

**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. 12 DT 13.06.2019
PROCEEDINGS NO.1631 OF 2018

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-
M/s. Jamnadas Tribhovandas & Co. (as 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. Jamnadas Tribhovandas & Co., of 46, Ezra Street, Kolkata 700001 AND also of Ramkristopur, Howrah 711101** is in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

1. That O.P. failed to submit its Reply to the Show Cause Notice/s u/s. 4 and 7 of the Act in spite of repeated chances.
2. That O.P. failed to bear any witness or adduce any evidence in support of its occupation into the public premises in spite of repeated chances.
3. That in gross violation of the condition of tenancy as granted by KoPT, O.P. failed and neglected to pay the rental dues and taxes to KoPT.
4. That O.P. parted with possession of the public premises unauthorizedly in favour of rank outsiders without having any authority under law.
5. That the sitting occupants/occupiers have failed to file any written submissions and failed to justify their occupation of the public premises, inspite of numerous opportunities.
6. That the ejectment notice dated 05.10.1988 as served upon O.P. by the Port Authority is valid, lawful and binding upon the parties.
7. That O.P. has lost its authority to occupy the public premises after determination/termination of the lease as mentioned in the notice to Quit dated 05.10.1988.

Please see overleaf....

8. That O.P's occupation into the public premises is wrongful on and from the period mentioned in the ejectment Notice dated 05.10.1988 and O.P. is liable to pay damages for such unauthorized use and occupation of the public premises upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

A copy of the reasoned order No. 12 dated 13.06.2019 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 **M/s. Jamnadas Tribhovandas & Co., of 46, Ezra Street, Kolkata 700001 AND also of Ramkristopur, Howrah 711101** 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. Jamnadas Tribhovandas & Co., of 46, Ezra Street, Kolkata 700001 AND also of Ramkristopur, Howrah 711101** 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

All that piece and parcel of land measuring about 301.006 Sq.mtrs. or thereabouts is situated at Ramkristopur, Thana, District & Registration District - Howrah. It is bounded on the north by the Cross Road No.2, on the east by the said Trustees' strip of open land, on the south by the Trustees' land occupied by Shankar Bhusan Reja and on the west by the upper Foreshore Road.

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

Dated: 13.06.2019


Signature & Seal of the
Estate Officer.

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



**REGISTERED POST WITH A/D.
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THE ESTATE OFFICER, KOLKATA PORT TRUST
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REASONED ORDER NO. 12 DT 13.06.2019
PROCEEDINGS NO.1631/R OF 2018

Form " E "

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-
M/s. Jamnadas Tribhovandas & Co. (as 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

**M/s. Jamnadas Tribhovandas & Co.,
46, Ezra Street,
Kolkata 700001**

**AND also of Ramkristopur,
Howrah 711101**

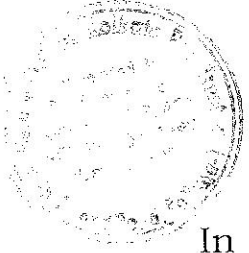
WHEREAS you are in occupation of the public premises described in
the Schedule below. (Please see on reverse).

AND WHEREAS, by written notice dated 25.05.2018 you were called
upon to show cause on/or before 18.06.2018 why an order requiring you to
pay a sum of Rs. 27,873.15/- (Rupees Twenty Seven Thousand Eight
hundred Seventy Three and paise fifteen only) being the rent payable
together with compound interest in respect of the said premises should not
be made;

And whereas you have contested the matter but failed to produce any
evidence/document in your defence.

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. 27,873.15/- (Rupees
Twenty Seven Thousand Eight hundred Seventy Three and paise fifteen
only) for the period 01.07.1983 to 30.11.1988 (both days inclusive) to
Kolkata Port Trust by 05.07.2019.

PLEASE SEE ON REVERSE



: 2 :

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 7.50 % per annum on the above sum till its final payment being the current rate of interest as per the Interest Act, 1978.

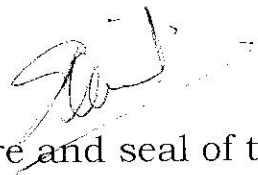
In case the said sum is not paid within the said period or in the said manner, it will be recovered as arrears of land revenue through the Collector.

SCHEDULE

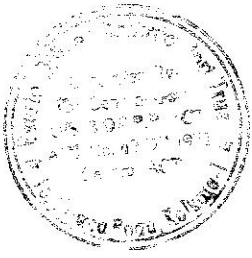
All that piece and parcel of land measuring about 301.006 Sq.mtrs. or thereabouts is situated at Ramkristopur, Thana, District & Registration District - Howrah. It is bounded on the north by the Cross Road No.2, on the east by the said Trustees' strip of open land, on the south by the Trustees' land occupied by Shankar Bhusan Reja and on the west by the upper Foreshore Road.

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

Dated: 13.06.2019


Signature and seal of the

Estate Officer



**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

Form G

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

REASONED ORDER NO. 12 DT 13.06.2019
PROCEEDINGS NO.1631/D OF 2018

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-
M/s. Jamnadas Tribhovandas & Co. (as O.P.)

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

To
M/s. Jamnadas Tribhovandas & Co.,
46, Ezra Street,
Kolkata 700001

AND also of Ramkristopur,
Howrah 711101

Whereas I, the undersigned, am satisfied that you are in unauthorised occupation of the public premises mentioned in the Schedule below:

And whereas by written notice dated 25.05.2018 you were called upon to show cause on/or before 18.06.2018 why an order requiring you to pay damages of Rs. 9,84,746.00/- (Rupees Nine lakh Eighty Four Thousand Seven Hundred and Forty Six only) together with compound interest for unauthorised use and occupation of the said premises, should not be made.

And whereas you have contested the matter but failed to produce any evidence/document in your defence.

Now, therefore, in exercise of the powers conferred on me by Sub-section (2) of Section 7 of the Public Premises (Eviction of

PLEASE SEE ON REVERSE

SV



: 2 :

Unauthorised Occupants) Act 1971, I hereby order you to pay the sum of Rs. 9,84,746.00/- (Rupees Nine lakh Eighty Four Thousand Seven Hundred and Forty Six only) for the period 01.12.1988 to 31.08.2017 assessed by me as damages on account of your unauthorised occupation of the premises to Kolkata Port Trust by 05.07.2019.

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 7.50 % per annum on the above sum till its final payment being the current rate of interest as per the Interest Act, 1978.

In the event of your refusal or failure to pay the damages within the said period or in the manner aforesaid, the amount will be recovered as an arrear of land revenue.

SCHEDULE

All that piece and parcel of land measuring about 301.006 Sq.mtrs. or thereabouts is situated at Ramkristopur, Thana, District & Registration District - Howrah. It is bounded on the north by the Cross Road No.2, on the east by the said Trustees' strip of open land, on the south by the Trustees' land occupied by Shankar Bhusan Reja and on the west by the upper Foreshore Road.

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

Dated: 13.06.2019

Signature and seal of the

Estate Officer



Estate Officer, Kolkata Port Trust
Appointed by the Central Govt. Under Section 3 of the Public Premises
(Eviction of Unauthorised Occupants) Act 1971

Proceedings No. 1631, 1631/R, 1631/D of 2018 Order Sheet No. 15

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS (Plate No. HL-87)
M/s Jamunadas Tribhovandas & Co.

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13-06-2019

FINAL ORDER

Factual aspect involved in this matter is required to be stated in a nutshell in order to link up the chain of events leading to this proceedings. A plot of land measuring about 301.006 sq.m. (under Plate no. HL87) situated at Ramkristopur, Howrah, Thana-Howrah, was allotted to M/s. Jamnadas Tribhovandas & Co. (O.P. herein) by Kolkata Port Trust (KoPT), Applicant herein, on short term (monthly) lease basis and it is the contention of KoPT vide Application dated 21.02.2018 that the O.P. had defaulted in making payment of rental dues and taxes and that O.P. had inducted unauthorized persons into the public premises in question. It is further the contention of KoPT that due to these breaches of the terms and conditions of the monthly lease, the said monthly lease granted to O.P. was determined/terminated by KoPT by forfeiture of lease by issuing Notice to Quit dated 05.10.1988 but O.P. failed and neglected to hand over possession of the public premises in question in spite of due service of the said ejection notice.

On the basis of KoPT's said application before this Forum, this Forum of Law 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 order of eviction) and u/s.7 of the Act (for recovery of rent, damages, interest etc), all dated 25.05.2018.

It is seen from record that the said Notice/s were sent by registered post to two addresses of the O.P. but one of them was returned undelivered with postal endorsement "insufficient address/not known". As per

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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
(Plate no. AL-87)

VS
M/s Jamunadas Tribhavadan & Co.

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the Report of the Process Server, O.P. was not found at the premises; however, it is also reported by the Process Server that the Notice/s were affixed on the public premises as per the mandate of the Act. Be that as it may, on the returnable date of the Notice/s i.e. 18.06.2018 although the undersigned was not available but it is seen from record that a Vakalatnama was filed by an Advocate on behalf of a Partner of the O.P. Firm and one Shri Amar Bahadur Singh appeared claiming to be a sitting occupant. On the subsequent date of hearing, one Kalyani Bhattacharyya, Advocate filed vakalatnama on behalf of O.P. Firm and one Niraj Kumar filed vakalatnama on behalf of said Amar Bahadur Singh. An application for addition of party was also preferred on behalf of said Amar Bahadur Singh. A communication regarding a Misc Appeal 142 of 2018 filed by M/s L.N. Engineering also came on record. This Forum, vide Order dated 09.07.2018 not only granted time to O.P. to file its Reply to the Show Cause Notice/s but also specifically mentioned that Amar Bahadur Singh, M/s L.N. Engineering or any other interested party had the liberty to appear before the Forum and file their respective written submission/s. On 23.7.2018 the partners of O.P. appeared with a letter of authorization but again sought time to file the Replies. The Advocate for Amar Bahadur Singh also appeared but with prayer for adjournment. Again, opportunity was granted to the parties to come up with their Reply/written submissions. On the next date, as per request of the O.P., copies of all documents on record were handed over to the representative of the O.P. Again, adjournment was sought on behalf of Amar Bahadur Singh. On the subsequent dates of hearing

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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

(Plate no HL-87)

M/s Jamunadas Tribhovandas & Co. VS

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13.06.2019

also, no Reply or written submission came to be filed by the parties but only prayers for adjournments on various flimsy grounds. On 12.03.2019 representatives of KoPT submitted that the premises had been gutted down in an incident of fire. A last opportunity was granted to O.P. and other interested parties to come up with their Reply/written submissions, fixing 19.03.2019 as the final date of hearing. However, even on 19.03.2019 neither O.P. nor any other interested party could produce anything in writing despite prior intimation of the order/s in force. Under such a situation, the Forum proceeded to conclude the hearings and reserved the matter for passing final order.

Now when the matter is taken up for final decision, it is seen that KoPT has filed an application dated 09.04.2019 confirming their verbal submission as regards break-out of fire in the premises, enclosing certain communications addressed to the police authorities regarding such incident of fire. It is also seen that KoPT has also filed an application dated 28.05.2019 informing that the Ld Additional District Judge, 1st Court, Howrah had passed an order of restraint dated 02.04.2019, in Misc. Appeal 142/2018 (filed by M/s L.N. Engineering) staying the operation of Order no. 01 passed by this Forum in the instant proceedings, subject to the appellant (M/s L.N. Engineering) continuing to pay the occupational charges of Rs 10,000/- per month payable in favour of Kolkata Port Trust within 10th day of each and every month starting from the month of April 2019 till the disposal of the Misc. Appeal, failing which, the stay order will stand vacated. KoPT has further submitted

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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

Proceedings No. 1631/1631/R/1631/D of 2018 Order Sheet No. 18

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

(Plate no. HL-87)

M/s Jamunadars Tribhovandas & Co.

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in the application dated 28.05.2019 that the first payment (for the month of April 2019) was tendered by the said M/s L.N. Engineering through cheque dated 09.04.2019 but thereafter, no payment has been made by the said M/s L.N. Engineering, thereby the stay order dated 02.04.2019 passed by Ld Additional District Judge, 1st Court, Howrah, automatically stands vacated. Be that as it may, it is further seen from record that a cheque for Rs 10,000/- dated 08.05.2019 has been forwarded to this Forum by M/s L.N. Engineering on 30.05.2019 (apparently, as payment for month of May, 2019) but the same does not seem to be in accordance with the Order dated 02.04.2019 of the Ld Additional District Judge, 1st Court, Howrah at all, as it has been posted only on 29.05.2019 vide Speed Post no. EW946673507IN although the Order dated 02.04.2019 required the same to be paid within 10th of every month. Moreover, KoPT has filed another application dated 12.06.2019 intimating that the first cheque of Rs 10,000/- which was submitted by M/s L.N. Engineering in the month of April, 2019 has been dishonoured by the bank. Under such a situation, it appears to me that said M/s L.N. Engineering is not at all complying with the direction dated 02.04.2019 of the Ld Additional District Judge, 1st Court, Howrah and as such, there is no bar in proceeding with the instant P.P. Act proceedings.

Now coming to the facts and circumstances of the case, I find that the allegation/s of KoPT are mainly two-fold i.e. non-payment of rent and taxes and induction of strangers/parting with possession. As regards default in payment, I have come across letters

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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

M/s Jamunadas Tribhovandas & Co. VS (Plate No H-L-87)

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13.06.2019

dated 30.05.1981, 24.05.1988 of the KoPT whereby KoPT repeatedly requested the O.P. for immediate liquidation of the dues. I have also gone through the statement of accounts produced by KoPT, maintained in official course of business, wherefrom the non-payment of dues is very much imminent. On the other hand, as regards induction of strangers, I find that various persons/entities such as Amar Bahadur Singh, M/s L.N. Engineering etc appear to be interested in the proceedings as sitting occupants/occupiers but all of them have failed to justify their occupation before this Forum. All of them including the O.P. have failed to file their Reply/written submissions despite several opportunities. Under such circumstances, adverse conclusion must be drawn against O.P. and a strong presumption arises that these occupiers such as Amar Bahadur Singh, M/s L.N. Engineering are all strangers in wrongful occupation having no legal right or interest over the property in question. As such, in my view, it is a fit case for allowing the prayer of KoPT and I must hold that the Notice to Quit dated 05.10.1988 has been rightly served by KoPT on O.P. and such Notice is valid, binding and enforceable in accordance with law. As there is no reply to the Show Cause/s, and being satisfied as above, I am left with no other alternative but to issue order of eviction u/s. 5 of the Act to O.P. on the following reasons/grounds:

1. That O.P. failed to submit its Reply to the Show Cause Notice/s u/s. 4 and 7 of the Act in spite of repeated chances.
2. That O.P. failed to bear any witness or adduce any evidence in support of its

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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

Proceedings No. 1631, 1631/R, 1631/D of 2018 Order Sheet No. 20

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

(Plate No HL-87)

M/s Jamunadas Tribhovandas & Co. ^{VS}

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13-06-2019

occupation into the public premises in spite of repeated chances.

3. That in gross violation of the condition of tenancy as granted by the Port Authority, O.P. failed and neglected to pay the rental dues and taxes to KoPT.
4. That O.P. parted with possession of the public premises unauthorizedly in favour of rank outsiders without having any authority under law.
5. That the sitting occupants/occupiers have failed to file any written submissions and failed to justify their occupation of the public premises, inspite of numerous opportunities.
6. That the ejectment notice dated 05.10.1988 as served upon O.P. by the Port Authority is valid, lawful and binding upon the parties.
7. That O.P. has lost its authority to occupy the public premises after determination/termination of the lease as mentioned in the notice to Quit dated 05.10.1988.
8. That O.P's occupation into the public premises is wrongful on and from the period mentioned in the ejectment Notice dated 05.10.1988 and O.P. is liable to pay damages for such unauthorized 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. and any person/s whoever may be in occupation, to vacate the premises. I make it clear



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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Order Sheet No. 21

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s Jamunadas Tribhovandas & Co. **VS**

(Plate no HL-87)

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that all person/s whoever may be in occupation, including Amar Bahadur Singh and M/s L.N. Engineering are liable to be evicted by this order and the Port Authority is entitled to claim damages for unauthorized use and occupation of the property against O.P. in accordance with Law up to the date of recovery of possession of the same.

I am satisfied that a sum of Rs. 27,873.15/- for the period 01.07.1983 to 30.11.1988 is due and recoverable from O.P. as arrears of rent and the arrear rental dues as aforesaid, shall be payable by O.P. to KoPT on or before 05.07.2019. In terms of Section 7 (2-A) of the PP Act, 1971, such dues attract simple interest @ 7.50 % per annum, which is the current rate of interest as per the Interest Act, 1978 (as gathered by me from the 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.

Likewise, I find that KoPT has made out an arguable claim against O.P., founded with sound reasoning, regarding the damages/compensation to be paid for unauthorised occupation. As such, I must say that Rs. 9,84,746.00/- as claimed by the Port Authority as damages in relation to the Plate in question, is correctly payable by O.P. for the period 01.12.1988 to 31.08.2017 (both days inclusive) and it is hereby ordered that O.P. shall also make payment of the aforesaid sum to KoPT by 05.07.2019. In terms of Section 7 (2-A) of the PP Act, 1971, such dues attract simple interest @ 7.50 % per annum, which is the current rate of interest as per the Interest Act, 1978 (as gathered by me from the official website of the State Bank of India) from the date of incurrance of

Q.N.



Estate Officer, Kolkata Port Trust

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

Proceedings No. 1631, 1631/R, 1631/D of 2018 Order Sheet No. 22

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

(Plate no. HL-87)

M/s Jamunadas Tribhovandas & Co. ^{VS}

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13.06.2019

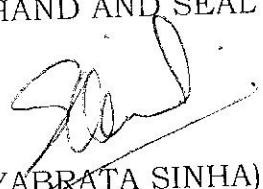
liability, till the liquidation of the same, as per the adjustment of payments, made so far by O.P., in terms of KoPT's books of accounts. I sign the formal order u/s 7 (2) & (2-A) of the Act.

I make it clear that KoPT is entitled to claim damages against O.P. for unauthorized use and occupation of the public premises right upto the date of recovery of clear, vacant and unencumbered possession of the same in accordance with Law, and as such liability of O.P. to pay damages extends beyond 31.08.2017 as well, as the possession of the premises is still with the O.P.. KoPT is directed to submit a statement comprising details of its calculation of damages after 31.08.2017, indicating there-in, the details of the rate of such charges, and the period of the damages (i.e. till the date of taking over of possession) together with the basis on which such charges are claimed against O.P., for my consideration for the purpose of assessment of such damages as per Rule made under the Act.

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


(SATYABRATA SINHA)
ESTATE OFFICER

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