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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  
6, Fairley Place (1st Floor)  
KOLKATA - 700 001  
\*\*\*\*\*

Court Room At the 1<sup>st</sup> Floor  
of Kolkata Port Trust's  
Fairley Warehouse  
6, Fairley Place, Kolkata- 700 001.

REASONED ORDER NO. 37 DT 15.07.2019  
PROCEEDINGS NO. 1350 OF 2013

BOARD OF TRUSTEES OF THE PORT OF KOLKATA  
-Vs-  
M/s Hoare Miller & Co. Ltd. & 7 Others (O.P.s)

**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 Chokhani Rubber Co., M/s R.S. Traders, M/s Standard Engineering Co., and M/s B. K. Traders, All of 1<sup>st</sup> Floor, Armenian Ghat Warehouse, Kolkata 700001**, being four of the eight O.P.s in the instant proceedings, are in unauthorized occupation of the Public Premises specified in the Schedule below:

**REASONS**

1. That the Port Authority was not under any compulsion under the Terms of Settlement approved on 15.09.1992 to grant direct tenancy to the occupiers (being O.P.s 2 to 8 of the instant proceedings).
2. That the plea taken by O.P.s/occupiers with regard to non-realization of rent by the Port Authority as provided under Terms of Settlement as approved by the Hon'ble High Court, Calcutta in question has got no merit to claim their occupation as "authorised occupation".
3. That the contention of O.P.s/occupiers regarding their liability towards payment of rental dues/occupational charges only at the rate which were earlier fixed at the time of approval of the terms of settlement by order of the Hon'ble Calcutta High Court dated 15.09.1992 is not at all supported by fact and law.
4. That O.P.s/occupiers are under obligation to pay the rental dues/occupational charges in terms of KoPT's schedule of rent charges as time to time in force for the relevant period in accordance with terms of settlement as approved by the Hon'ble High Court, Calcutta by order dated 15.09.1992.
5. That O.P.s/occupiers cannot deny their liability towards payment of rental dues/occupational charges on the basis of KoPT's Schedule of Rent charges and O.Ps/occupiers cannot claim their occupation as "authorised occupation" without making payment to KoPT in terms of the Schedule of rent charges for the relevant period.

*Ym*  
**Please see on reverse**

6. That O.Ps/occupiers cannot claim tenancy under Kolkata Port Trust without making payment of rental dues and/or occupational charges for the same and also cannot claim execution of tenancy agreement by and between KoPT and the respective occupiers in respect of their actual area in occupation in terms of the said Terms of Settlement before the Hon'ble High Court, Calcutta in question.
7. That O.Ps/occupiers have failed to bear any witness or adduce any evidence in support of their occupation as "authorised occupation" inspite of sufficient chances.
8. That occupation of O.P.s/occupiers have become unauthorized in view of Sec. 2(g) of the P.P. Act.
9. That KoPT's demand for possession by notice to O.Ps/occupiers dated 13.09.2006 bearing No. 3/19/II/06/6929 is valid, lawful and binding upon the parties.
10. That O.P.s/occupiers are 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. 37 dated 15.07.2019 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 Chokhani Rubber Co., M/s R.S. Traders, M/s Standard Engineering Co., and M/s B. K. Traders, All of 1<sup>st</sup> Floor, Armenian Ghat Warehouse, Kolkata 700001** 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 Chokhani Rubber Co., M/s R.S. Traders, M/s Standard Engineering Co., and M/s B. K. Traders, All of 1<sup>st</sup> Floor, Armenian Ghat Warehouse, Kolkata 700001** 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. A4** - Godown space msg. 503.906 sq.m. or thereabouts on the 1<sup>st</sup> floor of Kolkata Port Trust's Warehouse known as Armenian Warehouse which is situated in the presidency town of Kolkata, under P.S. - North Port Police Station. Trustees' means the Board of Trustees of the Port of Kolkata.

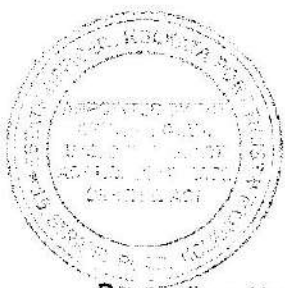
Dated: 15.07.2019

  
Signature & Seal of the  
Estate Officer

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

**COPY, FOR INFORMATION, TO THE O.P.s WHO HAVE ALREADY HANDED OVER POSSESSION:**

1. M/s Hoare Miller & Co. Ltd., OF 5, Fairlie Place, Kolkata 700001.
2. A) M/s. S. K. Rubber Stores  
B) M/s. S.V. Trading  
C) M/s. Indian Industrial Supplier  
ALL OF 1<sup>st</sup> Floor, Armenian Ghat Warehouse, Kolkata 700001



# 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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### FINAL ORDER

Noticeable facts are required to be put forward in a nutshell for clear understanding of the issues involved in this matter. Godown space Msg. About 503.906 Sq.m at Kolkata Port Trust's warehouse known as 'Armenian Warehouse' (under the jurisdiction of North Port Police Station) was allotted to M/s. Hoare Miller & Co. Ltd. of 5, Fairlie Place, Kolkata - 700 001 on monthly term lease basis on certain terms and conditions under Plate no. A-4. It is the case of Kolkata Port Trust (KoPT), vide original application dated 18.12.2006 that the Hon'ble Division Bench of Calcutta High Court by an order dated 15.09.1992 had approved the Terms of Settlement entered into by and between M/s. Hoare Miller & Co. Ltd. and Commissioners for the Port of Kolkata (now known as Kolkata Port Trust) in Appeal No. 405 of 1975, (arising out of suit No. 1574 of 1969) and the Appeal was disposed of according to the said Terms of Settlement, entitling the Port Authority to collect arrear rental and other dues together with interest from the existing occupiers as mentioned in said Terms of Settlement (the M/s. Hoare Miller & Co. Ltd. was named as O.P. 1 in the instant proceedings and the existing occupiers named as O.P.s 2 to 8). It is submitted on behalf of KoPT that the O.P.s failed to come up with appropriate proposal for settlement of tenancy in their favour and preferred to continue in occupation of the property without making payment/charges to KoPT for enjoyment of the same. It is also the case of KoPT that O.P.s have failed to hand over possession of the premises in question inspite of KoPT's demand for possession being No. 3/19/II/06/6929 dated 13.09.2006 and O.P.s are liable to pay damages for unauthorised use and enjoyment of the Port Property upto the date of handing over of possession to the Port Authority.

This Forum of Law formed its opinion to proceed against O.P.s and issued Show Cause Notice u/s 4 of the Act (for adjudication of the prayer for order of

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eviction etc.) and Show Cause Notice u/s 7 of the Act (for adjudication of the prayer for recovery of arrear rental dues etc.) both dated 19.11.2012 as per Rule made under the Act.

In course of hearing M/s. Hoare Miller & Co. Ltd. (the actual recorded tenant of KoPT, who is O.P. 1 of the instant proceedings) appeared through Advocates (D.S.P. Law Associates) and filed Reply on 12.12.2012 and 18.03.2014 with the prayer to expunge the name of M/s. Hoare Miller & Co. Ltd. from the proceedings etc. in view of the Terms of Settlement entered into by and between M/s. Hoare Miller & Co. Ltd. and the then Commissioners for the Port of Kolkata as approved by the Order of the Division Bench of the Hon'ble High Court, Calcutta dated 15.09.1992 etc. In course of hearing, KoPT by its application dated 17/18.02.2015 bearing No. Lnd.3/19/II/15/3432 prayed for treating M/s. Hoare Miller & Co. Ltd. as Proforma Defendant. As no relief/s has been claimed against such Proforma Defendant, this Forum is to adjudicate upon the rights and liabilities of the parties that is to say Respondent Nos. 2 to 8 and KoPT. Respondent Nos. 2 to 8 (i.e. Indian Industrial Supplies, Chokhani Rubber Co., S.V. Trading Co., Standard Engineering Co., B.K. Traders, R.S. Traders, S.K. Rubber Stores) by their respective Reply to the Show Cause Notice made almost similar submissions/arguments. It is stated by the Respondent No. 2 to 8 in course of hearing that inspite of written communication dated 13.09.1993 and 09.12.2006 (through their Attorney M/s. S. G. Muskara & Co.) for collection of rent, no communication from KoPT's end has been received by them and no rent bill was issued to them by the Port Authority. The submissions/arguments of O.P.s/occupants are as follows :

1. That O.P.s/occupants were all along willing to make payment of their rent.
2. That payments could not be made due to non-receipt of rent bills from September, 1992

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- inspite of O.P.'s/occupant's earnest efforts to get bills from Kolkata Port Commissioners.
3. That O.P.s/occupants are not defaulters as they are not responsible to withheld the payment of rent bills.
  4. That rent charges was fixed by the Hon'ble High Court Calcutta by its order dated 15.09.1992 and O.Ps/ occupants have been recognised as tenants of the proportionate area which was being held by them.

M/s. S.K. Rubber Stores, however, by their petition filed on 28.03.2014 (verified by one Mr. Kutubuddin) prayed for recording of the fact that the godown was vacated by M/s. S.K. Rubber Stores long back and is lying vacant. It is also prayed that direction be issued to the Port Authority to take immediate possession of the godown. It appears from records that KoPT took over possession of the godown space msg. About 64.325 Sq.m previously occupied by M/s. S.K. Rubber Stores at Armenian Ghat Warehouse (1<sup>st</sup> floor) on 15.12.2014 in compliance with the order of this Forum dated 19.11.2014. As per the report of KoPT under cover of the application filed on 16.12.2014, it is found that KoPT took over three portions of godown space on 15.12.2014, which were earlier occupied by M/s. S. K. Rubber Stores (area Msg. 64.325 Sq.m), M/s. S.V. Trading (area Msg. 134.897 Sq.m) and M/s. Indian Industrial Supplier (area Msg. 19.614 Sq.m). It also reveals from records that in course of hearing dated 19.11.2014, O.P.s/occupiers were informed about the claim of KoPT on account of outstanding dues/charges and KoPT during hearing on 20.05.2015 filed an application bearing no. Lnd 3/19/II with a comprehensive report regarding dues/charges on pro-rata basis payable by the respective occupants of the Public Premises calculated upto 15.12.2014 and 15.05.2015 in terms of the order dated 18.02.2015. It is also informed in course of hearing by KoPT that such pro-rata dues as payable by the respective occupants as per KoPT's claim have already been

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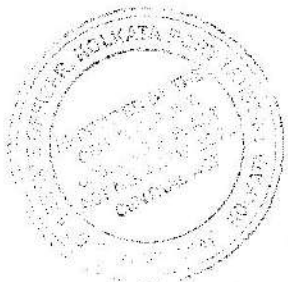
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informed to the O.P.s/occupants. By order dated 02.11.2016 it is recorded that O.P.s/occupiers duly received KoPT's application bearing No. 3/19/II dated 01.11.2016 with a copy of statement of accounts regarding KoPT's claim for occupation and enjoyment of the Port Property. On the question of liquidation of KoPT's dues/charges, during hearing on 02.11.2016, O.P.s/occupants controverted the claim of KoPT on the plea/statement that they are liable to pay only the occupational charges as had been fixed by the Hon'ble High Court vide order dated 15.09.1992. It is argued by O.P.s/occupants that there is no provision for enhancement/revision of occupational charges as the rate of rent/occupational charges is fixed up by Hon'ble High Court by order dated 15.09.1992. The representative of KoPT all along objected to the proposition of such fixed rate of rent/occupational charges and states with argument that the Terms of Settlement reached before the Hon'ble High Court as approved by order dated 15.09.1992 clearly speaks for entitlement of KoPT regarding recovery of occupational charges/rent in terms of KoPT's Schedule of Rent Charges as notified from time to time. It appears that the matter has been reserved for passing the Final Order during the course of hearing on 02.11.2016. However, the case has been re-opened on 08.01.2018 after the same has been assigned to the undersigned to ascertain development, if any, in the meantime. At the time of re-opening the undersigned finds sufficient materials in the file of records to adjudicate the respective rights and liabilities of the parties in the case. However, the parties were directed to come up for a Final hearing in the matter to ascertain the present status of the case. During the course of hearing of the case before the undersigned the representative of KoPT submitted that the position of the case has not changed since the matter was last heard by the erstwhile Ld. Estate Officer. On the other hand an application has been filed jointly by M/s Chokhany Rubber Co., M/s B.K. Traders, M/s

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## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

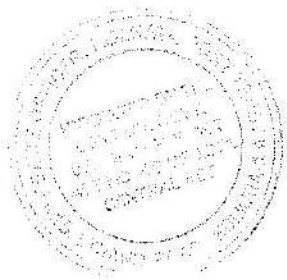
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Standard Engineering Co. and M/s R.S. Traders on 21.01.2019 reiterating their earlier stand in the matter.

Upon consideration of all relevant facts and statements/submissions of both sides and after due consideration of all relevant papers/documents as brought before me in course of hearing, I find that the crux of the matter revolves around the question, whether the Port Authority was bound to recognise the O.P.s/occupants as tenant under KoPT in terms of the said settlement or not, and whether there is any default on the part of KoPT in considering the applications of O.P.s/occupants (nos. 2 to 8) regarding realisation of rental dues/occupational charges in terms of the order dated 15.09.1992 passed by the Hon'ble High Court, Calcutta. A case has been made out on behalf of O.P.s/occupants that by Application dated 13.09.1993 and by Application dated 09.12.2006 by their Attorney at Law/Advocates they had drawn the attention of KoPT for collection of rent but KoPT failed to take any action in terms of the said letters. On perusal of records, I find that during hearing on 05.10.2016 the Head Clerk of Administration Department, KoPT confirmed that the then Head Clerk of KoPT had received the letter dated 13.09.1993 on 20.09.1993. As such, I have no bar to conclude that KoPT received such application from O.Ps /occupants. Now the question arises how far such act on the part of KoPT would be considered on merit to decide the issues before me. It is evident from the Terms of Settlement in question as per order dated 15.09.1992 passed by the Division Bench of Calcutta High Court (Appeal No.405 of 1975 arising out of Suit No.1574 of 1969- M/s. Hoare Miller and Company Limited -Vs- The Commissioners for the Port of Calcutta) that Port Authority is not bound to accept the O.P.s/occupiers as tenant. In other words no duty or responsibility was cast upon the Port Authority to accept the O.P.s/occupiers as tenant for realisation of rent. Clause No.3 of the said terms of settlement reads as follows:

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".....The Joint Receiver shall forthwith deliver possession of the Armenian Ghat Warehouse more fully described in Schedule 'A' mentioned hereinbelow to the respondent along with the existing occupiers and the respondent shall be entitled to collect rent and other dues from the occupiers and also be entitled to realise arrear rent and other dues if any, from the defaulting occupiers including interest thereon. In the event the respondent recognises the occupiers as the tenants, the occupiers shall have to execute formal agreements with the respondent and shall have to pay rent and other dues in terms of the Schedule of rent charges in force and/or as may be amended from time to time. ...." (underline added)

A plain reading of the above as has been directed by the Hon'ble Division Bench of Calcutta High Court clearly indicates KoPT's entitlement for realisation of rental dues in terms of the KoPT's Schedule of rent charges as time to time may come into operation. In view of the above, I am inclined to hold that there may be latches on the part of KoPT in dealing with the application/s of O.P.s/occupiers for collection of rent as applied for by them, but such act cannot be termed as fatal on the part of KoPT to come up with an application for order of eviction against the O.P.s/occupiers and realisation of rental dues from O.P.s/occupiers up to the date of their occupation and enjoyment of Port property in question. Grant of tenancy is the subject matter of consideration of the landlord (in this case KoPT) and this Forum while adjudicating a case under the Public Premises Act is not vested with such power. The conditions imposed upon the O.P.s / Occupiers in order to get tenancy under KoPT vide the Terms of Settlement as approved the Hon'ble Calcutta High Court could be summarised as follows;

- i) Willingness on the part of KoPT to grant tenancy in favour of the O.P.s / Occupiers
- ii) Formal execution of tenancy agreement by and between the Port Authority and the

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- O.P.s / Occupiers in respect of the area under their occupation.
- iii) Payment of rental dues and arrears by the O.P.s / Occupiers in terms of KoPT's Schedule of Rent Charges for the time being in force.

None of the above conditions appears to be in favour of O.P.s / Occupiers so as to infer about KoPT's intention to recognise O.Ps / Occupiers as tenant under KoPT. During the course of hearing no case has been made out by the O.P.s / Occupiers as to how the O.Ps / Occupiers could be taken into consideration for grant of tenancy without KoPT's "consent" in terms of the order of the Hon'ble Division Bench of Calcutta High Court. In no case the O.Ps / Occupiers could deny their liability towards payment of KoPT's demand for occupational charges/ rental dues upto the date of their occupation on the basis of KoPT's Schedule of rent charges for the relevant period. Such liability towards payment of occupational charges/ rental dues has had no connection or implication for grant of tenancy to O.Ps / Occupiers in respect of the area under their occupations and enjoyment. Continued silence on the part of KoPT after application of O.Ps / Occupiers since 20.09.1993 and institution of this proceedings at the instance of KoPT is a sufficient demonstration on the part of the Port Authority regarding their intention not to grant tenancy in favour of O.Ps / Occupiers. In course of hearing O.Ps / Occupiers were asked to express the modalities for liquidation of KoPT's dues/ charges consequent upon KoPT's application bearing No. Lnd 3/19/II dated November 1, 2016 (filed on 2.11.2016) which was handed over to them with a statement of accounts as per KoPT's claim in respect of their occupation. The submissions/reply of the O.P.s / Occupiers is very much instrumental in deciding their intention to get the tenancy under KoPT. It is submitted with argument on behalf of O.P.s / Occupiers that their liability towards payment of KoPT's dues/ charges is restricted to the rate of rent

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as fixed up by the Hon'ble High Court by order dated 15.09.1992. On perusal of the Terms of Settlement as approved by the Hon'ble High Court in question, I find no substance to the argument made on behalf of the O.Ps / Occupiers regarding their liability towards payment of KoPT's dues/ charges at the rate fixed up by the Hon'ble High Court. Nowhere in the said Terms of Settlement there is any scope for fixation of rent by the Hon'ble High Court. Rather it is amply clear from Clause (3) of the Terms of Settlement that O.Ps / Occupiers cannot repudiate the claim of KoPT on account of occupational charges as per KoPT's Schedule of Rent Charges up to the date of their occupation and enjoyment of Port Property. Moreover, it is my firm and considered view that O.P.s / Occupiers are liable to pay occupational charges/rent to the Port Authority upto the date of their occupation even if the Port Authority intends not to recognise the O.P.s / Occupiers as tenant of KoPT in respect of their area under their respective occupation. It is also my well considered view in the context of the Terms of Settlement as approved by the Hon'ble High Court by Order dated 15.09.1992 that O.P.s / Occupiers are not even in a position to pray for regularisation of their respective occupations without paying requisite charges for such occupation on the basis of KoPT's Schedule of rent charges for the time being in force. The question of execution of Tenancy Agreement as per Terms of Settlement before the Hon'ble High Court in question can not arise in the event of failure on the part of the O.P.s / Occupiers to pay the occupational charges/rent in terms of KoPT's demand based on Schedule of rent charges. Hence, I have to decide the issues against O.Ps / Occupiers. There is no confusion in my mind that the notice bearing No. Lnd.3/19/II/06/6929 dated 13.09.2006 by the Port Authority to O.P.s/occupiers is very much lawful and binding upon the parties. I have no hesitation in mind to say that after expiry of the period as mentioned in the said notice to Quit dated 13.09.2006, O.P.s/occupiers have lost their

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authority to occupy the public premises, on the evaluation of factual aspect involved into this matter and O.P.s/occupiers are liable to pay damages for such unauthorized use and occupation.

In course of hearing, the representative of KoPT states and submits that Port Authority never consented in continuing O.P.s/occupiers occupation into the public premises and never expressed any intention to accept O.P.s/occupiers 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.s/occupiers cannot claim its occupation as "authorized" without receiving any rent/ demand note. Therefore, there cannot be any doubt that the O.Ps/occupiers were in unauthorized occupation of the premises, once the Port Authority made up its mind not to grant direct tenancy to the occupiers, which was communicated vide the Notice dated 13.09.2006.

In my view, 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.s/occupiers 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 possession of the premises after termination of lease continues to occupy it as a trespasser or as a person who has no right to continue in occupation of the premises. Such person by no stretch of imagination can be called a lessee. Moreover, a person continuing in occupation of such premises after termination of lease is still liable to pay compensation or damages for their use and occupation and if, at any time, such compensation has been paid or accepted, it cannot undo the effect of the termination of lease. 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

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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 of damages upon the guiding principle as laid down by the Hon'ble Apex Court in the 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 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. Moreover, as per law O.P.s/occupiers are bound to deliver up vacant and peaceful possession of the public premises to KoPT after expiry of the period as mentioned in the Notice to Quit in its original condition. As such, I am inclined to decide the matter in favour of Kolkata Port Trust. I have no hesitation to observe that O.P.s/occupiers act in continuing occupation is unauthorized and O.P.s/occupiers are 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. With this observation, I must reiterate that the ejectment notice, demanding possession from O.P.s/occupiers as stated above has been validly served upon O.P.s/occupiers in the facts and circumstances of the case and such notice is valid, lawful and binding upon the parties.

NOW THEREFORE, the logical conclusion which could be arrived at in view of the discussion above that it is a fit case for allowing KoPT's prayer for order of eviction against O.P.s/occupiers nos. 2 to 8 (except M/s. S. K. Rubber Stores, M/s. S.V. Trading

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and M/s. Indian Industrial Supplier who have already handed over possession) u/s 5 of the Act for the following grounds/reasons:

1. That the Port Authority was not under any compulsion under the Terms of Settlement approved on 15.09.1992 to grant direct tenancy to the occupiers (being O.P.s 2 to 8 of the instant proceedings).
2. That the plea taken by O.P.s/occupiers with regard to non-realization of rent by the Port Authority as provided under Terms of Settlement as approved by the Hon'ble High Court, Calcutta in question has got no merit to claim their occupation as "authorised occupation".
3. That the contention of O.P.s/occupiers regarding their liability towards payment of rental dues/occupational charges only at the rate which were earlier fixed at the time of approval of the terms of settlement by order of the Hon'ble Calcutta High Court dated 15.09.1992 is not at all supported by fact and law.
4. That O.P.s/occupiers are under obligation to pay the rental dues/occupational charges in terms of KoPT's schedule of rent charges as time to time in force for the relevant period in accordance with terms of settlement as approved by the Hon'ble High Court, Calcutta by order dated 15.09.1992.
5. That O.P.s/occupiers cannot deny their liability towards payment of rental dues/occupational charges on the basis of KoPT's Schedule of Rent charges and O.Ps/occupiers cannot claim their occupation as "authorised occupation" without making payment to KoPT in terms of the Schedule of rent charges for the relevant period.
6. That O.Ps/occupiers cannot claim tenancy under Kolkata Port Trust without making payment of rental dues and/or occupational charges for the same and also cannot claim execution of tenancy agreement by and between KoPT and the

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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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- respective occupiers in respect of their actual area in occupation in terms of the said Terms of Settlement before the Hon'ble High Court, Calcutta in question.
7. That O.Ps/occupiers have failed to bear any witness or adduce any evidence in support of their occupation as "authorised occupation" in spite of sufficient chances.
  8. That occupation of O.P.s/occupiers have become unauthorized in view of Sec. 2(g) of the P.P. Act.
  9. That KoPT's demand for possession by notice to O.Ps/occupiers dated 13.09.2006 bearing No. 3/19/II/06/6929 is valid, lawful and binding upon the parties.
  10. That O.P.s/occupiers are 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.s/occupiers nos. 2 to 8 (except M/s. S. K. Rubber Stores, M/s. S.V. Trading and M/s. Indian Industrial Supplier who have already handed over possession) 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.Ps/occupiers in accordance with Law, up to the date of recovery of possession of the same. Since the O.P. no. 1 i.e. M/s. Hoare Miller & Co. Ltd. is admittedly not in possession of the public premises, this order of eviction shall have no application on said M/s. Hoare Miller & Co. Ltd. but let a copy of the same be forwarded to M/s. Hoare Miller & Co. Ltd. for its information. Similarly, let copies of this order of eviction be also served upon M/s. S. K. Rubber Stores, M/s. S.V. Trading and M/s. Indian Industrial Supplier for their

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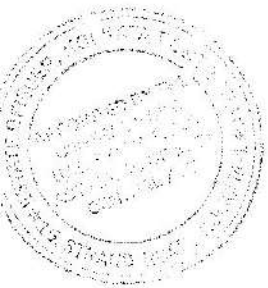
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information. KoPT is directed to submit a comprehensive status report of the Public Premises in question on inspection of the property after expiry of the 15 days as aforesaid so that necessary action could be taken for execution of the order of eviction u/s 5 of the Act as per Rule made under the Act.

I am unable to assess the exact amount of rental dues/compensation charges at this stage inasmuch as there is reference to a Money Suit no. 502 of 1979 in the Terms of Settlement approved on 15.09.1992 but the fate of such Money Suit was not intimated to this Forum by the parties. Moreover, there is no clarity as to whether the amount of Rs 4,82,787.69/- mentioned in the said Terms of Settlement has been paid to the KoPT or not, and whether such payment (if received) has been duly accounted for in the statement of accounts of KoPT or not. I also find that although KoPT vide original application/plaint dated 18.12.2006 claimed rental dues since 01.10.1967 and this Forum also issued Notice u/s 7 for the same period but during the proceedings, KoPT could produce statement of accounts only from 31.01.1971. Moreover, all the bills are shown as "Compensation" bills in the said statement of accounts of KoPT which does not appear to be in order in the facts and circumstances of the case and definitely needs a relook. As such, I am not in a position to assess the exact dues at this stage. I make it clear that KoPT shall submit a report regarding its exact and accurate claim on account of rental dues and damages against all the O.P.s/occupiers including O.P. no. 1, indicating therein the details of the computation of such rent/damages with the rate of charges so claimed for the respective period (details of computation with rates applicable for the relevant period) for my consideration in order to assess the rent and/or damages as per the Act and the Rules made thereunder by issuance of fresh Notice/s u/s 7 of the Act. I make it clear that neither O.P. no. 1 i.e. M/s. Hoare Miller & Co. Ltd. nor M/s. S. K. Rubber Stores, M/s. S.V. Trading and M/s. Indian



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Industrial Supplier are at present absolved from their liabilities towards rental dues and/or damages to the Port Authority for the respective period/s of their occupation, which shall be assessed in the fresh proceedings u/s 7 of the Act as mentioned above.

I make it clear that in the event of failure on the part of O.P.s/occupiers to comply with this order, the 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

  
(M.K. Das)  
ESTATE OFFICER

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