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AFFIXATION ON PROPERTY



THE ESTATE OFFICER, 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  
15, STRAND ROAD (4<sup>th</sup> Floor)  
KOLKATA - 700 001  
\*\*\*\*\*

Court Room At the 2<sup>nd</sup> Floor  
of Kolkata Port Trust's  
Head Office, Old Buildings  
15, Strand Road, Kolkata- 700 001.

REASONED ORDER NO. 18 DT. 03.02.2011  
PROCEEDINGS NO. 1008 OF 2007

BOARD OF TRUSTEES OF THE PORT OF KOLKATA  
-Vs-

M/S ARUN STEEL INDUSTRIES, O.P.NO.1  
M/S. LAHARU STEEL INDUSTRIES LTD., O.P.NO.2  
M/S. AGARWAL STEEL COMPLEX LTD.(ADDED PARTY)  
FORM - "B"

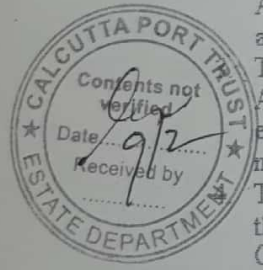
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ORDER UNDER SUB-SECTION (1) OF SECTION 5 OF THE PUBLIC PREMISES  
(EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1971

WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that M/S. ARUN STEEL INDUSTRIES, 17/1-C, ALIPUR ROAD, KOLKATA-700027 & AT 1, OIL INSTALLATION ROAD, KOLKATA-700088 AND M/S. LAHARU STEEL INDUSTRIES LTD., 17/1-C, ALIPUR ROAD, KOLKATA-700027 AND M/S. AGARWAL STEEL COMPLEX LTD., 308, CENTRAL PLAZA, 2/6, SARAT BOSE ROAD, KOLKATA-700020 are in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

1. That M/s. Arun Steel Industries has unauthorizedly transferred the leasehold interest to M/s. Laharu Steel Industries Ltd. in respect of the public premises in gross violation to the condition of lease as granted by the Port Authority.
2. That M/s. Arun Steel Industries and M/s. Laharu Steel Industries Ltd. AND M/s. Agarwal Steel Complex Ltd have failed to file reply to the show cause notice u/s.4 and 7 of the Act in spite of repeated chances.  
That M/s. Arun Steel Industries and M/s. Laharu Steel Industries Ltd. and M/s. Agarwal Steel Complex Ltd. have failed to bear any witness or adduce any evidence in support of their occupation as "authorized occupation" in spite of good number of chances apart from their failure to file reply to the Show Cause Notice/s. That occupation of M/s. Arun Steel Industries and anybody asserting any right through M/s. Arun Steel Industries, including occupation of M/s. Agarwal Steel Complex Ltd. have become unauthorized in view of Sec. 2(g) of the P.P. Act.
3. That statement of M/s. Agarwal Steel Complex Ltd. regarding non-affording of opportunity to file reply to the Show Cause Notice/s and non-formation of "opinion" are not at all a fact as per record and such statements are neither supported by fact nor supported by law.
4. That Port Authority is well within its jurisdiction to claim possession of the property in terms of the notice demanding possession dated 18.10.2005 and O.P. No.1, the actual allottee is liable to pay damages for unauthorized use and occupation of the Port property in question upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.
5. That M/s. Agarwal Steel Complex Ltd. (A.P.) has no authority under law to occupy the public premises and the status of M/s. Agarwal Steel Complex Ltd. is nothing but a "trespasser" to the public premises.
6. That M/s. Arun Steel Industries (O.P. No.1) and M/s. Laharu Steel Industries Ltd. (O.P. No.2) and M/s. Agarwal Steel Complex Ltd. (Added Party) are jointly and/or severally liable to pay damages to the Port Authority for their unauthorized act of occupying the Port property without having any authority under law AND Port Authority is entitled to claim damages upto the date of recovery of clear, vacant and unencumbered possession of the premises.



A copy of the reasoned order No.18 dated 03.02.2011 is enclosed which also forms a part of the reasons.

Please see on reverse

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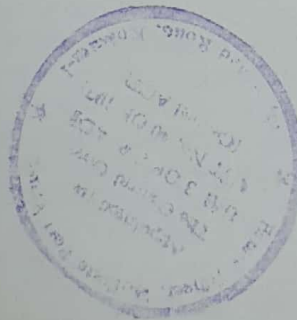
NOW, THEREFORE, in exercise of the powers conferred on me under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order the said M/S. ARUN STEEL INDUSTRIES, 17/1-C, ALIPUR ROAD, KOLKATA-700027 & AT 1, OIL INSTALLATION ROAD, KOLKATA-700088 AND M/S. LAHARU STEEL INDUSTRIES LTD.,17/1-C, ALIPUR ROAD, KOLKATA-700027 AND M/S. AGARWAL STEEL COMPLEX LTD.,308, CENTRAL PLAZA, 2/6, SARAT BOSE ROAD, KOLKATA-700020 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. ARUN STEEL INDUSTRIES, 17/1-C, ALIPUR ROAD, KOLKATA-700027 & AT 1, OIL INSTALLATION ROAD, KOLKATA-700088 AND M/S. LAHARU STEEL INDUSTRIES LTD.,17/1-C, ALIPUR ROAD, KOLKATA-700027 AND M/S. AGARWAL STEEL COMPLEX LTD.,308, CENTRAL PLAZA, 2/6, SARAT BOSE ROAD, KOLKATA-700020 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

Piece or parcel of land msg. 5146.17 sq.m. or thereabouts situated at Paharpur, Thana: West Port Police Station, Kolkata, Dist; South 24 Parganas, Registration District : Alipur. It is bounded on the north and west by Trustees' strip of open land reserved as margin of safety alongside the Trustees' Railway sidings, on the east by the Trustees' land previously leased to M/s. Victor Oil Company Ltd. and on the south partly by the Trustees' strip of open land reserved as margin of safety alongside the Trustees' Railway sidings and partly by Trustees' roadway.

Trustees means Board of Trustees of the Port of Kolkata.

Dated: 07.02.2011



*Shah*  
Signature & Seal of the  
Estate Officer.

COPY FORWARDED TO THE LAND MANAGER / LEGAL ADVISER, KOLKATA PORT TRUST FOR INFORMATION.

*Shah*  
9/2/11

Kolkata Port Trust  
Legal Department  
COMMENTS NOT VERIFIED



ESTATE OFFICER, 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

15, STRAND ROAD (4TH FLOOR), KOLKATA - 700 001 AND

COURT ROOM AT THE 2ND FLOOR (OLD BLDG.)

15 STRAND ROAD, KOLKATA - 700 001

PROCEEDINGS NO. 1003<sup>10</sup> OF 2007  
ORDER NO. 18 DATED 03.02.2011

**FORM "G"**

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

To

Shri/Smt./Km./M/s. Arun Steel Industries,  
17/1-C, Alipore Road, Kolkata-700027 AND  
At-1, Oil Installation Road, Kolkata-700088 AND  
M/s. Laharu Steel Industries Ltd.,  
17/1-C, Alipore Road,  
Kolkata-700027.

Whereas I, the undersigned, am satisfied that you are / were in unauthorised occupation  
of the Public Premises mentioned in the Schedule below :

An whereas by a written notice dated 06.03.2009 you are called upon to  
show-cause on or before 16.04.2009 why an order requiring you to pay of  
Rs. 70,94,605.14 (Rupees Seventy Lakhs Ninety four thousand Six  
hundred five and paisa fourteen only )  
being damages payable together with simple interest for unauthorised use and occupation of  
the said premises, should not be made.

And whereas I have considered your objection ~~and to the evidence produced by you~~

And whereas you have not ~~made any objections or~~ produced any evidence before the  
said date.

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. 70,94,605.14 (Rupees Seventy Lakhs Ninety four thousand  
Six hundred six five and paisa fourteen only ) assessed by me as damages on account of your  
unauthorised occupation of the premises to Kolkata Port Trust by 31.03.2011.

In exercise of the powers conferred by Sub-Section (2A) of Section 7 of the said Act, I  
also hereby require you to pay simple interest at the rate of 15% per annum on  
the above sum w.e.f. 01.01.1987 upto 18.09.1996 and thereafter @ 18% per annum till  
its final payment in accordance with Kolkata Port Trust's Notification Published in Calcutta  
Gazette/s as per Kolkata Port Trust's Rule.

PLEASE SEE ON REVERSE.

In the event of your refusal or failure to pay the damages or any instalment thereof within the said period or in the manner aforesaid, the amount will be recovered as an arrears of land revenue.

SCHEDULE

Piece or parcel of land msg. 5146.17 sq.m. or thereabouts situated at Paharpur. Thana West Port Police Station, Kolkata, Dist. South 24 Parganas, Registration District Alipore. It is bounded on the north and west by Trustees' strip of open land reserved as margin of safety alongside the Trustees' Railway Siding on the east by the Trustees' land previously leased to M/s. Victor Oil Company Ltd. and on the south partly by the Trustees' strip of open land reserved as margin of safety alongside the Trustees' Railway Siding and partly by Trustees' Roadway. Trustees' means the Board of Trustees for the Port of Kolkata.



Dated: 07-02-2011

*Jhosh*  
Signature and seal of the  
Estate Officer

COPY TO M/S. AGARWAL STEEL COMPLEX LTD. 308, CENTRAL PLAZA,  
2/6, SARAT BOSE ROAD, KOLKATA-700020.

Dated:

Signature and seal of the  
Estate Officer

# Estate Officer, Kolkata Port Trust

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

Proceedings No. 1008, 1008/D of 2007 Order Sheet No. 16

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s Arun Steel VS Industries  
M/s Laharu Steel Industries Ltd.  
M/s Agarwal Steel Complex Ltd (Added Party)  
FINAL ORDER

18

03.02.2011

The matter is taken up today for final disposal. It is the case of Kolkata Port Trust (KoPT), Applicant herein that M/s. Arun Steel Industries, O.P. No.1 herein came into occupation of the public premises in question on the strength of a long term lease executed on 18.02.1972 and registered by and between the parties before Sub-Registrar at Alipur, South 24 Parganas and M/s. Laharu Steel Industries Ltd., O.P. No. 2 herein is the unauthorized transferee of the premises in question by O.P. No.1 as M/s. Arun Steel Industries by way of Deed of Assignment transferred its right Title and interest in respect of the premises etc. without taking prior approval from the Port Authority in gross violation to the condition of tenancy as granted by the Port Authority. It is also the case that M/s. Agarwal Steel Complex Ltd. took unauthorized possession of the public premises from O.P. No.2 without having any authority under law etc. The factual aspect involved in this proceedings is required to be put forward in a nutshell in order to link up the chain of events leading to this proceedings. The Port Authority served ejection notice to M/s. Arun Steel

**BY ORDER OF  
THE ESTATE OFFICER  
KOLKATA PORT TRUST**

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Passed by the Estate Officer  
Kolkata Port Trust

Head Assistant  
Office of the Estate Officer  
KOLKATA PORT TRUST

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# Estate Officer, Kolkata Port Trust

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

Proceedings No. 1008, 1008/0 of 2007 Order Sheet No. 17

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Arun <sup>VS</sup> Steel Industries & Others

18  
03.02.2011

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M/s. Arun Steel Industries, O.P. No.1 being the recorded tenant of KoPT by notice bearing No. Lnd.4175/2/II/05/4730 dated 18.10.2005, asking O.P. No.1 to vacate the premises and failure on the part of O.P. No.1 to hand over possession to KoPT has given rise to the cause of action to KoPT. It is argued that O.Ps' occupation including occupation of anybody is unauthorized and O.P. is liable to pay damages for wrongful use and occupation of the Port property. This Forum of Law formed its opinion to proceed against O.Ps and issued Show Cause Notice u/s.4 and u/s.7 of the Act both dated 06.03.2009 to O.P. No.1 & O.P. No.2 for adjudication of the prayer of KoPT regarding issuance of order of eviction and recovery of damages as prayed for vide their application dated 19.06.2007. It reveals from record that O.P. No.1 and O.P.No.2 failed to appear before this Forum of Law in spite of notice to all person/s interested into the property published in Newspaper "The Telegraph" dated 16.06.2009. It is seen that on 14.05.2009, one Krishnendu Chatterjee, expressing himself as an employee of M/s. Agarwal Steel Complex Ltd. appeared and intimated that O.P. No.2 is known as M/s. Agarwal Steel Complex Ltd. (Added Party/A.P.)

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# Estate Officer, Kolkata Port Trust

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

Proceedings No. 1008, 1008/D of 2007 Order Sheet No. 18

**BOARD OF TRUSTEES OF THE PORT OF KOLKATA**

**VS**  
M/s. Arun Steel Industries & Others

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(Added Party/A.P.) and present address of O.P. No.2 is not known to him. In all the dates of hearing fixed up before this Forum of Law, the Added Party/A.P. appeared and there were no representation from O.P. No.1 and O.P. No.2. The Added party was represented by Advocate. I am satisfied with the service of notice to all concerned as service of notice/s were effected through postal service, affixation of notice on the property and publication of notice in Newspaper as well in order to invite attention to all concerned. It is evident from record that prayer for addition of party to this proceedings by M/s. Agarwal Steel Complex Ltd. was allowed by order dated 16.09.2009 and A.P. was directed to file reply to the Show Cause Notice/s on or before 22.10.2009. It is also evident that a statement of accounts in respect of KoPT's claim for the property in question against O.P. No.1 was handed over to A.P. on the prayer from the representative of A.P. Admittedly, A.P. came into possession of the property by way of arrangement with and control over M/s. Laharu Steel Industries Ltd. I have duly gone through the petition of the Added Party as filed on 16.09.2009, 03.12.2009 and 13.05.2010. I have duly considered O.Ps' application dated

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18  
03.02.2011

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Proceedings No. 1008, 1008/D of 2007 Order Sheet No. 19

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Arun Steel Industries & Others, <sup>VS</sup>

18  
03.02.2011

Contd..from pre-page..

application dated 27.05.2010 in the context of A.P's petitions. As nobody from O.P. No.1 and O.P. No.2 appeared before this Forum of Law in spite of sufficient service of notice to all concerned, the hearing was concluded. After consideration of the submissions/arguments made on behalf of the parties, I think following issues have come up for adjudication.

1. Whether O.Ps. No.1&2 can claim their occupation as "authorized occupation" or not.
2. Whether A.P's statement regarding non-affording of opportunity to file reply to the Show Cause Notice/s and non-formation of "opinion" has got any merit or not.
3. Whether M/s. Agarwal Steel Complex Ltd. (A.P.) has got any right to hold the property as "authorized occupant" of the public premises or not.
4. Whether the ejection notice, demanding possession from M/s. Arun Steel Industries, O.P. No.1 by the Port Authority is valid, lawful and binding upon the parties (including A.P.) or not.

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KOLKATA PORT TRUST



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



Proceedings No. 1008, 1008/D of 2007 Order Sheet No. 20

**BOARD OF TRUSTEES OF THE PORT OF KOLKATA**

**VS**

M/s. Arun Steel Industries & Others

18  
03.02.2011

Contd..from pre-page..

5. Whether O.Ps No.1&2 are liable to pay damages for unauthorized use and occupation of the public premises or not.

On Issue No.1, I have no other alternative but to declare O.Ps' occupation as "unauthorized" in view of Sec.2(g) of the P. P. Act. In fact, I do not find any scope for adjudication of any matter connected with O.Ps' right, whatever the nature it may be to occupy the premises as there is no reply to the Show Cause Notice/s in spite of sufficient chances. The statutory mandate before issuance of order u/s.5 of the Act being complied with, I have no hesitation to issue order of eviction u/s.5 of the Act against O.Ps. I have also no hesitation in my mind to allow the prayers of KoPT against O.Ps so far as it relates to order of eviction u/s.5 of the Act is concerned. At the cost of repetition I must say that scope for adjudication of any matter begins with filing of reply to the Show Cause Notice u/s.4 of the Act and as there is no reply to the Show Cause Notice, I am left with no other alternative but to issue order of eviction against O.Ps, allowing the prayers made on behalf of Port Authority. As such, the issue is decided clearly against O.P.No.1 and O.P. No.2.

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# Estate Officer, Kolkata Port Trust

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

Proceedings No. 1008, 1008/D of 2007 Order Sheet No. 21

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Arun Steel VS Industries & Others

18  
03.02.2011

Contd..from pre-page..

Issues No.2&3 are taken up together for the sake of convenience as the issues are related with each other that is to say each issue has direct impact over the other. It is a settled question of law that in case an original allottee/lessee is declared unauthorized occupier, anybody asserting any right through that allottee/lessee or ex-lessee has also become unauthorized in all sense of law. It is not a disputed matter of fact that lease in respect of the property in question situated at Oil Installation Road, Paharpur, Kolkata in favour of M/s. Arun Steel Industries expired long back, even if the optional period (two options for renewal for 5 years 10 months each) is taken into consideration. It is the case of Kolkata Port Trust that lease period expired on and from 31.12.1986 as O.P. No.1 (original allottee) was granted lease for 5 years 10 months with effect from 01.03.1971. It is the case of A.P. that by deed of assignment/transfer, O.P. No.2 purchased the leasehold interest in respect of the property from O.P. No.1 and A.P. by virtue of an arrangement with O.P. No.2 came into possession of the property and still under total control of the premises. Nothing has been disclosed whether KoPT had consented to such occupation of M/s. Laharu Steel Industries Ltd.,

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**BY ORDER OF  
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KOLKATA PORT TRUST

# 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. 1008, 1008/D of 2007 Order Sheet No. 22

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Axun Steel <sup>VS</sup> Industries & Others

18  
03.02.2011

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M/s. Laharu Steel Industries Ltd., O.P. No.2 or not. Rather the original lease deed executed and registered by and between O.P. No.1 and Port Authority specifically provides under lessee's covenant (read O.P. No.1) that O.P. No.1 shall not assign, transfer, under-let or part with the possession of the demised land or any part thereof without the prior consent in writing from the Commissioners (read KoPT). It is also provided in the said lease deed that in case the permission is granted it may be on such terms and conditions as the Port Authority may think fit and in case of refusal of permission KoPT should not be called upon to assign any reason for such refusal. Such provision in the original lease deed executed on 18.02.1972 by O.P. No.1 and KoPT is very much instrumental in deciding the status of O.P. No.2 and A.P. into the public premises. No case has been made out whether O.P. No.1 took any permission from the Port Authority for effecting such assignment/transfer in favour of O.P. No.2. In other words in absence of any permission from the Port Authority for transfer of leasehold interest in favour of O.P. No. 2, I am inclined to hold that O.P. No.2's occupation is unauthorized in all sense of law and any arrangement by virtue of which A.P.

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# Estate Officer, Kolkata Port Trust

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Proceedings No. 1008, 1008/D of 2007 Order Sheet No. 23

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Arun <sup>VS</sup> Steel Industries & Others

18  
03.02.2011

Contd..from pre-page..

which A.P. claiming its occupation into the Port property is also unauthorized in all sense of law. Arrangement made by A.P., if any, (no material has been produced on behalf of A.P. in spite of sufficient chances as it reveals from record) has no sanctity of law as O.P. No.2 has no authority under law to occupy the premises by virtue of the deed of transfer/assignment by O.P. No.1 as O.P. No.1 is incompetent to transfer the leasehold interest in favour of O.P. No. 2 without written permission from the Port Authority as is required under the contractual provision of the executed lease deed in question.

Once parties enter into a contract then every word stated therein has to be given its due meaning. No part can be considered as redundant unless it is contrary to any statute. Every word has to be given due importance/weightage which reveal the rights and obligations of the parties. Sec.108 of the Transfer of Property Act imposes no restriction on the right of the parties to enter into a contract and stipulate terms and conditions and restriction of their own choosing. In fact Sec.108 expressly permits conditions/contract to its provision as it starts with the word "in absence of the contract and local usage to the contrary."

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# Estate Officer, Kolkata Port Trust

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Proceedings No. 1008, 1008/D of 2007 Order Sheet No. 24

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Arun Steel <sup>VS</sup> Industries & Others

Contd.. from pre-page..

In the light of the discussion above, I am very much confident about the breach of lease terms and conditions on the part of O.P. No.1 in its act of transferring leasehold interest in favour of O.P. No.2 without prior approval/consent from the Port Authority and I have no hesitation in mind to come into conclusion that occupation of O.P. No.2 is by virtue of wrongful/unlawful transfer (that is to say not in accordance with law as per the provision of the Mother Lease Deed in question) which is totally unauthorized without having any authority under law. I must reiterate that if the principal's (O.P. No.1) occupation is unauthorized, anybody asserting any right through O.P. No.1 has become unauthorized and if occupation of O.P. No.2 is unauthorized in all sense of law as discussed above, Added Party's (A.P.) occupation is also unauthorized in all sense of law and I am very much confident in holding that Added Party's status into the Port property is not only unauthorized but also such occupation can be equated with that of a "trespasser" to the public premises in strict sense of law.

Now, to deal with the statement of A.P. regarding non-affording of opportunity to file reply to the Show Cause Notice/s and non-formation of

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18  
03.02.2011

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## Estate Officer, Kolkata Port Trust

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

Proceedings No. 1008, 1008/D of 2007 Order Sheet No. 25

### BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Arun Steel Industries & Others <sup>VS</sup>

18  
03.02.2011

Contd..from pre-page..

non-formation of "opinion" to proceed against O.Ps/A.P. etc., I must say that A.P.'s statements in this regard are not at all supported by fact and law as well. It reveals from record that A.P.'s prayer for addition of party was allowed by order dated 16.09.2009 and O.P. was directed to file reply to the Show Cause Notice/s on or before 22.10.2009. On 22.10.2009, a statement of accounts in respect of KoPT's claim for the public premises was handed over to A.P. though no reply to the Show Cause Notice/s was filed. On 22.10.2009, direction was given for fixation of date for production of documents, evidence and hearing on 12.11.2009. No reply to the Show Cause Notice/s was filed on behalf of A.P. on 12.11.2009 and the date for filing reply to the Show Cause Notice/s was extended upto 03.12.2009. Thereafter, date was fixed for consideration on 17.12.2009, 14.12.2009, 04.02.2010, 04.03.2010 and 22.04.2010. No reply to the Show Cause Notice/s was filed on behalf of A.P. in spite of repeated chances and liberty was given to file written notes on argument to A.P. on 22.04.2010. In view of the circumstances, what is evidence from the record itself, I do not find any merit to the statement made by A.P. Good number of chances has been given to A.P. for filing reply to the Show Cause

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**BY ORDER OF  
THE ESTATE OFFICER  
KOLAKTA PORT TRUST**

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KOLKATA PORT TRUST



# 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. 1008, 1008/D of 2007 Order Sheet No. 26

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Arun Steel Industries <sup>VS</sup> & Others

18  
03.02.2011

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Show Cause Notice/s. This Forum of Law is under obligation to adjudicate the matters under P. P. Act as expeditiously as possible to fulfill the object of the enactment that is to say providing speedy machinery for eviction of unauthorized occupants from the public premises etc. I am consciously of the view that A.P. prefers to continue in occupation of a public premises without satisfying this Forum of Law regarding their authority to occupy the premises and there is no obstruction to the streamline of justice as per provision of the P.P. Act which provides a complete code for adjudication of the matters under the Act. I have seriously considered A.P's statement with regard to "non-formation of opinion" for initiation of proceedings under the Act. It is worthy to point out that M/s. Agarwal Steel Complex Ltd. (A.P.) was added to this proceedings which was initiated against O.P. No. and O.P. No.2. I took hearing of KoPT on 29.01.2009 and 19.02.2009 before formation of my opinion to proceed against O.P. No.1 & O.P. No.2. Shri K. Dhar, Land Inspector, KoPT identifies the relevant photocopies of the notice including registered lease deed between Arun Steel Industries & KoPT. Upon consideration of all the papers/documents as brought before me by the Port Authority, I formed my opinion to

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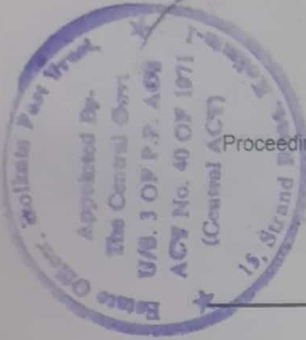
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Proceedings No. 1008, 1008/D of 2007 Order Sheet No. 27

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Arun Steel Industries & Others

18  
03.02.2011

Contd..from pre-page..

opinion to proceed against O.P. No.1 and O.P. No.2 under the relevant provisions of the Act. Mr. Ashok Bhowmick, Advocate appeared on 02.07.2009 on behalf of A.P. and thereafter, one Krishnendu Chatterjee appeared on behalf of A.P. on 14.05.2009, 21.05.2009, 20.08.2009, 10.09.2009, 16.09.2009 & 22.10.2009. In course of hearing, A.P. prayed for regularization of their occupation and by petition filed on 03.12.2009, A.P. was agreed to liquidate KoPT's dues/charges amounting to Rs.79,18,537.27 on certain terms and conditions. Thereafter, on several dates competent representatives from A.P's side appeared before this Forum of Law. The Added Party's prayer for addition of party to this proceedings was allowed upon consideration of the prayer of A.P. as interested party in respect of the property being the actual occupant. When opinion for proceedings against O.P. No.1 and 2 was duly formed on the basis of materials on record and A.P. intends to add as a party to this proceedings being an interested party to this proceedings, I do not find any substance to the statement of A.P. regarding "non-formation of opinion" as alleged in accordance with law in the facts and circumstances of the case. In fact, no one prevented them to file objection or reply to the

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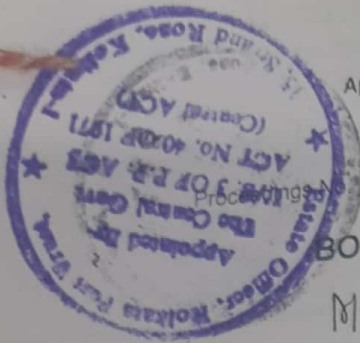
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1008, 1008/D of 2007 Order Sheet No. 28

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS  
M/s. Arun Steel Industries & Other,

18  
03.02.2011

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to the Show Cause Notice/s to demolish the grounds as stated under the Show Cause Notice u/s.4 of the Act and I do not find any merit to the submissions/arguments with regard to "non-formation of opinion" upon due consideration of the matter. In my view, there is no obstruction to the stream of justice and as such, there is no violation of natural justice to anybody. Hence, the issues are decided against A.P.

With regard to Issue No.4, there is little scope for discussion as the elaborate discussion made against the foregoing issues definitely lead to the conclusion that Port Authority is very much within its jurisdiction in demanding possession from O.P.No.1 and such demand for possession by notice dated 18.10.2005 is very much valid, lawful and binding upon the parties. As per law, O.P. No.1 was bound to deliver back possession of the premises to the Port Authority in its original condition after expiry of the lease period in question and non-delivery of such possession by O.P. No.1 to KoPT in spite of specific provision for yielding up of the demise land at the expiry or determination of the term in the registered lease deed executed on 18.02.1972 (Mother lease) in question is definitely a genuine ground for cause of action on the part of the Port Authority for

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(Eviction of Unauthorised Occupants) Act 1971

Proceedings No. 1008, 1008/D of 2007 Order Sheet No. 29

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S. Arun Steel Industries & Others

18  
03.02.2011

Contd..from pre-page..

Authority for recovery of possession of the property. As such, the notice of ejection dated 18.10.2005, demanding possession from O.P. No.1 by KoPT has its all strength of law and O.P. No.2 and A.P., whoever may be in possession of the Port premises are bound to deliver back possession of the public premises to the Port Authority. I therefore, hold that validity or legality of serving notice dated 18.10.2005 cannot be questioned by anybody including A.P. as Port Authority has acted legally and well within its jurisdiction in serving such notice. Hence the issue is clearly decided in favour of KoPT.

This takes me to the question of damages to be payable for wrongful use and occupation of the Port property under Issue No.5. The logical conclusion which could be arrived at on the basis of the discussions as aforesaid that the Port Authority is very much within its authority to demand possession of the public premises from O.P. No.1, after expiry of the lease period in terms of the notice to Quit dated 18.10.2005 and the occupation of O.P. No.1 including any person/s in occupation of the public premises is unauthorized as per provisions of P.P. Act.

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Proceedings No. 1008, 1008/D Of 2007 Order Sheet No. 30

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Arun Steel <sup>VS</sup> Industries & Others

Contd..from pre-page..

The properties of the Port Trust are coming under the purview of "public premises" as defined under the Act. Now the question arises 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. As per Transfer of Property Act, a lease of immoveable property determines either by efflux of time limited thereby or by implied surrender or on expiration of notice to determine the lease or to quit or of intention to quit, the property leased, duly given by one party to another. Here, the tenancy of O.P. No.1 under long term lease in question was expired long back. The Port Authority by service of notice dated 18.10.2005 demanded possession from O.P. No.1 and did not recognize O.P. No.1 as tenant by way of not issuing rent demand

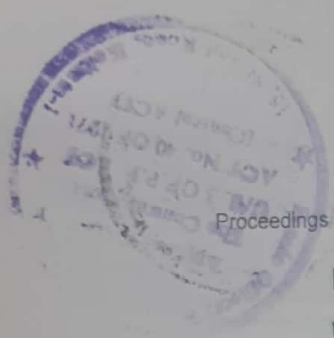
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Proceedings No. 1008, 1008/D of 2007 Order Sheet No. 31

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Arun Steel VS Industries & Others

18  
03.02.2011

Contd..from pre-page..

rent demand after expiry of the lease period in question. "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 lease deed in question and that too after expiry of the period as mentioned in the said notice of ejectment as the case may be, O.P. No.1 has lost its authority to occupy the public premises, on the evaluation of factual aspect involved into this matter and O.P.No.1 is liable to pay damages for such unauthorized use and occupation. To take this view, I must say that privity of estate with O.P. No.1 comes to end after expiry of the contractual period of lease in question as granted by the Port Authority and O.P. No.1 is under legal obligation to hand over possession to KoPT as landlord of the premises in its original condition and failure on the part of O.P. No.1 in discharging its statutory obligation under Transfer of Property Act must lead to the conclusion that O.P. No.1 is liable to pay damages for its wrongful act as discussed above. To take this view, I am fortified by the decision/observation of the Hon'ble Supreme

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Proceedings No. 1008, 1008/D of 2007 Order Sheet No. 32

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s Arun Steel Industries & Others VS Industries & Others

18  
03.02.2011

Contd. from pre-page..

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 judgement reads as follows.

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.

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Undoubtedly, the tenancy under lease is governed by the provisions of the Transfer of Property Act 1882 and there is no scope for denial of the same.

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Proceedings No. 1008, 1008/D of 2007 Order Sheet No. 33

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S. Arun Steel Industries <sup>VS</sup> & Others

18  
03.02.2011

Contd..from pre-page..

In course of hearing, the representatives of KoPT states and submits that Port Authority never consented in continuing O.P. No.1's occupation whatever the nature it may be into the public premises (may it be through its agent like O.P. No.2 and A.P.) and never expressed any intention to accept O.P. No.1 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. No.1 cannot claim its occupation as "authorized" without receiving any rent demand note. The question of "Holding Over" cannot arise in the instant case as the Port Authority never consented to the occupation of O.P. No.1 and anybody asserting any right through O.P. No.1 including the existing occupant like A.P.

In the instant case there was no consent on the part of the Port Authority either by way of accepting rent from O.P. No.1 or by any other mode, expressing the assent for continuance in such occupation after expiry of the period of lease in question or after expiry of the period as mentioned in the notice to vacate the premises. The Port Authority has a definite legitimate claim to get its revenue involved into this matter as per

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(Eviction of Unauthorised Occupants) Act 1971

Proceedings No. 1008, 1008/D of 2007 Order Sheet No. 34

**BOARD OF TRUSTEES OF THE PORT OF KOLKATA**

**M/S. Arun Steel Industries & Others**

Contd..from pre-page..

18  
03.02.2011

as per the KoPT's Schedule of Rent Charges for the relevant period and O.P. No.1 and anybody like A.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 judgement report 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. 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. No.1 is bound to deliver up vacant and peaceful possession of the public premises to KoPT after expiry of the period of lease in question or after expiry of the period

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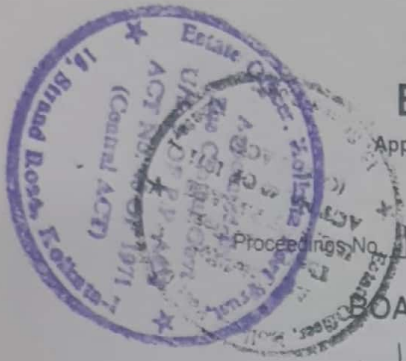
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Proceedings No. 1008, 1008/D of 2007 Order Sheet No. 35

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S. Arun Steel Industries & others <sup>VS</sup>

18  
03.02.2011

Contd..from pre-page..

the period as mentioned in the notice to Quit in its original condition (subject to applicability in view of the foregoing discussion). I have no hesitation to observe that O.Ps' and A.Ps' act in continuing occupation is unauthorized and O.P. No.1 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. No.1 as stated above have been validly served upon O.P. in the facts and circumstances of the case and such notices are valid, lawful and binding upon the parties. In view of the discussions above, the issue is decided in favour of KoPT.

In view of the foregoing, I am left with no other alternative but to allow the prayer of KoPT for order of eviction against O.P. No.1 as prayed for on the following reasons/grounds.

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

Proceedings No.

1008, 1008/D of 2007 Order Sheet No. 36

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Arun Steel <sup>VS</sup> Industries & others

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18  
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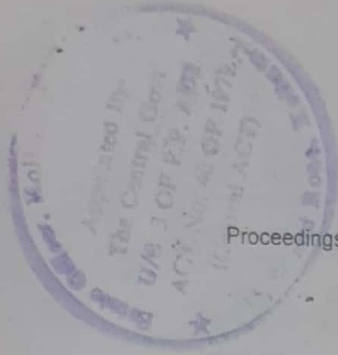
1. That M/s. Arun Steel Industries has unauthorizedly transferred the leasehold interest to M/s. Laharu Steel Industries Ltd. in respect of the public premises in gross violation to the condition of lease as granted by the Port Authority.
2. That M/s. Arun Steel Industries and M/s. Laharu Steel Industries Ltd. AND. M/s. Agarwal Steel Complex Ltd have failed to file reply to the show cause notice u/s.4 and 7 of the Act in spite of repeated chances.
3. That M/s. Arun Steel Industries and M/s. Laharu Steel Industries Ltd. and M/s. Agarwal Steel Complex Ltd. have failed to bear any witness or adduce any evidence in support of their occupation as "authorized occupation" in spite of good number of chances apart from their failure to file reply to the Show Cause Notice/s.
4. That occupation of M/s. Arun Steel Industries and anybody asserting any right through M/s. Arun Steel Industries, including occupation of

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Proceedings No. 1008, 1008/D of 2007 Order Sheet No. 37

## BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Arun Steel <sup>VS</sup> Industries & Others

18  
03.02.2011


Contd..from pre-page..

occupation of M/s. Agarwal Steel Complex Ltd. have become unauthorized in view of Sec. 2(g) of the P.P. Act.

5. That statement of M/s. Agarwal Steel Complex Ltd. regarding non-affording of opportunity to file reply to the Show Cause Notice/s and non-formation of "opinion" are not at all a fact as per record and such statements are neither supported by fact nor supported by law.

6. That Port Authority is well within its jurisdiction to claim for possession of the property in terms of the notice demanding possession dated 18.10.2005 and O.P. No.1, the actual allottee is liable to pay damages for unauthorized use and occupation of the Port property in question upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

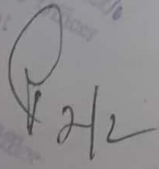
7. That M/s. Agarwal Steel Complex Ltd. (A.P.) has no authority under law to occupy the public premises and the status of M/s. Agarwal Steel Complex

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(Eviction of Unauthorised Occupants) Act 1971

Proceedings No.

1008, 1008/D of 2007 Order Sheet No. 38

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

M/s. Arun Steel Industries & others

Contd..from pre-page..

M/s. Agarwal Steel Complex Ltd. is nothing but a "trespasser" to the public premises.

ACCORDINGLY, Department is directed to draw up formal order of eviction u/s.5 of the Act as per Rule made thereunder, 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 occupation of the property against O.P. No.1 in accordance with Law up to the date of recovery of possession of the same.

KoPT is directed to submit a report regarding its claim on account of damages against O.P. No.1, indicating therein the details of the computation of such damages with the rate of charges so claimed for the respective period (details of computation with rates applicable for the relevant period) for my consideration in order to assess the damages as per the Act and the Rules made thereunder.

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# Estate Officer, Kolkata Port Trust

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

Proceedings No. 1008, 1008/D of 2007 Order Sheet No. 39

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Arun Steel Industries & Others  
VS

18  
03.02.2011

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Department is directed to draw up formal order for damages to be payable by O.P.No.1 for unauthorized use and occupation of the public premises for the period 01.01.1987 to 31.01.2006 for Rs.70,94,605.14. This amount is also payable by O.P. No.1 with accrued interest from the date of incurrance of their liability @ 15% per annum upto 18.09.1996 and thereafter @18% per annum as per KoPT's Rule till its final payment. Accordingly, Department is directed to draw up formal order u/s.7 of the Act for recovery of such damages as per Rule. O.P. No.1 must have to pay the amount of such damages to Kolkata Port Trust by 31.03.2011. It is made clear that O.P. No.1 is also liable to pay damages for the period beyond 31.01.2006 till recovery of possession of the premises by Kolkata Port Trust. In my considered view, KoPT's claim for principal amount of Rs.99,78,113.09 upto 31.10.2009 apart from interest for delayed payment of Rs.1,16,31,175/- has founded with reasons as it is gathered in course of hearing that the charges so claimed by KoPT is on the basis of the Schedule of Rent Charges published under the Authority of Law as per provisions of the Major Port Trust Act 1963 which is applicable to all user/occupier of the Port property in a similarly placed situation.

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(Eviction of Unauthorised Occupants) Act 1971

Proceedings No. 1008, 1008/D of 2007 Order Sheet No. 40

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Arun Steel Industries <sup>VS</sup> & others

Contd..from pre-page..

However, the order for payment of damages as stated above has been made u/s.7 of the Act for certain period as per notice u/s.7 of the Act dated 06.03.2009. It is also my considered view that such charges on account of damages are jointly and/or severally payable by O.P. No.2 and the Added Party as well due to the unauthorized act of use and occupation of the Port property by them. I make it clear that Kolkata Port Trust is entitled to claim damages against O.P. No.1 for unauthorized use and occupation of the public premises upto the date of recovery of clear, vacant and unencumbered possession of the same in accordance with Law. KoPT is accordingly directed to submit a statement comprising details of its calculation of damages indicating therein the details of the rate of such charges together with the basis on which such charges are claimed against O.P. No.1 for my consideration for the purpose of assessment of damages as per Rule made under the Act. All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL

(S. GHOSH)  
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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