

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 390 of 2000 Order Sheet No. 44

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Shree Gauri Shankar Jute Mills Pvt. Ltd.
(M/s Inland Vikas Ltd. (Added Party))

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29.11.2021

Final Order

The matter is taken up today for final disposal. The factual aspect involved in this matter is required to be put forward in a nutshell in order to link up the chain of events leading to this Proceeding. It is the case of **Syama Prasad Mookerjee Port, Kolkata** [erstwhile Kolkata Port Trust, hereinafter referred to as '**SMP, Kolkata**'], the applicant herein, that public premises being godown space measuring about 149.481 sq.m. or thereabouts on the ground floor of the Trustees' property being premises no P- 221/2 Strand Bank Road was originally allotted to **Shree Gauri Shankar Jute Mills Pvt. Ltd.** on long term Lease basis from May, 1980. Thereafter, on the grounds of violation of the conditions of the tenancy by the said erstwhile tenant, a proceeding for eviction and recovery of dues was initiated by SMP, Kolkata against the said erstwhile tenant viz. Shree Gauri Shankar Jute Mills Pvt. Ltd. under the relevant provisions of **Public Premises (Eviction of Unauthorized Occupants) Act, 1971** (hereinafter referred to as '**the Act**') before my predecessor Estate Officer which was numbered as Proceeding No 390 of 2000 in which **M/s Inland Vikas Ltd.** intervened as a party. Thereafter on 08.05.2002 the Order of eviction (vide Order no 21 dated 27.05.2002) was passed by my predecessor Estate Officer in the contested proceeding. It was recorded in the said Final Order that M/s Inland Vikas Ltd. had been found to be operating from the said premises. Further, in course of the said hearing an appeal / prayer had been made on behalf of M/s Inland Vikas Ltd. to grant them direct tenancy under SMP, Kolkata in respect of the Public Premises in question upon undertaking to liquidate all dues left by the erstwhile tenant viz. Shree Gauri Shankar Jute Mills Pvt. Ltd. The Ld. Advocate for the said erstwhile tenant also submitted that his client was very much eager to get the name mutated in favour of M/s Inland Vikas Ltd. in place of Shree Gauri Shankar Jute Mills Pvt. Ltd. in the Book or Records of SMP, Kolkata. Considering the all, the application made by M/s Inland Vikas Ltd. was forwarded to SMP, Kolkata with the direction to consider the prayer for





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Shree Gauri Shankar vs Jute Mills Pvt, Ltd,
(M/s Inland Vikas Ltd. (Added Party))

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grant of direct tenancy under SMP, Kolkata in respect ^{of} in the Public Premises in ^{the} question upon undertaking to liquidate all the rental dues ^{or} left by the earstwhile tenant Shree Gauri Shankar Jute Mills Pvt. Ltd. The prayer made by the M/s Inland Vikas Ltd. was considered in the context of socio-economic condition of our country and the matter of grant of direct tenancy to the present occupier M/s. Inland Vikas Ltd. was referred to SMP, Kolkata for active consideration. Subsequently, on 14.07.2004 the record was put up before my predecessor Estate Officer on being mentioned by SMP, Kolkata. It was submitted by SMP, Kolkata that they were not agreeable to come into a settlement with M/s Inland Vikas Ltd. as per the then estate management policy and SMP, Kolkata had the intention to get back the actual possession of the premises by way of executing the Order of Eviction passed under Sec.5 of the Act dated 27.05.2002. The Pay Order favouring SMP, Kolkata for Rs. 10 Lakhs as submitted by M/s. Inland Vikas Ltd. in course of hearing of the proceeding for getting the settlement with SMP, Kolkata ,was returned. In such a scenario, M/s Inland Vikas Ltd. preferred a revisional application before the Hon'ble Calcutta High Court challenging the order passed by my predecessor Estate Officer under Article 227 of the Constitution of India in C.O. No. 3685 of 2004 (Inland Vikas Ltd. -Vs- Board of Trustees for the Port of Kolkata and Ors.) The Hon'ble Calcutta High Court was pleased to dispose ^{of} of the application on 29.11.2004 by setting aside the Order of this Forum no. 22 dated 14.07.2004 with the direction upon this Forum to hear out the matter after giving reasonable opportunity to M/s Inland Vikas Ltd and pass appropriate orders, since the order was passed ex-parte.

In compliance of such direction passed by the Hon'ble Court, this Forum proceeded with the matter and the parties were directed to appear before this Forum and produce all relevant papers/ documents in support of their contentions. M/s Inland Vikas Ltd. was added as a party to the proceeding for

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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

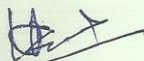
Shree Gauri Shankarvs Jute Mills Pvt. Ltd.
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all practical purposes and liberty was given to represent its case by filing written statement/ written objection. The Ld. Advocate of M/s Inland Vikas Ltd. took inspection of the records. The photocopies of the papers/ documents as required by the Ld. Advocate of M/s Inland Vikas Ltd. in course of such inspection were handed over to him. It has been the main contention of the Ld. Advocate of M/s Inland Vikas Ltd. that a differential treatment was being made upon his client with regard to the grant of direct tenancy by the management of SMP, Kolkata. It was stated that M/s Inland Vikas Ltd. was in occupation of the property as the "transport operator" of Shree Gauri Shankar Jute Mills Pvt. Ltd. and there was no bar to grant direct tenancy to M/s Inland Vikas Ltd. at that point of time that is to say on 27.05.2002, when a reasoned order was passed by this Forum for active consideration of its proposal for grant of direct tenancy in respect of the property in place of Shree Gauri Shankar Jute Mills Pvt. Ltd., as was done in other cases of similar nature. SMP, Kolkata, on the other hand, submitted that the entire matter was placed before SMP, Kolkata administration and the matter of regularising had not been made possible as per the estate management policy consequent upon direction of the controlling Ministry in similar cases. Strong argument has been advanced by SMP, Kolkata that as per the judgment dated 12.01.2007 of the Hon'ble Calcutta High Court delivered by His Lordship the Hon'ble Justice Shri Jayanta Kr. Biswas (as his Lordship then was) in W.P. No. 13458 (W) of 2005, any unauthorised occupant of the Public Premises cannot claim grant of direct tenancy on the ground of legitimate expectations. It is argued that even if there is any settlement with any unauthorised occupant in a similarly placed situation that cannot create a legal right on the part of M/s Inland Vikas Ltd. on the ground of discrimination and this Forum acting under the provisions of the Public Premises Act, 1971 is not competent to recommend any allotment in favour of unauthorised occupant. On the other hand, M/s Inland Vikas Ltd. submitted that the said Judgement dated 12.01.2001 is





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(M/s Inland Vikas Ltd. (Added Party))

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not a judgement -in-rem but a judgement -in-personam and a judgement -in-personam is not binding upon other proceedings and other litigants. .

It was pointed out that a suit for specific performance being T.S. No. 567 of 2005 was instituted by M/s Inland Vikas Ltd. against SMP, Kolkata before the Ld. Chief Judge, City Civil Court, Kolkata, wherein the Ld. Court, was pleased to pass an order of injunction against the Port Authority with direction to maintain status quo with regard to the possession of M/s Inland Vikas Ltd. into the Port Property in question. It was also informed that SMP, Kolkata preferred an appeal against the said Order of the Ld. Chief Judge City Civil Court, Kolkata before appropriate Forum of Law. SMP, Kolkata under the cover of its letter dated 17.12.2014 has furnished the Order dated 19.11.2014 passed by the Ld. Chief Judge City Civil Court, Kolkata. Since then, no communication has been received by this Forum from either of the parties regarding the fate of T.S. No. 567 of 2005, until recently, when SMP, Kolkata has filed an application bearing No. Lnd.16/3/II/21/3480 dated 28.09.2021 intimating that there is no pending stay/restraint order in T.S. No. 567 of 2005 and hence, there is no bar upon this Forum to proceed with the matter of the proceeding.

In view of the above, I proceed to pass the Final Order in the matter now. I have carefully considered the deliberations of the parties and gone through the documents placed on record. I find that the matter was heard extensively on several dates. I am satisfied with the number of opportunities provided to the parties, especially to M/s Inland Vikas Ltd., who has represented their case through their Ld. Advocate/s. Ample opportunity has been provided to M/s Inland Vikas Ltd. to represent its case in compliance with the direction passed by the Hon'ble High Court Calcutta by Order dated 29.11.2004 in C.O. No. 3685 of 2004.





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Shree Gauri Shankar vs Jute Mills Pvt. Ltd.,
(M/s Inland Vikas Ltd. (Added Party))

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To put it in a nutshell, it is the case that M/s Inland Vikas Ltd., being the occupier of the subject premises, has approached SMP, Kolkata for grant of tenancy in respect of the premises. It is also the case that in terms of the proposal of M/s Inland Vikas Ltd., it has agreed to liquidate the arrear rents payable by the erstwhile tenant viz. Shree Gauri Shankar Jute Mills Pvt. Ltd. in respect of the subject premises on condition that SMP, Kolkata would accept M/s Inland Vikas Ltd. as a lawful tenant in respect of the public premises in question. It is also the case that SMP, Kolkata submitted that the matter of grant of tenancy in favour of M/s Inland Vikas Ltd. was not possible as per the Estate Management Policy consequent upon direction of the controlling Ministry in similar cases. It was also informed by SMP, Kolkata that the matter of grant of direct tenancy to M/s Inland Vikas Ltd. was placed before the Appropriate Authority of SMP, Kolkata on 10.07.2002, when upon due consideration of the merit of the case, the Appropriate Authority of SMP, Kolkata turned down the proposal for grant of direct tenancy on 08.03.2003.

I find that an argument has been raised by M/s. Inland Vikas Ltd. that undue delay and discrimination has been done by SMP, Kolkata in the matter of grant of direct tenancy of M/s Inland Vikas Ltd. Considering such allegation, my predecessor Estate Officer has already expressed his mind that unless there is materials to prove such undue delay or discrimination as alleged by M/s Inland Vikas Ltd., it is not at all proper to indulge into such submission made by M/s. Inland Vikas Ltd.

With regard to the issue raised by M/s Inland Vikas Ltd. for grant of direct tenancy by SMP, Kolkata, it is the fact that such issue came up in 2004, when SMP, Kolkata had responded that regularisation of M/s Inland Vikas Ltd. was not permissible as per the Estate Management Policy. Clearly, more than 19 years has been elapsed from the date of the Order of Eviction (i.e. 27.05.2002), when the occupation of the erstwhile recorded tenant i.e. Shree Gauri Shankar Jute Mills



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*Shree Gauri Shankar vs Jute Mills Pvt. Ltd.,
(M/s Inland Vikas Ltd. (Added Party))*

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Pvt. Ltd. has been adjudicated as unauthorised. Be it mentioned here that in terms of the Order of Eviction dated 27.05.2002, the unauthorised occupier (i.e. Shree Gauri Shankar Jute Mills Pvt. Ltd.) of the public premises in question or whoever may be in occupation was directed to vacate the premises within 15 days of passing of the order. I find that SMP, Kolkata maintained their stand that grant of direct tenancy to the sitting occupant M/s Inland Vikas Ltd. could not be made possible. SMP, Kolkata authority has time and again made its intention clear, to obtain vacant possession of the public premises at once. I think time is ripe enough to proceed for delivery of final order as nothing has been heard with regard to grant of tenancy in favour of the existing occupant i.e M/s Inland Vikas Ltd. since past 19 years or so.

Moreover, it is my considered view, that grant of direct tenancy in favour of anybody is the prerogative of the landlord, here in this case SMP, Kolkata and it is beyond the purview of this Forum acting under the provisions of Public Premises Act, 1971 to interfere in such exercise by the landlord i.e. SMP, Kolkata. It is needless to mention that this Forum is mandated to act according to the provisions of Public Premises Act, 1971, and not otherwise, and hence there is no scope for this Forum to entertain any such plea of grant of direct tenancy on the part of the M/s Inland Vikas Ltd. Further, by expressing the desire to pay the dues/charges, payable to SMP, Kolkata on behalf of the recorded tenant of SMP, Kolkata, the existing occupants cannot claim their right to occupy the Public Premises without any valid grant from the Port Authority. In my view, enough opportunity has been provided to M/s Inland Vikas Ltd. to obtain its authority to hold the premises in question from SMP, Kolkata. However, it has failed to do so till date. M/s. Inland Vikas Ltd. is not in a position to produce a single piece of paper holding their occupation as authorised by SMP, Kolkata. Instead, they have continued their occupation

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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Shree Gauri Shankar vs *Jute Mills Pvt. Ltd,*
M/s Inland Vikas Ltd. (Added Party)

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order passed by Ld. Chief Judge, City Civil Court in T.S. No. 567 of 2005. In this context, I am guided by the Order dated 29.11.2004, passed by the Hon'ble Calcutta High Court delivered by the Hon'ble Justice Shri Soumitra Sen J. (as His Lordship then was) in C.O. No 3685 of 2004 preferred by M/s. Inland Vikas Ltd., inter alia, directing this Forum to hear out the matter afresh and decide all the points with regard to the Public Premises in question, it is in the fitness and fairness of things that this Forum has taken upon the proceedings to arrive at an equitable outcome, after diligently going through the deliberations of M/s. Inland Vikas Ltd. and SMP, Kolkata. Be it mentioned here that the Hon'ble Court was pleased not to go into the merits of the case and freed this Forum to pass any Order in accordance with Law upon hearing the M/s. Inland Vikas Ltd.

Additionally, 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. In the adjudication process as envisaged under Public Premises Act, 1971 an occupier of Public Premises like M/s Inland Vikas Ltd. is under obligation to satisfy this Forum of Law regarding the "authorised occupation" in view of Sec. 2(g) of the Act. As such, it is my firm understanding that the occupation of the M/s Inland Vikas Ltd. does not deserve any protection in law and should be evicted by an Order. As no case has been made out on behalf of M/s Inland Vikas Ltd. to establish their status as "authorised occupant", I have no other alternative but to issue order of eviction against M/s Inland Vikas Ltd., as prayed for on behalf of SMP, Kolkata, on the following grounds/reasons:-

[Signature]

[Signature]

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Proceedings No. 390 of 2000 Order Sheet No. 51

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Shree Gauri Shankar VS Jute Mills Pvt. Ltd
(M/s Inland Vikas Ltd, (Added Party))

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29.11.2021

1. That direct tenancy could not be granted to M/s. Inland Vikas Ltd. by the Port Authorities in view of their Estate Management Policy.
2. That M/s. Inland Vikas Ltd. could not obtain tenancy from the Port Authority as a matter of right and cannot dictate the Port Authority to grant such tenancy.
3. That in terms of the Order dated 27.05.2002 passed u/s 5 of the Public Premises Act, 1971 an Order of eviction has already been issued upon the erstwhile tenant Shree Gauri Shankar Jute Mills Pvt. Ltd.
4. That M/s. Inland Vikas Ltd. are occupying the Public Premises of Port Authority, unauthorisedly, without having any valid grant or authority from the Port Authority on your behalf.
5. That no case has been made out on behalf of M/s. Inland Vikas Ltd. as to how its occupation in the Public Premises could be termed as "authorised occupation" and the occupation has become unauthorized in view of Sec.2(g) of the Public Premises Act, 1971.

Department is directed to draw up formal order of eviction u/s.5 of the Act as per the Rules made there under, giving 15 days time to M/s Inland Vikas Ltd. and any person/s whoever may be in occupation to vacate the premises. I am firm in holding that the occupation of M/s Inland Vikas Ltd. and any person/s asserting any right through M/s Inland Vikas Ltd. is unauthorised and the person/s, whoever may be in occupation, are liable to be evicted by this order. However, I make it clear that the execution of the Order of Eviction is subject to any Order passed by any competent court of Law in the subject and such execution cannot be stayed without any effective order from competent court of law regarding stay of the instant proceedings.





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Proceedings No. 390 Of 2000 Order Sheet No. 52

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Shree Gauri Shakar vs *Sute Milk Pvt. Ltd.*
(M/s Inlad Vikar Ltd. (Added Party))

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29.11.2001

Further, in course of hearing, I find that SMP, Kolkata has made out an arguable claim against the Public Premises in question, founded with sound reasoning. I make it clear that SMP, Kolkata is entitled to claim damages for unauthorized 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 SMP, Kolkata is entitled to claim interest upon dues/charges right from the date of incurrance of liability as per SMP, Kolkata's Rule. SMP, Kolkata is accordingly directed to submit a statement, within 7 days of the receipt of the Order, comprising ^{of} details of its calculation of rent, damages etc. indicating therein ^{the} details of the rate of such charges together with the basis on which such charges as claimed against O.P. for my consideration for the purpose of assessment of rent, damages as per Rule made under the Act.

All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL



(K.K. Manna)
ESTATE OFFICER.

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

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

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
Fairley Warehouse
6, Fairley Place, Kolkata- 700 001.

REASONED ORDER NO. 58 DT 29.11.2021
PROCEEDINGS NO. 390 OF 2000

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-
SHREE GAURI SHANKAR JUTE MILLS PVT. LTD.
[M/S INLAND VIKAS LTD.(ADDED PARTY)]

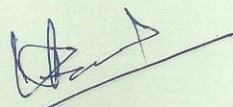
F O R M - "B"

**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 Inland Vikas Ltd. of 223, Strand Bank Road, Kolkata- 700 001** is in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

1. That direct tenancy could not be granted to you by the Port Authorities in view of their Estate Management Policy.
2. That you could not obtain tenancy from the Port Authority as a matter of right and cannot dictate the Port Authority to grant such tenancy.
3. That in terms of the Order dated 27.05.2002 passed u/s 5 of the Public Premises Act, 1971 an Order of eviction has already been issued upon the erstwhile tenant Shree Gauri Shankar Jute Mills Pvt. Ltd.
4. That you are occupying the Public Premises of Port Authority, unauthorisedly, without having any valid grant or authority from the Port Authority on your behalf.
5. That no case has been made out on your behalf as to how your occupation in the Public Premises could be termed as "authorised occupation" and your occupation has become unauthorized in view of Sec.2(g) of the Public Premises Act, 1971.



Please see on reverse

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A copy of the reasoned order No. 58 dated 29.11.2021 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 **M/s Inland Vikas Ltd. of 223, Strand Bank Road, Kolkata- 700 001** 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 Inland Vikas Ltd. of 223, Strand Bank Road, Kolkata- 700 001** 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

Godown space msg. 149.481 sqm or thereabouts on the ground floor of the Trustees' property being premises no P- 221/2, Strand Bank Road is situate on the west side of Strand Bank Road in the Presidency Town of Calcutta. It is bounded on the north by the Trustees' strip of open land on the east by the courtyard, rooms etc. of premises no. P- 221/2, Strand Bank Road on the south by the Trustees' strip of open land used as a passage and on the west by compartment of the trustees' no. P-221/2, Strand bank Road occupied by Taxtiles and Yard (P) Ltd.

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

Dated:



Signature & Seal of the
Estate Officer.

COPY FORWARDED TO THE ESTATE MANAGER, SYAMA PRASAD MOOKERJEE PORT, KOLKATA FOR INFORMATION.