

**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
Strand Warehouse
6, Fairlie Place, 1st Floor
KOLKATA - 700 001

Court Room At the 'Strand
Warehouse', 6, Fairlie Place, 1st
Floor, KOLKATA - 700 001

REASONED ORDER NO. 48 Dated 02.05.2019.
PROCEEDINGS NO. 911 OF 2007

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-

**Estate Kripanarayan Mishra, represented by his Legal Heirs,
Pawan Kumar Mishra & Ors. (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 Kripanarayan Mishra, represented by his Legal Heirs, Pawan Kumar Mishra & Ors., OF P-48, Strand Bank Road, Cossipore, Kolkata 700002** is in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

- 1) That O.P. has violated the terms of the month to month lease by defaulting in payment of rent and taxes for a prolonged period.
- 2) That O.P. has erected unauthorised construction in the public premises without any authority of law.
- 3) That defence taken on behalf of O.P. as regards application of Limitation Act and abatement of proceedings is not at all applicable, in the facts and circumstances of the case.
- 4) That O.P. has failed to make out any case in support of its occupation as "authorised occupation", inspite of sufficient chances being given.
- 5) That O.P. or any other person/s asserting any right through O.P. has failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation", inspite of sufficient chances being provided.
- 6) That the notice to quit dated 17.05.2006 as served upon O.P. by the Port Authority is valid, lawful and binding upon the parties. O.P's occupation, and that of any other occupant of the premises, has become unauthorised in view of Section 2(g) of the P.P Act.
- 7) That O.P. is liable to pay damages for wrongful use and occupation of the Public Premises upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

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Please see on reverse

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A copy of the reasoned order No. 48 dated 02.05.2019 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 **Estate Kripanarayan Mishra, represented by his Legal Heirs, Pawan Kumar Mishra & Ors., OF P-48, Strand Bank Road, Cossipore, Kolkata 700002** 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 Kripanarayan Mishra, represented by his Legal Heirs, Pawan Kumar Mishra & Ors., OF P-48, Strand Bank Road, Cossipore, Kolkata 700002** 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 561

The piece and parcel of land measuring about 106.931 sqm or thereabouts, situated on the Strand Bank Road at Cossipore in the presidency town of Kolkata. It is bounded on the North by the Trustees' land occupied by Shri Rama Shankar Singh, on the East by the Trustees' land occupied by Cossipore Kanch Sangha, on the South by the Trustees' land occupied by Kamta Prasad Sharma and on the West by the Trustees' Strand Bank Road. Trustees' means the Board of Trustees for the Port of Kolkata.

Dated: 02.05.2019.


(S. Mitra)
Signature & Seal of the
Estate Officer.

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

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02.05.19.

**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
1st Floor, 6, Fairlie Place (Fairlie Warehouse),
Kolkata-700001

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

REASONED ORDER NO. 48 DT 02.05.2019
PROCEEDINGS NO. 911/R OF 2007

Form " E "

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

-Vs-

J 02.05.19. **Estate Kripanarayan Mishra, represented by his Legal Heirs,
Pawan Kumar Mishra & Ors. (O.P.)**

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

To

**Estate Kripanarayan Mishra,
represented by his Legal Heirs,
Pawan Kumar Mishra & Ors.
P-48, Strand Bank Road, Cossipore,
Kolkata 700002**

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

AND WHEREAS, by written notice/s dated 29.10.2007 and
21.02.2018 you were called upon to show cause on/or before
14.11.2007 and 21.03.2018 respectively why an order requiring you
to pay a sum of Rs. 88,971/- (Rupees Eighty Eight Thousand Nine
Hundred Seventy One only) being the rent payable together with
compound interest in respect of the said premises should not be
made;

And whereas I have considered the document/s and/or
evidence produced by and on your behalf.

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. 88,971/- (Eighty Eight Thousand Nine Hundred Seventy
One only) for the period 01.08.1992 to 29.06.2006 (both days
inclusive) to Kolkata Port Trust by 15.05.2019.

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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 at the rate of 7.35% per annum on the above sum till its final payment being the current rate of interest as per the Interest Act, 1978.

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

Plate No: SB 561

The piece and parcel of land measuring about 106.931 sqm or thereabouts, situated on the Strand Bank Road at Cossipore in the presidency town of Kolkata. It is bounded on the North by the Trustees' land occupied by Shri Rama Shankar Singh, on the East by the Trustees' land occupied by Cossipore Kanch Sangha, on the South by the Trustees' land occupied by Kamta Prasad Sharma and on the West by the Trustees' Strand Bank Road.

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

Dated: 02-05-2019



Signature and seal of the

Estate Officer

02-05-19

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Estate Officer, Kolkata Port Trust

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

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Estate Kripa Narayan Mishra VS *(SB-561)*

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02.05.2019

FINAL ORDER

The matter is taken up today for final disposal. It is the case of Kolkata Port Trust (KoPT), applicant herein, that one Shri Kripa Narayan Mishra came into occupation of KoPT's land measuring about 106.931 sqm situated at Strand Bank Road, Cossipore, in the presidency Town of Kolkata under occupation No. SB-561, being the Public Premises in question, as a month to month lessee, on certain terms and conditions, and said Shri Kripa Narayan Mishra violated the conditions of such lease by defaulting in payment of rent and taxes, erecting unauthorized construction and also parting of possession in favour of rank outsiders. It is strongly argued on behalf of KoPT that Shri Kripa Narayan Mishra has no authority under law to occupy the public premises after expiry of the period as mentioned in the notice to quit dated 17.05.2006 and that Shri Kripa Narayan Mishra 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 notices under Sec. 4 & 7 of the Act (for adjudication of the prayer for issuance of Order of Eviction, recovery of rent etc.) on 29.10.2007.

It is seen from record that initially, said Shri Kripa Narayan Mishra appeared before this Forum and filed an application dated 14.11.2007 praying for time to file the Reply to the Show Cause Notices. It was also mentioned by said Shri Kripa Narayan Mishra that he was ready to pay the due rent but there is a dispute regarding the rent amount (without elaborating the nature of the dispute). Be that as it may, time was allowed by this Forum and a joint inspection of the premises took place between the Officials of KoPT and said Shri Kripa Narayan Mishra and a Report dated 04.03.2008 (duly signed by all concerned) annexing sketch map showing unauthorised construction, was filed before this Forum by the parties. During the course of hearing, KoPT filed detailed statement of accounts duly acknowledged by the said Shri Kripa Narayan Mishra. On 15.07.2009 an

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Estate Officer, Kolkata Port Trust

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

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Estate Kripa Narayan Mishra. (SB-561) VS

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11-04-2019.

The matter is refiled for passing final Order on

02.05.2019

Department is directed to place the file before me
for passing final Order, which shall be delivered
to the parties on 03.05.2019.

The parties are to collect certified copy of the
Order/s from the Department at 6, Firley Place
(1ST Floor), Kolkata 700001, with appropriate
proof of identity/authority. All concerned are
directed to act accordingly.


(S.Mitra)
ESTATE OFFICER

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Estate Officer, Kolkata Port Trust

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

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application was filed by one Pawan Kumar Mishra claiming to the son of Shri Kripa Narayan Mishra and claiming that his father Shri Kripa Narayan Mishra has expired on 26.04.2009 and also claiming that he was the only heir of the said deceased. It is seen from record that the hearing of the case resumed after a few years when on 09.06.2017 and again on 17.07.2017 said Pawan Kumar Mishra filed similar applications with request for substitution as only heir of the deceased. Taking cognizance of the applications, this Forum changed the cause-title of the proceedings to "Estate Kripa Narayan Mishra" as the Opposite Party (O.P.) thereby giving an opportunity to all concerned to represent their case, if any, before this Forum. On 06.09.2017, a Reply was filed by said Pawan Kumar Mishra with prayer for dismissal of the proceedings. On 26.10.2017 KoPT furnished its comments against the said Reply of the O.P. Hearing took place thereafter and O.P. placed reliance on one judgment of the Hon'ble Supreme Court reported in (1972) 1 SCC 857. This Forum, vide Order no. 32 dated 18.12.2017 decided to issue the Show Cause Notice/s u/s 4 & 7 of the Act once again, addressed to "Estate Kripanarayan Mishra, represented by his Legal Heirs, Pawan Kumar Mishra & Ors." This time also, nobody appeared before this Forum except said Pawan Kumar Mishra, who initially sought time to come up with the Replies and then filed an application on 30.05.2018 containing some preliminary issues. On 11.07.2018, said Pawan Kumar Mishra filed the Reply to the Show Cause Notice/s on behalf of the O.P. This Forum finally heard the matter on 25.03.2019 when after considering the arguments of both the parties, the final order was reserved. The O.P. also submitted its final written notes of arguments on that date.

Now, while passing the final order, I have carefully gone through the documents/evidence relied on by both the parties. It is seen that the allegations of KoPT against the O.P. are based on default of payment of rent and taxes, unauthorized construction and parting with possession. None of the parties has produced before me any registered

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lease deed. However, KoPT has produced the offer letter of monthly lease (dated 05.03.1991) and the unconditional acceptance of Shri Kripanarayan Mishra of the said offer vide his letter dated 13.03.1991, which coupled with the consideration paid by said Kripanarayan Mishra forms the contract between the parties. During continuance of proceedings, representative of O.P. has nowhere denied such contract. As such, there is no bar in relying upon the terms of the said offer letter as governing the month to month lease in question. Clause (i) of the said offer mentions that the tenancy will be on month-to-month basis terminable by 15 days' notice on either side expiring with the end of any English Calendar month. In my view, the said provision of the offer is very much in consonance with the provisions of the Transfer of Property Act, 1882. That being so, I find no infirmity on the part of KoPT in issuing Ejectment Notice against the O.P. terminating the relationship. Now, as regards the breaches complained of by KoPT, KoPT has produced letters dated 14.06.2005, 07.04.2006 etc whereby KoPT repeatedly requested the O.P. to liquidate the rental dues immediately. However, apparently no heed was paid by the O.P. KoPT has also produced detailed statement of accounts which reveal that O.P. was a defaulter for a considerable period. The question of O.P.'s dues is, in fact, not in doubt at all as Shri Kripanarayan Mishra has very much admitted the dues before KoPT as well as before this Forum. As per the letter dated 29.06.2006 of said Shri Kripanarayan Mishra addressed to Land Manager, KoPT Shri Mishra not only accepted that the Notice to Quit dated 17.05.2006 had been received by him but also admitted that due to his daughter's marriage he was unable to pay the dues rent. As per application dated 14.11.2007 of Shri Kripanarayan Mishra before this Forum, he expressed his inclination to pay the due rent but mentioned that there is a dispute regarding the rent amount. The question now survives whether plain submission of "dispute" is sufficient to justify the non-payment of the rental dues, or not. It is seen that Shri Mishra neither elaborated on the nature and particular of the dispute nor came up with any submission of "dispute" even after

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furnishing of detailed accounts statement by KoPT, the receipt of which he acknowledged under his signature. This leads me to a strong conclusion that there was, in fact, no "dispute" over the rent amounts billed by KoPT from time to time. Now, coming to the submissions of Shri Pawan Kumar Mishra before this Forum, I find that he has nowhere denied the question of being in default of payment of rent. No dispute whatsoever regarding the quantum of rent bills has ever been raised before this Forum. As such, I am confident in holding that the issue of non-payment of rent and taxes is to be definitely decided against the O.P., in the facts and circumstances of the case.

At the same time, I must consider the defence taken by Shri Pawan Kumar Mishra before this Forum. Pawan Kumar Mishra has questioned about the service of the Notice to Quit dated 17.05.2006 upon the O.P. which I think is already answered by my above observations which reveal that it was Shri Kripanarayan Mishra himself who had accepted the said Notice to Quit. Shri Pawan Kumar Mishra has also contended that the proceedings has already abated as the successor/s of deceased Shri Kripanarayan Mishra were not brought on record by this Forum. I am in complete disagreement with such submission. As per Sec. 13 of the P.P. Act, 1971, the heirs and legal representatives of the deceased are very much liable to be proceeded against under this Act. This Forum, taking into cognizance the intimation of death of Shri Kripanarayan Mishra modified the Cause-Title of the proceedings to "Estate Kripanarayan Mishra" thereby providing an opportunity to the heirs/legal representatives to represent their case. Further Notice/s u/s 4 & 7 of the Act were also issued to allay all doubts and confusions. However, only Pawan Kumar Mishra turned up before this Forum and no one else. Now, there is also inconsistency in the submission of said Pawan Kumar Mishra as regards the legal heirs of the deceased. Pawan Kumar Mishra has claimed in writing before this Forum that he is the only heir but subsequently claimed about existence of other legal heirs

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(without any details of names or addresses) also. Whatever may be the case, this Forum has made its intention quite clear in issuing the further Notice/s to all concerned and as such there is no merit in the submission of abatement on behalf of Pawan Kumar Mishra.

Shri Pawan Kumar Mishra has also tried to rely upon the photocopies of some receipts issued by KoPT to claim that the Notice to Quit has been superseded. Here also, I am not in a position to appreciate such submissions. The rent receipts must be read as a whole and the said receipts are nothing but "Compensation towards Unauthorised use and occupation of the Port property" as is inscribed on the face of such receipts. Moreover, I find no "conduct" on the part of the KoPT which can be said to constitute a "waiver" of the Notice to Quit, more so when the Notice to Quit dated 17.05.2006 clearly mentions that any payment tendered after the said Notice comes into effect shall be accepted only as compensation or damages and not otherwise. This apart, I fail to understand how Shri Kripanarayan Mishra after his alleged death on 26.04.2009 continued to make certain payments to KoPT on 13.10.2009, 02.12.2009, 13.01.2010, 19.02.2010 etc as has been repeatedly claimed by Shri Pawan Kumar Mishra in writing before this Forum. I must draw a strong inference that these payments, if at all tendered, must have been tendered by unauthorised occupants of the premises in the name of deceased Kripanarayan Mishra in a clandestine fashion, which is very much condemnable.

As regards the applicability of "Govt. guidelines", I must mention that the guideline/s are applicable for a genuine tenant and a established defaulter like O.P. cannot claim as a "genuine tenant". In fact, it is my firm conviction that the O.P. cannot claim any differential treatment from other occupiers of the Port property. In my view, the point of maintainability of this proceedings in view of the "Govt. Guideline" is not acceptable in all sense and fairness of the exercise and hence only worthy of rejection.

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Estate Officer, Kolkata Port Trust

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Shri Pawan Kumar Mishra has also raised the question of applicability of the Limitation Act in the proceedings before this Forum, which again I contradict and differ. Admittedly, O.P. is clearly in default of rent and occupational charges. No attempt has been made on behalf of O.P. as to how O.P.'s occupation could be termed as "authorised" in view of Sec. 2(g) of the P.P. Act, after expiry of the period as mentioned in the KoPT's notice dated 17.05.2006, demanding possession from O.P. It has been submitted by the KoPT that as judicially decided, the Limitation Act has no application before quasi-judicial authorities like this Forum of Law which is not a civil court to be governed by the Civil Procedure Code. With the introduction of Sec 15 of the P.P. Act, 1971, there is no scope for the Courts to entertain any matter regarding recovery of arrear rental dues and damages etc. arising out of the public premises. As such, in the present scenario, when the statute, in its own wisdom, has imposed a restriction upon the civil court, to adjudicate upon such matter, it would be very difficult to accept the contention of O.P. with regard to application of Limitation Act in the proceedings before this Forum of law, which is not a civil court to be governed by the civil procedure code. In my understanding, Civil Procedure Code and Indian Evidence Act are not applicable for proceedings before the Estate Officer under P.P. Act which provides a complete code. Rather the Limitation Act applies to "suits" to be governed by CPC and Indian Evidence Act. When the basic elements for adjudication of a "suit" are totally absent for proceedings under P.P. Act, 1971, it is futile to advance any argument for its application. Thus, the plea taken by O.P. regarding applicability of Limitation Act in the proceedings before the Estate Officer under P.P. Act has, to my considered view, got no merit.

Now coming to the breach of unauthorized construction on the part of the O.P., I find that Shri Kripanarayan Mishra during his lifetime had signed the minutes of the joint inspection held on 10.01.2008 (as submitted vide report/application

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dated 04.03.2008) without any whisper or murmur or protest. Such report and enclosed sketch map reveals that there was unauthorised construction measuring about 53.32 sqm as shown in the sketch map. During the course of hearing, Shri Pawan Kumar Mishra only claimed that the "construction was permitted by KoPT and no portion of the construction was unauthorised". I am not at all satisfied with such vague and evasive denial. I take note of the fact that the O.P., despite numerous opportunities has failed to produce any document evidencing any such permission for construction given by the Port Authority, as is being claimed by the O.P. As such, this issue must also be decided against the O.P.

Discussions against the foregoing paragraphs reveal that the O.P. has failed to justify its occupation of the public premises as "authorized" occupation. Thus, I have no alternative but to hold that the contentions of KoPT have definite merit and as such, I am inclined to conclude that the Notice to Quit dated 17.05.2006 is valid, lawful and correctly served on the O.P. and the same is binding between the parties.

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

- 1) That O.P. has violated the terms of the month to month lease by defaulting in payment of rent and taxes for a prolonged period.
- 2) That O.P. has erected unauthorised construction in the public premises without any authority of law.
- 3) That defence taken on behalf of O.P. as regards application of Limitation Act and abatement of proceedings is not at all applicable, in the facts and circumstances of the case.
- 4) That O.P. has failed to make out any case in support of its occupation as "authorised occupation", inspite of sufficient chances being given.

Sd

Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises
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- 5) That O.P. or any other person/s asserting any right through O.P. has failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation", inspite of sufficient chances being provided.
- 6) That the notice to quit dated 17.05.2006 as served upon O.P. by the Port Authority is valid, lawful and binding upon the parties. O.P's occupation, and that of any other occupant of the premises, has become unauthorised in view of Section 2(g) of the P.P Act.
- 7) That O.P. is liable to pay damages for wrongful use and occupation of the Public Premises upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

ACCORDINGLY, I sign the formal order of eviction u/s. 5 of the Act as per Rule made there-under, giving 15 days' time to O.P. i.e. "Estate Kripanarayan Mishra, represented by his Legal Heirs, Pawan Kumar Mishra & Ors." and any person/s whoever may be in occupation, to vacate the premises. I make it clear that all person/s, whoever may be in occupation, are liable to be evicted by this order and the Port Authority is entitled to claim damages for unauthorized use and enjoyment of the property against O.P., in accordance with the canons of Law till the date of unencumbered 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.

It is my considered view that a sum of Rs. 88,971.00/- for the period 01.08.1992 to 29.06.2006 (both days inclusive) is due and recoverable from O.P. by the Port authority on account of rental dues and O.P. must have to pay the rental dues to KoPT on or before 15.05.2019. In terms of Section 7 (2-A) of the PP Act, 1971, such dues attract simple interest @ 7.35 % per annum, which is the current rate of interest as per the Interest Act, 1978 (as gathered by me from the

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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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official website of the State Bank of India) from the date of incurrance of liability, till the liquidation of the same, as per the adjustment of payments, made so far by O.P., in terms of KoPT's books of accounts. I sign the formal order u/s 7 (1) & (2-A) of the Act.

I am not inclined to assess the damages at this stage as the Notice u/s 7(2) was issued only for a particular period whereas the O.P. is liable to pay damages for unauthorized use and enjoyment of the property right upto the date of handing over of possession of the public premises to KoPT. As such, the damages are to be assessed later, 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. to comply with this order as aforesaid, 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


(S. MITRA)
ESTATE OFFICER

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