.09.2015 why an order requiring you
to pay a sum of Rs. 17,741.00/- (Rupees Seventeen Thousand Seven
Hundred Forty One only.) being the rent payable together with simple
interest in respect of the said premises should not be made;

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

NOW, THEREFORE, in exercise of the powers conferred by sub-
section (1) of Section 7 of the Public Premises (Eviction of Unauthorised
Occupants) Act 1971, I hereby require you to pay the sum of Rs.
17,741.00/- (Rupees Seventeen Thousand Seven Hundred Forty One
only.) for the period 01.12.1984 to 02.02.2004 (both days inclusive) to
Kolkata Port Trust by 18.12.2019.

PLEASE SEE ON REVERSE

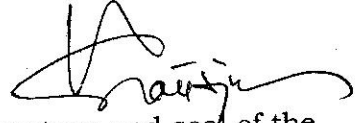
In exercise of the powers conferred by Sub-section (2A) of Section 7 of the said Act, I also hereby require you to pay simple interest @ 18% per annum upto 06.04.2011 and thereafter @ 14.25% per annum on the above sum till its final payment in accordance with Kolkata Port Trust Notification Published in Calcutta Gazettee/s as per Kolkata Port Trust's Rule.

In case the said sum is not paid within the said period or in the said manner, it will be recovered as arrears of land revenue through the Collector.

SCHEDULE

Piece or parcel of land msg. about 4.09 sq.m is situated at Circular Garden Reach Road being the Hawker Stall No. 21, Block No.-'B', Plate No. D-574, Thana-SPPS, Dist. 24 Parganas, Reg. District- Alipore. It is bounded on the North by the Trustees' road name C.G.R. Road, on the east by the Trustees' leased out land, on the West by the Trustees' open passage leased to CDLB, on the South by the Trustees' land leased to CDLB. Trustees' means the Board to Trustees' of the Port of Kolkata.

Dated: 04.12.2019


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. 1215 X 1215/R Of 2011 Order Sheet No. 18

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Md. Arif VS

FINAL ORDER

The instant Proceedings No. 1215, 1215/R of 2011 arises out of the application bearing No. Lnd.4790/B/21/04/473 dated 24.05.2004 filed by the Kolkata Port Trust (KoPT), the Applicant herein, praying for order of eviction and recovery of dues/damages/compensation etc. along with interest against Md. Arif, the O.P. herein, under the relevant provisions of Public Premises (Eviction of Unauthorised Occupants) Act 1971. The material facts of the case are summarized here under.

It is submitted by KoPT that O.P. came into possession of KoPT's land msg. 4.09 sqm of Hawker's stall No. 21, Block-B situated at Circular Garden Reach Road under Occupation No. D-574 with effect from 09.01.1980 as month to month licensee, as evident from the Offer letter being No. LM. 4790 dated 09.01.1980. It is submitted that the O.P. (a) defaulted in payment of monthly rent fee and taxes and also accrued interest thereon from 01.12.1984, and (b) transferred the tenancy right in full to Arati Devi Shaw, a rank outsider without prior approval of KoPT. Failing to remedy the breaches inspite of several reminders, KoPT finally issued Ejectment Notice being No.Lnd.4790/B/21 dated 09.12.2003, revoking the licence and asking the O.P. to quit, vacate and deliver up peaceful possession of the public premises on 03.02.2004. It is the case of KoPT that even after issuance of the notice to quit dated 09.12.2003, O.P. failed and neglected to hand over possession of the public premises to KoPT. Rather, O.P. or more specifically the sitting occupant to whom the O.P. transferred the tenancy right without prior approval etc. has been continuing to occupy the said port premises wrongfully and in unauthorised manner for which KoPT is entitled to have the O.P. evicted from the public premises and realise arrear rent/compensation charges/ accrued interest thereon from the O.P. till O.P. delivers up the vacant and unencumbered possession of the premises.

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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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On the basis of the information, supported with documentary evidence as received from KoPT, this Forum formed its opinion and issued Notice/s dated 14.09.2015 to O.P. u/s 4 & 7 of the Act to show cause as to why an order of eviction and an order requiring to pay arrears of rent together with simple interest should not be made against the O.P. O.P. was also called upon to appear before this Forum in person or through the duly authorised representative, capable of answering all material questions related to the matter along with the required evidence, the O.P. intends to produce in support of the cause.

On 08.10.2015, one Shri Avinash Shaw claiming to be the son of Arati Devi Shaw, makes an appearance before this Forum and submits that he is presently occupying the subject premises. On subsequent dates of hearing, specifically on 17.12.2015, Shri Avinash Shaw appeared without any authority from O.P. when he undertook before this Forum to produce requisite letter of authorization/authentication from O.P. which stands the test of legal scrutiny. During the course of hearing, he however states that he is ready to liquidate the dues/charges payable to KoPT.

The said Smt. Arati Devi filed a reply to the Show Cause Notice on 24.04.2019, with an affidavit signed by her and identified by one Sri Amit Nath, Advocate to represent the Forum on her behalf. In her said deposition, she states that presently she is in occupation of the subject premises and is running a sweetmeat shop namely 'Krishna Sweet Shop' on the above plot of land. She claims to have purchased the subject land way back in the year 2000 from Md. Arif (O.P. herein) by defraying a sum of Rs. 60,000/- by way of Notary Indenture made on 08.09.2000 before the Notary Public Sri Pradip Kumar Basu. She further submits that she is ready to pay the entire arrear overdue amount by way of 'convenient, installment's' subject to further issue of fresh licence agreement in her favour. Smt. Arati Devi also files a copy of said indenture/purchase agreement dated 08.09.2000

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(Eviction of Unauthorised Occupants) Act 1971

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executed before a Notary Public. Subsequently, Sri Amit Nath, Advocate appearing on behalf of Smt. Arati Devi Shaw, files written submissions on 29.05.2019 reiterating the earlier submissions. Representative of KoPT, in response to the show cause reply filed by Smt. Arati Devi Shaw files its rejoinder dated 08.05.2019, taking strong objection regarding the land being transferred to the third party by way of an indenture. KoPT submits that it is a clear case of parting with possession expressly admitted by the Sitting Occupant which is a clear breach of terms of agreement and particularly more so in the light of the established legal tenet that licence is a personal right and it is not transferrable by way of any means.

Upon hearing the matter, and on careful consideration of the documents brought before me, I find that the following issues have come up for adjudication.

1. Whether O.P. has defaulted in making payment of rental dues to KoPT, or not;
2. Whether the O.P. has parted with possession of the public premises unauthorisedly, or not;
3. Whether KoPT's notice dated 09.12.2003 as issued to O.P., demanding possession from O.P. is valid and lawful or not;
4. Whether O.P.'s occupation could be termed as "unauthorised occupation" in view of Sec.2 (g) of the P.P. Act and whether O.P. is liable to pay damages to KoPT during the period of its unauthorised occupation or not.

Issues 1, 2 and 3 are taken up together, as they are related to each other. It is the case of KoPT that the land in question was granted to one Md. Arif under licence agreement. Thereafter, the licensee defaulted in payment of monthly rent and as per records made available to this Forum by KoPT, various letters vide letter No. Lnd.4790/B/21 dated 04.05.1990, 13.03.1990, followed up by letter dated 15.11.1990 etc. were issued by KoPT asking the licensee to pay the



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outstanding arrear rent and taxes. This was followed by KoPT's letter of revocation/withdrawal of the grant of license dated 09.12.2003 on the grounds of sub-letting and non-payment of licence fees. Since neither the O.P. nor the sitting occupant handed over possession of the property, KoPT filed the application dated 24.05.2004 before this Forum, culminating into the current proceedings.

During the course of hearing, Md. Arif(O.P. herein) did not appear before this Forum. Only the sitting occupant/s, namely Sri Avinash Shaw, reportedly the son of Arati Devi Shaw, appeared before this Forum and states that presently his mother is running a Sweet Meat Shop viz 'Krishna Sweet Shop' on the above plot of land, KoPT had argued that the fact, that Smt. Arati Devi Shaw, the sitting occupant, herself admitted that she was running a sweetmeat shop at the subject premises, was itself a glaring pointer that she was an unauthorized occupant, inasmuch as Smt. Arati Devi Shaw had willingly made an illegal transaction by purchasing the port property from the third party, Md. Arif, incidentally the O.P. to whom KoPT granted the license of the subject premises.

In terms of a bare perusal of the sale deed executed between Md. Arif (Vendor) and Smt Arati Devi (Shaw), wife of Shri Abhay Kumar Shaw (Purchaser) and executed before the Notary Public and relied upon by Smt. Arati Devi(Shaw), it is evident that there was an outright sale of a leasehold land, the owner of which is Kolkata Port Trust. The deed contains a declaration to the effect that the vendor (Md. Arif)(the original licensee of the property) due to acute monetary trouble and being incapable to run the business for some unavoidable circumstances, was desirous of selling his right, title and interest in respect of stall No. 21 msg. an area 4.09 sq. mt lying and situated at 52, Circular Garden Reach Road, under South Port Police Station Calcutta-700023, under the tenancy of the Land Manager, Calcutta Port Trust at the monthly rent of Rs. 10.68 P.

Therefore, I am of the firm view that the said deed does not confer any right, title and interest whatsoever to the said sitting occupants, in respect of the land involved in the matter and such sale is impermissible in the eyes of law. In such a situation, any statement by the said sitting occupant regarding purchase of the tenancy right

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will certainly not come into their assistance. No case has been made out on behalf of the sitting occupants either in pleadings or in arguments as to how their claim of "granting fresh license agreement is supposedly valid under law. On the other hand, the said deed of sale is a sufficient evidence of the fact that Md. Arif(O.P. herein) had unauthorisedly parted with possession of the public premises in question, thereby handing over exclusive possession of the public premises to rank outsiders. In view of the above, I have no doubt that Smt. Arati Devi (Shaw) have no authority to remain in occupation and as such is an unauthorised occupant into the public premises.

Regarding the claim of KoPT for non-payment of rental dues, I have nothing to disbelieve the statement of accounts maintained by the Port Authority in the official course of business. It is evident from the statements produced before this Forum that the O.P. has palpably failed to pay the rental dues of KoPT, and therefore violated the fundamental condition of the license agreement. Also, in their reply to the show cause notice dated 24.04.2019, the O.P. had never contested KoPT's claim of outstanding rental dues and instead had evinced its readiness to pay the entire overdue amount, "by a few installments", and subject to further issue of a fresh license agreement in their favour

On evaluation of the factual aspects involved in this matter, the logical conclusion which can be arrived is that KoPT's notice dated 09.12.2003 as issued to O.P. is valid and lawful and binding upon the O.P. As per Section 2(g) of the Act, O.P's occupation has become unauthorised after revocation of the license. KoPT's application for passing order of eviction is a clear manifestation of Port Authority's intent to get back the possession of the land after the revocation of license. During the course of hearing, the representative of KoPT, submits that the license was doubtlessly determined by KoPT's notice demanding possession, whose validity for the purpose of deciding the legal question of authority is absolute and cannot be questioned by O.P.. In such a situation, I have no hesitation to accept KoPT's contention regarding enforceability of the Notice dated 09.12.2003, following evaluation of the facts and circumstances of the case.

10-12-2019

[Signature]

Estate Officer, Kolkata Port Trust

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I hereby infer that the sitting occupants have no right whatsoever in continuing with the possession of the public premises in question. Keeping all these facts into account, I have no hesitation to decide the issues in favour of Kolkata Port Trust.

On issue No. 4, I have no hesitation in holding that the O.P. is not only liable to pay the rental dues to KoPT upto 2nd February, 2004, but also legally obligated to pay the damages for unauthorised occupation and enjoyment of the Port property, after revocation of the license in question. Damages are like mesne profit, that is to say, the profit/compensation arising out of wrongful use and occupation of the property in question. In this context, I am firm in drawing the inference that after expiry of the period as mentioned in the said revocation of license dated 09.12.2003, O.P. has lost its authority to occupy the public premises and is liable to pay the damages for such unauthorised use and occupation of the public premises.

In my opinion, institution of the proceedings against O.P. in the public premises forum is a clear pointer to KoPT's express intent to obtain an order of eviction against the O.P., fortified by the declaration that KoPT is not in a position to recognise O.P. as a bonafide and lawful tenant.

NOW THEREFORE, I think it is a fit case for allowing KoPT's prayer for eviction against O.P. u/s 5 of the Act for the following grounds/reasons:

1. That this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrear rental dues/damages etc as prayed for on behalf of KoPT.
2. That O.P. has failed to pay the rental dues to KoPT, in clear violation to the condition of the license as granted to O.P. by the Port Authority.
3. That O.P. has unauthorisedly parted with possession of the public premises to rank outsiders.
4. That O.P. has failed to file reply to the show cause notice u/s 4 of the Act inspite of sufficient chances.



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5. That no case has been made out on behalf of O.P. as to how its occupation in the Public premises could be termed as authorised occupation after issuance of notice dated 09.12.2003, demanding possession by the Port Authority.
6. That O.P's occupation has become unauthorised in view of Sec.2(g) of the P.P. Act and 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 of the public premises to the Port Authority.

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 other interested 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 can be taken for execution of the order of eviction u/s 5 of the Act as per Rule made under the Act.

Department is also directed to draw formal order for rent u/s.7 of the Act for Rs. 17,741/- for Plate No. D-574 for the period 01.12.1984 to 02.02.2004(both days inclusive), directing O.P. to pay the amount on or before 21.12.2019 and it is hereby ordered that O.P. shall make payment of the aforesaid sum to KoPT by 18.12.2019. Such dues attract interest @ 15% per annum upto 18.09.1996 and thereafter @ 18% per annum upto 06.04.2011 and thereafter @ 14.25% per annum, till the liquidation of the same, from the date of incurrence of liability in accordance with the notification of KoPT, issued under Authority of Law, as per adjustment of payments made so far by O.P., in terms of KoPT's books of accounts. Department is directed to draw up formal order as per Rule u/s 7 of the Act. I make it clear that in

J. 09.12.2019

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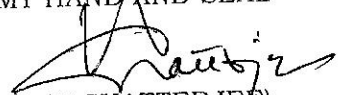
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the event of failure on the part of O.P. to pay the amount to KoPT as detailed above, Port Authority is entitled to proceed further for recovery of its claim in accordance with law.

KoPT is directed to submit a report regarding its claim on account of damages against O.P., indicating therein the details of the computation of such damages with the rate of charges so claimed for the respective period (details of computation with rates applicable for the relevant period) for my consideration in order to assess the damages as per the Act and the Rules made thereunder. All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL


(K.CHATTERJEE)
ESTATE OFFICER.

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