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

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

REASONED ORDER NO. **67 DT 30.07.2018**  
PROCEEDINGS NO. 1270 of 2012

BOARD OF TRUSTEES OF THE PORT OF KOLKATA  
-Vs-  
M/s Khemchand Rajkumar (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  
**M/s Khemchand Rajkumar, of Belvedere Court, 11 & 13 Alipore Road,  
Kolkata 700027, AND also of No. 1, Oil Installation Road, Kolkata 700088**  
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 of rental dues/damages etc. as prayed for on behalf of KoPT.
2. That the long term lease granted to O.P. had undoubtedly expired on 31.03.2000 with no scope for renewal/extension.
3. That O.P. was a defaulter of rent and taxes, at the time of expiry of the lease.
4. That O.P. parted with possession of the public premises to rank outsiders, without any authority of law.
5. That O.P.'s contention regarding "deemed renewal/automatic renewal" has got no merit in the facts and circumstances of the case.
6. That occupation of O.P. is not fit for protection, even for the sake of natural justice.
7. 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 expiry of the lease in question.

**Please see on reverse**

8. That O.P. has failed to bear any witness or adduce any evidence in support of their contention regarding "authorised occupation" and O.P's occupation has become unauthorized in view of Sec. 2(g) of the P.P. Act, 1971.
9. That right from the date of expiry of the lease, O.P. has lost its authority to occupy the Public Premises and O.P. is liable to pay damages for wrongful use and enjoyment of the Port Property upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

A copy of the reasoned order No. **67 DT. 30.07.2018** 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 **M/s Khemchand Rajkumar, of Belvedere Court, 11 & 13 Alipore Road, Kolkata 700027, AND also of No. 1, Oil Installation Road, Kolkata 700088** 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 **M/s Khemchand Rajkumar, of Belvedere Court, 11 & 13 Alipore Road, Kolkata 700027, AND also of No. 1, Oil Installation Road, Kolkata 700088** 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. 1858.060 Sq.m or thereabouts situated at Oil Installation Road, Paharpur, Thana : West Port Police Station, Dist. : 24 Parganas (South) Regn. Dist. : Alipore. It is bounded on the North by the Trustees' land occupied by Khem Chand Rajkumar, On the East by the Trustees' land occupied by Krebs & Cie India Ltd., On the South by the Trustees' land occupied by Krebs & Cie India Ltd. On the West by the Trustees' partly by Krebs & Cie India Ltd. and partly by open space.

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

Dated: 30.07.2018

  
Signature & Seal of the  
Estate Officer.

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



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Present : R P Mazumder, Jr. Land Inspector  
S Dasgupta, Resolution Officer (Legal)  
P Chatterjee, Resolution Officer (Legal)  
..... For Kolkata Port Trust (KoPT)

Jitesh Sah, Advocate for M/s Falcon  
Steel Corporation

One Shri Jitesh Sah appears on behalf of M/s Falcon Steel Corporation and desires to file an application on behalf of his client.

It is seen from record that M/s Falcon Steel Corporation has never appeared before this Forum earlier. There is no Vakalatnama/authorization from M/s Falcon Steel Corporation on record, empowering said Shri Jitesh Sah to appear before this Forum. Be that as it may, let the application be kept on record.

On the other hand, it is submitted on behalf of KoPT that they have nothing further to add, at this stage

Considered the matter on the basis of the documents on record. There is no representation from O.P. even after receiving the last orders of this Forum. I am not inclined to continue the proceedings any further, when sufficient documents are available on record to decide the respective rights and contentions of the parties. In my view, the matter is now mature enough for decision on merits. Hearing is thus concluded. Final order is reserved.

All concerned are directed to act accordingly.

  
Estate Officer

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### FINAL ORDER

The matter is taken up today for final disposal. It is the case of Kolkata Port Trust (KoPT), applicant herein, that land measuring about 1858.060 sqm situated at Oil Installation Road, Paharpur, was granted on long term lease basis (27 years), on certain terms and conditions, to M/s Khemchand Rajkumar, the O.P. herein, under Occupation no. D-173. A case has been made out by KoPT that the O.P. failed to vacate the premises on expiry of the lease on 31.03.2000. It is also the submission of KoPT that O.P. has defaulted in making payment of rental dues etc., has carried out unauthorised construction in the public premises in question, and also parted with possession of the public premises to rank outsiders. It is strongly argued on behalf of KoPT that the O.P. is liable to pay damages for wrongful use and occupation of the Port property upto the date of handing over of vacant possession of the same.

This Forum issued Show Cause notice under Section 4 of the P.P. Act 1971 (for adjudication of the prayer for issuance of Order of Eviction etc.) and Show Cause Notice under 7 of the Act (for adjudication of the prayer for recovery of damages, interest etc) both dated 12.11.2012.

O.P. contested the matter and filed Reply to Show Cause on 08.01.2013. KoPT filed their comments against said Reply vide application dated 09.04.2013, intimating about the dismissal of a Writ Petition (being no. 762 of 2012) filed by one Ashok Kumar against KoPT & Ors. On 08.10.2013, O.P. filed an application on suggested scheme for payment of principal and interest. Subsequently, prayers for regularization were made on behalf of O.P. vide applications filed on 09.12.2014, 10.01.2015 and 14.01.2015. A minutes of reconciliation of accounts is also



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available on record. A joint inspection of the public premises took place as per direction of this Forum, and KoPT filed the report on 16.03.2017. On same date O.P. also filed its application regarding such joint inspection. On 20.06.2017, KoPT filed an application, enclosing the report of joint inspection duly signed by both the parties, and a sketch plan highlighting the unauthorised constructions. Be that as it may, on 05.12.2017 KoPT filed another application, informing inter-alia that the request of O.P. for regularization has not been considered. Pursuant to order of this Forum, another joint inspection was held on 23.03.2018 and the report was filed before this Forum. On 17.05.2018, KoPT filed yet another application regarding the present status of the property in question, mentioning that one "M/s Falcon Steel Corporation" was functioning within the premises of O.P., by way of "storing steel rolls" and also they are running a weighbridge in the name of said Company. On same date, O.P. also filed an application summarising their stand in the matter. On the last date of hearing, i.e. 26.06.2018, one Shri Jitesh Sah, Adv. sought to file an application on behalf of one M/s Falcon Steel Corporation, which was kept in the record for the sake of natural justice despite Shri Sah not carrying any authorization/Vakalatnama from Falcon Steel Corporation. Hearing was concluded on 26.06.2018.

Upon careful perusal of the documents on record and the rival contentions of the parties, I think the following issues have come up for my consideration:

- I. Whether the instant proceedings against the O.P. is maintainable or not;
- II. Whether the lease granted to O.P. had expired on 31.03.2000, or not;

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- III. Whether there is any merit regarding submission of O.P. as to deemed renewal/automatic renewal of lease, or not;
- IV. Whether non-issuance of any Notice to Quit by KoPT, prior to institution of this proceedings, has any bearing in the matter, or not;
- V. Whether the allegations of default of rent, unauthorised parting of possession and unauthorised construction, against O.P., have any merit or not;
- VI. Whether occupation of the O.P. demands any protection, even for the sake of natural justice;
- VII. Whether O.P's occupation could be termed as "unauthorised occupation" in view of Sec.2 (g) of the P.P. Act and O.P. is liable to pay damages to KoPT during the period of its unauthorised occupation, or not.

Regarding Issue no. I, I must say that the properties owned and controlled by the Port Authority has been declared as "public premises" by the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and Sec. 15 of the Act puts a complete bar on any Court's jurisdiction to entertain any matter relating to eviction of unauthorized occupants from the public premises and recovery of rental dues and/or damages, etc. KoPT has come up with an application for declaration of O.P's status as unauthorized occupant in to the public premises with the prayer for order of eviction, recovery of dues etc on the ground of expiry of authority to occupy the premises in question. So long the property of the Port Authority is coming under the purview of "public premises" as defined under the Act, adjudication process by serving Show Cause Notice/s u/s 4 & 7 of the Act is very much maintainable and there cannot be any question

*[Signature]*



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about the maintainability of proceedings before this Forum of Law. In fact, proceedings before this Forum of Law is not statutorily barred unless there is any specific order of stay of such proceedings by any competent court of law.

Issues II, III and IV are taken up together as the issues are related to each other. During course of proceedings, a copy of the executed deed between the parties, has been produced before me. Upon careful perusal, I find that the lease was valid upto 31.03.2000 and there were no clauses for "renewal" in the said deed. There is a clause which mentions that at the expiration or sooner determination of the said term, quietly and peacefully yield up vacant possession of the demised land as a whole unto the Commissioners, with all buildings, erections and other structures, if any, erected thereon that shall not have been previously removed by the Lessees. I have also come across a provision which mentions that any building, structures and fixtures not so removed (after expiration or determination of the lease) become the absolute property of the Commissioners without payment to the Lessees of any compensation thereof whatsoever. As such, it is crystal clear that the intention of the parties was that the relationship was to come to an end on 31.03.2000 and in no circumstances the same was intended to be continued any further.

As per law, on the expiration of a lease, the lessee is bound to put the lessor in clear, vacant and unencumbered possession of the land. Sec. 108 (g) of the Transfer of Property Act, 1882 casts a duty upon the lessee to put the lessor into possession of the property. Under such circumstances, I must hold that the lease has expired on 31.03.2000 in all sense of law and O.P. must have to justify how it is authorised to hold and enjoy possession, after expiry of the lease. A defence has been taken by

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O.P. that no Notice to Quit was served on the O.P. and hence O.P. is not liable to vacate the public premises. However, as per law, service of notice determining the relationship (i.e. Notice to Quit or ejection notice, as the case may be) is not at all mandatory where the relationship has determined by efflux of time. I am fortified by the decision dated 09.09.2014 of the Hon'ble High Court, Calcutta in C.O. 3655 of 2013 (Sri Om Prakash Saxena v. The Board of Trustees' for the Port of Calcutta) where it was held that issuance of such a notice is completely unnecessary in the case of a person continuing in occupation of the public premises after the expiry of the period of grant or invitation. Thus, I am unable to allow the defence taken by the O.P. on this count as non-issuance of any such notice does not seem to have prejudiced the O.P. in any manner whatsoever.

Now, before deciding any proposition for deemed renewal/automatic renewal of lease, I must first discuss the status of Shri Ashokkumar Rajkumar who represented the O.P. before this Forum. It is seen from documents produced before me, that the lease was granted by KoPT in favour of M/s Khemchand Rajkumar which was a partnership firm of three partners. Subsequently, after execution of the lease deed, deed of dissolution of partnership was executed by and between the said 3 partners. As such, in my view, with such change/dissolution of partnership, the firm M/s Khemchand Rajkumar (O.P.) lost its existence in law. Be that as it may, a Power of Attorney was executed in favour of Shri Ashokkumar Rajkumar, one ex-partner, by the two other ex-partners, to represent "M/s Khemchand Rajkumar" in forum of law etc. Although such a Power of Attorney to represent a dissolved/non-existing entity is questionable, the status of Shri Ashokkumar Rajkumar is, at best, an agent of M/s Khemchand Rajkumar if I accept the genuinity of the Power of



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Attorney for the sake of argument. A question now arises how such an agent (at best, for the sake of argument) is entitled to transfer or renewal of tenancy, in his own name. It is seen from record that several requests were allegedly made by the said Shri Ashokkumar Rajkumar for grant/renewal of lease (after expiry) in his own name, which were, admittedly, not entertained by KoPT. As per law, the authority of an agent cannot be more than that of his principal. When the principal is no more in existence, and not at all interested in renewal of the lease in its name, it is very difficult to consider renewal in the name of the agent. Such a request is not a "renewal" at all, it amounts to grant of fresh tenancy to a stranger. In my view, KoPT was very much justified in not acceding to the request of Shri Ashokkumar Rajkumar for renewal of lease (after expiry) in his own name, inasmuch as same would have amounted to recognition of transfer of tenancy from M/s Khemchand Rajkumar to Shri Ashokkumar Rajkumar without following the due procedure of law. It is categorically mentioned in the executed lease deed that the lessee (M/s Khemchand Rajkumar) shall not effect or cause or allow to be effected, any change in the formation, constitution or composition of their business or the name of the business without the prior knowledge of the Commissioners. During course of hearing, O.P. has nowhere produced any prior intimation or permission from KoPT before going ahead with the dissolution of partnership, which is a glaring breach on its part of the terms and conditions governing the lease. Under such circumstances, when the original lessee i.e. M/s Khemchand Rajkumar was not at all interested in any "renewal" of the lease, proposition for deemed renewal/automatic renewal in favour of an agent of the lessee is not at all tenable. I find that the agent/Power of Attorney holder in the instant case has gone beyond the purview of his authority by

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asking for "renewal" in his own name (in place of the original tenant) which amounts to request for back-door settlement of tenancy. As such, I am not at all inspired with any proposition for deemed renewal/automatic renewal of the lease and the issues are thus decided against the O.P.

As regards Issue V and VI, I must mention that once the lease is accepted to have expired in all sense of law, the occupation of the O.P. is definitely "unauthorised" in terms of Sec. 2 (g) of the P.P. Act, 1971 and as such any discussion as to existence of any other breaches are purely academic. If at all I have to discuss these breaches, then I must say that the allegation of unauthorised parting of possession is very much established against the O.P., in the facts and circumstances of the case. There is no doubt or confusion as to the running of one "Falcon Steel Corporation" in the public premises in question. Admittedly, the said entity is a proprietorship firm of Shri Ashokkumar Rajkumar (and not that of O.P.). Submission has been made before this Forum that said Shri Ashokkumar Rajkumar has inducted other persons as Partners, for running the said "Falcon Steel Corporation". When the authority of Shri Ashokkumar Rajkumar is limited to the Power of Attorney in his favour, there is no clarification as to how Shri Ashokkumar Rajkumar can run his own proprietorship business which has no connection whatsoever with the O.P. i.e. M/s Khemchand Rajkumar, in the land allotted to the O.P. As per law, an agent/Power of Attorney holder is bound by the instrument and acts on behalf of the principal. Such a person does not act in his own interest. When such a person sets up his own business, with some other persons as Partners, it naturally amounts to parting of possession in favour of a partnership firm who is a stranger in the public premises.

*[Handwritten signature]*



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Likewise, it is seen from record that the allegation of default of rent and taxes was accepted by the O.P. subject to reconciliation of accounts etc. It is seen that even Falcon Steel in its application dated 26.06.2018 admitted about default in payment of rent from 1980-1992 and 2000-2008. As such, I need not delve any further. In view of such glaring breaches on the part of the O.P., I am not at all inclined to grant any relief even for the sake of natural justice. In order to claim natural justice, one must come with clean hands, but in the instant case I find that O.P. (through its Power of Attorney holder) continued to enjoy the public premises without any valid grant from the landlord and without bothering to liquidate the dues in full. As such, the issues are decided accordingly.

Issue VII is now taken up for discussion. Discussion against the foregoing paragraphs will certainly lead to the conclusion that the long term lease granted to the O.P. had very much expired on 31.03.2000 with no scope for any renewal/extension. I have deeply gone into the submissions/ arguments made on behalf of the parties in course of hearing. Now the question arises as to how a person become unauthorized occupant into a 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. The lease granted to O.P. was undoubtedly expired by efflux of time and institution of proceedings against O.P. by KoPT is a clear manifestation of Port Authority's

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intention to get back possession of the premises. In such a situation, I have no bar to accept KoPT's contentions regarding expiration of lease, on evaluation of the facts and circumstances of the case. "Damages" are like "mesne profit" that is to say the profit arising out of wrongful use and occupation of the property in question. I have no hesitation in mind to say that after expiry of the leasehold period, 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 10<sup>th</sup> 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. ....  
....."

*h.*  
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"



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without receiving any rent demand note, post expiry of the lease. Therefore, there cannot be any doubt that the O.P. was in unauthorized occupation of the premises, once the lease expired. In my opinion, institution of this proceedings against O.P. is sufficient to express the intention of KoPT to obtain an order of eviction and declaration that KoPT is not in a position to recognize O.P. as tenant under lease.

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 making payment of requisite charges as mentioned in the Schedule of Rent Charges.

It has been held by the Hon'ble Apex Court of India that a person continuing in occupation of such premises after expiry of lease is liable to pay compensation or damages for their use and occupation. 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 my view, the case in hand is very much relevant for the purpose of determination damages upon the guiding principle as laid down by the Hon'ble Apex Court in the above two cases. In course of hearing, it is submitted on behalf of KoPT that the charges claimed on 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

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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 lease-hold period in its original condition. As such, the issue is decided in favour of KoPT. I have no hesitation to observe that O.P's act in continuing 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, unencumbered and peaceful possession to KoPT.

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 of rental dues/damages etc. as prayed for on behalf of KoPT.
2. That the long term lease granted to O.P. had undoubtedly expired on 31.03.2000 with no scope for renewal/extension.
3. That O.P. was a defaulter of rent and taxes, at the time of expiry of the lease.
4. That O.P. parted with possession of the public premises to rank outsiders, without any authority of law.



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5. That O.P's contention regarding "deemed renewal/automatic renewal" has got no merit in the facts and circumstances of the case.
6. That occupation of O.P. is not fit for protection, even for the sake of natural justice.
7. 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 expiry of the lease in question.
8. That O.P. has failed to bear any witness or adduce any evidence in support of their contention regarding "authorised occupation" and O.P's occupation has become unauthorized in view of Sec. 2(g) of the P.P. Act, 1971.
9. That right from the date of expiry of the lease, O.P. has lost its authority to occupy the Public Premises and O.P. is liable to pay damages for wrongful use and enjoyment of the Port Property 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, including Shri Ashokkumar Rajkumar, Falcon Steel Corporation etc, are liable to be evicted by this order. 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.

I make it clear that I am not inclined to assess the damages at this stage as the Notice u/s 7(2) was

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*M/S. Khen Chand Rajkumar.*  
**VS**

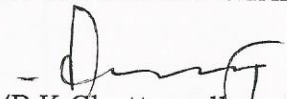
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30.07.2018.

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 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 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

  
(P K Chattopadhyay)  
ESTATE OFFICER

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