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

REASONED ORDER NO. 29 DT- 30-09-2021  
PROCEEDINGS NO. 1742 OF 2019

**BOARD OF TRUSTEES OF THE PORT OF KOLKATA  
-Vs-  
P.C Chatterjee & Co (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 **P.C Chatterjee & Co, Kishore Bhaban, 17, R.N. Mukherjee Road, Kolkata-700001 AND 6, Mission Row, Kolkata-700001** is in unauthorized occupation of the Public Premises specified in the Schedule below :

**REASONS**

1. That this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrear dues/damages etc. as prayed for on behalf of KoPT.
2. 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".
3. That the O.P has parted with Possession of the subject premises to third party in violation of the condition of such lease.
4. That the instant Proceeding is not barred by the principles of Estoppel and constructive res judicata.
5. That the vacation Notice/s dated 28.09.2018 as served upon O.P. by the Port Authority are 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.
6. 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

14104  
14105

(2)

30-09-2021

A copy of the reasoned order No. 29 dated \_\_\_\_\_ 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 **P.C Chatterjee & Co, Kishore Bhaban, 17, R.N. Mukherjee Road, Kolkata-700001 AND 6, Mission Row, Kolkata-700001** and all persons who may be in occupation of the said premises or any part thereof to vacate the said premises within 15 days of the date of publication of this order. In the event of refusal or failure to comply with this order within the period specified above the said **P.C Chatterjee & Co, Kishore Bhaban, 17, R.N. Mukherjee Road, Kolkata-700001 AND 6, Mission Row, Kolkata-700001** and all other persons concerned are liable to be evicted from the said premises, if need be, by the use of such force as may be necessary.

### SCHEDULE

- A. Land Msg. about 6008.708 Sq.m at Circular Garden Reach Road, Thana: West Port Police Station in the presidency town of Kolkata (under Plate No.D-86/3). It is bounded on the North partly by NSD and partly by land occupied by M/s. International Engineering & Construction Co. and partly by land occupied by Kolkata Municipal Corporation, On the South partly by Circular Garden Reach Road and partly by Trustees' vacant land earlier allotted to CWC, On the East partly by Nimak Mahal Road and partly by Trustees' land allotted to HPCL, Calcutta Municipal Corporation and partly by M/s International Engineering & Construction Co. and partly by Trustees' vacant land earlier occupied by CWC and On the West partly by Netaji Subhas Dock and partly by Trustees' land occupied by M/s P.C Chatterjee & Co.
- B. Land Msg. about 1403.67 Sq.m at Circular Garden Reach Road, Thana: West Port Police Station in the Presidency town of Kolkata (under Plate No.D-86/A). It is bounded on the North by Netaji Subhas Dock, On the South by Netaji Subhas Dock, On the East by the Trustees' land occupied by M/s. P.C Chatterjee & Co. and On the West by Netaji Subhas Dock.

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

Date- 22.10.2021.



Signature & Seal of the  
Estate Officer.



## Estate Officer, Kolkata Port Trust

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

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#### FINAL ORDER

The matter is taken up today for final disposal. The factual aspect involved in this matter is required to be put forward in a nutshell in order to link up the chain of events leading to this proceeding. It is the case of **Syama Prasad Mookerjee Port, Kolkata** [erstwhile Kolkata Port Trust], hereinafter referred to as **SMP, Kolkata**, the Applicant herein that the public premises being land msg. about 6008.708 Sq.m and 1403.67 Sq.m situated at Circular Garden Reach Road, Kolkata (comprised under Plate Nos. D-86/A, D-86/3 and permitted sub-letting Plate No. SF-100/55 and also way leave plate No. D-86/2) were allotted to **M/s P.C. Chatterjee & Company**, hereinafter referred to as **O.P.**, on a long term Lease basis for a period of 10 years w.e.f 07.12.1996, with option of renewal on certain terms and conditions. It is argued on behalf of SMP, Kolkata that after expiry of such lease on 06.12.2006, O.P. preferred to continue in wrongful occupation without paying the charges for compensation for use and occupation of the public premises/ port property in question. It is also argued by SMP, Kolkata that O.P has parted with the possession of the said premises to rank outsider/s in violation of the terms of such tenancy.

It the case of SMP, Kolkata that in view of the aforesaid breaches committed by the O.P., SMP, Kolkata had issued notice to quit being No. Lnd. 3101/1/IV(Loose)09/2987 dated 22.12.2009 asking the O.P. to hand over clear, vacant, peaceful and unencumbered possession of the property to SMP, Kolkata on 30.01.2010. As the O.P has failed and neglected to vacate/ hand over the possession of the premises to SMP, Kolkata upon service of the said Notice to Quit dated 22.12.2009, SMP Kolkata has filed an

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22.10.2021  
Head Assistant  
OFFICE OF THE LD. ESTATE OFFICER  
**SYAMA PRASAD MOOKERJEE PORT**



## 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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application for eviction of O.P. and recovery of dues from the O.P. before my predecessor Estate Officer which was registered as P.P. proceeding No.1089, 1089/R & 1089/D of 2010. The said Proceedings were, however, contested by the O.P. and disposed of by the Forum on 08.01.2014 with the following directions;

*"....Hence, O.P is entitled to get renewal of lease in terms of the option clause as provided in the lease deed in question, period of which expired on 06.12.2006. Logical conclusion which could be arrived at in view of the discussion as above that Ejectment notice dated 22.12.2009 as served upon O.P is not enforceable under law."*

On the basis of such direction, following the option clause in the Lease Deed, SMP Kolkata took a decision to grant a renewal of lease to the O.P for further period of 10 years w.e.f 07.12.2006. It was also decided that in terms of Board decision dated 26.11.2015 (Clause 11.3(d) of Modified Land Policy Guidelines as adopted by the Board) that endeavour should be made to migrate to lease rental based on latest market value where the lease conditions have automatic renewal clause. Accordingly, SMP, Kolkata had issued a Letter dated 18.01.2016 to O.P. seeking their concurrence on the payment at Schedule of Rent Charges (SoR) w.e.f 07.12.2006. Subsequently on 02.08.2016, the O.P. communicated that they had agreed to the grant of lease of 10 years, with one more option for renewal, with effect from 07.12.2006, at the then applicable rate. However, the Lease could not be renewed as there was reported breaches on the part of O.P. It is also reported by SMP, Kolkata that opportunity was provided to the O.P for

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22.10.2021  
Head Assistant  
OFFICE OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

# 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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removal of the alleged breaches but O.P had failed to remove the same. Thereafter SMP, Kolkata submitted that a decision was taken administratively for inclusion of the public premises within the Netaji Subhas Dock of SMP, Kolkata by shifting the existing boundary wall for its operation requirement and in this regard two vacation notices all dated 28.09.2018 for two individual plots were issued by SMP, Kolkata to O:P, asking them to quit, vacate and deliver up peaceful possession of the premises. It was communicated through the said Notices that in exercise of the covenants under the heading 'Determination for Port purposes' of the Lease Deed dated 31.05.2001, the premises are required by SMP, Kolkata to be vacated by the O.P. on or before a period of 6 months from the date of the Notice. As the O.P. did not vacate the premises in terms of the 2 no of Notices dated 28.09.2018, an application for eviction as well as recovery of dues has been preferred by SMP, Kolkata on the basis of which the present proceedings have been initiated against the O.P.

Thereafter, this Forum of Law formed its opinion to proceed against O.P. and issued Show Cause Notice u/s 4 (for adjudication of the prayer for order of eviction etc.) of the Public Premises Act, 1971( hereinafter referred to as the 'Act') dated 24.07.2020 (vide Order No.11 dated 24.07.2020).

The said notice/s were sent through Speed Post/hand delivery to the recorded addresses of O.P. at '17, R.N Mukherjee Road, Kolkata-700001' and also to '6, Mission Row, Kolkata-700001'. It appears from records that the Postal Services upon both the recorded addresses of O.P were not returned undelivered to the Forum by the Postal Department. Additionally, the report of the Process



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Server dated 28.07.2020 depicts that said notice/s were served upon O.P's address by hand delivery on 28.07.2020 and due affixation was also made over the subject premises on the same day as per the mandate of the Act.

On the day fixed for appearance and filing of reply to the Show Cause by the O.P., i.e on 14.08.2020, one Mr. Sudip Prafulla Chakraborty and another one Mr. Uttam Mondal, expressing themselves as the authorized representatives of O.P., appeared before the Forum and filed their proof of identity to contest the instant matter on behalf of O.P. Be that as it may, O.P further filed an application on the same day praying copies of certain documents from SMP, Kolkata in order to file their reply to the Show Cause. However, due to the other official engagement of the Estate Officer, the matter could not be taken up and the same has been posted to another date for hearing. It appears that the representative/s of O.P failed to appear before this Forum on different occasions thereafter. Finally on being appeared before the Forum on 28.09.2020, O.P continued with their prayer for copies of the documents and this Forum gave further opportunity to O.P to file their reply in terms of the principles of natural justice. This Forum, however, passed directions for service of those documents upon O.P. Thereafter on 16.10.2020, O.P filed their reply to the Show Cause notice. However, as the reply was an incomplete one, this Forum passed directions upon the O.P to take back the same and file it afresh by 20.10.2020. SMP, Kolkata was also directed to file their rejoinder to the reply filed by O.P. by 13.11.2020. Thereafter, O.P filed a fresh reply to the Show Cause on 20.10.2020 and subsequently Port Authority also filed their rejoinder within the specified time frame.

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# Estate Officer, Kolkata Port Trust

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

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Thereafter, a further opportunity was provided to the parties to file their respective written notes of Arguments. It appears that on 22.01.2021 O.P filed their Written Notes of Arguments. Thereafter, a number of opportunities have been provided to SMP, Kolkata for filing of their written notes, however, as the Port Authority failed to submit the same on a number of occasions, the matter was finally reserved for passing the final Order on 23.04.2021.

Be it mention here that now at the time of passing the Final Order, one M/s Parker Robinson (P) Ltd, claiming themselves as the authorised subtenant of SMP, Kolkata, filed an application dated 16.07.2021, inter alia, praying for an Order of addition of party in the present proceeding. Vide the application said M/s Parker Robinson (P) Ltd also prayed for copies of all papers, document, pleadings filed before this Forum. Prayer has also been made for a stay/adjournment of the proceeding (being No.1742 of 2019) as well as for ad interim orders in terms of prayers (b) and (c) of the said application.

Now, while passing the Final Order, after carefully considering the papers, documents on record and the submissions of the parties, I find the following issues came up for my adjudication/decision:

- I) Whether the instant proceeding is maintainable or not;
- II) Whether the contention of O.P. that the requirement of subject public premises for the Port Purposes would defeat O.P's right of renewal of lease has got any merit or not;

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## Estate Officer, Kolkata Port Trust

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

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- III) Whether the contention of O.P. that after displacement from the demised land, the O.P. has statutory right of relocation at an alternate place has also got any merit or not;
- IV) Whether the Port Authority by initiating the eviction proceeding against O.P. has violated any guideline issued by the Govt of India or not;
- V) Whether the instant proceeding is barred by the principles of Estoppel and constructive resjudicata or not;
- VI) Whether O.P. has parted with possession of the said public premises to any third party or not;
- VII) Whether O.P.'s occupation could be termed as "unauthorised occupation" in view of Sec. 2 (g) of the P.P. Act and whether O.P. is liable to pay damages to KoPT during the period of its unauthorised occupation or not;

**Issue No.I & V**, are taken up together for convenient discussion as they are related to each other on the question of maintainability of the proceedings against O.P. 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. SMP, Kolkata has come up with an application for declaration of representatives of O.P's status as unauthorized occupant in to the public premises with the prayer for order of eviction, recovery of compensation etc against O.P. on the ground of termination of authority to occupy the premises as earlier granted to O.P. in respect

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SYAMA PRASAD MOOKERJEE PORT



# 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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of the premises in question. 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. In fact, proceedings before this Forum of Law is not statutorily barred unless there is any specific order of stay of such proceedings by any competent court of law. To take this view, I am fortified by an unreported judgment of the Hon'ble High Court, Calcutta delivered by Hon'ble Mr. Justice Jyotirmay Bhattacharya on 11.03.2010 in Civil Revisional Jurisdiction (Appellate Side) being C.O. No. 3690 of 2009 (M/s Reform Flour Mills Pvt. Ltd. -Vs- Board of Trustees' of the Port of Calcutta) wherein it has been observed specifically that the Estate Officer shall have jurisdiction to proceed with the matter on merit even there is an interim order of status-quo of any nature in respect of possession of any public premises in favour of anybody by the Writ Court. Relevant portion of the said order is reproduced below:

"In essence the jurisdiction of the Estate Officer in initiating the said proceedings and/or continuance thereof is under challenge. In fact, the jurisdiction of the Estate Officer either to initiate such proceedings or to continue the same is not statutorily barred. As such, the proceedings cannot be held to be vitiated due to inherent lack of jurisdiction of the Estate Officer. The bar of jurisdiction, in fact, was questioned because of the interim order of injunction passed in the aforesaid proceedings".

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## Estate Officer, Kolkata Port Trust

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### BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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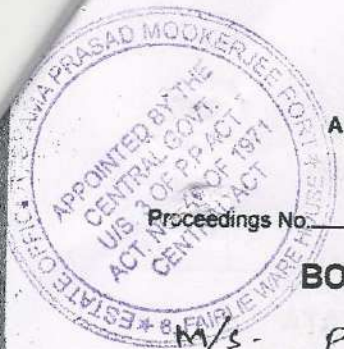
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Hon'ble Division Bench of Calcutta High Court had the occasion to decide the jurisdiction of the Estate Officer under P.P. Act in Civil Appellate Jurisdiction being MAT No.2847 of 2007 (The Board of Trustees of the Port of Kolkata and Anr -vs- Vijay Kumar Arya & Ors.) reported in Calcutta Weekly Note 2009 CWN (Vol.113)-P188 The relevant portion of the judgment (Para-24) reads as follows:-

*"The legal issue that has arisen is as to the extent of Estate Officer's authority under the said Act of 1971. While it is an attractive argument that it is only upon an occupier at any public premises being found as an unauthorized occupant would he be subject to the Estate Officer's jurisdiction for the purpose of eviction, the intent and purport of the said Act and the weight of legal authority that already bears on the subject would require such argument to be repelled. Though the state in any capacity cannot be arbitrary and its decisions have always to be tested against Article 14 of the Constitution, it is generally subjected to substantive law in the same manner as a private party would be in a similar circumstances. That is to say, just because the state is a Landlord or the state is a creditor, it is not 'burdened with any onerous covenants unless the Constitution or a particular statute so ordains".*

The question of 'estoppel' as raised on behalf of O.P. does not arise at all in view of the fact that O.P. has paid lease rent and the same has been received by the petitioner. By receiving rent the SMP, Kolkata is not estopped from referring the O.P as a unauthorized occupant because after expiry of lease if anything is received by the landlord it is called occupational

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charges. According to law the question of estoppel arises 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. In this instant matter there is no material to prove any intention or permission on the part of SMP, Kolkata to consider/accept O.P's status into the Public Premises as "lessee" and to withdraw/cancel the notice dated 22.12.2009. Similarly the plea of constructive res judicata as raised by O.P. is an artificial form of res judicata. It is engrafted under Explanation IV of Section 11 of the Civil Procedure Code which provides that if a plea could have been taken by a party in a proceeding between him and his opponent, he should not be permitted to take that plea against the same party in a subsequent proceeding with reference to the same subject-matter. It is clearly opposed to considerations of public policy on which the doctrine of res judicata is based and would mean harassment and hardship to the opponent. Besides, if such a course is allowed to be adopted, the doctrine of finality of judgments pronounced by the courts would also be materially affected.., However, such principles of constructive resjudicata is not applicable in the instant matter because the earlier Quit Notice dated 22.12.2009 On the basis of which the earlier Proceeding was instituted has been kept out of the consideration and two subsequent notice/s both dated 28.09.2018



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have been issued by the Forum to proceed with the instant matter. It is true that Estoppel and Resjudicata both puts a bar on getting remedy in Civil Court but are not applicable to the present proceeding before this Forum of Law, a quasi judicial authority under the P.P. Act. Moreover, I am consciously of the view that P.P. Act operates in a field where the Act itself specifically provided the jurisdiction of this Forum of Law (Adjudicating Authority under the Act) and any question about the maintainability of the proceedings is not sustainable without any appropriate order, restraining the proceedings etc. from any competent court of law.

In view of the discussions above, I must say that the proceeding is very much maintainable and the Show Cause Notice issued by SMP, Kolkata is very much valid and lawful therefore, the issues are decided in favour of SMP, Kolkata.

**Issue No II & III** are also taken up together as the issues are related with each other. Representative of O.P vide their written objection dated 20.10.2020 and subsequently vide their Written Notes of Arguments dated 22.01.2021 has claimed that requirement of land for the 'Port Purposes' can on its best defeat the O.P's right of renewal of lease of the subject premises, however, there is no bar of SMP, Kolkata from providing them an alternative plot of accommodation. It has been submitted by the O.P. that there has been no proposal from the concerned Department of SMP, Kolkata proposing requirement of the demised premises with N.S Dock by shifting the boundary wall for its operational requirements. However, I do not find any merit in such claim of O.P. because it

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# Estate Officer, Kolkata Port Trust

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## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

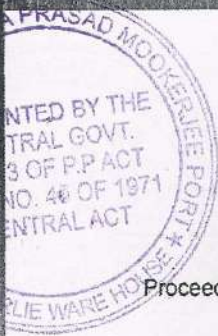
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appears from the record that as per the option clause of the lease O.P was given the opportunity of renewal for a further period of 10 year w.e.f 07.12.2006 but as the existing breaches were not removed by O.P. as a necessary precondition of such renewal such lease was not renewed. Moreover, O.P cannot claim relocation as their vested right because as per policy Guidelines and directives after 26.11.2015 of all Major Ports, the Port Trust Board shall have the right to resume possession of the leased land in public interest before expiry of lease period. In such cases, subject to availability of land, the lessee may at the discretion of the Port Trust Board be given an option to relocate activities in another suitable location to be offered by the Port, as per land used plan or refund of proportionate upfront premium if the land was leased on upfront basis.

So option of allotment of alternative plot on the ground of displacement from demised land is totally depending on the discretionary power of the Port Authority and such option can only be exercised subject to availability of land. In this instant case SMP, Kolkata has adopted such a course. Further, O.P. has failed to show any statutory provisions in this regard, therefore I am not at all inspired by the claims of O.P. on this count. Moreso, the Statement of Accounts submitted by SMP, Kolkata shows that the there is a huge dues on the part of O.P. to SMP, Kolkata and without clearing their dues O.P cannot claim any relocation on any other alternative plot. Considering all these aspects both the issues are decided in favour of SMP, Kolkata.

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22/10/2021  
Head Assistant  
OFFICE OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT



## 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. 1742 Of 2019 Order Sheet No. 36

### BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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As regards the **issue No. IV**, i.e on the issue of violation of guidelines framed by Govt. of India with regard to the actions directed to be taken by SMP, Kolkata against bonafide and lawful tenant, I must say that O.P's claim in this regard is unreasonable because O.P cannot claim them as a bonafide and lawful tenant of such land after determination of such lease. Moreover, the land is one of the important resources with the port trust to promote their business and accommodation of increasing traffic at the ports. Considering the shortage in the flow of revenue SMP, Kolkata has every right to initiate eviction proceeding against any tenant. Therefore, no questions of violation of guidelines issued by Govt of India comes in its way. Moreover, the guideline issued by the Govt. of India cannot override the specific provision of Law as provided under the P.P. Act. As per the Act, the "unauthorized occupants" within the definition of Section 2 (g) of the Act means the occupation of any person of the public premises without authority of such occupation and includes the continuance of occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. In the instant case I find that SMP, Kolkata demanded possession of the public premises from O.P. on the ground of failure on the part of O.P. to pay the dues/charges for use and enjoyment of the Port property in question together with the ground for unauthorized parting with possession of the public premises etc. Hence, the argument of O.P. regarding "genuine tenant" has no leg to stand upon to attract the guideline of the Govt. of India. It is further argued by SMP, Kolkata that they are the Statutory Authority created under the Major

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Port Trust Act 1963 and not a Govt. Undertaking to come under the purview of the said guideline in any event. In my view this Forum of Law has a definite scope in adjudicating the matter of unauthorized occupation of any person within the four corners of the Public Premises Act. Accordingly, the objection raised on behalf of O.P. regarding maintainability of the proceedings before this Forum of Law on the ground of violation of Policy Guidelines framed and notified by the Central Govt. is not at all applicable.

As regards the **issue No.VI** i.e on the issue of unauthorised parting with possession, mere claim on behalf of O.P that it has never parted with possession of the premises to any third party or is itself in use and occupation of the premises etc. are, in my view not sufficient to defend this type of serious allegation such as unauthorized parting with possession. The O.P could have very well produced documents relating to their trade or business from that premises but O.P chose to produce nothing. Even O.P did not produce any single photographic evidence to counter the allegation of SMP, Kolkata. As such it is very difficult to accept the mere claim of the O.P which is bereft of any cogent reason. Moreso, in Para no. ix of their rejoinder dated 13.11.2020 SMP, Kolkata has mentioned that as per their available records only the M/s Parker Robinson Pvt Ltd has still been operating within the premises in question. Such statement made by a statutory authority cannot be utterly disregarded. More over induction of a third party without the approval of SMP, Kolkata is also against spirit of tenancy.

As regards the **issue No. VII**, I must say that a lessee like O.P. cannot claim any legal right to hold the property

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after expiry of the period of lease. O.P has failed to satisfy this Forum about any consent on the part of SMP, Kolkata in occupying the public premises. I am consciously of the view that SMP, Kolkata never recognized O.P. as a lawful user/tenant in respect of the property in question after expiry of the period of such long term lease. As per Section 2 (g) of the P. P. Act the "unauthorized occupation", in relation to any Public Premises, means the occupation by any person of the public premises without authority for such occupation and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. Further, as per the Transfer of Property Act, a lease of immovable property determines either by efflux of time limited thereby or by implied surrender or on expiration of notice to determine the lease or to quit or of intention to quit, the property leased, duly given by one party to another. It is also a settled question of law that O.P, occupier cannot claim any legal right to hold the property after expiry of the lease, without any valid grant or allotment from SMP, Kolkata's side. Moreover, as per the Transfer of Property Act, 1882, a lessee is under legal obligation to hand over possession of the property to its landlord/lessor in its original condition after expiration of tenancy under lease. The tenancy of the O.P. automatically stands terminated upon expiry of the leasehold period and no additional Notice is required in the eye of law on the part of the landlord to ask the O.P. to vacate the premises. In other words, in case of a long term lease having a specific date of expiration, there is no legal compulsion on the landlord to issue any Notice to

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Quit. The landlord is, however, free to issue such a Notice as a reminder or as an act of gratuity. In the instant case, the landlord i.e. SMP, Kolkata adopted such a course and claims to have issued a Notice to O.P. dated 22.12.2009 asking for vacation of the premises said premises with effect from 30.01.2010. Whether such Notice has been received by O.P. or not is quite immaterial inasmuch as O.P. was duty bound to hand over possession to SMP, Kolkata after expiry of such lease which it had failed to do. Therefore, O.P.'s occupation is unauthorise and O.P is liable to pay compensation.

At the same time Application of Parker Robinson (P) Ltd is hereby also rejected after due consideration. It is the admitted position in this case that the lease of subject premises has already expired by efflux of time therefore, now the applicant company cannot claim their status as an authorized sub-tenant of SMP, Kolkata because no contract is existing between SMP, Kolkata and O.P. at present. Moreover, the hearing of this instant matter has also been concluded after a prolong period and is awaiting for final decision.

In view of the discussions above, all the issues are decided firmly in favour of SMP, Kolkata. I find that this is a fit case for passing order of eviction against O.P or other interested Party whoever in occupation, and hence, being satisfied as above I hereby, passing Order of eviction under Section 5 of the Act on following grounds:

1. That this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrear dues/damages etc. as prayed for on behalf of SMP, Kolkata.

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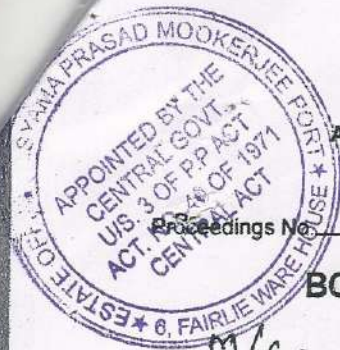
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2. The O.P or any other person/occupant has failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation".
3. That the O.P has parted with Possession of the subject premises to third party in violation of the condition of such lease.
4. That the instant Proceeding is not barred by the principles of Estoppel and constructive res judicata.
5. That the vacation Notice/s dated 28.09.2018 as served upon O.P. by the Port Authority are 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.
6. 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. 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

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order of eviction u/s. 5 of the Act as per Rule made under the Act.

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 the 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 as the possession of the premises is still lying unauthorisedly 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 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

(P. Mukhopadhyay)  
ESTATE OFFICER

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

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