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**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. 39 DT 13.07.2022  
PROCEEDINGS NO. 871 OF 2007

**Syama Prasad Mookerjee Port, Kolkata  
(ERSTWHILE BOARD OF TRUSTEES OF THE PORT OF KOLKATA)**

-Vs-

**Shree Dhakalia Industries (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 **Shree Dhakalia Industries of 138, Canning Street, Kolkata-700001** is in unauthorized occupation of the Public Premises specified in the Schedule below:

**REASONS**

1. That O.P. has violated the condition of monthly licence as granted by the Port Authority by way of not making payment of dues/damages and other charges to SMPK, for a prolonged period of time.
2. That O.P has carried out unauthorized construction in the public premises without any lawful authority.
3. The O.P or any other person/occupant have failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation"
4. That the notice for the revocation of licence dated 14.06.2000 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.
5. 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.

PLEASE SEE ON REVERSE

By Order of:  
**THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT**  
CERTIFIED COPY OF THE ORDER  
PASSED BY THE ESTATE OFFICER  
**SYAMA PRASAD MOOKERJEE PORT**  
Head Assistant  
14.07.2022  
OFFICE OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

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A copy of the reasoned order No.39 dated 13.07.2022 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 **Shree Dhakalia Industries of 138, Canning Street, Kolkata-700001** 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 **Shree Dhakalia Industries of 138, Canning Street, Kolkata-700001** 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.

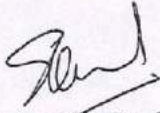
**SCHEDULE**

**Plate No: HL-450/D & SF-195**

The said piece or parcel of land msg.426.25 Sq.m. or thereabouts situated at Shibpore, District and Registration District, Howrah. It is bounded on the north Soorajmull Baijnath on the south Ashoka Steel Industries and on the east Atul Enterprises and on the west Trustees passage.

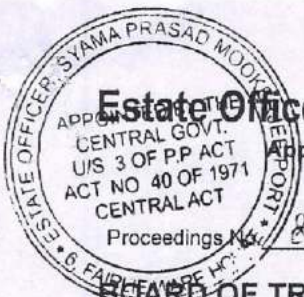
Trustee's means the Syama Prasad Mookerjee Port, Kolkata (Erstwhile the Board of Trustees of the Port of Kolkata).

Dated: 14.07.2022

  
Signature & Seal of  
Estate Officer.

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

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
CERTIFIED COPY OF THE ORDER  
PASSED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
14.07.2022  
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

Proceedings No. 871, 871/R of 2007 Order Sheet No. 33

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

**VS**

**SHREE DHAKALIA INDUSTRIES**

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13.07.2022

## FINAL ORDER

The instant proceedings No. 871, 871/R of 2007 arose out of an application being No. Lnd. 3348/112 dated 16.07.2002 filed by Syama Prasad Mookerjee Port Kolkata (erstwhile Kolkata Port Trust) hereinafter referred to as SMPK, Applicant herein, praying for an order of eviction and recovery of arrear rent, taxes, compensation along with interest etc. Against **Shree Dhakalia Industries**, the O.P. herein, under relevant provisions of the Public Premises (Eviction of Unauthorised Occupant) Act 1971. The facts of the case is summarised here under.

O.P. came into occupation of the Port property being Land measuring about 426.26 Sq.m (1<sup>st</sup> belt-118.86 Sq.m & 2<sup>nd</sup> belt-307.40 Sq.m) or thereabout situated at Shibpore (under Plate No. HL-450/D and SF-195), Thana- Shibpore, District-Howrah, as monthly licensee with effect from 22<sup>nd</sup> August 1957 on payment of monthly rent on certain terms and conditions as embodied in SMPK's offer letter. SMPK has submitted that while in possession of the Port property as licensee, O.P. violated the condition for such licence by way of not making the payment of licence fees/rental dues to SMP, Kolkata for use and enjoyment of the Port property in question the details of which has been given in 'Schedule-B' of the SMP, Kolkata's application dated 16.07.2002.

It is also the case of SMP, Kolkata that in gross violation of the terms of said tenancy O.P. has also parted with possession of the subject premises to third parties without taking any permission from SMP, Kolkata.

In view of the aforesaid breaches committed by the O.P., SMP, Kolkata had issued notice of revocation of licence dated 14.06.2000 asking the O.P. to hand over clear, vacant, peaceful and unencumbered possession of the property to SMP, Kolkata on the expiry of month of 31<sup>st</sup>

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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. 841, 871/R of 2007 Order Sheet No. 34

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

**VS**  
**SHREE DHAKALIA INDUSTRIES**

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July, 2000. SMP, Kolkata submits that O.P. has no authority under law to occupy the public premises after determination of the licence period and was required to hand over the possession of the property in question to SMP, Kolkata on the expiry of 31<sup>st</sup> July 2000 as required under the notice to quit. It is the case of SMP, Kolkata that O.P. is in wrongful occupation in the public premises on and from 01.08.2000 and is liable to pay compensation charges/mesne profits for unauthorized use and occupation of the Port Property in question.

Considering the submission advanced by SMP, Kolkata and the documents on record, Notice/s to Show Cause under section 4 and 7 of the Public Premises (Eviction of Unauthorized Occupation) Act, 1971 all dated 19.04.2007 (vide Order No.2 dated 13.04.2007) were issued by this forum to O.P. The Notice/s were issued in terms of the said provisions of the Act calling upon the O.P. to appear before this Forum in person or through authorized representative capable of answering all material questions in connection with the matter along with the evidence which the opposite party intends to produce in support of their case.

O.P. entered appearance through its Advocate and contested the matter by filling Written Statement/objection on behalf of O.P.

I have duly considered the reply to the Show Cause Notices as filed on 20.07.2007 and Rejoinder of SMPK filed on 16.08.2007. It is seen that cause of action against O.P. arises on the part of SMPK for non-payment of licence fees/rental dues and also for unauthorised parting of SMPK's property. In course of hearing it is found that O.P. continued to make payment to SMPK in pursuance of the Orders of the Forum without prejudice to the rights and contentions of both the parties and such payments as

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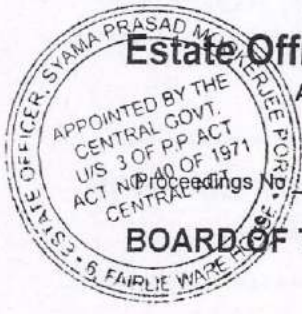
871, 871/R of 2007 Order Sheet No. 35

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS  
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tendered by O.P. were accepted by SMPK. It also emerged from the Inspection Report dated 18.04.2008 that O.P. removed the unauthorised construction as alleged by SMPK and O.P. has also made a prayer for regularization of their tenancy. It is again found that in terms of the Order dated 1.08.2014 both the Parties were directed to reconcile their respective books of accounts and SMPK was directed to submit the outcome of such reconciliation before the Forum. On 26.09.2014, SMPK submits such outcome of reconciliation stating that O.P. has cleared all dues of SMPK in compliance with the Order dated 01.08.2014 thereafter considering the submission of both Parties a further joint inspection was ordered by the Forum and a Report was submitted accordingly on 17.10.2014. In the meantime O.P. raised a dispute regarding SMPK's claim on account of 3 time rent charges for the month of June, July and August, 2012 in respect of both the occupations covered under these proceedings. It was further submitted by O.P. that in case such bills were considered at single rate there could have been no dues on the part of O.P., hearing the submission of O.P., the Forum thereafter, directed O.P. to file a written request before the SMPK for waiving off their decision regarding levy of three times Compensation charges and in consequence of such order O.P. filed a letter addressing the Estate Officer dated 26.11.2014. Subsequently, an Order was issued by the Forum on 28.11.2014 directing the O.P. to clear of their dues as payable to SMPK and directing the Estate Manager, SMPK to consider O.P.'s proposal for regularisation. It reveals from record that such proposal of O.P. was pending before the SMPK Authority for long time and further order of reconciliation was also passed by the Forum in terms of the Order dated 17.08.2016 however, O.P. did not turn up for such reconciliation inspite of best possible effort on the part of the Forum to serve such



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

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order upon the O.P. and now when SMPK vide their application dated 03.12.2021 has intimated that no process of regularisation is undergoing with O.P. and O.P. has erected unauthorised construction on the subject premises in question, the matter was reserved for passing Final Order on 17.03.2022 in absence of O.P.

Now while passing the final order, upon considering the deliberations of the parties and after carefully going through all the documents placed on record, I find that the allegations of SMPK against the O.P are two folds i.e non-payment of arrear dues/damages and unauthorized construction on the public premises in question.

As regards the issue of non-payment of arrear dues/damages, no such attempt has been made by the O.P. to dispute the claim of SMPK except 3 times rent charges. As regards the allegations of non-payment of such dues against the O.P., I find that SMPK has produced detailed statement of accounts dated 06.01.2014 in respect of the said occupation. It appears from the said statements of accounts that since 2013, no payment, whatsoever, has been made on behalf of the O.P. in respect of both the Plates in question. In my view, such statement maintained by the statutory authority in the usual course of business has definite evidentiary value, unless challenged by any of the concerned/interested parties with fortified documents/evidences etc, ready to bear the test of legal scrutiny. Moreover, during the course of hearing, no other submissions or documents have been placed before this Forum which may be in contradiction with the Statements produced by SMPK Authorities. During the course of hearing, I am given to understand by the Port Authority that the rent charged from time to time is based on the rates notified by the Tariff Authority for Major Ports (TAMP) in the Official Gazette, which is binding on all users of the port property. In my view, the breach committed by



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

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the O.P. is very much well established in the facts and circumstances of the case and O.P. must have to suffer the consequences, following due applications of the tenets of law. In my view, the conduct of the O.P. does not inspire any confidence and I am not at all inclined to protect O.P. even for the sake of natural justice. In my considered view, the Port Authority has a definite legitimate claim to get its revenue involved into the Port Property in question as per the SMPK's Schedule of Rent Charges for the relevant period and O.P. cannot deny such payment of requisite charges as mentioned in the Schedule of Rent Charges.

On the issue of three times rent charges, O.P. claimed adjustment vide their letter dated 26.11.2014. It is the categorical submission of O.P that SMPK has charged three times rent for the months of June, July and August 2012 if such bills were charged at single rate no dues could have been payable by O.P. However, I must say that as per law, when any occupant enjoys possession without having any valid authority, the party whose interest is hampered by such unauthorised occupation is entitled to receive, from the party who is occupying unauthorisedly, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from any breach, or which parties knew, when they made the contract to be likely to result from the breach of it. As regards the three times rate of compensation in respect of unauthorised occupation, the order dated 03.09.2012 passed by Hon'ble Justice Dipankar Datta in WP no. 748 of 2012 (M/s Chowdhury Industries Corporation Pvt. Ltd. versus Union of India & others) is very relevant. The said Order reads as follows:

".....  
It is undisputed that there has been no renewal of the lease prior to its expiry or even thereafter. There is also no fresh grant of lease. The petitioner has been occupying the property of the Port Trust unauthorisedly and, therefore, the Port Trust is well within

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



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**SHREE DHAKALIA VS INDUSTRIES**

*its right to claim rent at three times the normal rent in terms of the decision of the TAMP, which has not been challenged in this writ petition.*

Contd....

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

....."

Moreover, such licence was revoked by a Notice dated 14.06.2000., such being the case, O.P. is debarred from taking the plea of exorbitant rent/charges. In fact, the question of rent charges @ 3x SoR for occupation or any question about abnormally high rate of rent cannot be entertained by this Forum as the charges for occupation of Port Property is fixed up by Tariff Authority of Major Ports by their notification published under authority of law in accordance with the provisions of the Major Port Trusts Act, 1963 (Now Major Port Authorities Act-2021) as time to time amended. The issues are thus decided accordingly in favour of the Port Authority.

Further O.P. has also denied the SMPK's claim on account of interest. Therefore, it required to be adjudicated seriously as the issue involves mixed question of fact and law as well. It is my considered view that payment of interest is a natural fall out and one must have to pay interest in case of default in making payment of the principal amount due to be payable. For occupation and enjoyment of Port property, the charges leviable upon the tenants/occupiers are based on the Schedule of Rent Charges as applicable for a tenant/occupier in respect of respective zone as indicated in such Schedule of Rent Charges. Here in this instant matter O.P cannot deny such liability of payment of interest also as he has failed to pay the principal amount due to be payable by him. Moreso, this forum has no power in the matter of waiver of interest for which O.P has to pray before

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Appointed by the Central Govt. Under Section 3 of the Public Premises  
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Proceedings No.

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**SHREE DHAKALIA INDUSTRIES**  
**VS**

proper Authority of SMPK. As such, I have no hesitation to decide the issue in favour of SMPK and I have no bar to accept the claim of SMPK on account of Interest accrued for delayed payment.

In the aforementioned circumstances, being satisfied as above, I have no hesitation to uphold the claim of the Port Authority.

Regarding the issue of unauthorised construction no reply to SMPK's allegation regarding unauthorized construction has been given from O.P's end in it's reply to the Shaw Cause dated 20.07.2007. SMPK has also come up with specific drawing/sketch Maps being No. 8027-H dated 22.08.2007 highlighting the unauthorized construction in red hatch but O.P is silent as to how this construction can be said to be authorized in nature. As per the P.P Act 1971, once the Notice U/S-4 is issued, burden is on the O.P to Show Cause and/or produce evidence but in this case O.P. has hopelessly failed to do so. In my view, the O.P. has sufficiently admitted about the existence of unauthorized construction in the premises, and since it is a settled law that admitted facts need not be proved, I have no bar in accepting that the breach of unauthorized construction was existing when the notice for revocation of licence dated 14.06.2000 came to be issued by the Port Authority.

Discussion against the forgoing reveal that notice for revocation of licence dated 14.06.2000 is validly issued and served on O.P and the same is binding and very much enforceable, in the facts and circumstances of the case. Thus being satisfied as above, I am left with no other alternatives but to issue the order of eviction against O.P as prayed for on behalf of SMPK, on following grounds/reasons.

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13.07.2022

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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. 871, 871/R of 2007 Order Sheet No. 40

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

**SARBE DHAKALIA <sup>VS</sup> INDUSTRIES**

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1. That O.P. has violated the condition of monthly licence as granted by the Port Authority by way of not making payment of dues/damages and other charges to SMPK, for a prolonged period of time.
2. That O.P has carried out unauthorized construction in the public premises without any lawful authority.
3. The O.P or any other person/occupant have failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation"
4. That the notice for the revocation of licence dated 14.06.2000 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.
5. That O.P. is liable to pay damages for wrongful use and occupation of the public premises up to the date of handing over the clear, vacant and unencumbered possession to the port authority.

ACCORDINGLY, I sign the formal order of eviction u/s 5 of the Act as per Rule made there under, giving 15 days time to O.P. and any person/s whoever may be in occupation to vacate the premises. I make it clear that all person/s whoever may be in occupation are liable to be evicted by this order and the Port Authority is entitled to claim damages for unauthorized use and enjoyment of the property against O.P. in accordance with Law up to the date of recovery of possession of the same. SMPK is directed to submit a comprehensive status report of the Public Premises in question on inspection of the property after expiry of the 15 days as aforesaid so that necessary action could be taken for execution of the order of eviction u/s. 5 of the Act as per Rule made under the Act.

*(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

Proceeding No. 871, 871/R of 2007 Order Sheet No. 41

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

**SHREE D~~HA~~KALIA <sup>VS</sup> INDUSTRIES**

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I find that SMPK has made out an arguable claim against O.P., founded with sound reasoning, regarding the damages/compensation to be paid for the unauthorised occupation. I make it clear that SMPK is entitled to claim 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 as the possession of the premises is still lying unauthorisedly with the O.P. SMPK is directed to submit a statement comprising details of its calculation of damages, 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 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

  
(Satyabrata Sinha)  
ESTATE OFFICER

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