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**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 1<sup>st</sup> Floor  
of Kolkata Port Trust's  
Fairlie Warehouse  
6, Fairley Place, Kolkata- 700 001.

REASONED ORDER NO. 25 DT 13.04.2021  
PROCEEDINGS NO. 1657 OF 2018

BOARD OF TRUSTEES OF THE PORT OF KOLKATA  
-Vs-

**M/S Hooghly Building & Investment Co. Ltd (O.P.)**

**F O R M - "B"**

By Order of:  
**THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT**  
CERTIFIED COPY OF THE ORDER  
PASSED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
19.04.2021  
Head Assistant  
OFFICE OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

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

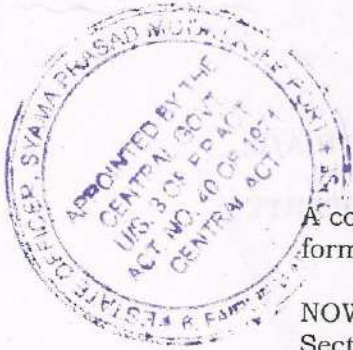
WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that  
**M/S Hooghly Building & Investment Co. Ltd of 1, Chitpur Ghat Lane,  
Kolkata-700002** is in unauthorized occupation of the Public Premises  
specified in the Schedule below :

**REASONS**

1. This Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrear rent, damages etc. as prayed for on behalf of KoPT.
2. 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 of time.
3. That such long term lease was expired by efflux of time.
4. That O.P has carried out unauthorized construction in the public premises without any lawful authority.
5. That O.P has parted with possession or inducted unauthorised sub-tenants in the said public premises in question without any authority of law or in violation of the condition of said lease.
6. The O.P or any other person/occupant has failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation".
7. That the notice to quit dated 15.10.2013 as served upon O.P. by the Port Authority is valid, lawful and binding upon the parties and O.P.'s occupation and that of any other occupant of the premises has become unauthorised in view of Sec.2 (g) of the P.P. Act.
8. 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.

*Sud*

**PLEASE SEE ON REVERSE**



(2)

A copy of the reasoned order No. 25 dated 13.04.2021 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 **M/S Hooghly Building & Investment Co. Ltd of 1, Chitpur Ghat Lane, Kolkata-700002** 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 Hooghly Building & Investment Co. Ltd of 1, Chitpur Ghat Lane, Kolkata-700002** 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-549**

Land msg. about 637.965 sq.mtrs at Cossipore River front in the Presidency Town of Kolkata under Plate No.SB-549. It is bounded on the North by Strand Bank Road, on the East by Trustees' land occupied by M/S Krishna Mineral Industries, on the South by Private property and on the West by Trustees' land occupied by M/S Chaturbhuj Hanumanmal.

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

Date-16.04.2021

Signature & Seal of the Estate Officer.

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
CERTIFIED COPY OF THE ORDER  
ISSUED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
16/04/2021  
Head Assistant  
OFFICE OF THE LD, ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

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

REGISTERED POST WITH A/D.  
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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 1<sup>st</sup> Floor  
6, Fairlie Place Warehouse  
Kolkata-700001

**Form " E "**

PROCEEDINGS NO.1657/R OF 2018  
ORDER NO. 25 DATED: 13-04-2021

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 Hooghly Building & Investment Co. Ltd,  
1, Chitpur Ghat Lane,  
Kolkata-700002.

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
CERTIFIED COPY OF THE ORDER  
PASSED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
13-04-2021  
Head Assistant  
OFFICE OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

WHEREAS you are in occupation of the public premises described in the  
Schedule below.

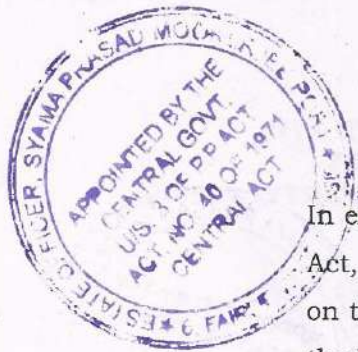
AND WHEREAS, by written notice dated 20.06.2018 you are called upon to  
show cause on/or before 20.07.2018 why an order requiring you to pay a sum  
of Rs 1,883/- (Rupees One Thousand Eight hundred Eighty Three only) being  
the rents payable together with compound interest in respect of the said  
premises should not be made;

AND WHEREAS I have considered your objections 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 1,883/- (Rupees One  
Thousand Eight hundred Eighty Three only) for the period 08.02.1991 to  
28.02.2011 (both days inclusive) to SMP, Kolkata by 03-05-2021.

*Sud*

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-549**

Land msg. about 637.965 sq.mtrs at Cossipore River front in the presidency town of Kolkata under Plate No.SB-549. It is bounded on the North by Strand Bank Road, on the East by Trustees' land occupied by M/S Krishna Mineral Industries, on the South by Private property and on the West by Trustees' land occupied by M/S Chaturbhuj Hanumanmal.

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

Dated: 16.04.2021.

Signature and seal of the  
Estate Officer

By Order of  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
CERTIFIED COPY OF THE ORDER  
ISSUED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
J. B. 19.04.2021  
OFFICE OF THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

COPY FORWARDED TO THE ESTATE MANAGER, SMP, 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  
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Court Room At the 1<sup>st</sup> Floor  
of Kolkata Port Trust's  
Fairlie Warehouse  
6, Fairlie Place, Kolkata- 700 001.

PROCEEDINGS NO. 1657/D OF 2018  
ORDER NO. 25 DATED: 13.04.2021.

**Form- G**

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

To  
M/S Hooghly Building & Investment Co. Ltd,  
1, Chitpur Ghat Lane,  
Kolkata-700002.

By order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
CERTIFIED COPY OF THE ORDER  
ISSUED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
13.04.2021  
Deputy Assistant  
ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

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

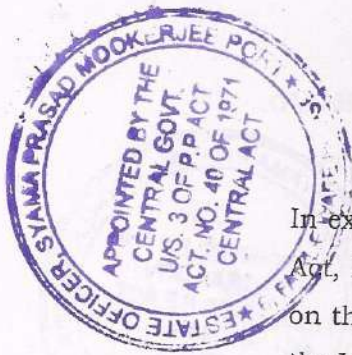
AND WHEREAS, by written notice dated 20.06.2018 you are called upon to show cause on/or before 20.07.2018 why an order requiring you to pay damages of Rs. 5,35,008/- (Rupees Five Lakhs Thirty Five Thousand Eight only) together with [compound interest] for unauthorised use and occupation of the said premises, should not be made;

AND WHEREAS I have considered your objections and/or the evidence produced by you;

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 order you to pay the sum of Rs. 5,35,008/- (Rupees Five Lakhs Thirty Five Thousand Eight only) assessed by me as damages on account of your unauthorised occupation of the premises for the period from 01.03.2011 to 30.06.2017 (both days inclusive) to SMP, Kolkata by  
03.05.2021

*Sd/-*

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

### SCHEDULE

**Plate No.SB-549**

Land msg. about 637.965 sq.mtrs at Cossipore River front in the Presidency Town of Kolkata under Plate No.SB-549. It is bounded on the North by Strand Bank Road, on the East by Trustees' land occupied by M/S Krishna Mineral Industries, on the South by Private property and on the West by Trustees' land occupied by M/S Chaturbhuj Hanumanmal.

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

By Order of  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
CERTIFIED COPY OF THE ORDER  
ISSUED BY THE ESTATE OFFICER,  
SYAMA PRASAD MOOKERJEE PORT  
16.04.2021  
Head Assistant  
OFFICE OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

Date 16.04.2021

Signature & Seal of the  
Estate Officer.

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

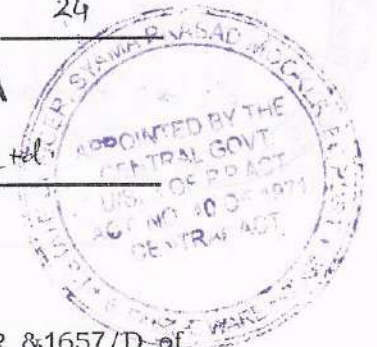
# Estate Officer, Kolkata Port Trust

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

Proceedings No. 1657, 1657/R & 1657/D of 2018 Order Sheet No. 24

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S. Hooghly Building & Investment Co. Ltd. <sup>VS</sup>



### FINAL ORDER

The instant proceedings Nos.1657, 1657/R &1657/D of 2018 arises out of the application being No. Lnd. 4967/4/14/2561 filed by the Syama Prasad Mookerjee Port, Kolkata [erstwhile Kolkata Port Trust] hereinafter referred to as KoPT, the applicant herein, on 22.11.2014 praying for an order of eviction and recovery of dues and other charges etc. along with accrued interest against M/S Hooghly Building & Investment Co. Ltd, the O.P. herein, under the relevant provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

The facts of the case, in terms of a nutshell, are that the O.P. came into occupation of the port property being land measuring 637.965sq.m or thereabouts (under plate no. SB-549), situated at Cossipore river front, in the presidency town of Kolkata (morefully described under the 'Schedule A' of the KoPT's application filed on 22.11.2014) as along term lessee on certain terms and conditions, and violated the conditions of such lease by defaulting in payment of KoPT's rent, taxes and other charges, inducted unauthorized subtenants in the Public Premises in question and also have made unauthorized construction upon the aforementioned premises.

It is the case of KoPT that after expiry of such lease by efflux of time, O.P. was asked to vacate the premises in terms of the Quit Notice dated 15.10.2013, served as per statute upon the O.P. by registered post with Acknowledgement Due. It is the submission of KoPT that inspite of the service of the said Quit Notice, the O.P. failed and neglected to quit, vacate and deliver up vacant and peaceful possession of the said premises on the

25  
13.04.2021.

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
CERTIFIED COPY OF THE ORDER  
PASSES BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
Head Assistant  
19-04-2021  
OFFICE OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

*Suk*



## 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. 1657,1657/R/1657/D Of 2018 Order Sheet No. 25

### BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Hooghly Building & Investment Co. Ltd. <sup>VS</sup>

25  
13.04.2021

scheduled date or thereafter and hence is liable to be evicted therefrom.

Considering the submissions and materials on record as submitted by KoPT, Notice/s to Show Cause U/s 4 and 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 all dated 20.06.2018 (Vide Order No.01 dated 19.06.2018) were issued to the O.P. as well as any other person interested in the subject property, as to why an order of eviction as well as recovery of dues etc, should not be made against the O.P. The O.P. as well as any other person interested was also called upon to appear before this Forum in person or through their duly authorized representative, capable of answering all material questions related to the matter, along with evidence which the O.P. or such other interested person, intends to produce in support of their case.

The said notice/s were sent to the recorded addresses of O.P. at 1,Chitpur Ghat Lane, Kolkata-700002 both by Speed Post & hand delivery. It appears from records that the Notice/s sent through speed post were not returned back. However, the Report of Process Server dated 25.06.2018 depicts that said notices were served upon O.P personally and affixation was also done on the same day at about 12:15 P.M over the subject premises in question as per the mandate of the P.P Act.

O.P entered appearance through their Ld' Advocate and filed on 20.08.2018 a Letter/application addressing this Forum for inspection of documents on which KoPT relies. However, Forum directed O.P to file reply to the Show Cause annexing all necessary documents such as DIN and CIN number and PAN Card to establish the identity and authority to appear before the Forum. On 18.03.2019 Advocate of O.P has further appeared and

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THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
TRUST  
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ISSUED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
13.04.2021  
Head Assis. Unit  
ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

*Suk*



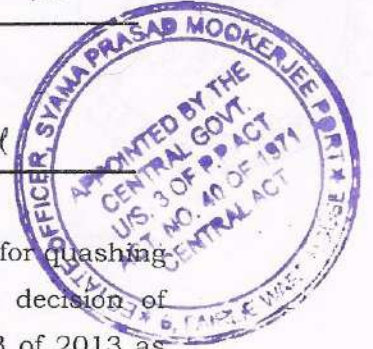
## Estate Officer, Kolkata Port Trust

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

Proceedings No. 1657, 1657/R.1657/D Of 2018 Order Sheet No. 26

### BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Hooghly Building & Investment Co. Ltd VS



25

13.04.2021

filed a maintainability petition with a prayer for quashing the instant proceeding but relying on the decision of Hon'ble High Court at Calcutta in C.O.2633 of 2013 as passed by Justice Prosenjit Mondal, Forum took a decision to decide such petition at the time of passing final Order. Thereafter, on 01.04.2019 O.P's Advocate continued his argument in the line of maintainability of the proceeding and also submitted the letter of Authority and identity of O.P. Finally on 13.06.2019 O.P filed their reply to the Show Cause along with some annexure for consideration before the Forum. Thereafter, KoPT also filed its rejoinder to such Letter/application of O.P on 15.07.2019 along with a copy of an updated Statement of Accounts to clarify the present dues as on date. Both the parties were heard extensively and after giving fifteen days time to O.P for filing documents/ Written notes of arguments, the matter was reserved for final order on the 15.07.2019.

Be that as it may, one interesting question of law arose thereafter when O.P., after submission of their Written Notes of Arguments and reservation of the Final Order, filed a further application on 25.07.2019 with a prayer for de novo hearing and recalling the Order dated 15.07.2019 as passed by this Forum. By filing such applications O.P tried to attract the attention of the Forum on a C.O (bearing No.1547 of 2019) which was filed before the Hon'ble High Court at Calcutta challenging the order dated 18.03.2019 as passed by the Ld' Estate Officer. Considered the matter, however, it is seen that the Hon'ble High Court vide it's Order dated 24.04.2019 has already disposed of such C.O without interfering with the impugned Order Therefore I do not find any reason for entertaining the present application of O.P.

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
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PASSED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
Head Assistant  
19.04.2021  
OFFICE OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

*Sud*



## 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. 1657, 1657/R A 1657/D Of 2018 Order Sheet No. 27

### BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Houghty Building & Investment Co. Ltd. <sup>VS</sup>

25  
13.04.2021

Further it appears that before reserving such final order representative of O.P has got ample opportunity before the Forum for representation of their case as per the principles of natural justice. Therefore, the present application of O.P for denovo hearing and recalling the Order dated 15.07.2019 at this stage is nothing but a dilatory tactics of O.P to prolong the instant matter. Thus the application in my view is unimportant therefore, rejected after consideration on all respect.

Now to sum up the allegations of KoPT against O.P, I find that main focal points of KoPT's allegations are three folds i.e nonpayment of rent, taxes and other charges of KoPT, induction of unauthorized subtenants in the Public Premises in question and also unauthorized construction upon the aforementioned premises in violation of such lease condition and without prior approval of KoPT.

Main Contentions of O.P during the course of hearing and from submitted documents are summarized as follows :-

I) The instant proceeding is not maintainable in its present form and prayer and the Estate Officer has no jurisdiction to adjudicate the present dispute

II) The description of the suit premises as made in the plaint does not tally with that made in the lease agreement. Therefore, without first ascertaining the nature extent and description of the suit premises no eviction proceeding can be decreed.

III) That the lease being not registered, it is not governed by Transfer of Property Act-1882, so the devolution of the suit premises falls under the domain of W.B Premises Tenancy Act 1956.

IV) The tenancy was not terminated by the notice dated 15.10.2013 as because KoPT has raised rent bills even

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SYAMA PRASAD MOOKERJEE  
Head Assistant  
OFFICE OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE

*Sud*

# 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. 1657, 1657/R & 1657/D Of 2018 Order Sheet No. 28

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S. Hooghly Building & Investment Co. Ltd. VS



25  
13.04.2021

after the Quit Notice and O.P has paid the same all the filling of the present suit and even thereafter. Therefore Such Quit Notice is illegal and invalid.

V) The O.P never accepts that they are in unauthorized occupation therefore the question of compensation and mesneprofit for wrongful occupation does not arise.

VI) The plaint is also not maintainable in the eye of law being barred by the principle of estoppels acquiescence and limitation.

VII) Since the arbitration clause is provided in the lease agreement, The said clause shall prevail over the application of the Public premises(Eviction of unauthorized Occupants) Act-1971.

VIII) The Suit land originally being a khasmahal land as appearing from the Index Map of Government Estates(Government Khasmahal) of 1905-06 and being a part of Grand Division-I, of Kolkata Khasmahal, and there being no mention of the land being acquired by the Port Commissioner, therefore, such premises cannot be said to be a public premises.

Now while passing the final order, upon considering the deliberations of the parties and after carefully going through all the documents placed on record, I find that 1<sup>st</sup> contention of O.P that the instant proceeding is not maintainable in its present form and prayer and the Estate Officer has no jurisdiction to adjudicate the present dispute etc in my view not acceptable in the eye of law. An application challenging the maintainability of the said proceeding when filed, the Estate Officer had recorded that "Let the application filed by the O.P. be kept with the record. I find that no decision was taken on the application raising the question of maintainability at that time. The proceeding under the Public Premises

By Order of:  
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SYAMA PRASAD MOOKERJEE PORT  
13.04.2021  
Head Assistant  
OFFICE OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

*Sud*



## 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. 1657, 1657/R, 1657/D of 2018 Order Sheet No. 29

### BOARD OF TRUSTEES OF THE PORT OF KOLKATA

*M/s. Hooghly Building & Investment Co. Ltd.* **VS**

25  
13.04.2021

By Order of  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT TRUST  
CERTIFIED COPY OF THE ORDER  
PASSED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT TRUST  
13.04.2021  
J. Hea...  
OFFICE OF THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT TRUST

*Sub*

(Eviction of Unauthorized Occupants) Act, 1971 is a summary proceeding and there is no provision for maintaining such application raising the question of maintainability and that is why, it has been kept with the record for decision possibly at the time of enquiry. This being the position, since no decision has been taken up on the said application and there is no provision for filing of such application raising the question of maintainability in the said Act of 1971, I am of the view that there is no scope of interference with the application, therefore such application challenging the maintainability is not tenable in the eye of law. Moreover, the properties owned and controlled by the Port Authority has been declared as "public premises" by the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and Section-15 of the Act puts a complete bar on Court's jurisdiction to entertain any matter relating to eviction of unauthorized occupants from the public premises and recovery of rental dues and/or damages, etc. KoPT has come up with an application for declaration of O.P's status as unauthorized occupant in to the public premises with the prayer for order of eviction, recovery of rental dues and damages against O.P. on the ground of expiry of such long term lease. So long the property of the Port Authority is coming under the purview of "public premises" as defined under the Act, adjudication process by serving Show Cause Notice/s u/s 4 & 7 of the Act is very much maintainable and there cannot be any question about the maintainability of proceedings before this Forum of Law. A close look into the provisions of sec 4 of the P.P. Act is relevant. According to sub-sections (1), (1A) and (1B) of Sec 4 of the Act, as amended in 2015, if the Estate Officer has information that any person is in unauthorised occupation of any public premises and that he should be

# 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. 1657, 1657/R.A/1657/D Of 2018 Order Sheet No. 30

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S. Hooghly Building & Investment Co. Ltd. VS



25  
13.04.2021

evicted or if the Estate Officer knows or has reasons to believe that any person is in unauthorised occupation of any public premises, the Estate Officer shall issue a notice calling upon the person concerned to show cause why an order of eviction should not be made and any delay in issuing such notice shall not vitiate the proceedings under the Act. The proceedings before this Forum of Law is not even statutorily barred unless there is any specific order of stay of such proceedings by any competent court of law. In view of the above, I have no hesitation in my mind to decide the issue in favour of the Port Authority.

In their 2<sup>nd</sup> contention O.P has claimed that the description of the suit premises as made in the plaint is not tallying with that made in the lease agreement. It is true that description of the property under Schedule is of paramount importance for initiation of proceedings but in the instant case, I do not find anything to interfere into the matter. No material has been placed from O.P.'s side to infer incorrect or inappropriate description of the property under Schedule. Exchange of letters from O.P.'s side in connection with the property must lead to the conclusion that the property is very much identifiable and there cannot be any scope for any confusion about the detection of such property as mentioned under the Schedule of the Show Cause Notice. It is also very much evident from the correspondence from O.P.'s side dated 26.06.1991 and the ejection notice of KoPT bearing No. Lnd. 4967/4/13/2226 dated 15.10.2013 that O.P. was well aware of the occupation area being properties covered under Plate No. SB-549 for which the proceedings have been initiated. An appraisal of the facts involving the matter must lead to the conclusion that O.P. is very much aware of the property under Schedule which was allotted to O.P. by the Port Authority on long

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SYAMA PRASAD MOOKERJEE PORT  
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SYAMA PRASAD MOOKERJEE PORT  
13.04.2021  
Head Assistant  
OFFICE OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

*Sud*



## 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. 1657, 1657/R/1657/D Of 2018 Order Sheet No. 31

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term lease basis and there is no scope for any confusion regarding identification of the property as mentioned under the schedule of the Show Cause Notice/s U/S 4 & 7 of the Act. Accordingly, I do not find any merit to the submissions made by O.P. with regard to "wrong description "of the property under Schedule or its disparity with lease agreement. Hence, the issue is decided against O.P.

Additionally, O.P raised a question that as the lease deed was not registered within 4 months of it's execution, such registration is of no effect as per Section 23 of the Registration Act-1908. But in my view O.P cannot raise any question regarding the fact of registration because the registration is a conclusive proof of the matter registered. Where the deed itself speaks that it will be effected from 8<sup>th</sup> day of Feb 1991 and Possession Certificate issued by KoPT confirms that fact, O.P cannot say that registration is ineffective. Moreover if the deed was not registered status of O.P's occupation could not have been affected. Therefore, O.P's claim in this regard is devoid of any merit.

In their 3<sup>rd</sup> contention, O.P raise a question that as the lease being not registered, it is not governed by Transfer of Property Act-1882, so the devolution of the suit premises falls under the domain of W.B Premises Tenancy Act 1956. But my view is that although a long term lease as per the provision of Transfer of Property Act-1882 is compulsorily registrable and such registration was done in the year 1999 which happens to be within lease term but only on the basis of the fact of late registration O.P cannot claim that his occupation is authorised. Moreover, it appears from the rejoinder dated 15.07.2019 as filed by KoPT that registration was lately done due to the fault of O.P. The deed of Lease itself and

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TRUST  
13.04.2021  
OFFICE OF THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

*Sud*

# Estate Officer, Kolkata Port Trust

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the Certificate of possession issued by the KoPT clearly shows that O.P was in occupation since 8<sup>th</sup> day February 1991. Therefore, such a certificate issued by a statutory authority like KoPT and the Deed of lease itself cannot be disregarded as a conclusive proof in this regard. More so, the erstwhile Commissioners for the Port of Kolkata (now known as Kolkata Port Trust by virtue of Major Port Trusts' Act-1963) is the owner of landed property beside River Hooghly in an around Kolkata. The landed property of the Port Authority is exempted from the purview of The West Bengal Premises Tenancy Act being a Local Authority as defined under the General Clauses Act -1897 and The West Bengal General Clauses Act -1899. In such a situation, the concept of tenancy right or statutory tenant as envisaged under the Rent Control Act is wholly inapplicable. Therefore, this issue is also decided in favour of KoPT.

In their 4<sup>th</sup> contention O.P submitted that the Quit Notice/Vacation Notice dated 15.10.2013 is illegal and invalid as because KoPT has raised rent bills even after the Quit Notice and O.P has paid the same till the filling of the present suit and even thereafter. But in my view Mere acceptance of rent during pendency of the eviction proceedings does not constitute a Quit Notice/Vacation notice illegal. As per law, in order to constitute a waiver of notice to quit/s, O.P. must have to prove that KoPT by accepting rent had intended to treat the lease as subsisting. In absence of any such intention on the part of KoPT being proved, mere acceptance of an amount tendered by O.P. during pendency of the proceedings cannot be said to be a "waiver" on the part of KoPT. In the present case in hand KoPT actively prosecuted the proceedings for ejection against O.P. and as such it cannot be an accepted proposition that the notice to

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19.04.2021  
Head Assistant  
OFFICE OF THE E.D. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

*Sudh*



## Estate Officer, Kolkata Port Trust

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

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### BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Hooghly Building Investment Co. Ltd. **VS**

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13.04.2021

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13.04.2021  
OFFICE OF THE ESTATE OFFICER  
54/1A, GOALAND MOOKERJEE PORT

*Sub*

quit/s have been waived by any sense of law or O.P cannot claim any protection U/S-53A of the T.P Act.

O.P's 5<sup>th</sup> contention is taken up together with the issue of nonpayment of KoPT's rent and taxes, O.P has denied the dues on their part vide Letter/reply to the Show Cause notice/s as filed on 13.06.2019. It is the categorical submission of O.P in para no.20 is that nonpayment of rent is absolutely false and incorrect. The respondent has paid many times more than what was the actual rent. O.P further submits that they never accept that they are in unauthorized occupation therefore the question of compensation and mesne profit for wrongful occupation does not arise. However, the Statement of Accounts (generated on 14<sup>th</sup> July 2015 and 15<sup>th</sup> July 2019) as filed by KoPT clearly indicates the huge dues on the part of the O.P. There is no reason to disbelieve such submission of the statutory authority like KoPT kept in its regular course of business. Moreover, O.P's plea that he has paid many times more than what was the actual rent does not seem to have any justification in this juncture because such statement do not come to the protection of O.P. at all. Further O.P raised a plea vide their subsequent application/comment dated 26.07.2019 that "... in case of forfeiture of lease not only notice is mandatory but opportunity for remedy of breaches U/S114 of Transfer of Property Act should also be given. Moreover, a forfeiture is waived by acceptance of rent on the part of the lessor which is the case here and which means the lease was subsisting and could not have forfeited" but I must say that this Forum, in pursuance of Section 114 T.P Act has given opportunity to O.P to liquidate the dues of KoPT but O.P never succeeded in complete and full discharge of such dues taxes and interest. It may be added that mere acceptance of rent during pendency of



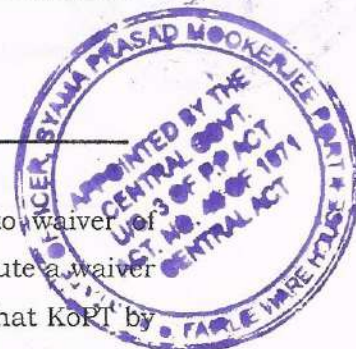
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the eviction proceedings does not amount to waiver of notice to quit. As per law, in order to constitute a waiver of notice to quit/s, O.P. must have to prove that KoPT by accepting rent had intended to treat the lease as subsisting. In absence of any such intention on the part of KoPT being proved, mere acceptance of an amount tendered by O.P. during pendency of the proceedings cannot be said to be a "waiver" on the part of KoPT. In the present case in hand KoPT actively prosecuted the proceedings for ejection against O.P. and as such it cannot be an accepted proposition that the notice to quit/s have been waived by any sense of law. Thus this Forum holds that the charge of default in payment of rent and taxes is definitely established.

As regards the applicability of estoppels, acquiescence and limitation, I must say that the principles of estoppels, acquiescence, etc are procedural in nature and thus the same will have no application in a case where issues involved are only pure question of law. According to law the question of estoppels arise when one person has, by his declaration, act or omission, **intentionally** caused or **permitted** another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceedings between himself and such person or his representative, to deny the truth of that thing. In other words to constitute an estoppels there must be an intention or permission to believe certain thing. There is no material in O.P's objection by which it can be proved that there was any intention or permission on the part of KoPT about O.P's occupation in the said public premises in question.

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SYAMA PRASAD MOOKERJEE PORT  
13.04.2021  
Head Assistant  
OFFICE OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

*Sub*



## Estate Officer, Kolkata Port Trust

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On the question of time barred claim of KoPT on "limitation" I have borrowed my contention from the several decisions of the Hon'ble Judiciary, in particular the decisions of the Hon'ble Supreme Court, wherein it was decided that the Limitation Act has no application in the proceedings before the Estate Officer which is not a Civil Court, governed by the Civil Procedure Code. Sec. 15 of the P.P. Act puts a complete bar in entertaining any matter before the Civil Court in respect of Public Premises. As such, I am firm in holding that Limitation Act has no application in the instant case.

As regards the applicability of arbitration clause which O.P raised in their 7<sup>th</sup> contention where O.P has claimed that the arbitration clause is provided in the lease agreement, and such clause shall prevail over the application of the Public premises (Eviction of unauthorized Occupants) Act-1971. But my view is that the Public Premises Act applies to public premises as defined in Section 2 (e) of the said Act. It is well-settled that the determination of the issues : Whether a premises is a public premises or not; whether the occupant is an unauthorized occupant or not - which depends on the determination of the issue whether the termination/expiry of the lease/ license is valid and effective or not, and; to what amount of damages, if any, the owner is entitled to, are all issues which are required to be determined under the Public Premises Act in respect of public premises. Under Section 15 of the Public Premises Act there is a clear bar of jurisdiction of any Court to entertain any suit or proceeding in respect of, inter alia, eviction of any person who is an unauthorized occupant of any public premises, etc. Therefore, those disputes which fall for determination within the jurisdiction of the Estate Officer appointed under the

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Head Assis. Mgr.  
OFFICE OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE  
13-04-2021

*Sud*



## Estate Officer, Kolkata Port Trust

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*M/s. Hoeghly Building Investment Co. Ltd.* <sup>VS</sup>

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SYAMA PRASAD MOOKERJEE PORT  
19.04.2021  
Head Assistant  
OFFICE OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

*Sudh*

Public Premises Act certainly cannot be referred for determination by the Arbitral Tribunal.

As regards the contention No.8 of O.P's reply, I must say that such claim of O.P that the suit property is a khasmahal or cannot be said to be a public premises is absurd and irrational. O.P has failed to produce any reliable documents in support of their contention. Moreover, for the sake of morality & as well as law, O.P cannot dispute the title of the land lord. Therefore, such issue is also decided against O.P.

With regards to the allegation of KoPT regarding unauthorized construction and induction of unauthorized subtenant by O.P in violation of lease term, the content of KoPT's letter to O.P dated 22.09.1997 is very much vital in deciding the issues. It reveals that as per the inspection unauthorized construction and induction of unauthorized sub tenancy was detected. However, O.P has denied such allegation of KoPT in their written objection/reply to the Shaw Cause dated 13.06.2019. O.P submitted that they have applied for sanction but as the sanction was not obtained within a stipulated time they have presumed that KoPT authority have consented to the same and necessary repair work and minor alteration were done. From this statement of O.P it is clear that O.P has made unauthorised constructions without any prior approval of KoPT. Moreover, KoPT has also come up with a specific drawing/sketch Maps being No. LM/6455B dated 01.02.91 highlighting the unauthorized construction in 'red hatch' which clearly depicts such breach on the part of O.P. As per the P.P Act 1971, once the Notice U/S-4 is issued, burden is on the O.P to Show Cause and/or produce evidence but in this case O.P has hopelessly failed to do so. In my view, the O.P. has sufficiently



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VS

M/s. Hooghly Building & Investment Co. Ltd.

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Head Assistant  
OFFICE OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE, PORT

*Sub*

admitted about the existence of unauthorized construction in the premises, and since it is a settled law that admitted facts need not be proved, I have no bar in accepting that the breach of unauthorized construction was existing when the notice to quit dated 15.10.2013 came to be issued by the Port Authority.

Now as regards the issue of induction of unauthorized subtenants, O.P chose to produce nothing. To substantiate such allegation KoPT has produced a copy of a letter dated 22.09.1997 which clearly shows that allegation of induction of unauthorized subtenants was there. Therefore this issue is also decided in favour of KoPT.

Discussion against the forgoing reveal that notice to quit dated 15.10.2013 is validly issued and served on O.P and the same is binding and very much enforceable, in the facts and circumstances of the case and O.P's act in continuing occupation after expiry and determination of the lease is unauthorized and O.P. is 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.

Thus being satisfied as above, I am left with no other alternatives but to issue the order of eviction against O.P as prayed for on behalf of KoPT, on following grounds/reasons.

1. This Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrear rent, damages etc. as prayed for on behalf of KoPT.
2. That O.P. has violated the condition of long term lease as granted by the Port Authority by way of not



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2018

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13.04.2021  
Head Assistant  
OFFICE OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

making payment of rental dues and taxes to KoPT, for a prolonged period of time.

3. That such long term lease was expired by efflux of time.
4. That O.P has carried out unauthorized construction in the public premises without any lawful authority.
5. That O.P has parted with possession or inducted unauthorised sub-tenants in the said public premises in question without any authority of law or in violation of the condition of said lease.
6. The O.P or any other person/occupant have failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation".
7. That the notice to quit dated 15.10.2013 as served upon O.P. by the Port Authority is valid, lawful and binding upon the parties and O.P.'s occupation and that of any other's occupation of the premises has become unauthorised in view of Sec.2 (g) of the P.P. Act.
8. 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.

ACCORDINGLY, I sign the formal order of eviction u/s 5 of the Act as per Rule made there under, giving 15 days time to O.P. and any person/s whoever may be in occupation to vacate the premises. I make it clear 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

*Sud*



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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.

It is my considered view that a sum of Rs.1,883/- (Rupees One Thousand Eight hundred Eighty three only) for the period 08.02.1991 to 28.02.2011 (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 the rental dues to KoPT on or before 03.05.2021. 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 incurrance 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.

By Order of  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE  
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SYAMA PRASAD MOOKERJEE  
Head Office  
OFFICE OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE

*Sud*

Likewise, I find that KoPT has made out an arguable claim against O.P., founded with sound reasoning, regarding the damages/compensation to be paid for unauthorised occupation. As such, I must say that Rs 5,35,008/- (Five Lakhs Thirty Five Thousand Eight Only) as claimed by the Port Authority as damages in relation to the subject premises in question, is correctly payable by O.P. for the period 01.03.2011 to 30.06.2017 (both days inclusive) and it is hereby ordered that O.P. shall also make payment of the aforesaid sum to KoPT by 03.05.2021. The said damages shall 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 incurrance of liability, till the liquidation

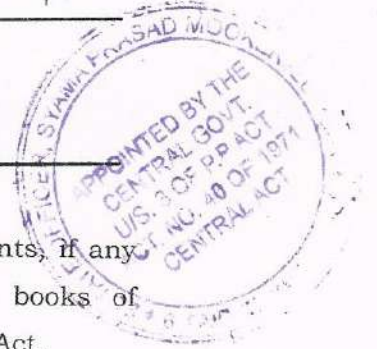
## Estate Officer, Kolkata Port Trust

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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 sign the formal orders u/s 7 of the Act.

I make it clear that KoPT is entitled to claim damages against O.P. for unauthorized use and occupation of the public premises right upto the date of recovery of clear, vacant and unencumbered possession of the same in accordance with Law, and as such the liability of O.P. to pay damages extends beyond 30.06.2017 as well, till such time the possession of the premises continues to be under the unauthorised occupation with the O.P. KoPT is directed to submit a statement comprising details of its calculation of damages after 30.06.2017, indicating there-in, the details of the rate of such charges, and the period of the damages (i.e. till the date of taking over of possession) together with the basis on which such charges are claimed against O.P., for my consideration for the purpose of assessment of such damages as per Rule made under the Act.

I make it clear that in the event of failure on the part of O.P. to comply with this Order, Port Authority is entitled to proceed further for execution of this order in accordance with law. All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL

(S. Mitra)

ESTATE OFFICER

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

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
CERTIFIED COPY OF THE ORDER  
ISSUED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
*J. J.* (19.04.2021)  
Head Assistant  
OFFICE OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT