

**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.18 DT 18.12.2020
PROCEEDINGS NO. 1122 OF 2011

**BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-
RAMLAL RAM GOVIND PROSAD**

F O R M - "B"

**ORDER UNDER SUB-SECTION (1) OF SECTION 5 OF THE PUBLIC
PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1971**

J B 21.12.2020

WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that **M/s Ramlal Ram Govind Prosad of Plot No 10, Watgung Rly Siding, KPD, Kolkata-700 023** is in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

1. That O.P. has failed to file reply to the Show Cause Notice under Section 4 of the Act inspite of sufficient chances being given.
2. That O.P. has violated the condition of tenancy under short term lease as granted by the Port Authority by way of not making payment of rental dues to SMP, Kolkata.
3. That O.P. has parted with possession of the Public Premises to rank outsiders without having any authority under law.
4. That O.P. / any other occupant of the public premises has failed to make out any case in support of its occupation as "authorised occupation", inspite of sufficient chances being provided.
5. That O.P. / any other occupant of the public premises has failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation", inspite of sufficient chances being provided.
6. That the notice to quit dated 21.02.2006 as served upon O.P. by the Port Authority is valid, lawful and binding upon the parties and O.P's occupation has become unauthorised in view of Section 2(g) of the P.P Act and all the occupants of the public premises, including Sri Kali Charan Gupta, are rank outsiders to the public premises.
7. That O.P. is liable to pay damages for wrongful use and occupation of the Public Premises upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

Please see on reverse

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A copy of the reasoned order No. 18 dated 18.12.2020 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 Ramlal Ram Govind Prosad of Plot No 10, Watgung Rly Siding, KPD, Kolkata- 700 023** 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 Ramlal Ram Govind Prosad of Plot No 10, Watgung Rly Siding, KPD, Kolkata- 700 023** 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 - D-33/2

All that piece or parcel of land Msg. 67.08 Sq.m or thereabouts situate at Watgunge Rly. Siding, P.S.: S.P.P.S., Kolkata, District : 24 Parganas, Regn. Dist. : Alipore. The said piece or parcel of land is bounded on the North by the Trustees' land leased to M/s. G. Patel & Co. Pvt. Ltd., on the East by the Trustees' Roadway, on the South by the Trustees' land occupied by M/s. Gupta Brothers and on the West by the Trustees' strip of open land measured as margin of safety alongside Port Trust Railway Siding.

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

Dated: 21.12.2020.


Signature & Seal of the
Estate Officer.

COPY FORWARDED TO THE ESTATE MANAGER/CHIEF LAW OFFICER, SYAMA PRASAD MOOKERJEE PORT, KOLKATA FOR INFORMATION.

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 Unauthorised Occupants) Act 1971
OFFICE OF THE ESTATE OFFICER
6, Fairlie Place (1st FLOOR) KOLKATA-700001

A B 21.12.2020

Form "E"

PROCEEDINGS NO.1122/R of 2011
ORDER NO. 18 DATED: 18.12.2020

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 Ramlal Ram Govind Prosad,
Plot No 10, Watgung Rly Siding, KPD,
Kolkata- 700 023.

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

AND WHEREAS, by written notice dated 20.10.2017 (Vide Order No 08
dated 13.10.2017) you were called upon to show cause on/or before
22.11.2017 why an order requiring you to pay a sum of Rs. 1,04,158.00
(Rupees One Lakh Four Thousand One Hundred and Fifty Eight only) being
the rent payable together with compound interest in respect of the said
premises should not be made;

And whereas I have considered your objection and/or the evidence
produced by you.

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. 1,04,158.00 (Rupees One
Lakh Four Thousand One Hundred and Fifty Eight only) for the period
01.05.1988 to 21.03.2006 (both day inclusive) to Kolkata Port Trust by
04.01.2021.



PLEASE SEE ON REVERSE

In exercise of the powers conferred by Sub-section (2A) of Section 7 of the said Act, I also hereby require you to pay compound interest @ 15% per annum upto 18.09.1996 and thereafter @18% per annum upto 06.04.2011 and thereafter at the rate of 14.25% per annum till liquidation of the same from the date of incurrence of liability in accordance with the notification of KoPT issued under Authority of Law as per adjustments of payments made so far by O.P. as per KoPT's books of accounts.

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


SCHEDULE

Plate no - D-33/2

All that piece or parcel of land Msg. 67.08 Sq.m or thereabouts situate at Watgunge Rly. Siding, P.S.: S.P.P.S., Kolkata, District : 24 Parganas, Regn. Dist. : Alipore. The said piece or parcel of land is bounded on the North by the Trustees' land leased to M/s. G. Patel & Co. Pvt. Ltd., on the East by the Trustees' Roadway, on the South by the Trustees' land occupied by M/s. Gupta Brothers and on the West by the Trustees' strip of open land measured as margin of safety alongside Port Trust Railway Siding.

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

Dated: 21-12-2020


Signature and seal of the
Estate Officer

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

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. 1122 & 1122/R Of 2011 Order Sheet No. 18

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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FINAL ORDER

The instant proceedings No. 1122, 1122/R and 1122/D of 2011 arise out of the application bearing No. Lnd.3723/4/06/7068 dated 26.09.2006 filed by Syama Prasad Mookerjee Port, Kolkata [erstwhile Kolkata Port Trust, hereinafter referred to as '**SMP, Kolkata**'], the applicant herein, under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as '**the Act**') praying for an order of eviction and recovery of rental dues, compensation/damages and other charges etc. along with accrued interest in respect of the Public Premises as defined under Schedule- 'A' of said application, against **M/s Ramlal Ram Govind Prasad** (hereinafter referred to as **O.P.**).

The fact of the case in a nutshell is that the O.P. came into occupation of the port property (under Plate Nos. D-33/2) on a short term lease at Watgunge Railway Siding at Kolkata, morefully described in the Schedule 'A' of SMP, Kolkata's application dated 26.09.2006. The allegations levelled by SMP, Kolkata against the O.P are that the O.P has defaulted in payment of monthly rent and taxes with the accrued interest thereof, has unauthorisedly parted with the possession of the premises to the rank outsiders, in gross violation of the terms and conditions of the tenancy. It is the case of SMP, Kolkata that the tenancy with the O.P. was determined w.e.f. 22.03.2006 in terms of the Notice to Quit dated 21.02.2006 and the O.P. failed and neglected to vacate/ hand over the possession of the premises after service of the said Notice to Quit. SMP, Kolkata has made out a case that O.P. has no right to occupy the premises after the termination of the lease in question upon service of a quit notice dated 21.02.2006.

Accordingly, this Forum of Law formed its opinion to proceed against O.P. under the relevant provisions of the Public Premises Act, 1971 and issued show cause notices under

[Handwritten signature]

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18.12.2020.

J.B. 21/12/2020

Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises
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Section 4 of the Act (for adjudication of the prayer for issuance of Order of Eviction etc.) and two Show Cause Notices under 7 of the Act (for adjudication of the prayer for recovery of rental dues, mesne profit/compensation/ damages etc) all dated 20.10.2017 (vide Order No 08 dated 13.10.2017) as per the Rules made under the Act.

It is seen from records that initially no one appeared on behalf of O.P., inspite of service of Notice/s through the Process Server. As per the report of the Process Server dated 20.11.2017, the Notice/s were affixed in the property in question, as per the mandate of the Act. The Notices were also sent through the 'Registered Post' but the same was returned by the Postal Department as not served. The Forum thereafter attempted service upon the O.P. by hand delivery. It appears that the Order dated 22.11.2017 was served upon O.P. on 01.12.2017 under acknowledgement of one Sk. Munna received on behalf of O.P. However, on the next date fixed for answering the show cause /filing reply i.e. on 15.12.2017, none appeared on behalf of O.P. Following the principles of Natural Justice the O.P. was provided with further opportunity to represent their case before this Forum and accordingly, the Department of the undersigned was once again directed to serve the Orders upon the O.P., requiring their representation before this Forum. Accordingly, the Order dated 15.12.2017 was served upon O.P. under the acknowledgement on 02.01.2018 of Sk. Akbar Ali, who appeared on the next date of hearing on 05.01.2018 and filed his photo identity proof, such as the copies of voter Card and Aadhaar Card. It is submitted by Sk. Akbar Ali that he has been occupying the premises in question as a caretaker of O.P. and sought time for filing reply to the Show Cause Notice. During the course of hearing, the representative of SMP, Kolkata raised strong objections to the said prayer made by Sk. Akbar Ali by submitting that no time was required to be given to said Sk. Akbar Ali as he enjoyed no right to occupy the premises being a 'sitting occupant' into the premises. However, following the principles of Natural Justice,



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the appearing 'sitting occupant' was directed to file the reply to the Show Cause. Nonetheless, no reply was filed thereafter either by the O.P. or the sitting occupant/s. However, this Forum continued with the hearing of the case by fixing up dates and attempted to serve notices upon the O.P. Thereafter, on 23.02.2018 one Sri Kali Charan Gupta appeared before this Forum and submitted that M/s Ramlal Ram Govind Prasad (O.P.) is a Firm and his father Sri Ram Gobind (as per the Aadhaar Card later filed by Sri Kali Charan Gupta) was one of the partners in the Firm alongwith the father of the latter. It was further submitted by Sri Kali Charan Gupta that his father Sri Ram Gobind had expired. Direction was passed by this Forum to file his credentials in support of his bonafide identity and also file a reply to the Show Cause Notice. Thereafter, Sri Kali Charan Gupta filed a copy of his Aadhaar card and a copy of the death certificate dated 16.03.2018 issued by the 'Gram Pradhan' in the name of 'Ram Govind Shah'. Upon hearing, this Forum directed Sri Kali Charan Gupta to file affidavit to be sworn before the Ld. First Class Judicial Magistrate attesting the facts stated by him, i.e. M/s Ramlal Ram Govind Prasad is a Firm wherein Sri Kali Charan Gupta's father and grandfather were partners while also confirming that 'Sri Ram Gobind' and 'Sri Ram Govind Shah' are the same person and Sri Kali Charan Gupta's father was a partner of M/s Ramlal Ram Govind Prasad. Sri Kali Charan Gupta was also directed to file a reply to the Show cause Notice. In spite of all efforts made by this Forum, no reply was filed by said Sri Kali Charan Gupta. Nothing has been heard from the sitting occupants as well. Sri Kali Charan Gupta has filed his School Leaving Certificate on 16.04.2018. Thereafter, this Forum has extended further opportunities on 3 (three) no of occasions to Sri Kali Chan Gupta as well as the sitting occupants for filing of the said reply. However, Sri Kali Charan Gupta or the sitting occupants failed to file their reply. SMP, Kolkata has, however, filed application dated 30.04.2018 stating that Ramlal Ram Govind Prasad is a partnership firm and that one Sri Ram Lal Shaw with another Sri Ram Govind

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Prasad Shaw are the partners of the said Firm. Finally, on 16.05.2018 observing the rather casual approach of the sitting occupant Sri Kali Charan Gupta and others for quite some time and after inferring that they are not interested in representing their cases and further taking note of the apprehension of defeat of the very spirit embodying the Public Premises Act, 1971 for speedy and summary disposal of cases through unnecessary prolongation of the matter, this Forum, concluded the hearing of the case after lending fair hearing to concerned parties and reserved the case for passing the Final Order. However, liberty was given to the parties to file Written Notes of Arguments. It is noted that SMP, Kolkata has filed the Written Notes of arguments on 29.11.2018.

Now while passing this Order, I have carefully gone through the submissions advanced by the parties and the documents/materials available on record. It is seen that M/s Ramlal Ram Govind Prasad was inducted as a lessee into the subject premises by SMP, Kolkata. Subsequently, Notice to quit dated 21.02.2006 came to be issued by SMP, Kolkata, for the O.P.'s default in payment of the rental dues, for erecting unauthorised construction and unauthorised parting with the possession of the premises to the rank outsiders. I have gone through the letters dated 09.01.2004 and 03.09.2005 issued by SMP, Kolkata whereby SMP, Kolkata took up the matter of non-payment of rental dues, unauthorised parting with possession with the O.P. During the course of hearing, computerised statements of accounts have been submitted by SMP, Kolkata under the cover of their application dated 14.03.2017 and the same indicates non-payment of such dues, on the part of the O.P., before issuance of the Notice to Quit. Subsequently, an updated statement of accounts has also been filed by SMP, Kolkata under the cover of application dated 29.11.2018. In my view, therefore, there was substantial ground for issuance the Notice to Quit dated 21.02.2006. It is observed that the said notice was also received by one Lal Babu under acknowledgement. It is the case of SMP, Kolkata

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that SMP, Kolkata has charged mesne profit/ compensation/ damages to the O.P. for their unauthorised occupation in the Public Premises after the issuance of the Notice to Quit dated 21.02.2006. In my opinion, SMP, Kolkata as the landowner has every right to charge compensation for continued and unauthorised use of land beyond the period mentioned in the Notice to Quit, as per the rates notified in the Official Gazette from time to time. In view of such facts and circumstances of the case, I have no hesitation to hold that the Notice to Quit was validly issued and served on the O.P. and the same is very much binding upon the parties. The original application ^(Atr) 26.09.2006 preferred by SMP, Kolkata pleaded that O.P. has unauthorisedly ~~part~~ with the possession of the premises to rank outsiders. Against this background, Sri Kali Charan Gupta appeared before this Forum and expressed himself as the son of one of the partners of O.P. I have carefully gone through the documents filed by said Sri Kali Charan Gupta. It is observed that the Aadhaar card of the said Sri Kali Charan Gupta mentions the name of his father as Ram Gobind and his date of birth as 01.01.1967; whereas, as per the School Leaving Certificate, the name of father of Sri Kali Charan Gupta, is mentioned as Sri Ram Gobind Prasad Gupta and the date of birth is mentioned as 15.03.1964. The direction regarding the swearing of affidavit before the Ld. First Class Judicial Magistrate for attesting the facts stated by Sri Kali Charan Gupta, viz. that Ramlal Ram Govind Prasad is a Firm wherein Sri Kali Charan Gupta's father and grandfather were partners and Sri Ram Gobind and Sri Ram Govind Shah are the same person, has never been complied with by him. Moreover, it has not escaped my attention that the said Sri Kali Charan Gupta did not disclose the death of his father until initiation of the present proceedings as the certificate of death was issued by the Gram Pradhan on 16.03.2018. Considering all such aspects of the matter, I am of the view that the claim of the said Sri Kali Charan Gupta as the legal representative/heir of Late Ram Govind, being one of the partner~~s~~ of Ramlal Ram Govind Prasad, can only be assumed at



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this stage, but cannot be admitted, in as much as the same is not supported with material evidence as is admissible in the eyes of law. During the course of hearings, several persons such as one Sk. Akbar Ali, one Ahad Ali appeared before this Forum claiming to be the representative of Sri Kali Charan Gupta. Furthermore, on 30.04.2018, said Ahad Ali has reported before this Forum that Sri Kali Charan Gupta had permitted him to reside in the subject premises. Hence, considering all the above there is no other alternative but existence of several pointers which endorse the claim of SMP, Kolkata that the O.P. has parted with the possession of the premises to rank outsiders. It bears mention that the said Sri Kali Charan Gupta, despite granting of several opportunities by this Forum, did not bother to file a reply to Show Cause or any affidavit sworn by Ld. First Class Judicial Magistrate attesting the facts stated by him. In view of the circumstances, I am left with no other alternative but to issue the Order of Eviction against the O.P. i.e. Ramlal Ram Govind Prasad, as prayed for on behalf of SMP, Kolkata, on the following grounds/reasons:-

- 1) That O.P. has failed to file reply to the Show Cause Notice under Section 4 of the Act inspite of sufficient chances being given.
- 2) That O.P. has violated the condition of tenancy under short term lease as granted by the Port Authority by way of not making payment of rental dues to SMP, Kolkata.
- 3) That O.P. has parted with possession of the Public Premises to rank outsiders without having any authority under law.
- 4) That O.P. / any other occupant of the public premises has failed to make out any case in support of its occupation as "authorised occupation", inspite of sufficient chances being provided.
- 5) That O.P. / any other occupant of the public premises has failed to bear any witness or adduce any evidence

[Signature]

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- in support of its occupation as "authorised occupation", inspite of sufficient chances being provided.
- 6) That the notice to quit dated 21.02.2006 as served upon O.P. by the Port Authority is valid, lawful and binding upon the parties and O.P's occupation has become unauthorised in view of Section 2(g) of the P.P Act and all the occupants of the public premises, including Sri Kali Charan Gupta, are rank outsiders to the public premises.
- 7) That O.P. is liable to pay damages for wrongful use and occupation of the Public Premises upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

Accordingly, I sign the formal order of eviction under Sec. 5 of the Act as per Rules made thereunder, giving 15 days time to O.P. 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 as their occupation into the Public Premises is/are unauthorised in view of sec. 2(g) of the Act. SMP, Kolkata 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.

Regarding payment of rental dues to SMP, Kolkata, I must say that Rs. 1,04,158/- (Rupees One Lakh Four Thousand One Hundred and Fifty Eight only) as claimed by the Port Authority in relation to the occupation Plates in question, is correctly payable by O.P. for the period 01.05.1988 to 21.03.2006 (both days inclusive) and it is hereby ordered that O.P. shall make payment of the aforesaid sum to SMP, Kolkata by 04-01-2021. O.P. shall be liable to pay compound interest @ 15% per annum upto 18.09.1996 and thereafter @ 18% per annum till 06.04.2011 and thereafter

21.12.2020



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@14.25% per annum on the above sum from the date of incurrence 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.

During the course of hearing, I find that SMP, Kolkata has made out an arguable claim against O.P., founded with sound reasoning, regarding the damages/compensation to be paid for unauthorised occupation. I make it clear that SMP, Kolkata 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. Incidentally, on the basis of claim made by Port Authority, this Forum had already issued a Show Cause Notice u/s 7 of the Act dated 20.10.2017 (vide Order no 08 dated 13.10.2017) to the O.P., directing the O.P. to file a reply to the said Notice as to why an Order requiring payment of compensation/ damages/ mesne profit together with interest should not be made against the O.P., which had not been complied with by the O.P.

Be that as it may, I am not inclined to assess the damages at this stage when possession of the premises is still with the O.P.. SMP, Kolkata is directed to submit a statement comprising details of its calculation of damages 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 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



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proceed further for recovery of possession in accordance
with law.

All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL


(K. CHATTERJEE)
ESTATE OFFICER

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

J B 21.12.2020