

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  
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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. 19 DT 19.08.2019  
PROCEEDINGS NO. 1559 OF 2017

BOARD OF TRUSTEES OF THE PORT OF KOLKATA  
-Vs-  
Estate Bhagyawati Gupta, represented by legal heirs / representative (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 Bhagyawati Gupta, represented by Shri Rakesh Gupta and other legal heirs/representatives, OF 67/43, Strand Road, Kolkata 700006, AND also of Shilpi Palace, Salempur Chapra, District - Saran, Bihar 841301** is in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

1. That the O.P. (since deceased) had inducted unauthorized persons/strangers into the public premises without any permission of the Port Authority.
2. That the monthly lease of the O.P. (since deceased) had been rightly determined by the Port Authority vide Notice to Quit dated 13.06.1983, which is valid, lawful and binding upon the parties.
3. That the contention of legal heirs/representatives of O.P. regarding no liability towards payment of damages/compensation to KoPT, is not at all supported by fact and law.
4. That legal heirs/representative of O.P. have failed to bear any witness or adduce any evidence in support of their occupation as "authorised occupation" inspite of sufficient chances.
5. That occupation of "Estate Bhagyawati Gupta" has become unauthorized in view of Sec. 2(g) of the P.P. Act, 1971.
6. That the legal heirs/representatives of deceased O.P. are liable to pay damages/compensation 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.

By Order  
THE ESTATE OFFICER  
KOLKATA PORT TRUST

Please see on reverse

CERTIFIED COPY OF THE ORDER  
ISSUED BY THE ESTATE OFFICER  
KOLKATA PORT TRUST  
19/08/2019  
OFFICE OF THE ESTATE OFFICER  
KOLKATA PORT TRUST

:: 2 ::

A copy of the reasoned order No. 19 dated 19.08.2019 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 Bhagyawati Gupta, represented by Shri Rakesh Gupta and other legal heirs/representatives, OF 67/43, Strand Road, Kolkata 700006, AND also of Shilpi Palace, Salempur Chapra, District - Saran, Bihar 841301** 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 Bhagyawati Gupta, represented by Shri Rakesh Gupta and other legal heirs/representatives, OF 67/43, Strand Road, Kolkata 700006, AND also of Shilpi Palace, Salempur Chapra, District - Saran, Bihar 841301** 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.

By Order of:  
THE ESTATE OFFICER  
KOLKATA PORT TRUST

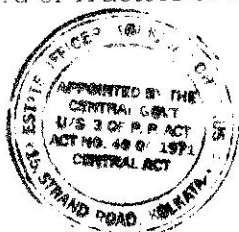
CERTIFIED COPY OF THE ORDER  
PASSED BY THE ESTATE OFFICER  
KOLKATA PORT TRUST

OFFICE OF THE ESTATE OFFICER  
KOLKATA PORT TRUST

**SCHEDULE**

Plate no. **SB-175/A** - The said piece or parcel of land msg. about 131.737 sq.m. or thereabouts is situated on the South Side of Cross Road No.9, Kulpighat, in the Presidency Town of Kolkata, P.S. Jorabagan Police Station, It is bounded on the North by the Trustees' Cross Road No.9, on the East by the Trustees' land occupied by Purna Chandra Ghosh & Estate Hem Chandra Ghosh, on the South by the Trustees' land occupied by Baidya Nath Hazr and on the West by the Trustees' land occupied by Brojo Gopal Sufal Chandra Sadhukhan. Trustees' means the Board of Trustees of the Port of Kolkata.

Dated: 19.08.2019



*[Handwritten Signature]*  
Signature & Seal of the  
Estate Officer.

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

ESTATE OFFICER, KOLKATA PORT TRUST  
(Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-Central Act)  
Public Premises (Eviction of Unauthorised Occupants) Act 1971  
OFFICE OF THE ESTATE OFFICER  
6, FAIRLIE PLACE (1<sup>st</sup> FLOOR) KOLKATA-700001

**FORM -G**

PROCEEDINGS NO. 1559/D OF 2017  
ORDER NO. 19 DATED: 19.08.2019

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

To

**Estate Bhagyawati Gupta,**

represented by Shri Rakesh Gupta and other legal heirs/representatives,  
67/43, Strand Road, Kolkata 700006,

AND also of Shilpi Palace, Salempur Chapra,  
District – Saran, Bihar 841301

Whereas I, the undersigned, am satisfied that you are in unauthorised occupants of the public premises described in the schedule below:

AND, whereas, by written notice dated 19.06.2017 you were called upon to show cause on or before 12.07.2017 why an order requiring you to pay a sum of Rs. 20,66,660.68/- (Rupees Twenty Lakhs Sixty Six Thousand Six Hundred Sixty and paise sixty eight only) being the damages payable together with compound interest in respect of the said premises should not be made;

AND whereas I have considered the cause and/or evidence produced by you or on your behalf, before this Forum.

NOW, THEREFORE, in exercise of the powers conferred on me by Sub-Section (2) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act,1971, I hereby require you to pay the sum of Rs. 20,66,660.68/- (Rupees Twenty Lakhs Sixty Six Thousand Six Hundred Sixty and paise sixty eight only) assessed by me as damages on account of your unauthorised occupation of the public premises for the period 01.08.1983 to 31.03.2017 to Kolkata Port Trust by 30.08.2019.

By Order of :  
THE ESTATE OFFICER  
KOLKATA PORT TRUST

CERTIFIED COPY OF THE ORDER  
PASSED BY THE ESTATE OFFICER  
KOLKATA PORT TRUST

OFFICE OF THE ESTATE OFFICER  
KOLKATA PORT TRUST

PLEASE SEE ON THE REVERSE

IN exercise of the powers conferred by Sub-section (2-A) of Section 7 of the said Act, I also hereby require you to pay simple interest @ 15% per annum upto 18.09.1996 and thereafter @ 18% per annum upto 06.04.2011 and thereafter @ 14.25% per annum on the above sum till its final payment in accordance with Kolkata Port Trust Notification Published in Official Gazette/s.

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.

By Order of:  
THE ESTATE OFFICER  
KOLKATA PORT TRUST

ASSISTANT ESTATE OFFICER  
KOLKATA PORT TRUST

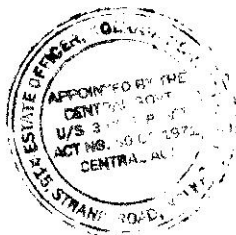
*[Handwritten Signature]*  
OFFICE OF THE ESTATE OFFICER  
KOLKATA PORT TRUST

**SCHEDULE**

**Plate no. SB-175/A** The said piece or parcel of land msg. about 131.737 sq.m. or thereabouts is situated on the South Side of Cross Road No.9, Kulpighat, in the Presidency Town of Kolkata, P.S. Jorabagan Police Station, It is bounded on the North by the Trustees' Cross Road No.9, on the East by the Trustees' land occupied by Purna Chandra Ghosh & Estate Hem Chandra Ghosh, on the South by the Trustees' land occupied by Baidya Nath Hazr and on the West by the Trustees' land occupied by Brojo Gopal Sufal Chandra Sadhukhan.

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

Dated: 19.08.2019



*[Handwritten Signature]*  
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. 1559, 1559/D of 2017 Order Sheet No. 17

### BOARD OF TRUSTEES OF THE PORT OF KOLKATA

**VS**  
Smt. Bhagyawati Gupta,

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26-09-2018

Present: J. Khan, Asst. Estate Manager  
For Kolkata Port Trust (KoPT)

Saptarshi Mukherjee, Advocate &  
Sankarsan Sarkar, Advocate for Rakesh  
Gupta

Shri Mukherjee, Advocate appears and files a copy of the death certificate of Smt. Bhagyawati Gupta, since deceased. It is stated by the Ld. Advocate that the liability of his client Sri Rakesh Gupta is limited to only 1/5 shareholding of the estate of the deceased, who is survived other legal heirs also. A list containing the names and addresses of the legal heirs of deceased is also filed.

Heard the submission and considered the matter. Shri Mukherjee, Advocate is directed to file an effective Reply to the Show Cause Notice/s dealing with all the points/ issues raised by him in this matter, also incorporating therein the names, addresses of the legal heirs of the deceased in confirmation with his submission, within a period of two weeks from date. Department is directed to amend the Cause Title of the matter to 'Estate Bhagyawati Gupta' from onwards. The amended cause title of the case should be regarded as the cause title of the case for all material purposes. Let the final order in the matter be reserved. All concerned are directed to act accordingly.

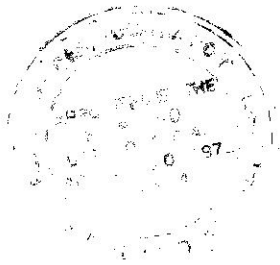
(M.K. Das)  
ESTATE OFFICER

#### FINAL ORDER

The matter is taken up for final disposal today. It is the case of Kolkata Port Trust (hereinafter referred to as 'KoPT'), the applicant herein, vide applications bearing No. Lnd.15/29/17/300 and Lnd.15/29 dated 22.03.2017 and 17.04.2017 respectively, filed under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter

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19-08-2019



# 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. 1559, 1559/D Of 2017 Order Sheet No. 18

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

Smt. Bhagyawati Gupta.

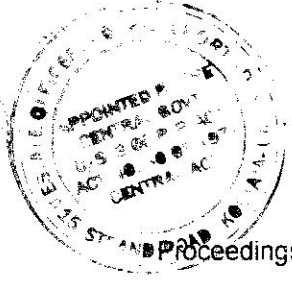
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19-08-2019

referred to as 'the Act') that Smt Bhagyawati Gupta (hereinafter referred to as 'O.P.') came into occupation of the Port Property in question being land measuring about 131.737 sq.m or thereabouts (under occupation No. SB-175/A) on the south side of the Cross Road No. 9, Kulpighat, P.S. – Jorabagan Police Station, on a month to month lease basis. It is the case of KoPT that O.P. unauthorisedly parted with the possession of the Public Premises in favour of rank outsiders, made unauthorised construction upon the premises and failed to hand over possession of the Public Premises after expiry of the period mentioned in the Quit Notice dated 13.06.1983 as issued by the Port Authority for gross violation of the terms and conditions of the lease. KoPT has made out a case that O.P. has no right to occupy the premises on the ground of violation of lease conditions and upon service of the said quit notice dated 13.06.1983.

This Forum of Law formed its opinion to proceed against O.P. under the relevant provisions of the P.P. Act and issued show cause notices under Sec. 4 & 7 of the Act both dated 19.06.2017 as per Rules made under the Act.

It is seen that the Notice/s sent through registered post was sent back with the endorsement "not known". It is also seen that the Process Server has mentioned in his Report that the O.P. was not found at the address; however, he has confirmed about affixation of the Notice/s on the property in question. On the date fixed for answering the Show Cause Notice/s (i.e. 12.07.2017) one Shri Kamallesh Kr. Gupta, expressing himself as the relative of O.P. appeared before this Forum and prayed for an adjournment for filing the said reply. Upon hearing, the next date was fixed on 18.08.2017, and O.P. was directed to file the Reply and Shri Gupta was directed to file a Letter of Authority in his favour. On 18.08.2017 Shri Gupta submitted that he is a sitting occupant of the Public Premises in question and he has no objection if the possession of the premises is

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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. 1559, 1559)D Of 2017 Order Sheet No. 19

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

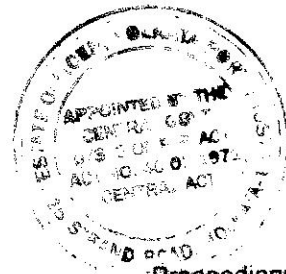
<sup>VS</sup>  
Smt. Bhagyawati Gupta.

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19.8.2019

taken over by KoPT. It was also submitted that he is not the relative of O.P. and the relation is wrongly mentioned in the Order dated 12.07.2017. It was prayed that the Notice/s might be sent to the native address of O.P. This Forum directed Shri Gupta to file an application mentioning the address of O.P. for effective communication of the Notice/s. Thereafter Shri Gupta filed an application dated 10.01.2018 intimating that he has no right, title and interests over the Public Premises in question. The native address for communication to O.P. was also mentioned in the said application. This Forum, prima facie, could find no reason to disbelieve the statement of Shri Gupta that the O.P. is residing in Bihar and accordingly the Notice/s were served through post to the native address of O.P. as was provided by Shri Gupta. Subsequently, one Shri Rakesh Gupta expressing himself as the son of O.P. (Smt Bhagyawati Gupta) appeared through his Ld. Advocates on the following day (i.e.18.04.2018). The Vakalatnama was filed on 02.05.2018. Later, on 11.06.2018 the Ld Advocates representing the said Shri Rakesh Gupta submitted that his client was intending to surrender the property to KoPT and hence direction was issued to file application in confirmation with the submission before this Forum. Additionally, KoPT was directed to hand over a copy of the detailed statement of accounts to Shri Rakesh Gupta for comments. Thereafter on 26.09.2018 a copy of the Death Certificate of O.P., since deceased, alongwith a list of the legal heirs of O.P. came to be filed before this Forum. Upon hearing the submissions of all concerned, final order was reserved by the Forum on 26.09.2018 itself with observation that henceforth, the proceedings shall be continued against the legal heirs and representatives of the deceased O.P. and be styled as "Estate Bhagyawati Gupta". In terms of the direction contained in said order, on 03.10.2018 a written submission came to be filed by Shri Rakesh Gupta. It is inter-alia stated in the said application that Sri Rakesh Gupta being one of the legal heirs of

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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. 1559, 1559/D Of 2017 Order Sheet No. 20

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

Smt. Bhagyawati Gupta

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19.8.19

deceased O.P., has no objection if the decree of eviction is passed and possession of the premises is taken over by KoPT.

Now, while passing the Final Order, I have carefully considered the documents on record and the submissions of the parties. As regards the lease in question, a registered lease deed has been produced by KoPT the veracity of which has not been questioned. During continuance of the proceedings, it was revealed to this Forum through one of the heirs/representatives of the O.P. that O.P. has expired on 26.11.2009. Considering the Death Certificate which has been placed on record, this Forum vide order dated 26.09.2018 amended the cause-title to "Estate Bhagyawati Gupta" i.e. the legal heirs and representatives of the deceased. Be that as it may, the representative of deceased O.P., who contested the matter, has never denied the service of notice to quit dated 13.06.1983 upon the O.P. No attempt has been made to establish non-receipt of the said notice to quit by the representative of O.P., since deceased. As per the Transfer of Property Act, a lessee is under legal obligation to hand over possession of the property to its landlord/lessor in its original condition after determination of tenancy under lease. It is a settled question of law that a lessee like O.P. cannot claim any legal right to hold the property after expiry of the period as mentioned in the notice of ejectment, unless O.P. has succeeded in making out a case of "Tenant Holding Over". No such attempt has been made out on behalf of O.P. to satisfy this Forum of Law about any consent on the part of KoPT in occupying the public premises unconditionally, in order to fulfill the essential ingredient of holding over. Rather it is a case of KoPT that by notice dated 13.06.1983, O.P. was directed to hand over the possession of the premises to KoPT which O.P. failed to comply with. Filing of this P.P. Act proceedings by KoPT is a clear manifestation of KoPT's intent not to treat the O.P. as a lessee any

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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. 1559, 1559/D Of 2017 Order Sheet No. 21

### BOARD OF TRUSTEES OF THE PORT OF KOLKATA

**VS**  
Smt. Bhagyawati Gupta.

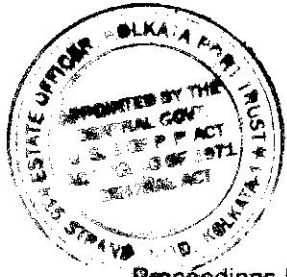
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19.8.2019

more, after the expiry of the period mentioned in the notice to quit dated 13.06.1983.

Now, as regards the validity of the KoPT's notice to quit dated 13.06.1983, I find that KoPT has placed on record a communication dated 18.04.1983 addressed to the O.P. whereby O.P. was requested to immediately remove the unauthorized occupants to whom it had handed over possession of the premises. A letter /notice issued in official course of business has definitely got an evidentiary value unless there is material, sufficient to contradict the case of KoPT on the basis of such letter. No such attempt has been made by the representatives of the deceased O.P. Rather, it is seen that strangers such as Kamallesh Kr Gupta are in possession and enjoyment of the premises, without any right whatsoever which such stranger also admits in writing. As such, it appears to me that there is sufficient merit in the quit notice issued by the Port Authority. As per clause 6 of the executed deed of lease dated 20<sup>th</sup> April 1965, the lessee was not permitted to transfer, underlet or part with the possession of the demised land or any part thereof etc. without prior consent of KoPT. No such consent of KoPT has been produced before me. Moreover, as per Section 108 of the Transfer of Property Act subletting of premises by the lessee is not permissible without the consent of the lessor, in the absence of a contract to the contrary, and the lessor has a right to terminate the lease in case of the breach of condition. Thus, I am satisfied with the validity, issuance and service of the Notice to Quit dated 13.06.1983. I have no hesitation to hold that after expiry of the period mentioned in said notice, occupation of the O.P. is nothing but "unauthorized occupation". As per Section 2 (g) of the P. P. Act, 1971 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

*[Signature]*



## 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. 1559, 1559) D Of 2017 Order Sheet No. 22

### BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

Smt. Bhagyawati Gupta.

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other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. In my considered view, said provision of the Act is squarely attracted in the instant case. I have no hesitation to hold that the legal heirs/representatives of the O.P. as well as all other persons in possession of the public premises must be evicted immediately. I also have no hesitation that the legal heirs/representatives of the deceased O.P. are very much liable to satisfy the dues of the Port Authority as regards compensation/damages for unauthorized occupation of the public premises which they still continue to occupy. To arrive at such conclusion, I rely on Sec. 13 of the Act as well as the fact that by intending to surrender possession, representatives of O.P. have admitted their continued unauthorized occupation of the public premises, thus making them liable to satisfy the dues of the Port Authority.

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. i.e. "Estate Bhagyawati Gupta" u/s 5 of the Act for the following grounds/reasons:

1. That the O.P. (since deceased) had inducted unauthorized persons/strangers into the public premises without any permission of the Port Authority.
2. That the monthly lease of the O.P. (since deceased) had been rightly determined by the Port Authority vide Notice to Quit dated 13.06.1983, which is valid, lawful and binding upon the parties.
3. That the contention of legal heirs/representatives of O.P. regarding no liability towards payment of damages/compensation to KoPT, is not at all supported by fact and law.
4. That legal heirs/representative of O.P. have failed to bear any witness or adduce any evidence in

*[Signature]*

# 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. 1559, 1559/D Of 2017 Order Sheet No. 23

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

Smt. Bhagyawati Gupta.

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19.8.2019

support of their occupation as "authorised occupation" inspite of sufficient chances.

5. That occupation of "Estate Bhagyawati Gupta" has become unauthorized in view of Sec. 2(g) of the P.P. Act, 1971.
6. That the legal heirs/representatives of deceased O.P. are liable to pay damages/compensation 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 "Estate Bhagyawati Gupta" 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 Law, up to the date of 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 could be taken for execution of the order of eviction u/s 5 of the Act as per Rule made under the Act.

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. 20,66,660.68/- as claimed by the Port Authority as damages in relation to the Plate in question, is correctly payable by "Estate Bhagyawati Gupta" for the period 01.08.1983 to 31.03.2017 (both days inclusive) and it is hereby ordered that "Estate Bhagyawati Gupta" shall make payment of the aforesaid sum to KoPT by 30.08.2019. The said damages shall carry simple interest @ 15% per annum upto 18.09.1996 and thereafter @ 18% per

*hr*

# 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. 1559, 1559/D Of 2017 Order Sheet No. 24

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

**VS**  
Smt. Bhagyawati Gupta.

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annum upto 06.04.2011 and thereafter @ 14.25% per annum on the above sum from the date of incurrance of liability till its final payment in accordance with the relevant notification/s published in Official Gazette. The formal order u/s 7 of the Act is signed accordingly.

I make it clear that in the event of failure on the part of O.P. i.e. "Estate Bhagyawati Gupta" 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 \*\*\*