

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

REASONED ORDER NO. 20 DT 02.02.2013
PROCEEDINGS NO.1397 OF 2013

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-
Estate Hariram Agarwalla (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 Hariram Agarwalla of 67/46, Strand Road, Cross Road No.8 Kulpighat, Kolkata-700007** is in unauthorized occupation of the Public Premises specified in the Schedule below :

R E A S O N S

1. That O.P. has failed to file reply to the Show Cause Notice/s in spite of sufficient chances and as such, there is nothing to disbelieve KoPT's contention regarding service of Quit notice to O.P., demanding possession dated 31.05.2005.
2. That O.P. has failed to bear any witness or adduce any evidence in support of their occupation as "Authorized Occupation" despite sufficient chances.
3. That the Quit notice dated 31.05.2005 as served upon O.P. by the Port authority is valid, lawful and binding upon the parties and O.P.'s occupation into the Public Premises has become unauthorized in view of Sec.2(g) of the P.P. Act.
4. That O.P. has violated the condition of long term lease as granted by the Port authority by way of not making payment of rental dues and taxes to KoPT, for a prolonged period.
5. That O.P. has erected unauthorised structures and carried out additions and alterations of such land in violation of the condition of such lease.
6. That O.P. has parted with possession, sub-let/sold/transferred/assigned of the said premises to rank outsiders in violation of the condition of such lease
7. That O.P. is liable to pay damages for wrongful use and occupation of the public premises up to the date of handing over the clear, vacant and unencumbered possession to the port authority.

PLEASE SEE ON REVERSE

(2)

A copy of the reasoned order No. 20 dated 02.02.2021 is attached hereto which also forms a part of the reasons.

NOW, THEREFORE, in exercise of the powers conferred on me under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order the said **Estate Hariram Agarwalla of 67/46, Strand Road, Cross Road No.8 Kulpighat, Kolkata-700007** 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 Hariram Agarwalla of 67/46, Strand Road, Cross Road No.8 Kulpighat, Kolkata-700007** 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. SB-168/1/A

The said piece or parcel of land msg. About 128.67 sq.m. or thereabouts is situated on the South side of Cross Road No.8 at Kulpighat in the Presidency town of Kolkata. It is bounded on the north by the Trustees' Cross Road No.8 leading from Strand Road, on the east and south by the Trustees' land occupied by Janaki O.I Mill and on the west by the Trustees' Goomty.

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

Date- 02.02.2021



Signature & Seal of the
Estate Officer.

COPY FORWARDED TO THE ESTATE MANAGER, SMP, KOLKATA FOR INFORMATION.



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

**ESTATE OFFICER
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Court Room At the 1st Floor
6, Fairlie Place Warehouse

Form " E "

PROCEEDINGS NO.1397/R OF 2013
ORDER NO. 20 DATED: 02.02.2014

Form of order under Sub-section (1) and (2A) of Section 7 of the Public
Premises (Eviction of Unauthorised Occupants) Act,1971.

To

Estate Hariram Agarwalla,
67/46, Strand Road,
Cross Road No.8 Kulpighat,
Kolkata-700007.

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

AND WHEREAS, by written notice dated 21.03.2014 you are called
upon to show cause on or before 23.04.2014 why an order requiring you
to pay a sum of Rs 4,28,717.37 (Rupees Four Lakhs Twenty Eight
Thousand Seven Hundred Seventeen and paisa Thirty Seven 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 objections and/or evidence
produced before this Forum.

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
4,28,717.37 (Rupees Four Lakhs Twenty Eight Thousand Seven Hundred
Seventeen and paisa Thirty Seven only) for the period July 1983 to 29th
June 2005 (both days inclusive) to SMP, Kolkata by 18.02.2014.

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 compound interest @ 6.20 % 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

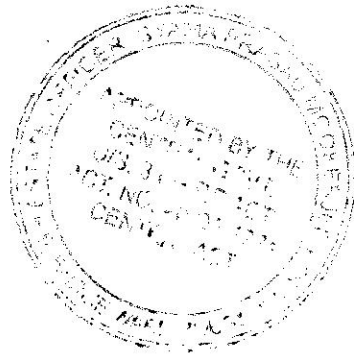
Plate No. SB-168/1/A

The said piece or parcel of land msg. About 128.67 sq.m. or thereabouts is situated on the South side of Cross Road No.8 at Kulpighat in the Presidency town of Kolkata. It is bounded on the north by the Trustees' Cross Road No.8 leading from Strand Road, on the east and south by the Trustees' land occupied by Janaki O.I Mill and on the west by the Trustees' Goomty.

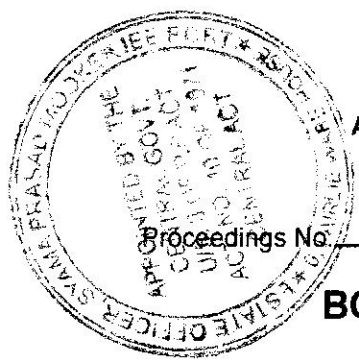
Trustees' means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata.)

Dated: 02.02.2021

Signature and seal of the
Estate Officer



COPY FORWARDED TO THE ESTATE MANAGER, SMP, 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. 1397, 1397/R Of 2013 Order Sheet No. 20

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

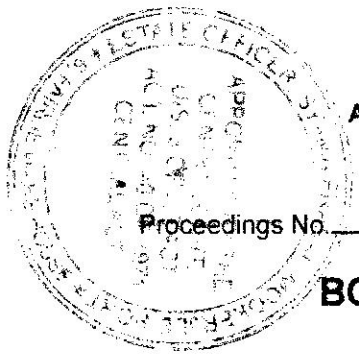
VS
Estate Hariram Agarwalla.

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FINAL ORDER

The instant proceedings No. 1397, 1397/R of 2013 arose out of an application being No. Lnd. 7/14/II/06/11 dated 03.01.2006 filed by Syama Prasad Mookerjee Port, Kolkata [erstwhile Kolkata Port Trust, hereinafter referred to as 'KoPT'], the applicant herein, praying for an order of eviction and recovery of rent, damages and/or compensation along with accrued interest etc. against Estate Hariram Agarwalla, the O.P. herein, under relevant provisions of the Public Premises (Eviction of Unauthorised Occupant) Act 1971 (hereinafter referred to as 'the Act'). The facts of the case is summarised here under.

The O.P. came into occupation of the Port property being land measuring about 128.67 sq.mtrs or thereabout situated on the South Side of Cross Road No.8 at Kulpighat in the Presidency town of Kolkata (under occupation Plate Nos.SB-168/1/A) as long term lessee for a period of 5 years, with certain terms and conditions as embodied in KoPT's offer/letter of allotment. KoPT has submitted that while in possession of the port property as long term lessee, the O.P. violated the conditions of such lease by way of defaulting in payment of rents, taxes for the use and enjoyment of Port property in question, the details of which has been provided under the 'Schedule-B' of the KoPT's application dated 03.01.2006. It is further submitted by KoPT that O.P has erected unauthorized structures on the subject premises, carried out additions and alterations of the subject premises, has unauthorisedly parted with the possession by way of sub-letting/sale/transfer etc. of the tenancy right/s



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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

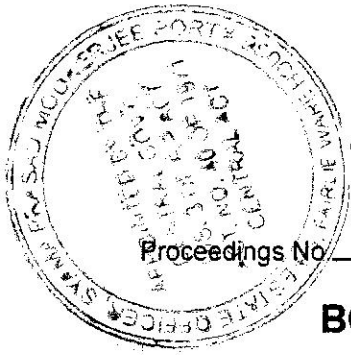
Estate Hariram Agarwala

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without taking due approval of KoPT in gross violation of the terms of the said tenancy.

It is the case of KoPT that in view of the aforesaid alleged breaches committed by the O.P. and in view of the requirement of land for the implementation of land use plan, KoPT had issued notice to quit being No.Lnd.7/14/II/05/580 dated 31.05.2005 asking the O.P. to hand over clear, vacant, peaceful and unencumbered possession of the property to KoPT on 30.06.2005. KoPT has submitted that the O.P has failed and neglected to quit, vacate and deliver up the vacant, peaceful possession of the premises to KoPT after expiry of the lease in question and even after the after service of the said Notice to Quit dated 31.05.2005. KoPT has made out a case that O.P. has no right to occupy the premises upon service of the quit notice dated 31.05.2005.

Considering the submission advanced by KoPT and the documents on record, Notice/s to Show Cause under section 4 and 7 of the Public Premises (Eviction of Unauthorized Occupation) Act, 1971 all dated 21.03.2014 (vide Order No.04 dated 14.08.2013) were issued by this Forum to O.P. The Notice/s were issued in terms of the provisions of the Rules made under the said Act calling upon the O.P. to appear before this Forum in person or through authorized representative capable of answering all material questions in connection with the matter along with the evidence which the opposite party intends to produce in support of their case.



Estate Officer, Kolkata Port Trust

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(Eviction of Unauthorised Occupants) Act 1971

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Of

2013

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

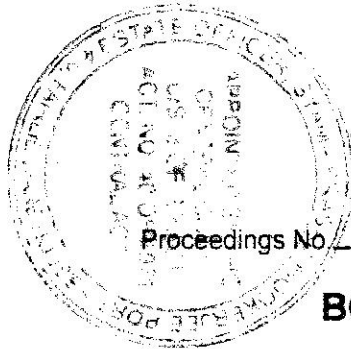
Estate Hariram Agarwalla

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It appears from the records that the said notice/s were sent through 'Speed Post' and by 'hand delivery' to the correct recorded addresses of O.P. at 67/46, Strand Road, Cross Road No.8, Kulpighat, Kolkata-700007. It is a matter of record that the Notices sent through 'Speed Post' were not returned back to this Forum. The report of the Process Server dated 24.03.2014 depicts that although O.P was not found at the address at that point of time, but affixation was made on the subject premises in question, on the same day at about 3:05 P.M, as per the mandate of the Public Premises Act.

On the day fixed for appearance and filing of reply to the Show Cause by the O.P., none appeared before this Forum. Therefore, following the principles of Natural Justice, direction was passed by this Forum to make another attempt of service and parallel affixation on the property of the orders (dated 23.04.2014 and 04.06.2014) passed by this. Thereafter, on the subsequent date fixed for hearing i.e. 18.06.2014, the O.P once again has failed to appear before this Forum. However, one Shri Madan Shaw and one Shri Tarun Kanti Deb expressing themselves as the sitting occupant of the premises, appeared before the Forum on 18.06.2014 by submitting that they have been in occupation of the said public premises since long. However, no documentary evidence was produced by them to prove that the original lessee had any dealing with them. In answer, KoPT has submitted that the said admission of the sitting occupant clearly establishes that O.P has left out the property after posting unauthorised subtenants therein. Thereafter, on 09.07.2014 the Forum has directed KoPT to submit a



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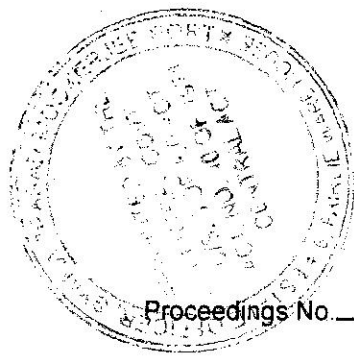
BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Estate ^{VS} *Hannam Agarnalla*

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detailed fact sheet in support of their allegation of parting with the possession by O.P. along with the survey report as was necessary in order to ascertain the factual matrix involved in the matter. Thereafter, on 05.03.2019 the matter was assigned to the undersigned on the ground of superannuation of the erstwhile Estate Officer from service. Following the principles of Natural Justice, this Forum made several attempts for service of Notices/ Orders upon the O.P. for their due appearance and representation of their case before this Forum, however the O.P. did not pay any heed to such efforts made by this Forum. However, on 23.04.2019, when one Shri B.N. Joshi and another Smt. Sreejoyee Bose expressing themselves as the Ld. Advocates for the O.P. appeared before this Forum, without filing the Vakalatnama executed in their favour, this Forum has directed to file a proof of identity and/or authority for their due representation before the Forum. But it appears from the records, that the said direction has never been complied with by the said Ld. Advocates, inspite of having four no. of chances thereafter. Then after observing for quite some long time the casual approach of O.P. and/ or the sitting occupants, after realizing that they are not interested in representing their cases and taking note of the apprehension of defeat of the very spirit embodying in the Public Premises Act, 1971 for speedy and summary disposal of cases by prolonging the matter unnecessarily, this Forum concluded the hearing of the case and reserved the case for passing the Final Order.

Be that as it may, one interesting question of law arose during the course of adjudication of the matter on 07.05.2019, when the representative of KoPT has



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verbally submitted that as per a Notification dated 29.01.2019 part of the area covered under Premises No 68 and 69 Stand Road, Kolkata comprising 114.24 Bighas has been vested upon Govt of West Bengal under the provisions of the West Bengal Escheats and Forfeiture Act, 2012 in the absence of a recorded owner of the same. On 28.05.2019, KoPT had filed the said Notification dated 29.01.2019 under the cover of their application dated 17.05.2019. On a bare perusal of such Notification dated 29.01.2019 and application of KoPT dated 17.05.2019, I find that there is no clear statement to the issue as to whether the subject occupation being piece or parcel of land situated on the south side of Cross Road No 8 at Kulpighat falls under the area mentioned in the said Notification dated 29.01.2019. Accordingly, a clarification was sought by this Forum vide order dated 28.05.2019. On the following date of hearing (i.e. 04.06.2019) KoPT has filed an application dated 03.06.2019 clearly intimating that the area under adjudication of the present proceedings falls under the area mentioned in the said Notification dated 29.01.2019 as 'Lot B1' . KoPT has also informed that being aggrieved by the said Notification dated 29.01.2019, KoPT has preferred a Writ Petition being W.P. No. 74 of 2019 before the Hon'ble Calcutta High Court, wherein the Hon'ble Court vide Order dated 25.02.2019 was pleased to direct as follows:

'.....this Court, at this stage, directs as follows -

A) That the possession of the parties qua the properties in Lots B1 and B2 of the Order dated 29th January, 2019 be treated as only notional;

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Estate Officer, Kolkata Port Trust

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B) Status quo in all other respects connected to the properties at Lots B1 and B2 be strictly maintained by the parties;

C) The interim directions at A) and B) above to continue till the end of March 2019 or, until further orders, whichever is earlier;

D) The Commissioner, Kolkata Municipal Corporation, be added as a party respondent to the writ petition.

The Commissioner, KMC/the added respondent, shall cause an enquiry through a competent officer, if necessary, upon notice to the parties with regard to the boundaries of Municipal Premises No. 68 and 69, Strand Road, qua the extent of areas as stated in the Order dated 29th January, 2019 of Lots B1 and B2. Let the Report of the Added Respondent be placed on the next date before Court through learned Counsel for KMC. Let the matter return under the same heading 'Fixed' on 18th March, 2019. "

Thereafter on 04.06.2019, as no one appeared on behalf of O.P and no reply to the Show Cause notice/s was filed by O.P or any other interested person, the matter was reserved for passing the final order.

Thereafter, the Hon'ble Court vide Judgement dated 10.08.2010 was pleased to allow the W.P. No 74 of 2019 while setting aside the action of the State of west Bengal in issuance of the Notification dated 29.01.2019, with the following findings:

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Estate Haniram Agarwala.

"..... A) that the original notice dated 25th October, 2018 was both subject and purpose specific.

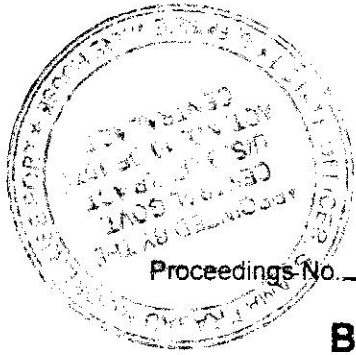
B) That the contents of the original notice dated 25th October, 2018 had the effect of enticing the Board to take a legal position qua Municipal Premises number 68 and 69 comprising in all 12 Bighas and 7 Cottahs of land.

C) In a well thought out manoeuvre by the State respondents the Board was allowed to hold on its position over a Lot A, while, simultaneously unleashing the provisions of the 2012 Act declaring the surprise Board to be a persona non grata qua Lots B1 and B2.

D) Finding itself outmanoeuvred, the Board has pressed this action by claiming title also in respect of several properties in Lots B1 and B2 in respect of which neither the KMC has measured nor declared the Municipal Premises No. to fulfill the conditions precedent of an inquiry inherent in the 2012 Act.

E) The KMC decided to aid the arbitrary state action by failing to identify and/or correlate the Municipal Premises Nos. of the property in issue with its corresponding area/boundary.

In the backdrop of the above discussion, this Court is persuaded to interdict the passage of the Royal Horse. This Court finds the action impugned of the Respondents to be foundationally flawed and accordingly sets it aside....."



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

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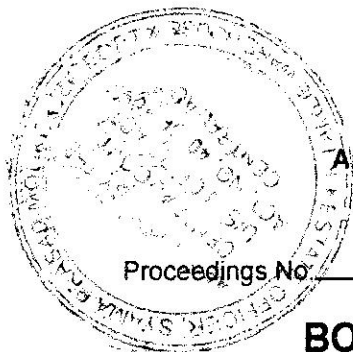
Estate Hari ram Agarwala.

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Perused the Judgement dated 10.08.2010 passed by the Hon'ble Court for my compliance and guidance in the present adjudication process. After a careful perusal of the said Judgement with due seriousness and intent, I find that there is no order of restraint for adjudicating the issues involved with the port property in question.

I have carefully considered the documents on record and the submissions of KoPT. It is ample clear from the records that no one has ever appeared on behalf of O.P. before this Forum, except on 23.04.2019 when 2 persons expressing themselves as the Ld Advocates appeared without Vakalatnama and no attempts has ever been made by the O.P. to satisfy this forum of Law about any consent on the part of KoPT in occupying the public premises in question. Rather it is a case of KoPT that by notice dated 31.05.2005 O.P. was directed to hand over possession of the premises to KoPT. A letter /notice issued in official course of business has definitely got an evidentiary value unless there is no material, sufficient to contradict the case of KoPT on the basis of such letter/Notice. It is a settled question of law that O.P. cannot claim any legal right to hold the property after expiry of the notice in question, without any valid grant or allotment from KoPT's side.

Further, I must say that as the Writ Petition being W.P. No.74 of 2019 is allowed in favour of KoPT vide judgement dated 10.08.2020 and as there is no reply to the Show Cause notice issued u/s 4 and/or 7 of the Act inspite of sufficient chances being provided to the O.P., I am left with no other alternative but to issue order of eviction u/s 5 of the Act against O.P. on the following grounds/reasons :-



Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises
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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

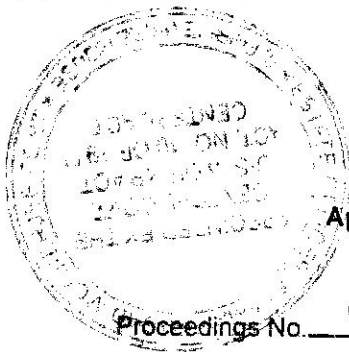
VS

Estate. Haniram Agarwala.

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1. That O.P. has failed to file reply to the Show Cause Notice/s inspite of sufficient chances and as such, there is nothing to disbelieve KoPT's contention regarding service of Quit notice to O.P., demanding possession dated 31.05.2005.
2. That O.P. has failed to bear any witness or adduce any evidence in support of their occupation as "Authorized Occupation" despite sufficient chances.
3. That the Quit notice dated 31.05.2005 as served upon O.P. by the Port authority is valid, lawful and binding upon the parties and O.P's occupation into the Public Premises has become unauthorized in view of Sec.2(g) of the P.P. Act.
4. That O.P. has violated the condition of long term lease as granted by the Port authority by way of not making payment of rental dues and taxes to KoPT, for a prolonged period.
5. That O.P has erected unauthorised structures and carried out additions and alterations of such land in violation of the condition of such lease.
6. That O.P has parted with possession, sub-let/sold/transferred/assigned of the said premises to rank outsiders in violation of the condition of such lease
7. That O.P. is liable to pay damages for wrongful use and occupation of the public premises up to

[Handwritten signature]



Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises
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Estate Haviram Agarwala

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the date of handing over the clear, vacant and unencumbered possession to the port authority.

ACCORDINGLY, Department is directed to draw up formal order of eviction u/s 5 of the Act as per Rule made there under, giving 15 days time to O.Ps' 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.

It is my considered view that a sum of Rs.4,28,717.37 for the period July 1983 to 29th June 2005 (both days inclusive) is due and recoverable from O.P. by the Port authority on account of rental dues and O.P. must have to pay such dues to KoPT on or before 18.02.2021. Such dues attract compound interest @ 6.20 % 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 incurrence of liability, till the liquidation of the same, as per the adjustment of payments, if any made so far by O.P., in terms of KoPT's books of accounts.

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 the unauthorised occupation. 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 as the possession of

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the premises is still lying unauthorisedly with the O.P. KoPT 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 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


(Sayan Sinha)

ESTATE OFFICER

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