



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

REASONED ORDER NO. 82 DT 23.11.2005  
PROCEEDINGS NO. 701 OF 2005

BOARD OF TRUSTEES OF THE PORT OF KOLKATA  
-Vs-

M/s Ara Warehousing Pvt. Ltd (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  
**M/s Ara Warehousing Pvt. Ltd, P-95, Lake View Road, Kolkata -700029**  
**AND ALSO AT P-12, Hide Road, Kolkata-700043** 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 etc. as prayed for on behalf of KoPT.
2. That O.P has made unauthorised construction on the subject premises without any authority of law.
3. 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".
4. That O.P. or any other person/occupant of the public premises has failed to make out any case in support of their occupation as "authorised occupation", inspite of sufficient chances being provided.
5. That no case has been made out on behalf of O.P. as to how its occupation in the Public Premises could be termed as "authorised occupation" after issuance of notice dated 16.05.2005, demanding possession by the Port Authority and O.P's occupation has become unauthorized in view of Sec.2(g) of the P.P. Act, 1971.
6. That right from the date of expiry of the Notice dated 16.05.2005, O.P. has lost its authority to occupy the Public Premises and O.P. is liable to pay dues/compensation charges with interest for wrongful use and enjoyment of the Public Property upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

PLEASE SEE ON REVERSE

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



A copy of the reasoned order No. 82 dated 2-3-11/2021 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 Ara Warehousing Pvt. Ltd, P-95, Lake View Road, Kolkata -700029 AND ALSO AT P-12, Hide Road, Kolkata-700043** 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 Ara Warehousing Pvt. Ltd, P-95, Lake View Road, Kolkata -700029 AND ALSO AT P-12, Hide Road, Kolkata-700043** and all other persons concerned are liable to be evicted from the said premises, if need be, by the use of such force as may be necessary.

**SCHEDULE**

**Plate No. D-300/78/A & H-87/A**

- (a) Piece or parcel of land msg.8387.42 sq.m. or thereabouts is situated at Block-"H" Hide Road, Thana. South Port Police Station, Dist.24 Pgs.(S), Registration Dist. Alipore, it is bounded on the north partly by the Trustees land occupied by the Parry & Co. Ltd., and partly by the Trustees room occupied by you on the east partly by the Trustees land occupied by Babcook & Wilcock Ltd., and on the west partly by the Trustees land occupied by Parry & Co. Ltd and partly by the Trustees verandah occupied by you and partly by the Trustees godown and verandah occupied by Babcook & Wilcock Ltd., Trustees' means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata).
- (b) The godown space msg.1613.54 sq.m. or thereabout, verandah space msg.1040.33 sq.m or thereabouts and room space msg.303.04 sq.m. or thereabout is situated at Block-"H" Hide Road, Registration Dist. Alipore.

By Order of  
 THE ESTATE OFFICER  
 SYAMA PRASAD MOOKERJEE PORT  
 ENCLOSED COPY OF THE ORDER  
 ISSUED BY THE ESTATE OFFICER  
 SYAMA PRASAD MOOKERJEE PORT  
 25/11/2021

Date- 25/11/2021



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

To) \_\_\_\_\_ Of 2005 Order Sheet No. 66

### BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Ara Ware <sup>VS</sup> Housing (Pvt.) Ltd.

82  
23.11.2021

#### FINAL ORDER

The instant Proceeding No.701 of 2005 is taken up today for final disposal. It is the case of Syama Prasad Mookerjee Port, Kolkata [erstwhile Kolkata Port Trust], hereinafter referred to as KoPT, applicant herein, that **M/s Ara Warehousing Pvt. Ltd.**, O.P. herein, came into occupation of KoPT's land, godown space, verandah & room space respectively measuring about 8387.42 sq.m, 1613.54 sq.m, 1040.33 Sq.m & 303.40 sq.m or thereabouts situated at Hide Road, Thana-South Port Police Station, Dist-24 Parganas(S), Registration District- Alipore, all comprised under Plate Nos.D-300/78/A, H-87/A being the Public Premises in question; on the strength of offer Letters being No. 5098 & Nil both dated 02.06.2003, an Offer of grant of tenancy under Licence on certain terms and conditions and it is submitted by KoPT that without complying with the requirements of said Offer Letters Of KoPT, O.P. preferred to continue in occupation of the Port Property unauthorisedly. It is the case of KoPT that in view of such non compliance and non acceptance of the terms and conditions, the Offer stood withdrawn vide Notice/s demanding possession both dated 16.05.2005 and O.P. was asked to vacate, hand over unencumbered possession of said premises to KoPT on 26.05.2005. It is strongly argued on behalf of KoPT that as the O.P has failed to accept the offer of KoPT, the O.P. has no authority under law to occupy the said public premises after expiry of the period as mentioned in the said Notice/s being Nos. Lnd.5098(Dup)/05/436 and Lnd. 5098(Dup)/05/437 both dated 16.05.2005, the O.P. is liable to pay compensation/ mesne profit etc for wrongful use and occupation of the Port property upto the date of handing over of clear, vacant possession of the same.

It appears from record that SMP, Kolkata and O.P both have quoted different Plate Numbers in their respective

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT.  
CERTIFIED COPY OF THE ORDER  
PASSED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
15/11/2021  
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

701 Of 2005 Order Sheet No. 67

### BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

M/s. Ara ware Housing (Pvt) Ltd.

82  
23.11.2024

applications and being utterly surprised by this fact, the Forum made a <sup>query</sup> asking KoPT to confirm which Plate Numbers are correct and after having been confirmed from KoPT, this Forum considers the Plate Nos. D-300/78/A and H-87/A (as mentioned above) are correct. It appears that a good number of hearings have taken place before passing of this Order and nobody has ever pointed out such discrepancies before this Forum. Further, M/S Ara Warehousing Pvt Ltd has acknowledged their liability towards the subject occupation throughout the entire proceedings. Hence, it appears to me that such discrepancy in the Plate numbers., as mentioned in the original application of KoPT dated 09.06.2005, might be a typographical one and did not prejudice the rights and liabilities of the parties to the present proceeding. In view of the above, it is therefore, directed that henceforth the Plate numbers should be read as D-300/78/A and H-87/A for all the material purposes of this proceeding.

This Forum issued Show Cause notice under Section 4 of the Act (for adjudication of the prayer for issuance of Order of Eviction etc.) dated 15.06.2005 (vide Order No.4 dated 14.06.2005).

The said notice was served through Speed Post as well as by hand delivery to the recorded address of O.P. at P-95, Lake View Road, Kolkata-700029. It appears from record that said Notice/s sent to the above recorded address of O.P was not returned back. However, the report of the Process Server dated 28.06.2005 depicts that the copy of the said Notice was served upon O.P personally on 24.06.2005 and affixation was duly made on the subject premises on the same day at about 4 P.M as per the mandate of the P.P Act.

O.P. in its oral as well as written arguments submits that KoPT in terms of the offer letter dated 02.06.2003

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MUKHERJEE PORT  
CERTIFIED COPY OF THE ORDER  
PASSED BY THE ESTATE OFFICER  
SYAMA PRASAD MUKHERJEE PORT  
25/11/2024  
OFFICE OF THE ESTATE OFFICER  
SYAMA PRASAD MUKHERJEE PORT





# Estate Officer, Kolkata Port Trust

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

701 Of 2005 Order Sheet No. 68

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Ara Ware <sup>VS</sup> Housing (Pvt.) Ltd.

82  
23.11.2021

transferred to O.P the tenancy of Kajaria Iron Casting Pvt. Ltd in respect of land measuring about 8387.42 sq.m (Plate No.D-300/78/A) and godown space msg. 1613.54 sq.m, varandah space msg. 1040.33 sq.m and room space msg. 303.04(Plate No.D-87/A) at P-12, Hide Road, upon payment of all requisite charges as contemplated in the said offer letter. They have paid total amount of 69 lakhs in terms of the said offer letter dated 02.06.2003 and KoPT has already accepted such dues. It is further submitted by O.P. that they have been paying regular rent as per the bill raised by KoPT from time to time @ Rs.144,059/- & Rs.1,37,906/- per month along with 5.1% enhanced charges from time to time in terms of the said offer letter dated 02.06.2003. However, KoPT has very surprisingly enhanced such rate @ three times from 01.07.2012 to the tune of Rs.5,59,006.00 & 6,85,806.00 instead of single rate of rent of Rs.1,86,414.00 & 2,28,602.00 and subsequently such calculation @ 3times was stopped on & from August 2012 and presently O.P. is paying regular single rate as per prevailing SoR. O.P. has also made payment of rent, interest and penal charges for regularisation of unauthorised construction time to time as per various orders passed by this Forum in connection with this purported proceeding (being No.701 of 2005) initiated by the KoPT. Till 17.09.2018 O.P. has paid to KoPT a total sum of Rs.9,37,16,818/- towards outstanding dues along with interest in terms of the Order as passed by this Forum from time to time. KoPT could not treat O.P. as unauthorised occupant and this Forum has also not determined O.P as unauthorised. This Forum has passed an order giving direction upon O.P. to make penal payment for regularization of unauthorised construction and in pursuant to such Order O.P has made payment of Rs. 14,84,140 and thereafter it has been admitted by KoPT that such unauthorised construction was regularised upon

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

12





## 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. 701 Of 2005 Order Sheet No. 69

### BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Ara ware <sup>VS</sup> Housing (Pvt) Ltd.

82  
23-11-2021

acceptance of such payment. Therefore, O.P's occupation is authorised and now, O.P. is a liable to pay regular rent as per prevailing Schedule of rent charges and not @ 3 times SoR. Relying on different citations of Supreme Court and High Court, O.P tried prove O.P's occupation as authorised and claimed that KoPT being a statutory authority cannot realise any amount from any citizen without empowered by a statute. O.P has further placed that KoPT has no jurisdiction to adjudicate or levy compensation/damages for unauthorised occupation. Finally O.P. has submitted that notice u/s 4 of the Act has no basis therefore, it is liable to be quashed or dropped.

KoPT, the petitioner, argues that the transfer of tenancy was made in O.P's favour from Kajaria Iron & casting Pvt Ltd vide Offer letter dated 02.06.2003 in respect of the plot of land msg about 8387.42 sq.m at Hide Road under Plate No.D-300/78 on a month to month licence basis w.e.f 01.07.2002 and thereafter another Offer letter on the same day was issued in favour of O.P. by which the godown space msg.1613.54 sq.m, veranda space msg.1040.33 sq.m and room space msg.303.04 sq.m at Hide Road(under Plate No.D-87/A) were allotted to O.P. on the same terms & condition. However, without complying the terms & condition of said Offer letters O.P. continued their occupation. Subsequently, KoPT issued Final notice as a gentle reminder to O.P on 29.09.2004 and asked them to liquidate the arrear dues of KoPT and also to accept the terms & condition of such offer within the stipulated period as mentioned in the said notice. When O.P. has failed to accept the offer of KoPT within the said stipulated period as mentioned in the said Final notice, two notice/s demanding possession both dated 16.05.2005 were served upon the O.P. by KoPT for handing over clear, vacant and unencumbered possession of such land on 26.05.2005 but instead of complying with such Notice/s dated 16.05.2005,

By Order of:  
THE ESTATE OFFICER  
SWARNA PRASAD MOOKERJEE PORT  
CERTIFIED COPY OF THE ORDER  
PASSED BY THE ESTATE OFFICER  
SWARNA PRASAD MOOKERJEE PORT  
25/11/2021  
OFFICE OF THE ESTATE OFFICER  
SWARNA 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

701 Of 2005 Order Sheet No. 70

### BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Ara Ware <sup>VS</sup> Housing (Pvt) Ltd.

82  
23.11.2021

O.P. continued their occupation without any valid authority under law. Thereafter the instant proceeding was initiated before the Forum. On 19.12.2012 as per the direction of the Estate Officer an inspection was held and report of such inspection was filed by KoPT vide letter dated 23.02.2012. KoPT by filing such inspection report submitted that O.P has erected unauthorised construction and demolished the structure of KoPT. Further on 01.06.2017, KoPT has filed another application before the Forum and stated that on the basis of valuation of the demolished structure and upon payment of regularisation fees the breach of making damage to KoPT structure stood regularised. However, in the sketch plan being No.8327-2-D-III as submitted on 22.02.2012, KoPT has further pointed out the unlawful conduct of O.P. in erecting unauthorised construction. Now KoPT submits that as there is no contractual relation with O.P. and as the O.P. has failed to accept the terms & condition of offer letter dated 02.06.2003 within stipulated period, O.P has no valid authority under law to occupy the subject premises in question and O.P.'s occupation is unauthorised. KoPT further submits that they have only regularised the demolition of structure of KoPT as done by O.P. As O.P. has failed to take any steps to remedy the breach of unauthorised construction, O.P. shall also be liable for such breach.

Heard the rival arguments from both the sides and considered all the documents placed before me including KoPT's notice/s demanding possession dated 16.05.2005, final notice dated 29.09.2004, KoPT's application dated 09.06.2005, Statement of Accounts as generated on 09.04.2019, O.P.'s reply to show cause notice filed on 18.03.2019, Letter/petition dated 19.03.2019, KoPT's rejoinder/comments dated 09.04.2019, O.P.'s written notes of argument dated 16.04.2019.

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
CERTIFIED COPY OF THE ORDER  
PASSED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
Head of Office  
OFFICE OF THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
23/11/2021

1/



# 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. 701 Of 2005 Order Sheet No. 71

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

M/s. Araware Housing (Pvt) Ltd.

82  
23.11.2021

After careful consideration of all relevant papers/documents as brought before me in course of hearing and after due consideration of all the submissions/arguments made on behalf of the parties, I find that following issues have come up for my adjudication

1. Whether this Forum of Law is competent to adjudicate upon the matter;
2. Whether the Maxim "no one should be a judge in his own cause" applies in the instant case or not;
3. Whether the contention of O.P that three times rent charges is illegal has got any merit or not;
4. Whether O.P. has carried out unauthorised construction on the Public Premises or not.
5. Whether KoPT's notice dated 16.05.2005 as issued to O.P., demanding possession from O.P. is valid and lawful or not;
6. Whether O.P's occupation has become unauthorised in terms of Sec.2(g) of the P.P. Act and whether O.P. is liable to pay damages for wrongful occupation and enjoyment of the Port Property to KoPT or not;

The issues No. 1 & 2, are taken up together for convenient of discussion as the issues are mainly related to jurisdiction

By Order of  
THE ESTATE OFFICER  
KOLKATA PORT TRUST  
CERTIFIED COPY OF THE ORDER  
MADE BY THE ESTATE OFFICER  
KOLKATA PORT TRUST  
25/11/2021





## 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. 701 Of 2005 Order Sheet No. 72

### BOARD OF TRUSTEES OF THE PORT OF KOLKATA

**VS**  
M/s. Ara ware Housing (Pvt.) Ltd.

82  
23.11.2021

of this Forum of Law to entertain the application of KoPT dated 09.06.2005. In fact, the issues are related to each other on the question of maintainability of the proceedings.

I must say that 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 along with the prayer for order of eviction against O.P. on the ground of termination of authority to occupy the premises as earlier granted to O.P. in respect 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:

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
CERTIFIED COPY OF THE ORDER  
PASSED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
23.11.2021  
OFFICE OF THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

19





# Estate Officer, Kolkata Port Trust

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

701

Of

2005

Order Sheet No.

73

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Anaware <sup>VS</sup> Housing (Pvt) Ltd.

82

23.11.2021

"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".

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 maxim that no one can be judge in his own case only means that he should not have private interest in the case

By Order of:  
THE ESTATE OFFICER  
GYAN PRASAD MOOKERJEE PORT

CERTIFIED COPY OF THIS ORDER  
ISSUED BY THE ESTATE OFFICER  
GYAN PRASAD MOOKERJEE PORT

23/11/2021  
OFFICE OF THE ESTATE OFFICER  
GYAN 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. 701 Of 2005 Order Sheet No. 74

### BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Araware <sup>VS</sup> Housing (Pvt.) Ltd.

82

23.11.2021

he is to adjudicate. The Estate Officer discharges his official function under the law. He acts as a tribunal and has no private interest. He cannot be said to be both the prosecutor and the judge. No material has been produced or no case has been made out by O.P as to how this forum of law is involved with any work relating to O.P's tenancy or related to any decision making process of the Port Authority to seek prayer for eviction against O.P etc. As such I do not find any merit to the submissions made on behalf of O.P in this regard.

In view of the discussions above, the issues are decided accordingly against O.P.

Regarding **issue No.3** i.e on the issue of three times rent charges, O.P. has claimed in their Application dated 16.04.2019 that "charging 3 times the SoR by KoPT from O.P or ex-lessees or occupants, against whom no decree of eviction is passed by a competent Civil Court or the Estate Officer is illegal." However, I must say that as per law, when any occupant enjoys possession without accepting the offer, the party whose interest is hampered by such unauthorised occupation is entitled to receive, from the party who is occupying unauthorisedly, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from any breach, or which parties knew, when they made the contract to be likely to result from the breach of it. As regards the three times rate of compensation in respect of unauthorised occupation, the order dated 03.09.2012 passed by Hon'ble Justice Dipankar Datta in WP no. 748 of 2012 (M/s Chowdhury Industries Corporation Pvt. Ltd. versus Union of India & others) is very relevant. The said Order reads as follows:

By Order of:  
THE ESTATE OFFICER  
SVAMA PRASAD MOOKERJEE PORT  
CERTIFIED COPY OF THE ORDER  
PASSED BY THE ESTATE OFFICER  
SVAMA PRASAD MOOKERJEE PORT  
Head Office  
OFFICE OF THE LD. ESTATE OFFICER  
SVAMA PRASAD MOOKERJEE PORT

MS





# 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. 701 Of 2005 Order Sheet No. 75

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

M/s. Araware Housing (Pvt) Ltd.

82

23.11.2021

.....  
It is undisputed that there has been no renewal of the lease prior to its expiry or even thereafter. There is also no fresh grant of lease. The petitioner has been occupying the property of the Port Trust unauthorisedly and, therefore, the Port Trust is well within its right to claim rent at three times the normal rent in terms of the decision of the TAMP, which has not been challenged in this writ petition.

Furthermore, enhancement to the extent of three times the normal rent for persons in unauthorised occupation of Port Trust property does not appear to be utterly unreasonable and arbitrary warranting interference of the Writ Court.

....."

Moreover, O.P has failed to accept the Offer for grant of licence dated 02.06.2003, such being the case, O.P. is debarred from taking the plea of exorbitant rent/charges. In fact, the question of rent charges @ 3times for occupation or any question about abnormally high rate of rent cannot be entertained by this Forum as the charges for occupation of Port Property is fixed up by Tariff Authority of Major Ports by their notification published under authority of law in accordance with the provisions of the Major Port Trusts Act, 1963 as time to time amended. The issue is thus decided accordingly in favour of the Port Authority.

On issue No. 4, regarding carrying out of unauthorised construction, O.P. vide their reply/application dated 18.03.2019 has submitted that modified structure in its present form on recovery of damaged/demolished cost of structure has been regularized'. However, KoPT in its application dated 01.06.2017 claimed that only the portion

✓

By Order of:  
ESTATE OFFICER  
BYAMA PRASAD MOOKERJEE PORT  
CERTIFIED COPY OF THE ORDER  
ISSUED BY THE ESTATE OFFICER  
BYAMA PRASAD MOOKERJEE PORT  
Head Assessor  
OFFICE OF THE LD. ESTATE OFFICER  
BYAMA PRASAD MOOKERJEE PORT  
25/11/2021





## 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.

701

Of

2005

Order Sheet No.

76

### BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

M/s. Araware Housing (Pvt) Ltd.

82

23.11.2021

of KoPT's structure which was demolished by O.P. had been regularised. Moreover, it appears from a Letter of KoPT dated 11.04.21016 that as per the administrative decision O.P. was advised to reconstruct the KoPT's structure within 3months or alternatively to pay penalty being twice the valuation of the demolished structure however no decision was taken on modified structure. KoPT has also come up with specific drawing/sketch Maps being No. 8327-2-D-III dated 22.02.2012 highlighting the unauthorized construction in red hatch but O.P is silent as to how this construction can be said to be authorized in nature. As per the P.P Act1971, 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. Further, O.P. in their application dated 16.04.2019 has claimed that dilapidated structure was repaired within KMC rule however, subsequently O.P. further said that KMC rule is not applicable to repair of structures. This statement of O.P. seems contradictory. O.P. has failed to produce any sanction plan of the Kolkata Municipal Corporation for such unauthorised construction.

In my view, the O.P. has sufficiently 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 proceeding was initiated before the Forum.

Issues No 5 & 6, are also required to be discussed analogously. Discussion against the foregoing paragraphs will certainly lead to the conclusion that the notice/s demanding possession of such land dated 16.05.2005 as issued by the Port Authority, demanding possession from O.P. is very much valid, lawful and binding upon the parties. I have deeply gone into the submissions/

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

18





## Estate Officer, Kolkata Port Trust

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

701

Of

2005

Order Sheet No.

77

### BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS  
M/s. Aramare Housing (Pvt) Ltd.

82

23.11.2021

arguments made on behalf of the parties in course of hearing. The properties of the Port Trust are coming under the purview of "public premises" as defined under the Act. Now the question arises as to how a person become unauthorized occupant into such public premises. As per Section 2 (g) of the 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. The offer for grant of tenancy under Licence to O.P. was undoubtedly determined by the Port Authority by due service of notice demanding possession of such land and institution of proceedings against O.P. by KoPT is a clear manifestation of Port Authority's intention to get back possession of the premises. In such a situation, I have no bar to accept KoPT's contentions demanding possession of such land by notice dated 16.05.2005, on evaluation of the facts and circumstances of the case.

"Damages" are like "mesne profit" that is to say the profit arising out of wrongful use and occupation of the property in question. I have no hesitation in mind to say that after expiry of the period as mentioned in the said notice demanding possession dated 16.05.2005, O.P. has lost its authority to occupy the public premises, on the evaluation of factual aspect involved into this matter and O.P. is liable to pay damages for such unauthorized use and occupation. To come into such conclusion, I am fortified by the decision/observation of the Hon'ble Supreme Court in Civil Appeal No.7988 of 2004, decided on 10<sup>th</sup> December 2004, reported (2005)1 SCC 705, para-11 of the said judgment reads as follows.

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
CERTIFIED COPY OF THE ORDER  
PASSED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
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

Page No. 701 Of 2005 Order Sheet No. 78

### BOARD OF TRUSTEES OF THE PORT OF KOLKATA

**VS**  
M/s. Araware Housing (Pvt.) Ltd.

82  
23.11.2021

Para:11-" under the general law, and in cases where the tenancy is governed only by the provisions of the Transfer of Property Act 1882, once the tenancy comes to an end by determination of lease u/s.111 of the Transfer of Property Act, the right of the tenant to continue in possession of the premises comes to an end and for any period thereafter, for which he continues to occupy the premises, he becomes liable to pay damages for use and occupation at the rate at which the landlord would have let out the premises on being vacated by the tenant. ....

In course of hearing, the representative of KoPT states and submits that Port Authority never consented in continuing O.P's occupation into the public premises and never expressed any intention to accept O.P as tenant. It is contended that KoPT's intention to get back possession is evident from the conduct of the Port Authority and O.P. cannot claim its occupation as "authorized" after non acceptance of such offer dated 02.06.2003 & issuance of notice demanding possession. The offer for grant of tenancy under licence was doubtlessly determined by the landlord by notice demanding possession, whose validity for the purpose of deciding the question of law cannot be questioned by O.P. Therefore, there cannot be any doubt that the O.P. was in unauthorized occupation of the premises, once the offer stood withdrawn. In my opinion, institution of this proceedings against O.P. is sufficient to express the intention of KoPT to obtain an order of eviction and declaration that KoPT is not in a position to recognize O.P. as tenant.

The Port Authority has a definite legitimate claim to get its revenue involved into this matter as per the KoPT's

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
CERTIFIED COPY OF THE ORDER  
PASSED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
25/11/2021

✓





# 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. 701 Of 2005 Order Sheet No. 79

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

**VS**  
M/s. Araware Housing (Pvt.) Ltd.

82  
23.11.2021

Schedule of Rent Charges for the relevant period and O.P. cannot claim continuance of its occupation without making payment of requisite charges as mentioned in the Schedule of Rent Charges.

To take this view, I am fortified by the Apex Court judgment reported in JT 2006 (4) Sc 277 (Sarup Singh Gupta -vs- Jagdish Singh & Ors.) wherein it has been clearly observed that in the event of termination of lease the practice followed by Courts is to permit landlord to receive each month by way of compensation for use and occupation of the premises, an amount equal to the monthly rent payable by the tenant. In my view, the case in hand is very much relevant for the purpose of determination damages upon the guiding principle as laid down by the Hon'ble Apex Court in the above case. In course of hearing, it is submitted on behalf of KoPT that the charges claimed on account of damages is on the basis of the KoPT's Schedule of Rent Charges as applicable for all the tenants/occupiers of the premises in a similarly placed situation and such Schedule of Rent Charges is notified rates of charges under provisions of the Major Port Trusts Act 1963. In my view, such claim of charges for damages by KoPT is based on sound reasoning and should be acceptable by this Forum of Law. As per law, when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract to be likely to result from the breach of it. Moreover, as per law O.P. is bound to deliver up vacant and peaceful possession of the public premises to KoPT after expiry of the period as mentioned in the notice demanding possession in its original condition. As such, the issues are decided in favour of Kolkata Port Trust. I have no hesitation to observe that

*Handwritten initials*

By Order of:  
**THE ESTATE OFFICER**  
SYAMA PRASAD MOOKERJEE PORT  
CERTIFIED COPY OF THE ORDER  
PASSED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
*Handwritten signature*  
OFFICE OF THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
25/11/2021





### 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. 701 Of 2005 Order Sheet No. 80

### BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Araware Housing (Pvt) Ltd. VS

82  
23.11.2021

O.P's act in continuing occupation 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. With this observation, I must reiterate that the ejection notice, demanding possession from O.P. as stated above has been validly served upon O.P. in the facts and circumstances of the case and such notice is valid, lawful and binding upon the parties. In view of the discussions above, the issues are decided in favour of KoPT.

NOW THEREFORE, I think it is a fit case for allowing KoPT's prayer for order of eviction against O.P. u/s 5 of the Act for the following grounds/reasons :

1. That this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction etc. as prayed for on behalf of KoPT.
2. That O.P has made unauthorised construction on the subject premises without any authority of law.
3. 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".
4. That O.P. or any other person/occupant of the public premises have failed to make out any case in support of their occupation as "authorised occupation", inspite of sufficient chances being provided.
5. That no case has been made out on behalf of O.P. as to how its occupation in the Public Premises could be termed as "authorised occupation" after issuance of notice dated 16.05.2005, demanding possession by the Port Authority and O.P's occupation has become unauthorized in view of Sec.2(g) of the P.P. Act, 1971.

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

12





## Estate Officer, Kolkata Port Trust

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

701

Of

2005

Order Sheet No.

81

### BOARD OF TRUSTEES OF THE PORT OF KOLKATA

<sup>VS</sup>  
M/s. Araware Housing (Pvt) Ltd.

82

23.11.2021

6. That right from the date of expiry of the Notice dated 16.05.2005, O.P. has lost its authority to occupy the Public Premises and O.P. is liable to pay dues/compensation charges with interest for wrongful use and enjoyment of the Public Property upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

ACCORDINGLY, I sign the formal order of eviction u/s 5 of the Act as per Rule made there under, giving 15 days time to 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 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.

KoPT is further directed to submit a report regarding its claim on account of dues and damages against O.P., indicating there-in, the details of the computation of such dues/damages with the rate of charges so claimed for the respective periods (details of computation with rates applicable for the relevant periods) for my consideration in order to assess the dues/damages as per the Act and the Rules made thereunder.

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

CERTIFIED COPY OF THE ORDER  
PASSED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

*Handwritten signature*  
Head Assistant  
OFFICE OF THE 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. 701 Of 2005 Order Sheet No. 82


## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

<sup>VS</sup>  
M/s. Araware Housing (Port) Ltd.

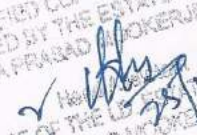
82  
23.11.2021

I make it clear that in the event of failure on the part of O.P. or the unauthorised occupants to hand over possession of the public premises to KoPT as aforesaid, Port Authority is entitled to proceed further for recovery of possession in accordance with law. All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL

  
(Nirmalya Biswas)  
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  
PASSED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
He   
OFFICE OF THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT