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**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.1549/D OF 2017
ORDER NO.29 DATED: 07.02.2022

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 Friends Engineering Corporation,
7, Muktaram Babu Street,
Ground Floor,
Kolkata-700 007
And also of
Ramkrishna Mansion,
Room No.17, 2nd floor
16, Indian Exchange Place,
Kolkata-700 001.

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

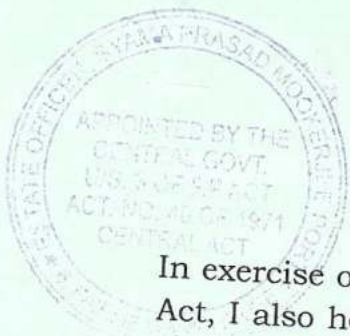
AND WHEREAS by written notice dated 04.01.2021 you are called upon to show cause on or before 18.01.2021 why an order requiring you to pay damages of Rs.39,43,348.65 (Rupees Thirty nine Lakh forty three thousand three hundred forty eight and paise sixty five Only) for Plate No.SW-16 together with [compound 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.39,43,348.65 (Rupees Thirty nine Lakh forty three thousand three hundred forty eight and paise sixty five Only) for Plate No.SW-16 assessed by me as damages on account of your unauthorised occupation of the premises for the period from June, 2002 to 24.02.2020 (both days inclusive) to SMP, Kolkata by 24.02.2022

Signature

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 - SW-16

Compartment No.16 msg. about 221.295 sq.m on the 2nd floor of Kolkata Port Trust's Canning Warehouse, on the west side of Strand Road under North Port Police Station in the Presidency Town of Kolkata.
Trustee's means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata).

Date 09.02.2022


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

Proceedings No. 1549, 1549/D & 1549/R of 2017 Order Sheet No. 33

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/S FRIENDS ENGINEERING CORPORATION ^{VS}

FINAL ORDER

The instant proceedings No. 1549/D of 2017 arises out of the application bearing No. Lnd.15/42/II/20/1694 dated 26.08.2020 filed by the Syama Prasad Mookerjee Port, Kolkata [erstwhile Kolkata Port Trust, hereinafter referred to as '**SMP, Kolkata**'], the applicant herein, praying for an order of recovery of damages/compensation and other charges etc. along with accrued interest in respect of the subject public premises, against **M/s Friends Engineering Corporation**, (hereinafter referred to as **O.P.**), under relevant provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

The fact of the case in a nutshell is that the O.P. came into occupation of the Port property being Compartment No.16 measuring about 221.295 Sq.m situated on the 2nd Floor of the SMP, Kolkata's Canning Warehouse comprised under occupation Plate No. SW-16, in the presidency town of Kolkata on month to month lease basis on certain terms and condition. Thereafter, O.P. has defaulted in making payment of SMP, Kolkata's dues/ charges. Notice to quit was issued by SMP, Kolkata to O.P. on 25.04.2014. Thereafter, proceeding was initiated by SMP, Kolkata before this Forum against the O.P. under relevant provisions of the Act, which was numbered as Proceeding No 1549, 1549/R & 1549/D of 2017. The O.P. appeared before this Forum and contested the case. Thereafter, the Final Order of eviction and payment of rental dues/damages by the O.P. was passed on 30.07.2018. It appears that thereafter SMP, Kolkata vide their applications dated 26.02.2020 has intimated that the possession of the subject premises was taken over by the O.P. on 25.02.2020 in terms of the said Order of eviction dated 30.07.2018. It has also been

29
07.02.2022

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

09/02/22

sd.

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. 1549, 1549/80/1549/R of 2017 Order Sheet No. 34

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S. FRIENDS ENGINEERING CORPORATION



29
07.02.2022

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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

Head *mm* 09/2/2022
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

intimated by SMP, Kolkata vide the said application as referred above that huge amount of damages/compensation/ mesne profit was still due and recoverable from the O.P for the respective Plates in question. After considering the submissions and the allegations levelled by SMP, Kolkata against the O.P that while in possession of Port property, the O.P. has defaulted in making payment of damages /compensation and taxes and also accrued interest thereon, this Forum being prima facie satisfied with the claim of SMP, Kolkata has issued Notice to Show Cause dated 04.01.2021 (vide Order-21 dated 23.11.2020) upon the O.P. u/s 7 of the Public Premises (Eviction of Unauthorized Occupation) Act, 1971 to show cause as to why an order requiring to pay arrear damages /compensation together with interest should not be made against the O.P. The O.P. was also called upon to appear before this forum in person or through authorized representative capable to answer of material question connected with the matter along with the evidence which the opposite party intends to produce in support of this case.

It is the case of SMP, Kolkata that the O.P. was asked to pay damages/compensation upto 24.02.2020 as because the subject premises was taken over by SMP, Kolkata on 25.02.2020.

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The said notice was served through Speed Post as well as by hand delivery to the recorded addresses of O.P. at 7, Muktarām Babu Street, Ground Floor, Kolkata-700007 And also to Ramkrishna Mansion, Room No.17, 2nd floor, 16 Indian Exchange Place, Kolkata-700001. It appears from record that except the Notice sent to 1st mentioned

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. 1549, 1549/DA 1549/A of 2017 Order Sheet No. 35

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/S. FRIENDS ENGINEERING CORPORATION VS

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07.02.2022

recorded address of O.P., Notice sent to other recorded address of O.P. was not returned back. However, the report of the Process Server dated 05.01.2021, depicts that the said Notice was received by the representative of O.P. on 05.01.2021. Thereafter, on the scheduled date of appearance and filing of reply to the Show Cause, one Bishalaxmi Ghosh and another one Ayan Kumar Boral expressing themselves as the Ld' Advocate of O.P appeared before the Forum and filed their Vakalatnama to contest the instant matter on behalf of O.P. Thereafter, Ld' Advocates of O.P. filed their reply to the Show Cause on 01.02.2021 denying the claim of SMP, Kolkata. SMP, Kolkata also filed their rejoinder on the said reply to the Show Cause as filed by O.P. on 05.04.2021. Both the parties are heard extensively finally on 28.04.2021 after giving opportunity to both the parties for filing their written notes of arguments, the matter was reserved for final order.

I have duly considered the applications of O.P as filed on 01.02.2021 and also of SMP, Kolkata as filed on 05.04.2021. After due consideration of the submissions/arguments made on behalf of the parties, I find that following issues have come up for my adjudication/decision:

- I) Whether the issues with regard to eviction being settled/decided in terms of order dated 30.07.2018, this Forum is empowered under the provisions of P.P Act to revisit such issues in the absence of error apparent on the face of record etc. or not;
- II) Whether the tenancy of O.P. is hit by the provisions of Premises Tenancy Act -1997 or not;

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

09/02/2022

sd.

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. 1549, 1549/DN/1549/R/ 2017 Order Sheet No. 36

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/S. FRIENDS ENGINEERING CORPORATION
VS

Both the **issues No. I & II** are taken up together for convenient discussion. O.P. vide their reply to the Show Cause dated 01.02.2021 again raised a question on the validity of quit notice dated 25.04.2014. With regard to such challenge made by O.P. to the notice to Quit dated 25.04.2014, I am of the firm view that Validty/legality, of Notice to Quit dated 25.04.2014 has already been decided in the final order dated 30.07.2018. Further, the Forum is not empowered to revisit the same issue in view of Section 10 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 as the Proceeding of eviction has already reached its finality and possession has already been taken over by SMP, Kolkata on 25.02.2020. The provision under Sections 10 of the Public Premises (Eviction Of Unauthorized Occupants) Act, 1971, is enumerated below:-

"Finality of orders—Save as otherwise expressly provided in this Act, every order made by an estate officer or appellate officer under this Act shall be final and shall not be called in question in any original suit, application or execution proceeding and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

Even for the sake of natural justice, if the application filed by O.P. is taken up for consideration, no mistake or error apparent on the face of the record has been found in the final order dated 30.07.2018. Further no discovery of new and important matter or evidence has been pointed out by O.P vide their application dated 01.02.2021 to revisit the final order dated 30.07.2018. Further no other sufficient reason has been brought out by O.P. enabling this Forum to revisit this order dated 30.07.2018. Hence, I find no justification to reconsider or revisit the order of eviction passed under Section 5 of the Act at this stage only.

29
07.02.2022

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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

Head Assent
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

Ad.

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. 1549, 1549/D & 1549/R of 2017 Order Sheet No. 37

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/S. SAAG FRIENDS ENGINEERING CORPORATION ^{VS}

29
07.02.2022

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
09/02/2022

On the applicability of West Bengal Premises Tenancy Act-1997, O.P. vide their reply to the Show Cause dated 01.02.2021 has also alleged that the agreement entered upon between the parties can be termed as tenancy agreement since in each and every place the term rent has been used as such the tenancy of the opposite party is governed under West Bengal Premises Tenancy Act, 1997 and not under the Public Premises(Eviction of Unauthorised Occupants) Act, 1971. However, I must say that the erstwhile Commissioners for the Port of Kolkata (now known as Syama Prasad Mookerjee Port, Kolkata is the owner of landed property beside River Hooghly in an around Kolkata. The landed property of the Port Authority is exempted from the purview of The West Bengal Premises Tenancy Act being a Local Authority as defined under the General Clauses Act -1897 and The West Bengal General Clauses Act -1899. In such a situation O.P's plea is highly unacceptable to me and I am not at all inspired by O.P's submission. Moreso, O.P. in their reply to the Show Cause did not make any whisper as regards the SMP, Kolkata's claim of compensation charges. In such a situation, it can be assumed that O.P. has sufficiently admitted the claim of SMP, Kolkata. In fact, I have nothing to disbelieve in respect of SMP, Kolkata's claim against O.P. as per statement of accounts maintained regularly in SMP, Kolkata's office in regular course of business. Hence, the application filed O.P on 01.02.2021 is rejected however, the O.P. is always at liberty to seek remedy against the said order of eviction dated 30.07.2018 in appropriate forum of law. Therefore, both the issues are decided in favour of SMP, Kolkata.

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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. 1549, 1549/P or 1549/R of 2017 Order Sheet No. 38

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

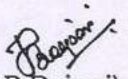
VS
M/S. FRIENDS ENGINEERING CORPORATION

29
07.02.2022

It is my considered view that a sum of Rs.39,43,348.65 (Rupees Thirtynine Lakh forty three thousand three hundred forty eight and paise sixty five Only) for the period June, 2002 to 24th February 2020 (both days inclusive) for the respective plate in question is due and recoverable from O.P. by the Port authority on account of damages and O.P. must have to pay such dues to SMP, Kolkata on or before 29.02.2022. The said damages shall 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 SMP, Kolkata's books of accounts. I sign the formal orders u/s 7 of the Act.

Department is directed to draw up formal order as per Rule u/s 7 of the Act. I make it clear that in the event of failure on the part of O.P. to pay the dues/charges as aforesaid; SMP, Kolkata is at liberty to recover the dues etc. in accordance with law. All concerned are directed to act accordingly.


GIVEN UNDER MY HAND AND SEAL


(J.P Boipai)

ESTATE OFFICE

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



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

OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT