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REGISTERED POST WITH A/D.
HAND DELIVERY
AFFIXATION ON PROPERTY

THE ESTATE OFFICER, KOLKATA PORT TRUST
(Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-Central Act)
Public Premises (Eviction of Unauthorized Occupant) Act 1971
OFFICE OF THE ESTATE OFFICER
15, STRAND ROAD
(4th Floor)
KOLKATA - 700 001

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

REASONED ORDER NO.36 DT 30.10.2012
PROCEEDINGS NO.1004 OF 2009

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

-Vs-
M/S. JAJODIA (OVERSEAS) PVT. LTD

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. JAJODIA (OVERSEAS) PVT. LTD OF 46A, RAFI AHMED KIDWAI ROAD, 3RD FLOOR, KOLKATA - 700 016 AND OF 13, MANDEVILLE GARDEN, KOLKATA-700 019 is in unauthorized occupation of the Public Premises specified in the Schedule below:

R E A S O N S

- (i) That after expiry of the period of lease in question, you have preferred to continue in occupation of the Public Premises without any valid grant/allotment in respect of the property in question.
- (ii) That after expiry of the contractual period of lease in question you are/were under legal obligation to hand over possession of the public premises to Kolkata Port Trust (KoPT) in its original condition and you have failed to do so.
- (iii) That you have failed to make out any case in respect of your "Authorised Occupation" inspite of repeated chances.
- (iv) That you have failed to bear any witness or adduce any evidence in support of your "Authorised Occupation" inspite of sufficient chances.
- (v) That you are in "Unauthorised Occupation" in view of Sec. 2(g) of P.P. Act.
- (vi) That KoPT's contentions regarding unauthorised parting with possession in favour of M/s. Osho Garments is proved by admission from your end vide letter to the Land Manager, KoPT dated 07.10.2002 and KoPT's claim on account of interest @ 18% per annum is correctly payable by yourself for delayed payment as agreed rate of interest and it has no bearing with the Power of the Estate Officer (This Forum of Law) for awarding interest as per Sec.7 of the P.P. Act.
- (vii) That you cannot claim extension of lease or allotment of the property in your favour by the Port Authority without removing all the breaches in terms of the provision of the expired lease deed on demand from KoPT as a matter of right.
- (viii) That you are liable to pay damages for wrongful use and occupation/enjoyment of the Port Property with effect from 01.03.2003 upto the date of handing over of clear vacant and unencumbered possession to KoPT AND you are liable to pay also the damages equivalent to sub-letting fees upto 31.03.2011 in addition to the damages in respect of the entire Public Premises in question.

A copy of the reasoned order No.36 dated 30.10.2012 is attached hereto which also forms a part of the reasons.

Please see on reverse

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: 2 :

NOW, THEREFORE, in exercise of the powers conferred on me under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order the said M/S. JAJODIA (OVERSEAS) PVT. LTD OF 46A, RAFI AHMED KIDWAI ROAD, 3RD FLOOR, KOLKTA - 700 016 AND OF 13, MANDEVILLE GARDEN, KOLKTATA-700 019 and all persons who may be in occupation of the said premises or any part thereof to vacate the said premises within 15 days of the date of publication of this order. In the event of refusal or failure to comply with this order within the period specified above the said M/S. JAJODIA (OVERSEAS) PVT. LTD OF 46A, RAFI AHMED KIDWAI ROAD, 3RD FLOOR, KOLKTA - 700 016 AND OF 13, MANDEVILLE GARDEN, KOLKTATA-700 019 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.

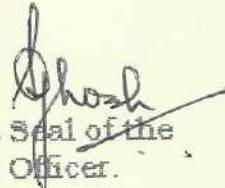
SCHEDULE

The Piece or Parcel of land msg. about 1282.619 sq.m or there about which is situated at Hari Mohan Ghosh Road, Thana: West Port Police Station, Dist. : 24 parganas (South), Regn. Dist. : Alipore. It is bounded on the North by Kolkata Port Trust's (KoPT) land previously lease to M/s. Ganges Agencies Pvt. Ltd. on the East by KoPT's strip of open land served as margin of safety alongside the Railway Sidings on the South by the KoPT's land previously occupied by M/s. Chaliha Rollings Mills Pvt. Ltd. and on the West by the Hari Mohan Ghosh Road.

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

Dated: 8.11.12




Signature & Seal of the
Estate Officer.

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

Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises
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FINAL ORDER

The matter is taken up today for final disposal. It is the case of Kolkata Port Trust (KoPT), the Applicant herein that a lease for 30 years without any option for renewal was granted to M/s. Jajodia (Overseas) Pvt. Ltd., O.P. herein with effect from 01.03.1973 with certain terms and conditions and O.P. prefers to continue in occupation after expiry of the period of lease on and from 01.03.2003. It is also the case of KoPT that O.P. has parted with possession of the Public Premises unauthorisedly and failed to handover possession of the Public Premises comprised under Plate No. D-133/2/A, even in terms of demand for possession dated 23.08.2005, AND O.P. is still continuing in wrongful occupation for which they are liable to pay damages to KoPT upto the date of handing over of clear, vacant and peaceful possession. The 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 prayer for realization of damages) both dated 02.05.2009. O.P. contested the matter through its Advocate and filed reply to the Show Cause Notice/s filed on 17.03.2009

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on 17.03.2009 read with supplementary reply to the Show Cause Notice/s filed on 13.04.2009. It reveals from record that O.P. made certain payments to KoPT in terms of the order passed by the Forum of Law (of course without prejudice to the rights and contentions of the parties in dispute) and dispute arose (application of O.P. filed on 14.01.2010) on the question of payment of interest for delayed payment at the rate of 18% per annum as per KoPT's 1996 schedule of Rent Charges. It is seen that an application was filed on behalf of O.P. on 01.11.2010 regarding withdrawal of permitted sub-tenancy under S.F.-100/61 and O.P. prayed for withdrawal of sub-letting fees. By application dated 20.01.2011 O.P. also prayed for the amount of interest as per KoPT's claim/record by 12 equal installments and O.P. expressed its intention vide application dated 20.02.2011 to clear up the interest amount involved under cover of 5 Post dated cheques each for to Rs.1,05,000/- with the specific intention to get long term lease in respect of the property in question. It is evident from record O.P. requested The Land Manager, KoPT by its letter dated 21.04.2011 to withhold the post dated cheques as submitted by them

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by them earlier without receiving any information from O.P.'s end. The petition filed by O.P. on 01.09.2011 with the prayer to refund the excess amount realized by KoPT on account of sub-letting fees etc. and KoPT's inspection report as filed on 22.09.2011 bearing No.Lnd.4295/III/11/4244 dated 22.09.2011 also received my attention. In course of hearing it is submitted on behalf of KoPT that the writ petition, directed against KoPT's enhancement of charges as per notification effective from 07.04.2011 being W.P. No. 21513 (W) of 2011 which was moved by O.P. before the Hon'ble High Court, Calcutta stands dismissed and O.P. is not paying current monthly charges for compensation in terms of the notification effective from 07.04.2011. After careful consideration of all the relevant papers/documents as brought before me in course of hearing and after due consideration of the submissions/arguments made on behalf of the parties, I find that following issues have come up for adjudication :

1. Whether O.P. has got any authority under law to occupy the Public Premises after expiry of the period of lease in question or not;

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Estate Officer, Kolkata Port Trust

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2. Whether O.P. is act in continuing occupation could be termed as 'un-authorised occupation' in terms of the provisions u/s 2 (g) of P.P. Act or not;
3. Whether KoPT's notice demanding possession dated 23.08.2005 has got any force of law or not;
4. Whether O.P. is liable to pay damages for wrongful use and occupation of the Port Property or not;
5. Whether O.P's plea to challenge/object KoPT's claim of interest at the rate of 18% per annum and its enforceability, in the context of KoPT's Schedule of rent charges is entertainable or not;
6. Whether O.P's plea regarding withdrawal of sub-letting fees from September, 2010 has got any merit or not;

Issues No. 1 & 2 are taken up together for convenient discussion. It is a settled question of law that after expiry of the contractual period of lease, the occupation of lessee has become unauthorized until or unless it is proved that O.P./lessee prefers to continue in occupation with the consent of Land Lord/lessor. In order to constitute a case of 'holding over' one must

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one must have to establish that there is consent on the part of lessor/Land Lord in continuing such occupation. No case has been made out on behalf of O.P. to entertain any matter with regard to any case for "Tenant Holding Over" as per section 116 of the T.P. Act. The provision u/s 2(g) of the P.P. Act is very much clear about its intent and object. The provision is clearly applicable to the occupation of O.P. for declaration of O.P's status into the Public Premises as "Unauthorised Occupant" and I do not find any scope to interpret the provision for assistance to O.P. by considering it otherwise. The issues are thus decided accordingly.

Issues No. 3 & 4 are also required to be discussed together. The notice demanding possession dated 23.08.2005 clearly speaks for KoPT's intention to get back possession on 30.08.2005. It is specifically stated in the notice that contractual period of lease for 30 years with effect from 01.03.1973 has expired on 28.02.2003. As per law, a leasee like O.P. is bound to deliver up vacant possession of the property to KoPT /Land Lord in its original condition. Such being the case, I am firm in holding O.P's act of continuing in position after

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after position after expiry the contractual period of lease in question as "wrongful occupation" and O.P. is liable to pay damages for such wrongful use and enjoyment of the Port Property in question. The discussions against the foregoing issues are bound to dominate these issues. I have deeply gone into the submissions/arguments made on behalf of the parties in course of hearing. The properties of the Port Trust are coming under the purview of "public premises" as defined under the Act. Now the question arises how a person become unauthorized occupant into such public premises. As per Section 2 (g) of the Act the "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. As per Transfer of Property Act, a lease of immovable property determines either by efflux of time limited

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time limited thereby or by implied surrender or on expiration of notice to determine the lease or to quit or of intention to quit, the property leased, duly given by one party to another. Here, the tenancy of O.P. under long term lease was expired long back and O.P. continued to occupy the premises. The Port Authority by service of notice dated 23.08.2005 demand possession and did not recognize O.P. as tenant by way of not issuing rent demand after expiry of the period on and from 28.02.2003 and also after expiry of the period as mentioned in the said notice demanding possession dated 23.08.2005. In fact there is no material to prove O.P's intention to clear up the liability towards payment of interest for delayed payment as per KoPT's rule as applicable for all tenants/occupiers of the Port Property and all my intention to narrow down the dispute between the parties has failed when O.P. challenged the enforceability of KoPT's rent schedule notified in Calcutta gazette, specifying the rate of interest payable in case of default in making payment in time. "Damages" are like "mesne profit" that is to say the profit arising out of wrongful use and occupation of the property

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the property in question. I have no hesitation in mind to say that after expiry of the period of lease, O.P. has lost its authority to occupy the public premises, on the evaluation of factual aspect involved into this matter and O.P. is liable to pay damages for such unauthorized use and occupation. To come into such conclusion, I am fortified by the decision/observation of the Hon'ble Supreme Court in Civil Appeal No.7988 of 2004, decided on 10th December 2004, reported (2005)1 SCC 705, para-11 of the said judgment reads as follows.

Para:11-" under the general law, and in cases where the tenancy is governed only by the provisions of the Transfer of Property Act 1882, once the tenancy comes to an end by determination of lease u/s.111 of the Transfer of Property Act, the right of the tenant to continue in possession of the premises comes to an end and for any period thereafter, for which he continues to occupy the premises, he becomes liable to pay damages for use and occupation at the rate at which the landlord would have let out the premises on being vacated by the tenant.

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

In course of hearing, the representative of KoPT states and submits that Port Authority never consented in continuing O.P's occupation into the public premises and never expressed any intention to accept O.P as tenant. It is contended that KoPT's intention to get back possession is evident from the conduct of the Port Authority and O.P. cannot claim its occupation as "authorized" without receiving any rent demand note. The question of "Holding Over" cannot arise in the instant case as the Port Authority never consented to the occupation of O.P. In the instant case, the lease was doubtlessly determined by efflux of time and the landlord by a notice demanded possession, whose validity for the purpose of deciding the question of law has not been questioned by O.P. Therefore, there can be no doubt that the O.P. was in unauthorized occupation of the premises, once the lease was determined. In my opinion, institution of this proceedings against O.P. is sufficient to express the intention of KoPT to obtain an order of

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order of eviction and declaration that KoPT is not in a position to recognize O.P. as tenant. In the instant case there was no consent on the part of the Port Authority either by way of accepting rent from O.P. or by any other mode, expressing the assent for continuance in such occupation after expiry of the period of lease and after expiry of the period as mentioned in the notice to vacate the premises. The Port Authority has a definite legitimate claim to get its revenue involved into this matter as per the KoPT's Schedule of Rent Charges for the relevant period and O.P. cannot claim continuance of its occupation without obtaining valid grant/allotment in respect of the property on payment of requisite charges. To take this view, I am fortified by the Apex Court judgment reported in JT 2006 (4) Sc 277 (Sarup Singh Gupta -vs- Jagdish Singh & Ors.) wherein it has been clearly observed that in the event of termination of lease the practice followed by Courts is to permit landlord to receive each month by way of compensation for use and occupation of the premises, an amount equal to the monthly rent payable by the tenant. In course of hearing, it is submitted on behalf of KoPT that the charges claimed on account of

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account of damages is on the basis of the KoPT's Schedule of Rent Charges as applicable for all the tenants/occupiers of the premises in a similarly placed situation and such Schedule of Rent Charges is notified rates of charges under provisions of the Major Port Trusts Act 1963. In my view, such claim of charges for damages by KoPT is based on sound reasoning and should be acceptable by this Forum of Law. As per law, when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract to be likely to result from the breach of it. Moreover, as per law O.P. is bound to deliver up vacant and peaceful possession of the public premises to KoPT after expiry of the period as mentioned in the notice to Quit in its original condition. I have no hesitation to observe that O.P's act in continuing in occupation is unauthorized and O.P. is liable to pay damages for unauthorized use and occupation of the Port property in question upto the date of delivering vacant,

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delivering vacant, unencumbered and peaceful possession to KoPT. With this observation, I must reiterate that the ejectment notice, demanding possession from O.P. as stated above has been validly served upon O.P. in the facts and circumstances of the case and such notice is valid, lawful and binding upon the parties. In view of the discussions above, the issues are decided in favour of KoPT.

With regard to issue No. 5, I must say that 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 contended that continuing in occupation of the public premises must necessarily mean that O.P. is

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that O.P. is under legal obligation to pay such charges on 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. 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 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 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

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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. 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 until such rate of interest is modified/enhanced by further notification. 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 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 a conclusion, I must say that Hon'ble Supreme Court of India had the occasion to speak on the validity of a notification in

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Estate Officer, Kolkata Port Trust

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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 Aloke
Shanker Pandey -Vs- Union of India reported in
(2007)3 SCC 545 is very much 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

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Estate Officer, Kolkata Port Trust

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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 demand 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 interest upon publication of the rate of such interest in Official Gazette. 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

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payment of interest @18% per annum as per KoPT's notification in Calcutta Gazette published on 19.09.1996 (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 19.09.1996. As notification published in the Official Gazette is considered to be a notification published under authority of law and such notification has statutory force of law, I do not find any merit to the submissions/arguments made on behalf of O.P. to deny its liability towards payment of interest as per the said notifications for the relevant period. Moreover, the matter of liability towards payment of interest constitutes an integral part of rental dues on the basis of notification effective from 31.3.1988 read with notification effective from 07.02.1976 as the case may be. The definition of rent as per Public Premises Act is very much vital which is as follows:

"Rent" in relation to any public premises, means

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means consideration payable periodically for authorized occupation of the premises and includes

- (i) Any charge for electricity, water or any other services in connection with the occupation of the premises,
- (ii) Any tax (by whatever name called) payable in respect of the premises, where such charges or tax is payable by the Central Govt. or the Corporate authority.

In course of hearing, no dispute has been raised on behalf of O.P. regarding computation of rental dues etc. However, provision of the expired lease deed leaves no room for doubt about the enforceability of statutory power of the Port Authority which reads as follows

"Any statutory power thereafter conferred upon the commissioners (read KoPT) shall automatically apply to the demised land and provisions in that respect shall be deemed to be incorporated in these presents and the lessee shall be deemed to have constructive notice thereof"

In such a situation when O.P. was well aware of the statutory provision and power for its application/enforceability, it is very much futile

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much futile to challenge any question about its applicability, particularly when O.P. is under legal obligation to discharge its responsibility as per agreement. It is my considered view that O.P. cannot take the shield of the provision under P.P. Act to deny KoPT's claim on account of interest which is based on the strength of an agreement with statutory umbrella in the facts and circumstances of the case. As such, I have no hesitation to decide the issue in favour of KoPT.

The plea of O.P. regarding withdrawal of sub-letting fees from September, 2010 under issue No. 6 is required to be decided upon appraisal of the factual aspect involved in this matter. The permission for creation of sub-tenancy by the Port Authority bearing No. Lnd.4295/II dated 11.11.1983 as disclosed by KoPT vide their application bearing No. Lnd. 4295/II/09/399 dated 04.05.2009 is a vital piece of document in deciding any matter in connection with sub-letting. Existence of unauthorized sub-letting in favour of M/s. Osho Garments was admitted by O.P. vide their letter to the Land Manager (KoPT) dated 07.10.2002. By affidavit filed on 27.08.2009, O.P. denied the inspection report as filed on 23.07.2009 and states that washing of

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washing of different cloths is a small industry under S.S.I. Scheme and there cannot be any violation of the purpose clause of the lease in question. It is evident from record that O.P. is claiming withdrawal of sub-letting charges from Sept.,2010 and KoPT confirmed withdrawal of such sub-letting vide report bearing No. Lnd.4295/III/11/4244 dated 22.09.2011. However, it reveals from KoPT's application filed on 01.12.2011 (bearing No. Lnd.4295/III/11/4516 dated 01.12.2011) that KoPT's inspection report dated 14.03.2011 reveals no existence of sub-letting on 14.03.2011. However, no explanation has been given from KoPT's end to contradict O.P's claim for withdrawal of "sub-letting charges" from Sept.,2010. O.P's loud and persistent advocacy towards withdrawal of sub-letting fees from September, 2010 did not receive any attention from KoPT's end in time. The clause No. VI of the letter of permission for creation of sub-tenancy by the Port authority dated 11.11.1983 clearly speaks for the provision in charging sub-letting fees in case vacancy occurs after 31st March of any year and it has been clearly provided in the said letter of permission that in case of vacancy permission fees will be charged

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charged upto 31st March of the following year.
Such being the case, I am firm in holding that
O.P. is liable to pay damages equivalent to sub-
letting fees upto 31st march, 2011 to KoPT.

In view of the discussion above, I am left with no
other alternative but to issue order of eviction
u/s 5 of the Act on the following
grounds/reasons :

1. That after expiry of the period of lease in question, O.P. has preferred to continue in occupation of the Public Premises without any valid grant/allotment in respect of the property in question.
2. That after expiry of the contractual period of lease in question, O.P. is under legal obligation to handover possession of the public premises to KoPT in its original condition and ^{O.P.} you have failed to do so.
3. That O.P. has failed to make out any case in respect of its "authorized occupation" inspite of repeated chances.
4. That O.P. has failed to bear any witness or adduce any evidence in support of its "authorized occupation" inspite of sufficient chances.

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5. That O.P. is an "unauthorized occupant" in view of sec.2(g) of the P.P. Act.
6. That KoPT's contention regarding unauthorized parting with possession in favour of M/s. Osho Garments is proved by admission from O.P's end vide letter to the Land Manager,(KoPT) dated 07.10.2002 and KoPT's claim on account of interest @ 18% per annum is correctly payable by O.P. for delayed payment as agreed rate of interest and it has no bearing to the power of the Estate Officer for awarding interest as per Sec. 7 of the Act.
7. That O.P. cannot claim extension of lease or allotment of the property in its favour by the Port Authority without removing all the breaches in terms of the provisions of the expired lease deed on demand from KoPT as a matter of right.
8. That the O.P. is liable to pay damages for wrongful use and occupation of the Port Property with effect from 01.03.2003 upto the date of handing over of clear, vacant and unencumbered possession to KoPT AND O.P. is liable to pay also the damages equivalent to sub-letting fees upto 31.03.2011 in addition to the damages in respect of the entire Public Premises in question.

ACCORDINGLY, Department is directed to draw

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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 31.05.2012 for Rs.20,59,548.84 (which includes interest for delayed payment of Rs.6,06,416.80) for wrongful occupation may be payable by O.P.in respect of occupation Nos. D-133/2/A and SF-100/61(Sub-letting fees) 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

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use and occupation of the public premises upto the date of recovery of clear, vacant and unencumbered possession of the same in accordance with Law and KoPT is entitled to claim interest upon dues/charges right from the date of incurrence of liability by O.P. as per KoPT's Rule. KoPT is accordingly directed to submit a 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. 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***