



Syama 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 Unauthorized Occupant) Act 1971  
OFFICE OF THE ESTATE OFFICER  
6, Fairley Place (1st Floor)  
KOLKATA - 700 001  
\*\*\*\*\*

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

REASONED ORDER NO. 49 DT 02.02.2022  
PROCEEDINGS NO. 1024 OF 2009

**BOARD OF TRUSTEES OF THE PORT OF KOLKATA  
-Vs-  
M/s Calcutta Investment Company (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 Calcutta Investment Company of 14, Netaji Subshas Road, Kolkata-700001 AND ALSO AT 3/1, Loudon Street 4<sup>th</sup> Floor, Kolkata-700017** is in unauthorized occupation of the Public Premises specified in the Schedule below:

**R E A S O N S**

1. That O.P's contention regarding non-maintainability of the proceedings in view of pendency of their suit for specific performance of contract before the Ld. Civil Judge (Jr. Division) at Alipore is not tenable under law.
2. The O.P or any other person/occupant has failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation".
3. That O.P's failure to accept KoPT's offer for grant of lease for a period of 15 years vide KoPT's letter No. Lnd.2377/V dated 04.09.1997 at the relevant point of time is a clear manifestation of unwillingness on the part of O.P. to continue in occupation of the Public Premises with valid grant from the Port Authority. In fact, O.P. cannot dictate the terms and conditions of KoPT for allotment in their favour.
4. That the O.P has parted with Possession of the subject premises to third party in violation of the condition of such lease.
5. That the instant Proceeding is not barred by the principle of Estoppel.
6. The Provision of Rent Control Act is not applicable to this proceeding.
7. That O.P's plea regarding non-maintainability of the proceedings due to Govt. Guidelines dated 30.05.2002 in question has got no merit in the facts and circumstances of the case.
8. That O.P's point of maintainability on issuance of Show Cause Notice u/s 7 of the Act for realisation of damages without declaring O.P's status as "unauthorised occupant" has got no merit in the context of factual aspect involved in this matter and law as well.
9. That O.P. cannot take the shield of Limitation Act to defend KoPT's claim for compensation charges for use and enjoyment of the Public Premises while acknowledging the Jural relationship as debtor.

**PLEASE SEE ON REVERSE**





(2)

10. That the notice to quit dated 27.03.2006 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.
11. 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.

A copy of the reasoned order No. 49 dated 22.02.2022 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 Calcutta Investment Company of 14, Netaji Subshas Road, Kolkata-700001 AND ALSO AT 3/1, Loudon Street 4<sup>th</sup> Floor, Kolkata-700017** 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 Calcutta Investment Company of 14, Netaji Subshas Road, Kolkata-700001 AND ALSO AT 3/1, Loudon Street 4<sup>th</sup> Floor, Kolkata-700017** and all other persons concerned are liable to be evicted from the said premises, if need be, by the use of such force as may be necessary.

#### SCHEDULE

**Plate No - D-286/A**

The piece or parcel of land measuring about 3245.19 sq.m or thereabouts is situate at Hide Road, Thana-South Port Police Station, District-24 Parganas(South), Regn. Dist. Alipore. It is bounded on the North by the Trustees' land used as passage leading from Hide Road on the East by the Trustees land leased to American Refrigerator(Pvt) Ltd. On the South by Goragacha Road(Old) on the West by Hide Road. Trustee's means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata).

Dated: 02.02.2022

  
Signature & Seal of  
Estate Officer.

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





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

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

(Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-Central Act)  
Public Premises (Eviction of Unauthorised Occupants) Act 1971

OFFICE OF THE ESTATE OFFICER  
6, Fairlie Place (1st FLOOR) KOLKATA-700001

\*\*\*\*\*

Court Room at the 1st Floor

Of Kolkata Port Trust's

Fairlie Warehouse

6, Fairlie Place, Kolkata- 700 001.

PROCEEDINGS NO.1024/D OF 2009

ORDER NO.49 DATED: 02.02.2022.

**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 Calcutta Investment Company**

**14, Netaji Subshas Road,**

**Kolkata-700001**

**AND ALSO AT**

**3/1, Loudon Street 4<sup>th</sup> Floor,**

**Kolkata-700017**

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 02.03.2010 you are called upon to show cause on or before 01.04.2010 why an order requiring you to pay damages of Rs.53,12,839.78 (Rupees Fifty three Lakh twelve thousand eight hundred thirty nine and paise seventy eight Only) for Plate No.D-286/A 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 evidence produced before this Forum;

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.53,12,839.78 (Rupees Fifty three Lakh twelve thousand eight hundred thirty nine and paise seventy eight Only) for Plate No.D-286/A assessed by me as damages on account of your unauthorised occupation of the premises for the period from 01.08.1995 to 31.07.2006 (both days inclusive) to SMP, Kolkata by 22.02.2022.

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 @ 6.20 % per annum on the above sum till its final payment being the current rate of interest as per the Interest Act, 1978.

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

### SCHEDULE

#### **Plate No - D-286/A**

The said piece or parcel of land measuring about 3245.19 sq.m or thereabouts is situate at Hide Road, Thana-South Port Police Station, District-24 Parganas(South), Regn. Dist. Alipore. It is bounded on the North by the Trustees' land used as passage leading from Hide Road on the East by the Trustees land leased to American Refrigerator(Pvt) Ltd. on the South by Goragacha Road(Old) on the West by Hide Road. Trustee's means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata).

Date 02.02.2022.

Signature & Seal of the  
Estate Officer.

COPY FORWARDED TO THE ESTATE MANAGER, SMP, 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

Proceeding No. 49,1024/D of 2009 Order Sheet No. 49

### BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/s. Calcutta Investment Company. <sup>VS</sup>

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02.02.2022

#### FINAL ORDER

The matter is taken up today for final disposal. The factual aspect involved in this matter is required to be put forward in a nutshell in order to link up the chain of events leading to this proceeding. It is the case of Syama Prasad Mookerjee Port, Kolkata [erstwhile Kolkata Port Trust], hereinafter referred to as KoPT, Applicant herein, that land msg. 3245.19 Sq.m or thereabouts situated at Hide Road, Thana- South Port Police Station, District-24 Pgs, comprised under Plate No. D-286/A was allotted to **M/s Calcutta Investment Company.**, O.P. herein, on long term Lease for 5 years w.e.f 01.08.1980 with two options of renewal under cover of a lease executed by both the parties on certain terms and conditions. It is argued on behalf of KoPT that after expiry of such lease on 31.07.1995, O.P. preferred to continue in wrongful occupation without paying charges for compensation for use and occupation of the same and also parted with possession of the said premises to rank outsider, in violation of terms of such tenancy.

In view of the aforesaid breaches committed by the O.P., KoPT had issued notice to quit being No. Lnd. 2377/V/Loose/06/1064 dated 27.03.2006 asking the O.P. to hand over clear, vacant, peaceful and unencumbered possession of the property to KoPT on 21.04.2006. But O.P. has failed and neglected to vacate/ hand over the possession of such premises to KoPT after service of the said Notice to Quit.

This Forum of Law formed its opinion to proceed against O.P. and issued Show Cause Notice 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 recovery of compensation etc.) all dated 02.03.2010 (vide Order No.02 dated 25.02.2010).

The said notice/s were sent through Speed Post/hand delivery to the recorded addresses of O.P. at 14, Netaji Subhas Road, Kolkata-700001 and also to 3/1, Loudon Street(4<sup>th</sup> Floor), Kolkata-700017. The Postal Services to the 1st mentioned

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

No. 1024, 1024/D of 2009. Order Sheet No. 50

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/s Calcutta Investment Company <sup>VS</sup>

recorded address of O.P returned undelivered to the Forum with a mark 'not Known'. However, the report of the Process Server dated 05.03.2010 depicts that said notice/s were served upon O.P's address personally on 05.03.2010 and due affixation were also made over the subject premises in question on the same day as per the mandate of the P.P Act.

On the schedule date of appearance and filing of reply to the Show Cause although no hearing was held but a petition dated 30.03.2010 on behalf of O.P. affirmed by one Soma Roychowdhury was found in the record. On 08.04.2010, Ld' Advocate of O.P appeared and filed his Vakalatnama before the Forum to represent the instant matter on behalf of O.P. During the course of hearing Ld' Advocate of O.P. referred such application dated 30.03.2010 and contended that a suit for Decree for specific performance of agreement for renewal of lease in respect of the premises for a period of 15 years with effect from 01.08.1995 is pending before the Ld. Civil Judge (Jr. Division at Alipore) being T.S. No. 80 of 2006 and there is no basis of the allegation against O.P. for creation of unauthorised sub-tenancy etc. He further contended that notice/s u/s 4 & 7 of the Act do not disclose any cause of action and the directive by way of guidelines issued by the Govt. of India on 19.02.1992 is very much applicable in respect of O.P's case and the entire proceeding deserve dismissal. On the other hand, the representative of KoPT raising a strong objection on the submission of O.P made a contrary submission in this regard. He submitted that after expiry of lease O.P's occupation could not be termed as authorized. Moreover O.P had used such land completely on a separate purpose other than the purpose for which such land was allotted to O.P. Hearing the submission of both parties & considering KoPT's observation as an essential one, the Forum thereafter gave a direction to KoPT for filing their reply on O.P's petition by 16.04.2010 and O.P was also directed to file their rejoinder by 23.04.2010. Thereafter, in the same hearing Forum gave a further direction to O.P for filing their reply to the Show Cause after including all such points of

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02.02.2022

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 Hearing Assistant  
OFFICE OF THE L.D. 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. 1024, 1024/D of 2009 Order Sheet No. 51

**BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

*M/s Calcutta Investment Company* <sup>VS</sup>

49  
02.02.2022

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

maintainability was raised by O.P in their previous application. By giving such direction, the Forum made it clear that as per the scheme of PP Act there was no bar in taking those points on maintainability in reply to the Show Cause. Thereafter on 13.05.2010, O.P did not appear before the Forum however, it appeared from the record that one Sushmita Nandy had received the copy of KoPT's reply on 05.05.2010 on behalf of Mr. Yadav. On 10.6.2010 expressing his ignorance about the receipt of KoPT's reply, Ld' Advocate of O.P filed an application for recalling the Order dated 13.05.2010 but KoPT made a strong objection on such submission of O.P. Thereafter on 10.06.2010, on the basis of submission of both the parties, Forum took a decision to hear out the matter in totality on the basis of O.P's petition dated 30.03.2010. Thereafter on 24.06.2010, Ld' Advocate of O.P again stressed on the primary decision of maintainability issue and KoPT submitted that there was no bar in inclusion of those points in their reply and no bar to hear the matter in its entirety. Hearing submission of both the parties, the Forum observed that the PP Act being a summary procedure, efforts should be made to continue with the adjudication process by filing reply to the Show Cause and to avoid piecemeal arguments of O.P. As prayed by O.P., sufficient time was allowed by the Forum thereafter and finally O.P filed their reply to the Show Cause on 11.11.2010 denying the claim of KoPT. KoPT also filed their rejoinder/comments thereafter on 15.11.2010 denying the averments of O.P's reply. Ld' Advocate of O.P on 02.12.2010, by filing their supplementary affidavit further pressed their submission on maintainability issue and argued on KoPT's consent in occupying the subject premises by O.P after expiry of the lease period. Thereafter on 12.05.2011, Ld' Advocate of O.P filed an application with a view to adduce oral evidence in support of their case and such prayer was allowed by the Forum and on 16.06.2011 & 07.07.2011 such examination in Chief and the Cross Examination by the Port Authority were conducted respectively. Thereafter, O.P was directed to file written Notes

*[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

No. 1024, 1024/D of 2009 Order Sheet No. 52

**BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

M/s Calcutta Investment Company, <sup>VS</sup>

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02.02.2022

of Arguments and such Written Notes of Arguments was filed on 23.02.2012. Subsequently on 10.03.2014 i.e almost two years later on the ground of de-notification of the predecessor Estate Officer, the matter was assigned to his successor and the Final order was reserved by him with a liberty to both the parties for filing their additional written notes on arguments under the changed circumstances. Thereafter on 21.04.2014 representative of O.P submitted on the talks of settlement of such disputes with KoPT however, the representative of KoPT argued that proposal of settlement with O.P, might be entertained by the appropriate authority of KoPT only upon liquidation of all dues/charges as payable by O.P. Thereafter on 24.04.2014 representative of O.P filed a liquidation Scheme along with a Cheque (being No.691071 dated 23.04.2014) for Rs.10 lakhs in order to liquidate the dues of KoPT on account of interest by installments. Thereafter, in view of such application of O.P., the Forum vide its order dated 02.05.2014 recalled its earlier order dated 10.03.2014 upon some conditions. The Forum along with this order made a further observation that KoPT should proceed with the matter in accordance with law in case of non compliance of such order by O.P. On 14.01.2015 KoPT filed an application to intimate the payment status of O.P and after perusing such application, the Forum gave a direction to KoPT for furnishing the actual dues on account of interest and the principal. Thereafter on 24.03.2015, after adjustment of three times penal charges when O.P's outstanding dues to KoPT become nominal, KoPT press their submission on unauthorized parting. Hearing the submission of KoPT, the Forum directed them to conduct a joint inspection on 06.05.2015 and to file a report thereon and accordingly such Joint inspection was held in presence of the representative of both the parties on 06.05.2015 and its Report dated 11.05.2015 was filed on 12.05.2015. On 12.05.2015 Forum gave a further direction to O.P for compliance of the payment Order and gave direction to both the parties for filing their respective written Notes of Arguments. Thereafter O.P filed their Written Notes of

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]*  
Deputy Assistant  
OFFICE OF THE ESTATE OFFICER  
**SYAMA PRASAD MOOKERJEE PORT**

*[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. 1024, 1024/D of 2009 Order Sheet No. 53

**BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

*M/s Calcutta Investment Company.* <sup>VS</sup>

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02.02.2022

By Order of:  
**THE ESTATE OFFICER**  
**SYAMA PRASAD MOOKERJEE PORT**  
CERTIFIED COPY OF THE ORDER  
PASSED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
*f* *02-02-22*  
Head Assistant  
OFFICE OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

Arguments on 26.05.2015. Subsequently on 15.03.2017 i.e after two years later, when the matter was again agitated before the Forum, it appeared that KoPT had also filed their written Notes of arguments on 06.07.2015. Thereafter on 29.03.2017, both the parties were directed to intimate the latest development of the instant matter before the Forum and the matter was placed before the undersigned on 13.06.2019. O.P filed another Written Notes of Arguments on 23.07.2019 and thereafter on 06.08.2019, KoPT also vide their application being No. Lnd.2377/VI/19/1289 dated 19.07.2019 submitted their views as regards the instant matter. Thereafter on 13.08.2019, when both the parties submitted that their arguments have already been completed & nothing new to place before the Forum, the matter was reserved for final order in presence of both the parties.

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

- I. Whether proceedings against O.P. is maintainable in view of pendency of suit for specific performance of contract as instituted by O.P. against KoPT before the Ld. Civil Judge (Jr. Divn. ) at Alipore or not;
- II. Whether issuance of notice under S. 4 is bad in Law due to contradictory grounds for issuance of such notice in connection with period of unauthorized occupation as contended by O.P. or not;
- III. Whether the O.P has parted with possession of said public premises to third parties or not;
- IV. Whether the instant proceeding is barred by the principles of Estoppel or not;
- V. Whether O.P.'s contention with regard to continuance in occupation after expiry of the period of lease as month to month tenant (on the basis of non-execution of lease deed as pleaded) without

*Dr*





**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

Proceeding No. 1024, 1024/D Of 2009 Order Sheet No. 54

**BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

*M/s Calcutta Investment Company* <sup>VS</sup>

49  
02.02.2022

By Order of:  
**THE ESTATE OFFICER**  
SYAMA PRASAD MOOKERJEE PORT  
CERTIFIED COPY OF THE ORDER  
PASSES BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
*[Signature]*  
Head Assistant  
OFFICE OF THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

- determination since 1995, is at all tenable under Law or not;
- VI. Whether the Rent Control Act is applicable to the present proceeding or not;
  - VII. Whether non acceptance of KoPT's offer for grant of lease for 15 years from a prospective date in terms of KoPT's offer bearing No. Lnd. 2377/V dated 04.09.1997 by O.P. could be considered as unwillingness on the part of O.P. to continue in occupation as 'authorized occupant' or not;
  - VIII. Whether the plea taken by O.P. regarding maintainability of the proceedings (plea of O.P. with regard to 'genuine tenant') in view of the Govt. Guidelines dated 30.05.2002 has got any merit in deciding the question of O.P.'s occupation into the public premises or not;
  - IX. Whether the claim of KoPT on account of compensation charges is barred by law of limitation or not;
  - X. Whether issuance of Show Cause Notice under S. 7 of the Act for realisation of damages without declaration of O.P.'s status as 'unauthorized occupant' under S. 5 of the Act has got any merit or not;
  - XI. Whether the notice to quit dated 27.03.2006 as issued by the Port Authority is valid and lawful in the present facts and circumstances of the case or not;
  - XII. Whether O.P.'s occupation could be termed as "unauthorised occupation" in view of Sec.2 (g) of the P.P. Act and whether O.P. is liable to pay damages to KoPT during the period of its unauthorised occupation or not;

*[Signature]*

With regard to the **issue No.I**, 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





# 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

M/S Calcutta Investment Company <sup>VS</sup>

49  
02.02.2022

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 02.02.2022  
Head Assistant  
OFFICE OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

Unauthorised Occupants) Act, 1971 and Section-15 of the Act puts a complete bar on Court's jurisdiction to entertain any matter relating to eviction of unauthorized occupants from the public premises and recovery of rental dues and/or damages, etc. KoPT has come up with an application for declaration of representatives of O.P's status as unauthorized occupant in to the public premises with the prayer for order of eviction, recovery of compensation etc against O.P. on the ground of termination of authority to occupy the premises as earlier granted to O.P. in respect of the premises in question. So long the property of the Port Authority is coming under the purview of "public premises" as defined under the Act, adjudication process by serving Show Cause Notice/s u/s 4 & 7 of the Act is very much maintainable and there cannot be any question about the maintainability of proceedings before this Forum of Law. In fact, proceedings before this Forum of Law is not statutorily barred unless there is any specific order of stay of such proceedings by any competent court of law. To take this view, I am fortified by an unreported judgment of the Hon'ble High Court, Calcutta delivered by Hon'ble Mr. Justice Jyotirmay Bhattacharya on 11.03.2010 in Civil Revisional Jurisdiction (Appellate Side) being C.O. No. 3690 of 2009( M/s Reform Flour Mills Pvt. Ltd. -Vs- Board of Trustees' of the Port of Calcutta) wherein it has been observed specifically that the Estate Officer shall have jurisdiction to proceed with the matter on merit even there is an interim order of status-quo of any nature in respect of possession of any public premises in favour of anybody by the Writ Court. Relevant portion of the said order is reproduced below:

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





**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. 1024.1024/D Of 2009 Order Sheet No. 56

**BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

*M/s Calcutta Investment Company* <sup>VS</sup>

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02.02.2022

fact, was questioned because of the interim order of injunction passed in the aforesaid proceedings".

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

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

The matter of pendency of suit for specific performance of contract has received my due attention. Without going into the merit of the argument on behalf of O.P., I am very much inclined to come into a conclusion that the papers/documents as brought before me in course of hearing is not at all satisfactory/ sufficient for inference of any concluded contract between the parties in dispute for grant of lease in favour of O.P. for 15 years by KoPT. It is evident from record that an offer for grant of lease for 15 years was made to O.P. by the Port Authority in terms of KoPT's letter to O.P. dated 04.09.1997 which was at all accepted by O.P. Moreover, there is no averment on the part of O.P. with regard to acceptance of

*[Handwritten signature]*

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
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SYAMA PRASAD MOOKERJEE PORT  
*[Signature]*  
Head Assistant  
OFFICE OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
02.02.2022





**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. 1024, 1024/D of 2009 Order Sheet No. 57

**BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

*m/s Calcutta Investment Company.* **VS**

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02.02.2022

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such offer from KoPT's end by O.P. at any point of time. In my view, in absence of any concluded contract there cannot be any question of specific performance of such contract. However, jurisdiction of this Forum of Law to proceed against O.P under the relevant provisions of the Act cannot be questioned in view of the discussion as aforesaid. Thus the issues is decided in favour of KoPT.

As regards the **issue No. II** a strong argument has been leveled on behalf of O.P. with regard to enforceability of Show Cause Notice u/s 4 of the Act on the ground of mentioning of "contradictory grounds" in connection with period of unauthorized occupation. It is argued that the ground for Show Cause Notice indicates "unauthorised occupation" since 1995 whereas KoPT served notice to quit only on 27.03.2006. It is argued that occupation of O.P. cannot be terminated without service of ejection notice and such contradictory ground renders the Show Cause Notice u/s 4 of the Act as in effective. Now the question arises how far the contention of O.P. in this regard is tenable under the facts and circumstances of the case. Show Cause Notice u/s 4 of the Act clearly states as under :

".....  
..... That you have failed and neglected to comply with the requisition of KoPT to vacate the premises in terms of the notice to quit dated 27.03.2006. That you have (read O.P.) no authority to occupy the Public Premises after expiry of the contractual period of lease. That you have parted with possession of the Public Premises without any authority under law. That you are in wrongful occupation of the Public Premises on and from 01.08.1995 .....  
....."

It is evident from the grounds mentioned in the show cause notice that this Forum of Law formed its opinion for issuance

*[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

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## BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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of Show Cause Notice on the ground that O.P.'s occupation is unauthorized from 01.08.1995. It was also stated in the notice that O.P. has failed to vacate the premises inspite of quit notice dated 27.03.2006. It reveals from the notice to quit dated 27.03.2006 that the Port Authority has notified that all the relationship with O.P. as lessee stands determined with effect from 31.07.1995. Needless to mention that issuance of Show Cause notice under S. 4 of the Act on the basis of a prima-facie "opinion" is a step towards initiation of adjudication process as envisaged under the Act and formation of such opinion on the basis of materials brought before this Forum of Law cannot be questioned as no right has been taken away from O.P. to demolish the grounds as mentioned in the Show Cause Notice. The basis of 'opinion' may be right or wrong. But for initiation of adjudication process through service of Show Cause Notice is a sine qua non. The scheme of the enactment provides enough safe guard to protect the right of noticee/O.P. to challenge the legality of serving such notice. Moreover, a careful reading of the Show Cause Notice under S. 4 of the Act in conjunction with the Notice to Quit dated 27.03.2006, demanding possession and harmonious construction of both the Notices in question will certainly reveal that 'opinion' for wrongful occupation from 01.08.1995 is a natural consequence of the requisition made from KoPT's end to hand over possession on 27.04.2006 at 11 a.m. in pursuance of notice to quit dated 27.03.2006. In my view, formation of opinion shall not necessarily mean satisfaction of this Forum of Law with regard to unauthorized occupation of O.P. and in order to arrive at a conclusion with regard to 'satisfaction' necessary inquiry within the four corners of the PP Act is mandatory as per statute. It is my considered view that there is no contradiction in the grounds as mentioned in the Show Cause Notice under S. 4 of the Act in any manner whatsoever. Accordingly, the issue is decided against O.P.

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Head Assistant  
02.02.2022  
OFFICE OF THE D. 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

M/s Calcutta Investment Company. <sup>VS</sup>

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02.02.2022  
Head Assistant  
OFFICE OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

As regards the **issue No. III**, i.e on the issue of unauthorized parting with possession, mere claim on behalf of O.P that it has never parted with possession of the premises to any third party or is itself in use and occupation of the premises etc. are, in my view not sufficient to defend this type of serious allegation such as unauthorized parting with possession. The O.P could have very well produced documents related to their trade or business from that premises but O.P chose to produce nothing. Even O.P did not produce any single photographic evidence to counter the allegation of KoPT. Moreover, KoPT has come up with specific drawing/sketch Maps being No. 9433-D-III dated 31.03.2015 and a copy of Joint Inspection Report dated 11.05.2015 which clearly shows that subject premises has been unauthorisedly occupied by M/s Sreema Satyabhama Enterprise and by M/S The Warehouse Prestige. Such submission made by a statutory authority like KoPT cannot be disregarded. As such it is very difficult to accept the mere claim of the O.P which is bereft of any cogent reason. Moreover, O.P vide their reply/objection dated 11.11.2010 has admitted that they have inducted third parties to use the said premises thus the induction of a third party without the approval of KoPT is also against spirit of tenancy.

As regards the **issue No. IV**, i.e on the issue of estoppel, O.P vide their written notes of arguments dated 26.05.2015, has claimed that as there was a concluded agreement between the Port authorities and the O.P on renewal of lease, KoPT was estopped from initiating any eviction proceeding against O.P. However, I must say that there was no concluded contract between the parties as regards the renewal of such leases therefore, the principles of estoppels does not and cannot arise in this instant matter. According to law the question of estoppels arise when one person has, by his declaration, act or omission, **intentionally** caused or **permitted** another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceedings between himself and such person or his

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# Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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**BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

*m/s Calcutta Investment Company* <sup>VS</sup>

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OFFICE OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

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 in O.P.'s objection by which it can be proved that there was any intention or permission on the part of KoPT about O.P.'s occupation in the said public premises in question.

**Issue No. V** is an important question of Law and the plea of month to month tenant in absence of non-execution and registration of lease deed has received my due attention. As per Transfer of Property Act read with Registration Act, the lease for more than one year is compulsorily registerable document. The fact of non-registration of a lease must necessarily be considered as continuing on month to month basis as per Law. I am inclined to accept the contention of O.P. that O.P. cannot be termed as unauthorized occupant without determination of such monthly tenancy. Now the question arises as to how O.P. can claim its occupation as 'authorized', subsequent to the period from 01.08.1995. It is the case of KoPT that an offer for grant of lease for five years from 1.08.1990 was made to O.P. vide KoPT's offer bearing no. L.M. 2377/V dated 5.09.1990 which was duly accepted by O.P. vide letter dated 10.09.1990 addressed to the Land Manager, KoPT bearing no. CIC/J/90-91 and O.P. was well aware of the conditions for its occupation that is to say O.P. was permitted to occupy the premises upto 31.7.1995 only. It reveals from record that there was an agreement for grant of lease for the period upto 31.07.1995 commencing from 1.08.1990 though there was no formal registration of any lease deed, as per law to that effect. It also reveals that lease for earlier period of five years from 1.08.1985 was duly registered in terms of the option clause of the mother lease with option for renewal and the said offer for grant of lease was made to O.P. by KoPT in terms of the option clause of the registered lease deed dated 18.3.1986. I have carefully considered the question of law involved in this issue and I am convinced that due to non registration of the lease deed, O.P.'s tenancy into the public premises was continuing on month to

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## Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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### BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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month basis with effect from 1.08.1990 till issuance of notice to quit dated 27.3.2006, demanding possession from O.P. on 21.04.2006. The situation would have been otherwise had there been any earlier demand for possession from KoPT's side to O.P. Accordingly, the issue is decided in favour of O.P.

As regards the **issue No.VI**, i.e on the issue of applicability of Rent Control Act, O.P vide their application dated 30.03.2010 has specifically submitted that while resuming possession of a public premises or flat in a public premises occupied by a genuine tenant/lessee such as the applicant, the concerned landlord should move under genuine grounds under the Rent Control Act. However, My considered view is that the provision of Rent Control Act is not applicable to public premises. Kolkata Port Trust (now Syama Prasad Mookerjee Port, Kolkata) is the Successor in Interest of the erstwhile Commissioners for the Port of Kolkata which is a Local Authority as defined under the General Clauses Act, 1897 (Section 3) and West Bengal General Clauses Act, 1899 (Section 3(23)) and on the application of The Major Port Trusts Act, 1963, all properties, Assets and Funds etc. vested in the Central Government or as the case may be, any other Authority (Commissioners for the Port Of Calcutta constituted under the Bengal Act) for the purpose of Port immediately before such day shall vest in the Board (KoPT Board under Section 29 of the MPT Act). Whereas the Rent Control Act is applicable to "premises" which means any building or part of a building or any hut or part of a hut let separately and includes:

- (i) the gardens, grounds and out-houses, if any, appertaining thereto, and
- (ii) any furniture supplied by the landlord or any fittings or fixtures affixed, for the use of the tenant in such building or part of a building or hut or part of a hut, but does not include a room in a hotel or a lodging house;

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*[Signature]* 02.02.2022  
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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The Rent Control Act never dealt with fair rent in respect of land and specifically **excludes** premises let out for **non-residential purposes** which carries monthly rent for more than Rs. 10,000/- within the limit of KMC and HMC. In this instant case said land was allotted to O.P for such commercial purposes for storage of non hazardous goods and general merchandise. Moreover, Rent Control Act in respect of Public Premises is not supported by law particularly when the Major Port Trust's Act 1963 prescribes a different mode for fixation of rent for use and enjoyment of the Port Properties being the Public Premises as defined under P.P. Act. Therefore, In view of the circumstances, I do not find any merit to the contentions of O.P.

As regards the **issue No.VII**, it is evident from record that a decision was taken by the Port Authority to grant 15 years lease to O.P. from a prospective date subject to certain terms and conditions as embodied in KoPT's offer letter bearing no. LND 2377/V dated 4.09.1997 and O.P. failed to accept such offer from KoPT's end. I have duly considered the written objection on behalf of O.P. filed on 11.11.2010, affirmed by Soma Choudhury in the capacity of authorized signatory. As per statement made against paragraph 6 sub-paragraph (L) of the written objection of O.P. that parties were in agreement for grant of lease for 15 years but they have failed to agree at the exact amount of rent to be paid to KoPT. It is also stated in paragraph 7 of the written objection that at all material times O.P. has been and still is ready and willing to do all things needful for execution of lease deed and implementation of the terms thereof in respect of the premises for a period of 15 years. Such statements made on behalf of O.P. appear to be confusing, in view of the earlier stand taken by O.P. regarding fixation of rent. At the cost of reiteration, I must say that there was no valid contract between the parties in view of failure on the part of O.P. to accept the offer of KoPT dated 04.09.1997 and O.P.'s stand as expressed vide their written objection regarding their readiness and willingness to accept the terms and conditions for grant of lease is very much unacceptable at

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SYAMA PRASAD MOOKERJEE PORT





# Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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*m/s Calcutta Investment Company.*

such an distant date or I should rather say such statement has got no merit or value in the eyes of law. To consider the matter as "agreement", there must be unconditional acceptance of the offer of KoPT by O.P. As there is no element of truth regarding unconditional acceptance of offer for grant of lease by O.P. and O.P. has no authority under law to dictate KoPT, the terms and conditions for grant of lease, I have no other alternative but to consider the matter as unwillingness on the part of O.P. to continue in occupation as a "lessee". Moreover, KoPT as a landlord of the public premises has every authority under law to impose certain terms and conditions for grant of lease as a part of their Estate Management Policy.

Regarding the **issue No. VIII**, now the question which falls for determination whether the O.P. can claim as a "genuine tenant" to attract the guideline of the Govt. of India as cited in the reply/written objection to the Show Cause dated 11.11.2010 or not. In this connection I find support from the submissions made on behalf of SMP, Kolkata that the guideline as cited is applicable for Public Sector Undertakings only not for Statutory Authority like SMP, Kolkata. It is the specific case on behalf of O.P. that the O.P. Cannot be termed as "unauthorized occupant" in view of the Govt. guideline issued in this regard and proceedings against O.P. should be dropped. Earlier, I had the opportunity of hearing arguments on the basis of the guidelines as cited and read out by the Advocate for O.P. It is argued on behalf of SMP, Kolkata that after expiry of the lease period, O.P. has no legal right to occupy the premises. To start with the adjudication process regarding "unauthorized occupation" of O.P., Section 4 notice had been issued to O.P. in order to establish its authority to occupy the public premises. It is evident from the guideline of the Ministry of Urban Development and Poverty Alleviation (Directorate of Estate) that the provision of the public premises (Eviction of Unauthorized Occupants) Act 1971 should be used primarily to evict the totally unauthorized occupants of the premises of public authorities or sub-lessees, occupants of the premises and a person in occupation

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

*AS*





# 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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**BOARDS OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

**VS**  
m/s Calcutta Investment Company

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02.02.2022

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OFFICE OF THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

of any public premises should not be treated or declared to be unauthorized occupants merely of service of notice of termination of tenancy, but the fact of unauthorized occupation shall be decided by following due process of Law. The guideline issued by the Govt. of India cannot override the specific provision of Law as provided under the P.P. Act. As per the Act, the "unauthorized occupants" within the definition of Section 2 (g) of the Act means the occupation of any person of the public premises without authority of such occupation and includes the continuance of occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. In the instant case I find that KoPT demanded possession of the public premises from O.P. on the ground of failure on the part of O.P. to pay the dues/charges for use and enjoyment of the Port property in question together with the ground for unauthorized parting with possession of the said the public premises in question. Hence, the argument of O.P. regarding "**genuine tenant**" has no leg to stand upon to attract the guideline of the Govt. of India. It is further argued by SMP, Kolkata that SMP, Kolkata is a Statutory Authority created under the Major Port Trust Act 1963 and not a Govt. Undertaking to come under the purview of the said guideline in any event. In my view this Forum of Law has a definite scope in adjudicating the matter of unauthorized occupation of any person within the four corners of the Public Premises Act. Accordingly, the objection raised on behalf of O.P. regarding maintainability of the proceedings before this Forum of Law on the ground of violation of Policy Guidelines framed and notified by the Central Govt. is not at all applicable. Thus the issue is decided in favour of SMP, Kolkata.

As regards the **issue No. IX**, it is my considered view that O.P. cannot escape their liability towards payment of dues on the plea of "limitation" as per Sec. 25 of the Indian Contract Act, while acknowledging the jural relationship as debtor. No

*[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

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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

*M/s Calcutta Investment Company.*

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attempt has been made on behalf of O.P. as to how O.P.'s occupation could be termed as "authorised" in view of Sec. 2(g) of the P.P. Act, after expiry of the contractual period of lease.

The core submissions regarding non-applicability of the Limitation Act in proceedings before this Forum is based on various decisions of the Hon'ble Apex Court of India and Calcutta High Court, wherein it has been decided that Limitation Act has no application before quasi-judicial authorities like this Forum of Law which is not a civil court to be governed by the Civil Procedure Code.

The judgment of the Hon'ble Apex Court of India reported in New India Assurance Case - 2008 (3) SCC 279 = AIR 2008 SC 876 is very much relevant in deciding the question whether this Forum is a court or not. It was decided by the Supreme Court that Civil Procedure Code and Indian Evidence Act are not applicable for proceedings before the Estate Officer under P.P. Act which provided a complete code. The Limitation Act applies to "suits" to be governed by CPC and Indian Evidence Act. When the basic elements for adjudication of a "suit" are totally absent for proceedings under P.P. Act, 1971, it is futile to advance any argument for its application. The judgments of different High Courts including that of Delhi High Court could be accepted as a guiding principle. In this connection, I am fortified by a judgment of the Hon'ble High Court, Calcutta in S.N. BHALOTIS -vs- L.I.C.I. &Ors. reported in 2000(1) CHN 880 with reference to the judgment reported in AIR 1972 Tripura 1 (Hemchandra Charkraborty -vs- Union of India) wherein, it was clearly held that proceedings initiated by an Estate Officer are not in the nature of suit nor the Estate Officer acts as a Court while deciding proceedings before him.

It is worthy to record that there is no prescribed period of limitation in the Limitation Act itself for recovery of "damages". It would not be out of scope to mention that Limitation Act bars the remedy by way of "suit" but not the entitlement. In my view, there is a clear distinction between 'rent' and 'damages'. So long both the parties admit their





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relationship as landlord and tenant, the question of paying damages does not arise. In other words, if the tenant is asked to pay rent by the landlord, the element of authorized occupation could be inferred but in case of demand for damages, there is element of unauthorized use and enjoyment of the property (1996) 5 SCC 54 (Shangrila Food Products Ltd. & Anr vs Life Insurance Corporation of India & Another).

In view of the discussion above, I am of the view that this Forum of Law is very much competent under law to adjudicate the claim of KoPT against O.P. and Limitation Act has no application to the proceedings before the Estate Officer which is a quasi-judicial authority under P.P. Act and is neither a Civil Court to be governed by the Civil Procedure Code nor a "court" within the scheme of the Indian Limitation Act. In holding so, I have also relied on the judgment delivered by the Hon'ble Supreme Court of India on 23.4.2015 in Civil Appeal No. 4367 of 2004 (M.P. Steel Corporation -vs- Commissioner of Central Excise) reported in (2015) 7 SCC 58. I have also taken a note of Sec.29 of The Limitation Act, 1963 read with Sec. 25 of the Indian Contract Act, 1872. It is my well considered view that even if for the sake of argument, Limitation Act is taken to apply to the proceedings before the Estate Officer (not admitting), Sec.25 of the Indian Contract Act will definitely come into play against O.P.'s plea for "time barred" claim under Limitation Act. I am of the view that O.P. acknowledged its relationship as debtor and Sec. 25 of the Contract Act debars O.P. to take the plea of "barred by limitation", in the facts and circumstances of the case. Therefore, the issue is decided in favour of KoPT.

On **issue No. X**, the ground of challenge thrown against issuance of show cause notice under section 7 of the Act, is required to be considered with all its seriousness. The fundamental argument on behalf of O.P. is non-maintainability of proceedings u/s 7 of the Act without declaration of O.P.'s status as "unauthorised occupant" in pursuance of Sec. 5 of the Act. It is true that the condition

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SYAMA PRASAD MOOKERJEE PORT





**Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

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precedent for issuance of Show Cause Notice u/s7 of the Act for realization of damages is "unauthorised occupation". There is no doubt that damages cannot be claimed against O.P. unless O.P's occupation is declared unauthorised through Adjudicating Process under the P.P. Act. Now the question arises how far the contention of O.P. regarding non-maintainability of proceedings for realisation of damages u/s 7 of the Act is tenable in the instant case. Order No. 2 dated 25.02.2010 is very much relevant and the important portion of the order is reproduced below :

"Now it seems that we must give a meaning of the term "Unauthorized occupation" as per definition provided in the P. P. Act itself. At this stage for the purpose of adjudication of KoPT's claim for damages only under Schedule of the KoPT's Application dated 31.8.2006 which may have arisen due to unauthorized use and occupation of the public premises in question, after expiry of the period of lease in question, I have no bar to assess the damages as per Rules made under the Act. It is made clear that this assessment of damages and issuance of Show Cause Notice u/s.7 of the Act shall not affect any of the rights and liabilities of the parties in connection with the adjudication process for determination of the question in connection with the order of eviction as prayed for by KoPT against O.P. and shall not in any way affect the rights and liabilities of the parties in dispute, arising out of and in course of the proceedings u/s. 4 of the Act. All the points are left open for discussion on merit of the case on the basis of the Show Cause Notice u/s.4 of the Act.

I have examined the representative of KoPT and find that the charges as claimed by KoPT on account of damages against O.P. are equivalent to the monthly rent charges of the public premises in question and the amount has been claimed on the basis of the relevant Schedule of Rent Charges of KoPT as time to time notified in Calcutta Gazette which is applicable to all the occupiers/users of the Port property in a similarly placed situation. In my consideration KoPT has made out an arguable claim for such assessment of damages. As such,

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*for* 02.02.2022  
Head Assistant  
OFFICE OF THE I.D. 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

M/s Calcutta Investment Company <sup>VS</sup>

issue of notice accordingly to O.P. in terms of Section 7 of the Act and Rules made thereunder, fixing 01.04.2010 at 3 P.M. for production of documents, evidence and hearing. O.P. to file reply to the Show Cause on or before 01.04.2010. It is, however, made clear that such assessment of damages is only for a particular period as claimed by KoPT at this stage. All concerned are directed to act accordingly".

Occupation and enjoyment of a Public Premises without making payment of requisite charges for such occupation is very much unfair in all sense. Such activity is opposed to Public Policy as O.P's enjoyment of such Port Property without paying charges as applicable to others occupiers/users of the Port Property in a similarly placed situation, not only creates differentiation with regular tenant and tenant under default like O.P. but also fundamentally encourages the illegal activity of a wrong doer. It has been superficially stated in the order that assessment of damages in terms of the occupational charges only (equivalent to rent for such occupation) has been done for initiation of adjudication process in pursuance of Sec.7 of the Act and there is no scope for curtailment of any right of O.P. No order for payment of damages u/s 7 of the Act has been issued to O.P. without coming into conclusion about O.P's "unauthorised occupation". In fact issuance of Show Cause Notice u/s 7 of the Act does not necessarily mean that the adjudication process must lead to the conclusion of unauthorised occupation without considering relevant facts/evidence as required under law. In my view, O.P's contention is based on pre-supposition of certain things which is not at all supported by fact nor supported by law. A somewhat similar situation arose when Hon'ble Calcutta High Court had the occasion to decide the matter on merit in W.P. No. 10173(W) of 2010 ( Vijay Kumar Arya and Ors -vs- Board of Trustees of the Port of Kolkata &Ors.) The Hon'ble High Court's Order (unreported) is reproduced below :-

*"This writ petition has been taken out by the petitioners, inter alia, challenging the impugned notice dated 19.04.2010, being*

*Sty*

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SYAMA PRASAD MOOKERJEE PORT  
for 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. 1024, 1024/D of 2009 Order Sheet No. 69

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

m/s Calcutta Investment Company. <sup>VS</sup>

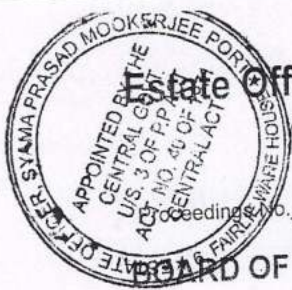
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annexure-'P/12' to the writ petition, issued under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as "the Act of 1971") wherein the petitioners have been called upon to show cause as to why damages for unauthorised occupation along with interest thereon be not levied upon the petitioner. The facts of the case giving rise to the writ petition are to the effect that the writ petitioners were in occupation of a public premises under the respondent -Port Trust. By notice dated 28th July, 2006, the petitioners were called upon to quit the said premises. As the petitioners failed to quit, by order dated 23rd February, 2009, the Estate Officer called upon the petitioners to show cause as to why an order of eviction under Section 4 of the Act of 1971 shall not be passed against them. It appears that the notice to quit dated 28th July, 2006 was challenged by the writ petitioners in an earlier proceeding, but the same was futile. Thereafter, the petitioners approached the Estate Officer and filed various applications including their reply to the show cause notice dated 23rd February, 2009. In the meantime, the impugned notice dated 19.04.2010 was issued by the Estate Officer under Section 7 of the Act of 1971 calling upon the petitioners to show cause why they shall not be directed to pay damages including interest for unauthorised occupation of the said premises. By order dated 19.04.2010, the Estate Officer, inter alia, clarified that the assessment of damages pursuant to the impugned notice dated 19.04.2010 under Section 7 of the Act of 1971 was not affect the rights and liabilities of the parties in connection with eviction proceeding which was also pending before him. By the selfsame order, the Estate Officer proceeded to assess the damages which may be payable by the petitioners. In this backdrop, the petitioners have approached this Court challenging the impugned notice dated 19.04.2010, as aforesaid.

Mr. Mazumdar, learned senior counsel appearing for the petitioners, submitted that the proceedings before the Estate Officer was wholly without jurisdiction and that the eviction proceedings were barred by the statutory provision as

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Head Assistant  
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SYAMA PRASAD MOOKERJEE PORT  
02.02.2022





**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

Proceeding No. 1024, 1024/D Of 2009 Order Sheet No. 70

**BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

M/s Calcutta Investment Company <sup>VS</sup>

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02.02.2022  
Head Assistant  
OFFICE OF THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

engrafted in Section 114A of the Transfer of Property Act. It was further submitted by Mr. Mazumdar that the applications taken out by his clients before the said Officer have not been dealt with and the same are still pending consideration before the Estate Officer. Mr. Mazumdar submitted that his clients have challenged the impugned notice dated 19.04.2010 under Section 7 of the Act of 1971 on the premise that unless there is a declaration that the petitioners' occupation is unauthorised, the assessment of damages and a direction to pay the same are untenable in law.

Per contra, Mr. Sengupta, learned senior counsel appearing for the respondents-Port Trust, contended that the order dated 19.04.2010 passed by the Estate Officer has clarified the position inasmuch as the Estate Officer has recorded that the rights and the liabilities of the parties in respect of eviction proceeding would not in any way be affected by the assessment of damages pursuant to the impugned notice. Mr. Sengupta further submitted that the eviction proceeding is not the subject matter of challenge in the instant writ petition and that in the earlier writ petition where the notice of quit upon the petitioners had been challenged, this Court has refused to interfere in the matter and the parties were left to agitate their grievances before the Estate Officer in accordance with law. Having heard the submissions of the respective counsels appearing for the parties and having considered the materials on record, I am of the opinion that the eviction proceeding is not the subject matter of the instant writ petition. In this regard, reference may be made to the prayers in the writ petition wherein the challenge is exclusively to the notice dated 19.04.2010, under Section 7 of the Act of 1971 (being annexure 'P/12' to this writ petition) calling upon the petitioners to show cause as to why they shall not be directed to pay damages for unauthorised occupation of the said premises and nothing more.

Hence, I do not express any opinion as to the merits of the submission made by Mr. Mazumdar with regard to the maintainability or otherwise of the eviction proceeding before

*[Signature]*





# Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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the Estate Officer and the issues raised by Mr. Mazumdar with regard thereto are kept open to be decided by the Estate Officer in accordance with law. With regard to the challenge to the notice under Section 7 of the Act of 1971, I am of the opinion that the Estate Officer had proceeded fairly in the matter by observing that the assessment of damages pursuant to such notice would not affect the rights and liabilities of the parties in the collateral eviction proceedings. The Estate Officer has also in the order dated 19.04.2010, as indicated by Mr. Sengupta, clarified the position that he has proceeded to assess the damages only and the same cannot prejudice the petitioners in any manner.

In view of such fact, I do not find any reason to interfere with the impugned notice or the proceedings ensuing therefrom pending before the Estate Officer save and except observing that the Estate Officer would be at liberty to pass an order assessing the damages payable by the petitioners, but the latter need not pay the said sum till any eviction order is passed against them in the collateral eviction proceeding. I further direct the Estate Officer to proceed with and dispose of the eviction proceeding as expeditiously as possible preferably within a period of three months from the date of communication of this order without granting any unnecessary adjournment to the parties. I clarify that the applications filed by the petitioners shall be analogously disposed of along with the main eviction proceeding. I also make it clear that I have not made any observation as to the merits of the case and the parties are at liberty to raise all issues available to them in law by effectively participating in the proceedings pending before the Estate Officer.

With the aforesaid observations, the writ petition is disposed of Interim order stands vacated. There shall not be any order as to costs."

The judgment/order of the Hon'ble high Court is very much instrumental in deciding the issue of maintainability of show

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Head Assistant  
OFFICE OF THE 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. 1024, 1024/D Of 2009 Order Sheet No. 72

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cause notice under section 7 of the Act for realization of damages. At the cost of reiteration, I must say that this Forum of Law has had no intention to pass any order regarding payment of damages without being satisfied with the unauthorized occupation of O.P. as per provisions of the Act u/s. 4 read with sec 5 and Rules made thereunder. The issue is thus decided accordingly.

**Issues No. XI and XII** are taken up together, as the issues are related with each other. I must say that a lessee like O.P. cannot claim any legal right to hold the property after expiry of the period as mentioned in the Notice to Quit. O.P. has failed to satisfy this Forum about any consent on the part of KoPT in occupying the public premises. Rather it is a case of KoPT that by notice dated 27.03.2006, O.P. was directed to hand over possession of the premises to KoPT. A letter/notice issued in official course of business has definitely got an evidentiary value unless there is material, sufficient to contradict the case of KoPT on the basis of such letter. Further, I am consciously of the view that KoPT never recognized O.P., as a lawful user/tenant in respect of the property in question after expiry of the period mentioned in the Notice to Quit dated 27.03.2006. As per Section 2 (g) of the P. P. Act the "unauthorized occupation", in relation to any Public Premises, means the occupation by any person of the public premises without authority for such occupation and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. Further, as per the Transfer of Property Act, a lease of immovable property determines either by efflux of time limited thereby or by implied surrender or on expiration of notice to determine the lease or to quit or of intention to quit, the property leased, duly given by one party to another. It is a settled question of law that O.P. cannot claim any legal right to hold the property after expiry of the period mentioned in the Notice to Quit dated 27.03.2006, without any valid grant or

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Head Assistant  
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02.02.2022





**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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allotment from KoPT's side. This issue is also decided in favour of KoPT. In the instant case, the landlord i.e. KoPT claims to have issued a Notice to O.P. dated 27.03.2006 asking for vacation of the premises on 12.04.2006 as O.P. was duty bound to hand over possession to KoPT and it had failed to do, KoPT's claim by filing Application dated 31.08.2006 is very much justifiable. O.P. failed to substantiate as to how its occupation could be termed as "authorised" in view of Sec. 2(g) of the P.P Act, after expiry of the period as mentioned in the KoPT's notice dated 27.03.2006, demanding possession from O.P. I have no hesitation to observe that O.P's act in continuing occupation after expiry and determination of the lease is unauthorized and O.P. is liable to pay damages for unauthorized use and occupation of the Port property in question upto the date of delivering vacant, unencumbered and peaceful possession to KoPT. The Issues XI & XII are thus decided in favour of KoPT.

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

1. That O.P's contention regarding non-maintainability of the proceedings in view of pendency of their suit for specific performance of contract before the Ld. Civil Judge (Jr. Division) at Alipore is not tenable under law.
2. The O.P or any other person/occupant has failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation".
3. That O.P's failure to accept KoPT's offer for grant of lease for a period of 15 years vide KoPT's letter No. Lnd.2377/V dated 04.09.1997 at the relevant point of time is a clear manifestation of unwillingness on the part of O.P. to continue in occupation of the Public Premises with valid grant from the Port Authority. In

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**SYAMA PRASAD MOOKERJEE PORT**  
*02.02.2022*  
OFFICE OF THE 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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02.02.2022

fact, O.P. cannot dictate the terms and conditions of KoPT for allotment in their favour.

4. That the O.P has parted with Possession of the subject premises to third party in violation of the condition of such lease.
5. That the instant Proceeding is not barred by the principle of Estoppel.
6. The Provision of Rent Control Act is not applicable to this proceeding.
7. That O.P's plea regarding non-maintainability of the proceedings due to Govt. Guidelines dated 30.05.2002 in question has got no merit in the facts and circumstances of the case.
8. That O.P's point of maintainability on issuance of Show Cause Notice u/s 7 of the Act for realisation of damages without declaring O.P's status as "unauthorised occupant" has got no merit in the context of factual aspect involved in this matter and law as well.
9. That O.P. cannot take the shield of Limitation Act to defend KoPT's claim for compensation charges for use and enjoyment of the Public Premises while acknowledging the Jural relationship as debtor.
10. That the notice to quit dated 27.03.2006 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.
11. 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

*[Signature]*

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*[Signature]* 02.02.2022  
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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

Proceeding No. 1024, 1024/A Of 2007 Order Sheet No. 75

**BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

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occupation are liable to be evicted by this order and the Port Authority is entitled to claim damages for unauthorized use and enjoyment of the property against O.P. in accordance with Law up to the date of recovery of possession of the same. KoPT is directed to submit a comprehensive status report of the Public Premises in question on inspection of the property after expiry of the 15 days as aforesaid so that necessary action could be taken for execution of the order of eviction u/s. 5 of the Act as per Rule made under the Act.

It is my considered view that a sum of Rs.53,12,839.78 (Fifty three Lakh twelve thousand eight hundred thirty nine and paise seventy eight) for the respective Plate in question, for the period 01.08.1995 to 31.07.2006 (both day inclusive) <sup>is</sup> are 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 KoPT on or before ..... It is clarified that such dues will attract compound interest @ 6.20 % per annum, which is the current rate of interest as per the Interest Act, 1978 (as gathered by me from the official website of the State Bank of India) from the date of 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 KoPT's books of accounts. I sign the formal order u/s 7 of the Act.

I make it clear that KoPT 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 31.07.2006 as well, till such time the possession of the premises continues to be under the unauthorised occupation with the O.P. KoPT is directed to submit a statement comprising details of its calculation of damages after 31.07.2006, indicating there-in, the details of the rate of such charges, and the period of the damages (i.e. till the date of taking over of possession) together with the basis on which such charges are claimed

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Head Assistant  
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*[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. 1024, 1024/D Of 2009 Order Sheet No. 76

**IN FAVOR OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA**


M/s Calcutta Investment Company <sup>VS</sup>

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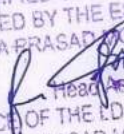
against O.P., for my consideration for the purpose of assessment of such damages as per Rule made under the Act.

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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