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**ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT, KOLKATA
(erstwhile 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. 19 DT 01.09.2021
PROCEEDINGS NO. 1557 OF 2017

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

-Vs-

Estate Satyendra Nath Nandy, Estate Aruna Mitra and Smt Aparna Roy((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 Satyendra Nath Nandy, Estate Aruna Mitra and Smt Aparna Roy** are in unauthorized occupation of the Public Premises specified in the Schedule below :

REASONS

1. That O.P. has failed and neglected to hand over possession of the Public Premises in question after issuance of the Notice to Quit dated 28.07.2015.
2. The O.P or any other person/occupant have failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation".
3. That the O.P has parted with Possession of the subject premises to third party in violation of the condition of such lease.
4. That the sitting occupant appearing before the Forum has failed to explain their authority to occupy the premises.
5. That the notice to quit dated 28.07.2015 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 Sec.2 (g) of the P.P. Act.
6. That O.P. is liable to pay damages for wrongful use and occupation of the public premises up to the date of handing over the clear, vacant and unencumbered possession to the port authority.

Sub

PLEASE SEE ON REVERSE

(2)

A copy of the reasoned order No. 19 dated 01.09.2021 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 Satyendra Nath Nandy, Estate Aruna Mitra and Smt Aparna Roy** 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 Satyendra Nath Nandy, Estate Aruna Mitra and Smt Aparna Roy** 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.

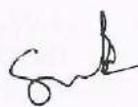
SCHEDULE

Plate No. SB-30

The said piece or parcel of land msg 227.15 sq.m.(1st Belt) and 4.74 Sq.m(2nd belt) or thereabouts is situated at the junction of Cross Road No.7 and Strand Road, Jagannath Ghat, Thana: Jorabagan Police Station, District: & Registration District : Kolkata. It is bounded on the **North** by Cross Road no.7, on the **South & West** by the Trustees' leased out land and on the **East** by Strand Road.

Trustees' means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata).

Date- 01.09.2021.


Signature & Seal of the
Estate Officer.

COPY FORWARDED TO THE ESTATE MANAGER, SMP, KOLKATA 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

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

(SB-30)

Estate Satyendra Nath Nandy, Smt. Aruna Mitra, Smt. Aparna Roy & others. VS Mitra, Smt. Aruna Roy, Smt. Aparna Roy & others.

FINAL ORDER

19
01.09.2021

The matter is taken up today for final disposal. It is the case of Syama Prasad Mookerjee Port, Kolkata [erstwhile Kolkata Port Trust], hereinafter referred to as SMP, Kolkata, Applicant herein, that a monthly term lease was granted to "Estate Satyendra Nath Nandy, Estate Aruna Mitra and Smt Aparna Roy" (Opposite Parties), on certain terms and conditions in respect of land measuring about 231.89 Sq.m (227.17 Sq.m in the First belt & 4.74 Sq.m in Second belt) situated at the junction of Cross Road No.7 and Strand Road, Jagannath Ghat, Thana- Jorabagan Police Station in the presidency town of Kolkata comprised under Plate No.SB-30 and O.P violated the condition of such tenancy by defaulting in payment of SMP, Kolkata's rental dues taxes and other charges and also by way of unauthorised construction and parting with possession of the said public premises to rank outsiders without having any authority under law. It is argued on behalf of SMP, Kolkata that O.P has no authority under law to occupy the said public premises after 31.08.2015 as mentioned in the notice to quit dated 28.07.2015 and O.P is liable to pay damages for unauthorised enjoyment of the Port property in question.

It appears that the original application was filed by SMP, Kolkata against Satyendra Nath Nandy, Smt. Aruna Mitra & Smt. Aparna Roy. However, from the submitted documents of the representative of O.P it appears that both Satyendra Nath Nandy and Smt. Aruna Mitra are now deceased. Now, this Forum vide it's Order dated 11.02.2021 has also directed to refer the Proceeding as "Estate Satyendra Nath Nandy, Estate Aruna Mitra and

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Estate Officer, Kolkata Port Trust

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Estate Satyendra Nath Nandy, Smt. Aruna ^{Mitra} Roy, Smt. Aparna Roy & others. **VS**

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Smt Aparna Roy" In view of the above, it is therefore, directed that henceforth the name of O.P should be read as "Estate Satyendra Nath Nandy, Estate Aruna Mitra and Smt Aparna Roy" for all the material purposes of this proceeding and such change would not anyway affect the rights and liabilities of the parties to the present proceeding.

This Forum formed its opinion to proceed against O.P under the 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 etc.) dated 09.03.2017 (vide Order No. 01 dated 03.03.2017) as per rule made under the Act.

The record depicts that such Notice had been sent to O.P both by hand and Speed Post as per addresses available on record. Although the Postal Service to O.P was not returned back but the report of the Process Server dated 17.03.2017 depicts that the affixation was duly made on the subject premises on 17.03.2017 at about 4 P.M as per the mandate of the P.P Act.

Thereafter, on 27.03.2017 i.e on the scheduled date of appearance and filing of reply to the Show Cause, One Sreenath Roy claiming himself as a representative of O.P appeared before the Forum. He by producing his Letter of Authority, prayed time to file his reply to the Show Cause. Thereafter on 01.09.2017, O.P filed an application along with some specific submissions that the proceeding has been instituted against a dead person and Late Satyendra Nath Nandy has not been in possession of any portion of the said premises and none of his heirs, since deceased, are interested in the said property therefore, SMP, Kolkata can oust those occupiers and recover outstanding occupational charges from them. On the

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Estate Satjendra Nath Nandy, ^{VS} ^{Mittra} ~~Smt. Aparna Roy~~, Smt. Aparna Roy & others.

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same day One Sri Suvasish Sreemany claiming to be a sitting Occupant of the said public premises also appeared before the Forum and prayed settlement/grant of tenancy in his favour on the ground of his payment to O.P. However, considering his submission, Forum allowed opportunity to such sitting occupant to place his submission in written form. Thereafter on 02.11.2020, due to the superannuation of the erstwhile Estate Officer from service; the matter was assigned to the undersigned and this Forum gave further direction to O.P./such sitting Occupant for compliance of the earlier Order dated 01.09.2017 however, the O.P./sitting occupant did not pay any heed to such efforts made by this Forum. On 11.02.2021 interestingly one Sri Laxman Sanbooi claiming himself as an employee of one of the Opposite Parties, appeared before the forum but the Forum directed him to file proper authorisation Letter to represent the instant matter. Thereafter on 04.03.2021 he again appeared and filed such Letter of authorisation and accordingly this Forum concluded the hearing of the case and reserved the matter for passing Final Order.

Now while passing the final order, upon considering the deliberations of the parties and after carefully going through all the documents placed on record, I find that the allegations of SMP, Kolkata against the O.P are three folds i.e non payment of rent, unauthorised construction and unauthorized parting with possession to third party/s in violation of the lease condition and without prior approval of SMP, Kolkata.

With regard to the issue of non payment of rental dues, I must say that although, SMP, Kolkata in their original application has recognised rental dues as a ground of eviction however, the Statement of Accounts as generated

Sd/-

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Estate Satjendra Nath Nandy, Smt. Anura Roy, Smt. Aparna Roy & others. ^{Mitra} **VS** Anura Roy, Smt. Aparna Roy & others.

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on 31.07.2017 shows that no dues are remaining on account of rent therefore, I do not find any reason to deal with that issue however, as regards the compensation charges, I must say that SMP, Kolkata's allegation is justifiable because the Statement of dues as submitted by SMP, Kolkata vide their application dated 07.04.2017 shows that O.P is still liable to pay such dues for unauthorized use & occupation of the subject public premises in question. In my view, such statement maintained by the statutory authority in the usual course of business has definite evidentiary value, unless challenged by any of the concerned/interested parties with fortified documents /evidences etc, ready to bear the test of legal scrutiny. In this present case in hand O.P. vide their Letter/Application dated 28.04.2017(as received by this Forum on 01.09.2017) has merely claimed that they have paid the entire dues of SMP, Kolkata but in this regard no documents have been produced before the Forum by O.P which may be in contradiction with the Statements produced by Port Authority. In my view, the conduct of the O.P. does not inspire any confidence and I am not at all inclined to protect O.P. even for the sake of natural justice. In my considered view, the Port Authority has a definite legitimate claim to get its revenue involved into the Port Property in question as per the SMP, Kolkata's Schedule of Rent Charges for the relevant period and O.P. cannot deny such payment of requisite charges as mentioned in the Schedule of Rent Charges. In the aforementioned circumstances, being satisfied as above, I have no hesitation to uphold the claim of the Port Authority.

In deciding the issues of unauthorized construction and unauthorized parting with possession by O.P in violation of lease term, the content of SMP, Kolkata's letter to O.P

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Estate Satyendra Nath Nandy, Smt. Aruna Mitra, Smt. Aparna Roy & others.

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dated 25.06.2014 (styled as Final Notice) is very much vital. It reveals that SMP, Kolkata has given one more opportunity to O.P to remove the breaches before issuing the Quit notice dated 28.07.2015, terminating the lease in question. However, no reply to SMP, Kolkata's allegation regarding unauthorized construction and unauthorized parting with possession have been given from O.P's end in their letter/Application. SMP, Kolkata has also come up with specific drawing/sketch Maps being No. 8839-K dated 04.07.2012 highlighting the unauthorized construction in red hatch but O.P is silent as to how this construction can be said to be authorized in nature. As per the P.P Act 1971, once the Notice U/S-4 is issued, burden is on the O.P to Show Cause and/or produce evidence but in this case O.P has hopelessly failed to do so. In my view, the O.P. has sufficiently admitted about the existence of unauthorized construction in the premises, and since it is a settled law that admitted facts need not be proved, I have no bar in accepting that the breach of unauthorized construction was existing when the notice to quit dated 28.07.2015 came to be issued by the Port Authority.

As regards the unauthorized parting with possession, it is seen from the Final notice dated 25.06.2014 where SMP, Kolkata has mentioned that during their inspection some unauthorised entities were found such as M/s Tulsiram Agarwal, M/s Nitai Chandra Shaw & Co., Shri Binod Shing & M/s Jana Seva Hotel and it is also seen that during such inspection SMP, Kolkata had noticed that such public premises was also being used for shop, hotel and residential purposes. Thus mere claim on behalf of O.P that the said property was let out by Surendra Nath Nandy and thereafter by Satyendra Nath Nandy and the property is fully tenanted etc are, in my

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view not sufficient to defend this type of serious allegation such as unauthorized parting with possession. The O.P could have very well produced documents related to their trade or business from that premises but O.P chose to produce nothing. Even O.P did not produce any single photographic evidence to counter the allegation of SMP, Kolkata. As such it is very difficult to accept the mere claim of the O.P which is bereft of any cogent reason. Moreover, appearance of sitting occupant during the course of hearing clearly shows that unauthorised induction of a third party was occurred i.e without the approval of SMP, Kolkata . In fact, the presence of sitting occupant in the premises (admittedly, for long time) is sufficient enough to conclude "parting of possession" by the O.P. It is evident from the submission of the sitting occupants dated 01.09.2017 that he is occupying the premises without any authority whatsoever and the said occupant has rather sought relief on "humanitarian grounds". I must say that this Forum is to adjudicate the matters strictly in terms of the P.P. Act while ensuring natural justice is not denied to anyone. In my view, the lack of any interest of the O.P. coupled with prolonged enjoyment of vital public premises at a prime location by unauthorised occupant, deserves no protection in all sense of law. As such, I am not at all inspired by the prayer of the sitting occupant. In my view, the action of the Port authority in issuing the Notice to Quit dated 28.07.2015 cannot be said to be improper or unjust. It appears to me that the said Notice to Quit had been validly issued and served on the O.P. and the same is definitely binding on the parties.

In view the facts and circumstances of the present case, being satisfied as above, I am left with no other alternatives but to issue the order of eviction against O.P

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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Aruna Mitra, Smt. Aparna Roy & others.*

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as prayed for on behalf of SMP, Kolkata, on following grounds/reasons :

1. That O.P. has failed and neglected to hand over possession of the Public Premises in question after issuance of the Notice to Quit dated 28.07.2015.
2. The O.P or any other person/occupant have failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation".
3. That the O.P has parted with Possession of the subject premises to third party in violation of the condition of such lease.
4. That the sitting occupant appearing before the Forum has failed to explain their authority to occupy the premises.
5. That the notice to quit dated 28.07.2015 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 Sec.2 (g) of the P.P. Act.
6. That O.P. is liable to pay damages for wrongful use and occupation of the public premises up to the date of handing over the 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

Smt

Estate Officer, Kolkata Port Trust

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Sourav Mitra, Smt. Aparna Roy & others.*

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01.09.2021

enjoyment of the property against O.P. in accordance with Law up to the date of recovery of possession of the same. SMP, Kolkata 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.

SMP, Kolkata is further directed to submit a report regarding its claim on account of dues/damages against O.P., indicating there-in, the details of the computation of such dues/damages with the rate of charges so claimed for the respective periods (details of computation with rates applicable for the relevant periods) for my consideration in order to assess the dues/damages as per the Act and the Rules made thereunder.

I make it clear that in the event of failure on the part of O.P. to comply with this Order, Port Authority is entitled to proceed further for execution of this order in accordance with law. All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL



(Sourav Mitra)

ESTATE OFFICER

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