

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

**ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT, KOLKATA
(ERSTWHILE KOLKATA PORT TRUST)**

(Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-Central Act)
Public Premises (Eviction of Unauthorized Occupant) Act 1971
OFFICE OF THE ESTATE OFFICER
6, Fairley Place (1st Floor)
KOLKATA - 700 001

Court Room At the 1st Floor
of SMPK's
Fairley Warehouse
6, Fairley Place, Kolkata- 700 001.

REASONED ORDER NO.74 DT 11 NOV 2022
PROCEEDINGS NO. 824 OF 2006

15 NOV 2022
15 NOV 2022

**SYAMA PRASAD MOOKERJEE PORT, KOLKATA
(ERSTWHILE BOARD OF TRUSTEES OF THE PORT OF KOLKATA)
-Vs-**

M/s. Karia Brothers (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**

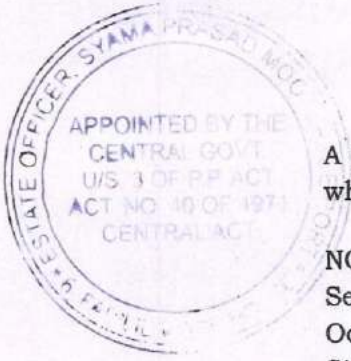
WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that **M/s. Karia Brothers, 67/10, Strand Road, Nimtollah, Kolkata-700007** is in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

1. That contentions on behalf of O.Ps regarding non-maintainability of the proceedings have got no merit in the facts and circumstances of the case.
2. That O.P's contention regarding non-receipt of ejection notice dated 8.9.1969 has no support of law on evaluation of factual aspect involved in this matter.
3. That the contentions of O.P. with regard to non-maintainability of proceedings on the plea of "Estoppel" has got no merit in the facts and circumstances of the case.
4. That O.P. Can't take the plea of time barred claim by SMPK, taking the shield of Limitation Act.
5. That O.P's contention regarding waiver of interest has got no merit in fact and circumstances of the case.
6. That O.P. has carried out unauthorized construction by way of walling up of the encroached area of SMPK's land.
7. That O.P. has violated the condition of tenancy under monthly term lease by way of encroachment of SMPK's land.
8. That 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".
9. That the notice to quit dated 08.09.1969 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.
10. 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.

THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
16/11/22
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

PLEASE SEE ON REVERSE



(2)

A copy of the reasoned order No. 74 dated **15 NOV 2022** 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. Karia Brothers, 67/10, Strand Road, Nimtollah, Kolkata-700007** and all persons who may be in occupation of the said premises or any part thereof to vacate the said premises within 15 days of the date of publication of this order. In the event of refusal or failure to comply with this order within the period specified above the said **M/s. Karia Brothers, 67/10, Strand Road, Nimtollah, Kolkata-700007** and all other persons concerned are liable to be evicted from the said premises, if need be, by the use of such force as may be necessary.

SCHEDULE

Plate No. SB-220

All that the said piece or parcel of land msg. 138.890 sq.m (2cottahs 1 chatack 10 sq.ft) or thereabouts situated at Nimtalla in the Presidency town of Calcutta. The said piece or parcel of land is bounded on the north by the said Commissioners' strip of open land beyond which is the said Commissioners' land leased to Calcutta Tramways Company Limited, on the east partly by Strand Road and partly by the said Commissioners' open land, on the south by the said Commissioners' land partly covered by the said Commissioners' labour Quarters and partly occupied by Debidutt Jamandhar and on the west by the said Commissioners' land partly open and partly covered by the said Commissioners' Labour Quarters.

Plate No. SB-222

All that the said piece or parcel of land msg. 511.245 sq.m (7 cottahs 10 chattack 13 sq.ft) is situate on the west side of Strand Road at Nimtalla in the presidency town of Calcutta. The said piece of the land is bounded on the north by the said Commissioners' land leased to Ramlal Poddar, on the east by Strand Road, on the south by the Commissioners strip of open land beyond which is their land leased to the Calcutta Tramways Company Ltd., and on the west by the Commissioners' boundary wall beyond which is is their class IV staff quarters and partly by the commissioners land leased to Ram Lal Poddar.


Dated: **16 NOV 2022**
16 NOV 2022

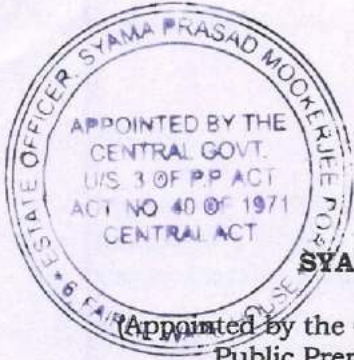

Signature & Seal of
Estate Officer.

COPY FORWARDED TO THE ESTATE MANAGER, SYAMA PRASAD MOOKERJEE PORT, KOLKATA FOR INFORMATION.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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


16/11/22
11850 Assn/MT
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



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

Court Room at the 1st Floor
Of SMPK's
Fairlie Warehouse
6, Fairlie Place, Kolkata- 700 001.

PROCEEDINGS NO.824/D OF 2006
ORDER NO. 74 DATED:

15 NOV 2022

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. Karia Brothers,
67/10, Strand Road,
Nimtollah,
Kolkata-700007.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
16/11/22
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

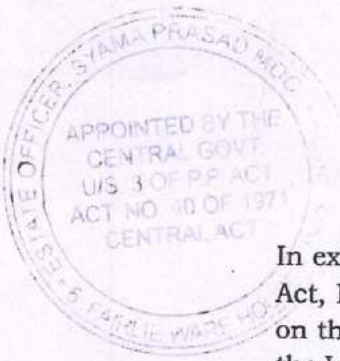
WHEREAS I, the undersigned, am satisfied that you are in unauthorised occupation of the public premises mentioned in the Schedule below:

AND WHEREAS by written notice dated 15.11.2006 you are called upon to show cause on or before 28.11.2006 why an order requiring you to pay damages of Rs. 27,62,621.60 (Rupees Twenty Seven Lakh sixty two thousand six hundred twenty one and paise sixty 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. 27,62,621.60 (Rupees Twenty Seven Lakh sixty two thousand six hundred twenty one and paise sixty only) assessed by me as damages on account of your unauthorised occupation of the premises for the period from 01.11.1969 to 30.11.2004 (both days inclusive) to SMPK by 30.11.2022.

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 @ 6.90 % 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-220

All that the said piece or parcel of land msg.138.890 sq.m(2cottahs 1 chatack 10 sq.ft) or thereabouts situated at Nimtalla in the Presidency town of Calcutta. The said piece or parcel of land is bounded on the north by the said Commissioners' strip of open land beyond which is the said Commissioners' land leased to Calcutta Tramways Company Limited, on the east partly by Strand Road and partly by the said Commissioners' open land, on the south by the said Commissioners' land partly covered by the said Commissioners' labour Quarters and partly occupied by Debidutt Jamandhar and on the west by the said Commissioners' land partly open and partly covered by the said Commissioners' Labour Quarters.

Plate No.SB-222

All that the said piece or parcel of land msg. 511.245 sq.m (7 cottahs 10 chattack 13 sq.ft)is situate on the west side of Strand Road at Nimtalla in the presidency town of Calcutta. The said piece of the land is bounded on the north by the said Commissioners' land leased to Ramlal Poddar, on the east by Strand Road, on the south by the Commissioners strip of open land beyond which is their land leased to the Calcutta Tramways Company Ltd., and on the west by the Commissioners' boundary wall beyond which is is their class IV staff quarters and partly by the commissioners land leased to Ram Lal Poddar.

Date 16 NOV 2022

Signature & Seal of the
Estate Officer.

COPY FORWARDED TO THE ESTATE MANAGER, SYAMA PRASAD MOOKERJEE PORT,
KOLKATA FOR INFORMATION



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 824, 824/D of 2006 Order Sheet No. 79

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/s Karia Brothers

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15 NOV 2022
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FINAL ORDER

The factual matrix involved in this matter is required to be put forward in a nutshell for clear understanding and to deal with the issues involved. It is the case of Syama Prasad Mookerjee Port Kolkata (Erstwhile Kolkata Port Trust/KoPT), hereinafter referred to as SMPK, applicant herein, that land msg. about 138.890 Sq.m(2cottahs 1chattack10 sq.ft) and 511.245 Sq.m(7cottahs 10 chattack 13sq.ft) situated at 67/10, Strand Road, Nimtalla, Thana-Jorabagan, in the presidency town of Kolkata comprised under Plate Nos.SB-220 & SB-222 were allotted to **M/s. Karia Brothers (O.P.)** on monthly term lease with effect from October, 1968 on certain terms and condition and O.P. violated the conditions for grant of such lease by way of non-payment of rental dues, erecting unauthorised structure/carrying out addition and alterations of SMPK's building /shed/ godown and also by subletting/selling/ transferring/ assigning the tenancy right in part or full without having any prior approval from SMPK.

It is the case of SMPK that in view of such aforementioned breaches committed by O.P. SMPK made a request to the O.P. to quit, vacate and deliver up the peaceful possession of the subject premises on October, 1969 in terms of the notice to quit dated 08.09.1969. As the O.P. did not vacate the premises even after issuance of the said Quit Notice, the instant Proceeding bearing No.824, 824/R & 824/D of 2006 was initiated before the Forum for eviction of the alleged unauthorised occupant, seeking other relief. It is also the case of SMPK that as the O.P. has failed to deliver back possession even after the issuance of notice demanding possession dated 08.09.1969, O.P's occupation is unauthorised and O.P. is

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
for  16/11/22
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 824 + 824/D Of 2006 Order Sheet No. 80

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/s Karia Brothers

liable to pay damages for wrongful use and enjoyment of the Port Property in question.

This Forum of Law formed its opinion to proceed against O.P. and issued Show Cause Notice/s u/s 4 of the Act (for adjudication of the prayer for order of eviction etc.) and Show Cause Notice u/s 7 of the Act (for adjudication of the prayer for realisation of rental dues and damages etc.) all dated 15.11.2006 vide (Order No.2 dated 15.11.2006) as per Rule made under the Act.

It appears that after issuance of Show Cause Notice/s, O.P appeared before the Forum through their Ld' Advocate and contested the matter by way of filing reply to the Show Cause notices on 7.2.2007. In course of hearing, O.P. disputed SMPK's claim on account of interest for delayed payment and also other allegations raised by SMPK. After completion of hearing eviction Order was passed against O.P. along with the Order of damages by the then Estate Officer on 19.08.2009 in connection with the instant Proceeding. However, such eviction Order dated 19.08.2009 was subsequently challenged by O.P. on the ground of illegality, preferring Misc Appeal bearing No.45 of 2009 and 46 of 2009 before the Ld' 3rd Bench, City Civil Court, Calcutta. Wherein the Ld' Court vide it's order dated 18.06.2010 set aside the Order dated 19.08.2009 and sent back the record of the instant matter on open remand for passing a fresh order after hearing the parties. The relevant portion of such Order of the Ld' Court is reproduced below:

".....But after considering the entire materials on record it is found that order was passed in respect of Plot Nos.SB-220 and SB-222.But in the Order sheet it is mentioned that the area is 7 kathas 10 chittacks 13 square feet. But in fact the total area of two plots would

15 NOV 2022

15 NOV 2022

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

[Handwritten signature]



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 824 & 824/D of 2006 Order Sheet No. 81

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S. KARIA BROTHERS

15 NOV 2022

15 NOV 2022

THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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

more than 9 to 10 kathas which is evident from the fact. The Ld. Estate Officer stated proceeding in respect of two plots SB-220 (area 7 Kathas 10 chittacks & 10 Square feet) and also in respect of SB-222 (area 7 Kathas 10 chittack 10 square feet). But order was passed stating that the eviction order was passed against the Karia Brothers in both the plots. But the area shown as 7 kothas 10 chittack 10 square feet. That means the judgment is incomplete because it is not mentioned that in respect of plot SB-220 an order of eviction was not passed. But area as mentioned as 7 kothas 10 chittack 10 square feet that means that there is error in the judgement. But that was detected by this Court. But the Ld. Lawyers for the appellant submitted that there is error in the judgment, so the order of Ld. Estate Officer may be set aside and the case may be sent back to the Ld. Estate officer for fresh decision.

Ld. Lawyer for the respondent also submitted that fact, so in view of the above fact and circumstances considering the incomplete judgment of Ld. Estate Officer I am convinced to hold that the order passed in Case Nos. 824 of 2006 and 824/D of 2006 is liable to be set aside.

In the above circumstances, both the appeals succeed as there are defect in the judgements and the judgements are incomplete.

Hence, that both the Misc Appeal Nos. 45 of 2009 and 46 of 2009 are hereby allowed on contest against the contesting respondent.

Accordingly, the order passed by the Ld' Estate Officer in Proceeding Nos. 824 and 824/D of 2006 passed on 19.08.2009 are hereby set aside.

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 824-824/D of 2006 Order Sheet No. 82

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

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15 NOV 2022

Accordingly, in view of the above observation of the judgement Proceeding Nos.824 and 824/D of 2006 are hereby sent back on open remand to the Ld' Estate Officer for passing a fresh order after hearing the parties and giving them such chance to adduce evidence if it is required by them and to complete the entire judgement so that no defect would be found in future in respect of the property and description etc."

Thereafter, the matter was further taken up before my predecessor Estate Officer on 18.01.2011 and subsequently, before the undersigned and fresh hearing was again started and continued as per the direction of the Ld' Court. During the course of such fresh hearing Ld' Advocate of O.P again appeared and filed their Written Notes of Arguments on 31.01.2018 and supplementary reply to the Show Cause on 28.02.2019 and SMPK also filed several applications on different dates. Thereafter considering the submissions of both the parties the matter was reserved for passing Final Order on 13.06.2019.

Now at the time of passing final Order being guided by the decision of Ld' 3rd Bench, City Civil Court, Calcutta and after carefully considering the documents on record and the submission of the parties, I find that following issues have come up for my adjudication:

- I. Whether the instant Proceeding against O.P. is maintainable or not;
- II. Whether the present proceeding is maintainable in view of the State of W.B Gazette Notification being No.45-JL/JD/L/16M-11/2018 dated 29th January 2019 or not;



By Order of:

**THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT**

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

16/11/22
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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 SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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- III. Whether the issue of non-receipt of ejection notice dated 8.9.1969 as raised by O.P. is at all relevant or not.
- IV. Whether O.P. was defaulted in making payment of rental dues to SMPK or not;
- V. Whether O.P. can take the shield of time barred claim under Limitation Act to contradict the claim of SMPK or not;
- VI. Whether the contention of O.P. regarding waiver of interest has got any merit or not;
- VII. Whether the instant proceeding is hit by the principles of estoppel or not;
- VIII. Whether O.P. has carried out unauthorized construction or not;
- IX. Whether O.P. has made encroachment upon SMPK's land or not;
- X. Whether O.P. has parted with possession of the public premises unauthorizedly or not;
- XI. Whether O.P. can claim its occupation as "authorized occupation" in view of Sec.2(g) of the P.P. Act or not;
- XII. Whether O.P. is liable to pay damages/ compensation as claimed by SMPK in terms of the condition of such lease or not;

Issues No. I & II are taken up together for convenient discussion, 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. SMPK has come up

CERTIFIED COPY OF THE ORDER PASSED BY THE ESTATE OFFICER SYAMA PRASAD MOOKERJEE PORT
16/11/22
OFFICE OF THE LD. ESTATE OFFICER SYAMA PRASAD MOOKERJEE PORT

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 824 & 824/D of 2006 Order Sheet No. 84

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

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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 compensation/damages etc. 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 Can't 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.

As regards the issue of Gazette Notification being No.45-JL/JD/L/16M-11/2018 of State of W.B. dated 29th January 2019 as annexed by O.P with the application dated 28.02.2019, I must say that such notification is of no effect today because being aggrieved by the said Notification dated 29.01.2019, SMPK has preferred a Writ Petition being W.P. No. 74 of 2019 before the Hon'ble Calcutta High Court and Hon'ble High Court has already vide its Judgement dated 10.08.2020 allowed such W.P. No 74 of 2019 by setting aside such Notification dated 29th January 2019 with the following observations:-

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

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

[Handwritten signature]

By Order of
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
16/11/22
Office Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 824 / 824/7 of 2006 Order Sheet No. 85

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S. KARIA BROTHERS

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15 NOV 2022

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
for Chandra 16/11/22
Head Assitant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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

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

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

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

In view of the decisions as cited above, I have no hesitation in my mind to decide the issues No. I & II in favour of the Port Authority.

On the issue No.III, I have deeply gone into the submissions/arguments made on behalf of the parties and considered the relevant papers/documents as brought before me in course of hearing. It is seen that SMPK has submitted a photocopy of the Registered Lease Deed registered with the Registrar of Calcutta (Book

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 824/824/D Of 2006 Order Sheet No. 86

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

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15 NOV 2022

No.1, Volume No.99, Pages-22 to 30 being No.3266 for the year 1951) in respect of public premises under Plate Nos.SB-220 & SB-222 in connection with ejectment notice and/or demand for possession dated 8.9.1969. In course of hearing, it is submitted by SMPK that O.P. has no authority under law to occupy the premises after expiry of the period as mentioned in the ejectment notice that is to say on and from 1.11.1969 and O.P. duly accepted the notice through postal service and through hand service on 19.9.1969. A copy of the SMPK's ejectment notice dated 8.9.1969 is perused wherefrom it reveals that somebody had accepted the said notice on behalf of O.P. It is the specific averment on the part of SMPK that the notice to O.P. was served through Registered Post with Acknowledgement Due and the said notice was simultaneously sent to O.P. by Certificate of Posting to the correct address/s of O.P. It is seen that the address mentioned in the Notice is exactly the address of O.P. as mentioned in the lease deed which according to SMPK's record is the last known address. I have closely perused the terms and conditions of the Registered Lease Deed executed by and between the parties and find that as per Clause No.VI of the said lease deed under lessees covenant, the matter in connection with service of notice has been specifically provided which reads as follows:

"Any notice required to be given to the lessees hereunder may be served on the lessees by sending the same through the post, addressed to them at the address above mentioned and shall be deemed to have been duly served on them on the day next subsequent to the day on which it was posted."

[Signature]

By Order of:

THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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

[Signature] 16/11/22
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 824 & 824/D of 2006 Order Sheet No. 87

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S - KARIA BROTHERS

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There is a presumption of law about the service of such notice through post. If a letter/notice is properly addressed to O.P. and is registered at the post office and left in the custody of the Postal Department, it must be presumed under Evidence Act that such letter/notice has reached to the addressee. Moreover, record maintained in the official course of business of a statutory authority like SMPK has definitely got a probative value of the substance and there is no reason to disbelieve the SMPK's case about service of notice, terminating O.P's tenancy under lease. As per Transfer of Property Act , O.P. is bound to deliver up vacant and peaceful possession to the Port Authority after determination of the lease in question in its original condition. In such a situation, the contention of O.P. regarding non-receipt of notice terminating the tenancy by SMPK appears to be of no merit and clearly an afterthought on the facts and circumstances of the case. It is very futile to assert that O.P's tenancy is continuing after expiry of the period as mentioned in the ejectment notice in question when there is no case even any assertion on the part of O.P. that Port Authority has consented in continuance of such occupation after expiry of the lease period. There is no material to prove any intention on the part of the Port Authority for continuance of O.P's occupation into the public premises after expiry of the period in question and even for the sake of argument there is no notice to vacate the premises (not accepting), O.P. as a lessee Can't brush aside its liability towards vacating the premises as per provision under T. P. Act. SMPK has made it sufficiently clear by moving an application before this Forum of Law for eviction of O.P. that SMPK has no intention to recognize O.P. as tenant. I have duly considered the provision of the lease deed concerning SMPK's right to re-

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

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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 SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S. KARIA BROTHERS

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enter into the premises in case the lessee (read O.P) commits a breach of or fail or neglect to perform or observe any of the covenants conditions or agreements as contained in the lease deed in question without any notice

The lease terms and conditions speak for grant of tenancy under lease for initial period of two months commencing from 1.8.1951 and thereafter continuing on monthly tenancy basis until determination of the tenancy at any time by either party by giving to other not less than 15 days written notice, expiring at the end of a calendar month of their intention to determine such tenancy. Now the question arises as to how the tenancy was continuing on month to month basis without payment of rent to SMPK or without receiving demands on account of monthly rent from SMPK's side. A tenancy is continuing on month to month basis upon conduct of the parties that is to say sending of rent bills to lessee/tenant and the tenant in turn pays the rent demand to the satisfaction of the Landlord, in the instant case being SMPK. It is a very strange case where O.P. continued in occupation for a considerably long period from November 1969 without making payment of rental dues and there is no strip of papers and/or evidence on the part of O.P. at least to show the gesture on the part of O.P. to pay the rental demand or charges for occupation. There is no evidence on the part of O.P. whether they have enquired into the matter of non-issuance of bill since long. On the contrary, it is the case of SMPK that after service of ejection notice, O.P. is not recognized as tenant and as such there is no question of issuing rent bill. In such a situation it is very difficult to accept that O.P. was unaware of the service of ejection

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notice from SMPK's side dated 8.9.1969. Moreover, no case has been made out on behalf of O.P. at least to show that SMPK has intention to the continuance of O.P's occupation into the public premises, treating the lease as subsisting. It appears to be a very strange case when O.P. is claiming to be an "authorized occupant" on the plea of non-service of ejection notice from SMPK's side without tendering monthly charges for occupation into the public premises for a considerably long period and that too without enquiring about the status of O.P. for a long period. In my view, such act on the part of O.P. is not acceptable at all in all sense to attract Section 2(g) of the Public Premises Act. Hence the issue is decided against O.P.

With regard to **issue No. IV**, I must say that the application of SMPK dated 9th February 2005 indicates Rs.14,320.29 as rental dues against O.P. whereas deposits held at the credit of O.P. in suspense-account indicates an amount of Rs.17,391.66. Apparently, at the time of filing the application before this Forum of Law there was an excess amount at the credit of O.P. In course of hearing, it is submitted on behalf of SMPK that the deposits made on behalf of O.P. was kept in suspense account due to various irregularities like non-payment of interest and payment of the rent bill after due date etc. After appraisal of the factual aspect I do not find any merit to the SMPK's case against O.P. for non-payment of rental dues. To come into such conclusion, I must say that the amount held at the credit of O.P. for the relevant period should be adjusted against the principal amount of rental dues and the dues, if any, after such adjustment should be intimated to O.P.

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for *[Signature]* 16/11/22
Deputy Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

[Signature]

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Proceedings No. 824.824/D of 2006 Order Sheet No. 90

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Issue No.V, i.e on the question of time barred claim of SMPK on the issue of "limitation" and applicability of Limitation Act-1963, I have carefully considered all the submissions/ arguments made on behalf of O.P. before the Forum. It is the case of O.P. that SMPK's claim against O.P. is hopelessly barred by applying the Law of Limitation, 1963. However, as per settled law, 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. Hence, the issues is decided against O.P.

O.P.'s prayer for waiver of interest amount in **issue No.VI** is required to be adjudicated seriously as the issue involves mixed question of fact and law as well. it is the case of SMPK that in view of Major Port Trusts Act 1963 every occupant/users of the port properties are under legal obligation to pay the notified rates of charges which includes rates of interest as notified therein and O.P. is bound to compensate the charges for the purpose of compensating the loss incurred during the period of O.P's occupation into the public premises after determination of tenancy. It is further argued by SMPK that they are entitled to recover the loss sustained during O.P's occupation which includes loss of interest, recoverable in a similarly placed situation from a regular tenant /occupier over and above the permitted rate of interest as per law. It is the specific argument on behalf of SMPK that 15% per annum upto 18.9.1996 and thereafter @ 18% per annum (rate of rate of interest) have been specified in the Official Gazette in pursuance of the



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VS
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statutory mandate under the Major Port Trusts Act, 1963 and such charges are equally payable by all the occupants/users of the Port Property. However, O.P vide their application dated 17.09.2008 submits that SMPK's demand for interest as shown in the Statement of Accounts is @ 18% after the period of determination till date and it would not be proper, legal and fair to charge any interest on mesneprofit or compensation as revised rent as per notification has already been demanded by SMPK and paid by O.P time to time pursuant to the direction of the Ld. Estate Officer. I have duly considered the submissions/ arguments made on behalf of the parties. It is my considered view that payment of interest is a natural fall out and one must have to pay interest in case of default in making payment of the principal amount due to be payable. Needless to mention that one of the basic conditions of short term lease that the lessee/ O.P. is liable to pay rents in timely manner to the lessor SMPK and any breach in such terms shall invariably attract the penal charges by way of interest. All canons of law permits charging of interest if payments are being made in delayed fashion. O.P Can't deny such liability of payment of interest as it has failed to pay the principal amount due to be payable by him more so this forum has no power in the matter of waiver of interest for which O.P. may like to pray before proper Authority of SMPK. As such, I have no hesitation to decide the issue in favour of SMPK and I have no bar to accept the claim of SMPK on account of Interest accrued for delayed payment.

However, as regards the extent of such claim of interest, I am to some extent convinced by O.P's submission. In my view, this Forum must exercise the power mentioned in Sec. 7 (2-A) of the P.P. Act, 1971 as amended in the year

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2015, which mentions that interest is to be charged as per the current rate of interest within the meaning of the Interest Act, 1978. The relevant portion of the amended Section 7 of the PP Act is reproduced below:-

"Section 7 - Power to require payment of rent or damages in respect of public premises

(2A) While making an order under sub-section (1) or sub-section (2), the estate officer may direct that the arrears of rent or, as the case may be, damages shall be payable together with compound interest at such rate as may be prescribed, not being a rate exceeding the current rate of interest within the meaning of the interest Act, 1978."

It may be noted that the words "compound interest" in the sub-section (2A) above were substituted by the said Notification for the original words "simple interest". I must mention that I am not convinced with the submission of SMPK that the rate notified by the TAMP, should be applied in the instant case. For the purpose of determining the current rate of interest within the meaning of the Interest Act, 1978, I have gone through the website of the State Bank of India as well as the Reserve Bank of India, and in my view, the rate of 6.90 % (compound interest) is applicable as the same is the present highest rate of interest as mentioned in the Interest Act, 1978.

In view of the discussion as above, having regard to the conduct of O.P., it is my considered view that natural

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justice will prevail, if O.P. is allowed to pay the amount of interest due at the above rate of 6.90%.

On **issue No. VII** i.e on the question of applicability of estoppel, I must say that according to law the question of estoppel 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 estoppel there must be an intention or permission to believe certain thing. There is no material to prove any intention or permission on the part of SMPK to consider/accept O.P's status into the Public Premises as "lessee" in respect of Proceedings No.824 of 2006 and to withdraw/cancel the notice dated 08.09.1969. As such, it is my considered view that the question of 'estoppel' as raised on behalf of O.P. does not arise at all in view of the facts and circumstances of the case.

Issues No. VIII & IX i.e issue of unauthorised construction and encroachment are taken up together for the sake of convenience. The sketch map bearing No.8039-K dated 21.09.2007 as annexed with the Inspection Reports dated 27.9.2007 and 5.12.2007 reveal that O.P. has encroached upon SMPK's land by way of walling up a portion of the SMPK's property adjacent to the property allotted to O.P. msg. about 9.256 sq.m.(shown in red hatch) and such encroachment has been admitted by the representative of O.P. In course of hearing, Advocate for O.P. submitted in favour of regularization of such encroachment by way of making payment to SMPK. The representative of SMPK on

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examination states that the encroachment as shown in the plan annexed to the report in question is very much known to O.P. and such encroachment (by way of walling up) is a permanent type of encroachment. It is also made clear that O.P. has failed to remove such encroachment. As there is clear admission on the part of O.P., such wrongful act on the part of O.P. is established beyond doubt. I have duly considered the provision of the registered lease deed executed by and between the parties on 25th July 1951, commencing from 1st August 1951, initially for two months and thereafter continuing on monthly tenancy basis. It is seen that O.P. was agreed to maintain the boundaries of the demise premises by masonry pillar and fencing to be built and erected at their own cost. In such a situation where there is a specific condition for grant of tenancy under monthly term lease in respect of maintenance of boundaries of the demise premises, the act of encroachment and construction of wall without permission from SMPK is undoubtedly a violation of the condition of tenancy as granted to O.P. under monthly term lease. In view of the discussion above, both the issues are decided against O.P.

With regard to **issue No.X**, there is no material to show the existence of sub-tenant as alleged by SMPK. I have duly considered the inspection report as filed by SMPK on 27.9.2007 and 5.12.2007. In such reports, there is no indication about unauthorized parting with possession by O.P. In fact nothing has been produced or no evidence has been laid on behalf of SMPK to substantiate the contention regarding unauthorized parting with possession by O.P. In such a situation the allegation

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Head Assistant
OFFICE OF THE LD ESTATE OFFICER
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[Signature]



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against O.P. regarding unauthorized parting with possession has no leg to stand.

Issues XI & XII are taken up together, as the issues are related with each other. On evaluation of the factual aspects involved in this matter, the logical conclusion which could be arrived at is that SMPK's notice dated 08.09.1969 as issued to O.P., demanding possession of port property from O.P. is valid and lawful and binding upon the O.P. 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 lease granted to O.P. was determined and the Port Authority by due service of notice to Quit demanded possession from O.P. SMPK's application for order of eviction is a clear manifestation of Port Authority's intention to get back possession of the premises. In course of hearing, the representative of SMPK submits that O.P. Can't claim its occupation as "authorized" without receiving any rent demand note. The lease was doubtlessly determined by SMPK's notice demanding possession, whose validity for the purpose of deciding the question of law Can't be questioned by O.P. Therefore, there Can't be any doubt that the O.P. was in unauthorized occupation of the premises, In such a situation, I have no bar to accept SMPK's contentions regarding enforceability of the notice dated 08.09.1969, on evaluation of the facts and circumstances of the case.

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for 16/11/22
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With this observation, I must reiterate that the notice to quit, demanding possession from O.P. as stated above have 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. As per law O.P. is bound to deliver up vacant and peaceful possession of the public premises in its original condition to SMPK after expiry of the period as mentioned in the said notice to quit.

"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 of ejection, 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.

NOW THEREFORE, SMPK's prayer for order of eviction against O.P. is hereby allowed and accordingly Department is directed to draw up formal order of eviction u/s 5 of the Act for the following reasons/grounds:

1. That contentions on behalf of O.Ps regarding non-maintainability of the proceedings have got no merit in the facts and circumstances of the case.
2. That O.P's contention regarding non-receipt of ejection notice dated 8.9.1969 has no support of law on evaluation of factual aspect involved in this matter.
3. That the contentions of O.P. with regard to non-maintainability of proceedings on the plea of "Estoppel" has got no merit in the facts and circumstances of the case.

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Head Assistant
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4. That O.P. Can't take the plea of time barred claim by SMPK, taking the shield of Limitation Act.
5. That O.P's contention regarding waiver of interest has got no merit in fact and circumstances of the case.
6. That O.P. has carried out unauthoroized construction by way of walling up of the encroached area of SMPK's land.
7. That O.P. has violated the condition of tenancy under monthly term lease by way of encroachment of SMPK's land.
8. That 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".
9. That the notice to quit dated 08.09.1969 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.
10. 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

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date of recovery of possession of the same. SMPK 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.


It is my considered view that a sum of Rs.27,62,621.60 (Rupees Twenty seven Lakh sixty two thousand six hundred twenty one and paise sixty only) for the respective Plates in question for the period 01.11.1969 to 30.11.2004 (both day inclusive) is due and recoverable from O.P. by the Port authority on account of damages/compensation for unauthorized occupation and O.P. must have to pay such dues to SMPK on or before

30.11.2022. It is clarified that such dues will attract compound interest @ 6.90 % per annum, which is the current rate of interest as per the Interest Act, 1978 (as gathered by me from the official website of the State Bank of India) from the date of incurrence of liability, till the liquidation of the same, as per the adjustment of payments, if any made so far by O.P., in terms of SMPK's books of accounts. I sign the formal order u/s 7 of the Act. I make it clear that SMPK is entitled to claim further 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 30.11.2004 as well, till such time the possession of the premises continues to be under the unauthorised occupation with the O.P. SMPK is directed to submit a statement comprising details of its calculation of damages after 30.11.2004, indicating there-in, the details of the rate of



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SYAMA PRASAD MOOKERJEE PORT

for  16/11/22



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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

(A.K Das)

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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THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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16/11/22
1001
Office Assistant
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