



o/c  
**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 1<sup>st</sup> Floor  
Of Syama Prasad Mookerjee Port  
Fairlie Warehouse  
6, Fairlie Place, Kolkata- 700 001.

PROCEEDINGS NO.1663/D OF 2018  
ORDER NO. 34 DATED: 02.08.2022

**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

The President,  
Ganga Seva Samity,  
157, Netaji Subhas Road,  
2<sup>nd</sup> Floor, Room No.145,  
Kolkata-700001  
AND ALSO AT  
P-222/3, Strand Bank Road,  
Kolkata-700001

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 16.07.2018 you are called upon to show cause on or before 03.08.2018 why an order requiring you to pay damages of Rs.36,56,364/- (Rupees Thirty six lakh fifty six thousand three hundred sixty four only) together with [compound interest] for unauthorised use and occupation of the said premises, should not be made;

AND WHEREAS I have considered your objections and/or 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.36,56,364/- (Rupees Thirty six lakh fifty six thousand three hundred sixty four only) assessed by me as damages on account of your unauthorised occupation of the premises for the period from 01.04.2016 to 30.06.2017 (both days inclusive) to SMPK by 18.08.2022.

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 @ 6.30 % per annum on the above sum till its final payment being the current rate of interest as per the Interest Act, 1978.

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

### SCHEDULE

**Plate No -SB-515**

Land Msg. about 790.418 sq.m on the South side of Chotalal Bathing Ghat, in the presidency town of Kolkata. It is bounded on the **North** by the Chattalal Bathing Ghat, on the **South** by the River Hooghly, on the **East** by the Trustees' building occupied by M/s Shanti Builders and on the **West** by the River Hooghly.

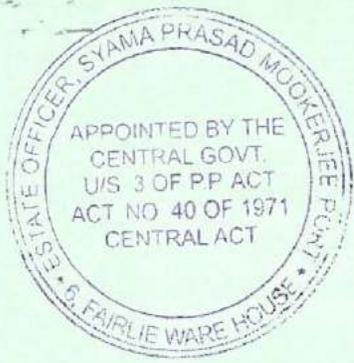
Trustees' means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata).

Date 03.08.2022 .



Signature & Seal of the  
Estate Officer.

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



o/c  
**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 Syama Prasad Mookerjee Port  
Fairlie Warehouse  
6, Fairlie Place, Kolkata- 700 001.

PROCEEDINGS NO.1663/D OF 2018  
ORDER NO. 34 DATED: 02.08.2022

**Form " E "**

Form of order under Sub-section (1) and (2A) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

To  
The President,  
Ganga Seva Samity,  
157, Netaji Subhas Road,  
2<sup>nd</sup> Floor, Room No.145,  
Kolkata-700001  
AND ALSO AT  
P-222/3, Strand Bank Road,  
Kolkata-700001

WHEREAS you are in occupation of the public premises described in the Schedule below. (Please see on reverse).

AND WHEREAS, by written notice dated 16.07.2018 you are called upon to show cause on or before 03.08.2018 why an order requiring you to pay a sum of Rs.63,15,371/- (Rupees Sixty three lakh fifteen thousand three hundred seventy one only) being the rent payable together with compound interest in respect of the said premises should not be made;

AND WHEREAS, I have considered your objections and/or the evidence produced by you;  
NOW, THEREFORE, in exercise of the powers conferred by sub-section (1) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971, I hereby require you to pay the sum of Rs.63,15,371/- (Rupees Sixty three lakh fifteen thousand three hundred seventy one only) for the period 1<sup>st</sup> day April, 2005 to 31<sup>st</sup> day of March, 2016 (both days inclusive) to SMPK by 18.08.2022.

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 @ 6.30 % per annum on the above sum till its final payment being the current rate of interest as per the Interest Act, 1978.

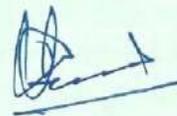
In case the said sum is not paid within the said period or in the said manner, it will be recovered as arrears of land revenue through the Collector.

### SCHEDULE

#### **Plate No -SB-515**

Land Msg. about 790.418 sq.m on the South side of Chotalal Bathing Ghat, in the presidency town of Kolkata. It is bounded on the **North** by the Chattalal Bathing Ghat, on the **South** by the River Hooghly, on the **East** by the Trustees' building occupied by M/s Shanti Builders and on the **West** by the River Hooghly.

Trustees' means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata).



Dated: 03.08.2022.

Signature and seal of the  
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 Unauthorized Occupant) Act 1971

OFFICE OF THE ESTATE OFFICER

6, Fairlie Place (1st Floor)

KOLKATA - 700 001

\*\*\*\*\*

Court Room at the 1<sup>st</sup> Floor  
Of Syama Prasad Mookerjee Port  
Fairlie Warehouse  
6, Fairlie Place, Kolkata- 700 001.

PROCEEDINGS NO.1663 OF 2018  
ORDER NO. 34 DATED: 02.08.2022.

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

-Vs-

**The President, Ganga Seva Samity (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 **The President, Ganga Seva Samity of 157, Netaji Subhas Road, 2<sup>nd</sup> Floor, Room No.145, Kolkata-700001 AND ALSO AT P-222/3, Strand Bank Road, Kolkata-700001** is in unauthorized occupation of the Public Premises specified in the Schedule below:

#### **REASONS**

1. That O.P. has defaulted in making payment of monthly licence fees/rental dues to SMPK in gross violation to the condition for grant of tenancy under monthly term licence.
2. That O.P. has erected unauthorised constructions and also encroached upon the SMPK's khas land msg. about 13.71 Sq.m. without having any authority of law.
3. That O.P. has failed to bear any witness or adduce any evidence in support of its "Authorised Occupation".
4. That notice for revocation of licence dated 15.03.2016 issued by the Port Authority to O.P., demanding possession is valid, lawful and binding upon the parties.
5. That O.P's occupation has become unauthorized in view of Sec.2 (g) of the P.P. Act.
6. That O.P. is liable to pay damages for its wrongful use and enjoyment of the Port Property upto the date of handing over of clear vacant and unencumbered possession to SMPK.

**PLEASE SEE ON REVERSE**

(2)

A copy of the reasoned order No. 34 dated 02.08.2022 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 **The President, Ganga Seva Samity of 157, Netaji Subhas Road, 2<sup>nd</sup> Floor, Room No.145, Kolkata-700001 AND ALSO AT P-222/3, Strand Bank Road, 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 **The President, Ganga Seva Samity of 157, Netaji Subhas Road, 2<sup>nd</sup> Floor, Room No.145, Kolkata-700001 AND ALSO AT P-222/3, Strand Bank Road, 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.

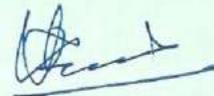
#### SCHEDULE

**Plate No. SB-515**

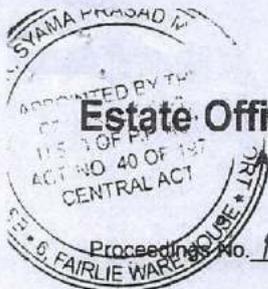
Land Msg. about 790.418 sq.m on the South side of Chotalal Bathing Ghat, in the presidency town of Kolkata. It is bounded on the **North** by the Chattalal Bathing Ghat, on the **South** by the River Hooghly, on the **East** by the Trustees' building occupied by M/s Shanti Builders and on the **West** by the River Hooghly.

Trustees' means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata).

Dated: 03.08.2022



Signature & Seal of  
Estate Officer.



# 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. 1663, 1663/R & 1663/D Of 2018 Order Sheet No. 27

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

VS

THE PRESIDENT GANGA SEVA SAMITY

### FINAL ORDER

The instant proceedings No. 1663, 1663/R & 1663/D of 2018 arisen out of the application bearing No. Lnd.14/22/III/17/3712 dated 15.11.2017 filed by the Syama Prasad Mookerjee Port Kolkata (Erstwhile Kolkata Port Trust), hereinafter referred to as SMPK, the applicant herein, praying for an order of eviction and recovery of rent, compensation/ damages and other charges etc. along with accrued interest in respect of the public premises as defined in the Schedule of said application, against **The President, Ganga Seva Samity**, the O.P herein, under relevant provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

The fact of the case in a nutshell is that O.P. came into occupation of the Port Property being land msg. about 790.418 Sq.m under occupation No. SB-515 on the south side of Chotalal Bathing Ghat, Kolkata on month to month license basis. The allegations leveled by SMPK against O.P is that while in possession of Port property as licensee, the O.P. has defaulted in payment of monthly license fees and taxes, unauthorisedly erected certain structures/ construction and unauthorisedly encroached upon Trustees' Khas land msg. about 13.71 sqm in clear and gross violation of the terms and conditions of such license.

It is also the case of SMPK that the said licence with O.P. was determined by way of a notice of revocation of licence dated 15.03.2016 and the O.P. was asked to vacate the premises on 31.03.2016 but O.P has failed and neglected to vacate/ hand over the possession of such premises after service of the said Notice. Now, it is argued by SMPK that O.P. has no right to occupy the said premises after revocation of said licence vide the quit notice dated 15.03.2016 and O.P. is liable to pay damages for wrongful use and enjoyment of the Port Property in question.

This Forum of Law formed its opinion to proceed against O.P. under the relevant provisions of the P.P. Act and issued show cause notices under Sec. 4 & 7 of

34

09.08.2022

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
CERTIFIED COPY OF THE ORDER  
PASSED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
Head Assistant  
OFFICE OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
20.08.2022



# 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. 1663, 1663/R & 1663/D of 2018

Order Sheet No. 28

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

VS

THE PRESIDENT GANGA SEVA SAMITY

34  
02.08.2022

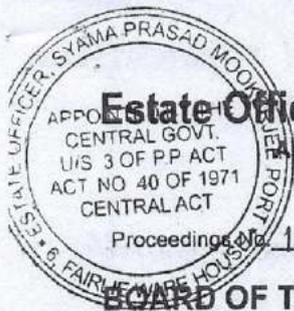
the Act all dated 16.07.2018(vide Order No.1 dated 16.07.2018) as per Rules made under the Act.

The O.P. contested the case and filed several applications. Reply to the Show Cause Notice/s was filed by the O.P. on 05.09.2018. Thereafter, the O.P. has filed applications on 01.10.2018, 14.01.2019. Finally the written notes has been filed by O.P. on 04.10.2019 etc. SMPK has also filed application on 14.01.2019 etc. in addition to the original application dated 15.11.2017. It is also seen that the subject property has been inspected twice jointly by the representatives of SMPK and the O.P. on 29.01.2019 and 18.03.2019 in order to ascertain the present factual scenario of the public premises in question. The reports of such joint inspections dated 29.01.2019 and 18.03.2019 have been filed before this Forum on 04.02.2019 and 05.08.2019, respectively.

The main contentions of O.P. during the course of hearing and as alleged vide several applications are as follows:

1. That O.P. runs a charitable organisation/ society at the public premises in question for the poor and helpless people by rendering free medical camp, distribution of food & cloth etc.
2. That the rent/ license fees has been enhanced from Rs 482/- to Rs 76,101.45/- from June, 2011 with effect from bill no. 2011/06/2620 dated 31.05.2011. No proper justification has been shown by SMPK regarding such abnormal enhancement of rent.
3. That no unauthorised construction has ever been erected by O.P. at the public premises in question.
4. Kolkata Port Trust has no documents of Licence to show the terms and condition of licence.
5. That Joint inspection Report is a myth. At the time of joint inspection nobody has signed on behalf of O.P. and long after it's submission before the Estate Officer, the person who was

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
CERTIFIED COPY OF THE ORDER  
PASSED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
02.08.2022  
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. 1663, 1663/R & 1663/D of 2018 Order Sheet No. 29

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

**VS**

**THE PRESIDENT GANGA SEVA SAMITY**

34

02.08.2022

asked to signed he also signed it with objection.

6. That the notice to quit was not served upon O.P. and none of the grounds mentioned in the alleged revocation notice is maintainable against O.P.
7. That SMPK has initiated the instant Proceeding mala fide with a ulterior motive to evict the licensee.

Referring to the above contentions, The President, Ganga Seva Samity/O.P. has prayed for dismissal of the instant proceedings in limini.

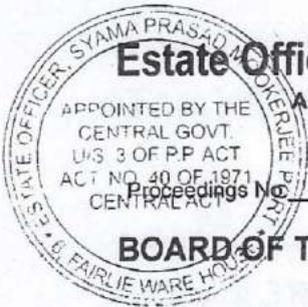
The instant Proceeding was placed before the under signed on 01.03.2022 after the superannuation of erstwhile Estate Officer and it is seen that during the course of hearing before the undersigned, O.P never appeared before the Forum to contest the instant matter in spite of due service and publication of the order of the instant matter in a widely circulated News Paper as a notice to all concerned.

In view of the above I have been constrained to pass this Final Order only after considering the available documents on record.

After carefully considering the documents on record and the submissions of the parties, I find that following issues have come up for my adjudication:-

- I) Whether O.P. is in default of making payment of licence fees/rental dues to SMPK or not;
- II) Whether the plea taken by O.P. regarding non-receipt of notice for revocation of licence dated 15.03.2016 has got any merit in determining the point at issue or not;
- III) Whether O.P. has carried out any unauthorized construction or not.
- IV) Whether O.P. has made any encroachment upon SMPK land or not;
- V) Whether the notice for revocation of licence, demanding possession from O.P. by the Port Authority dated 15.03.2016 is valid and lawful 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  
02.08.2022  
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.

1663, 1663/R 9 1663 of 2018

Order Sheet No.

30

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

**VS**

**THE PRESIDENT GANGA SEVA SAMITY**

VI) Whether O.P. is liable to pay damages for unauthorized use and enjoyment of the Port Property or not;

34

02.08.2022

**Issues No. I & II** are required to be discussed analogously. The claim of SMPK on account of arrear licence fees for a particular period is never denied by O.P. by producing any paper/document like receipts for payment for the relevant period. Non-payment of arrear licence fees/rent is taken as a ground for serving Show Cause Notice u/s 4 of the Act and Show Cause Notice u/s 7 of the Act specifically indicated the period for which rental dues have fallen in arrear from O.P. No case has been made out by O.P. throughout the proceedings that they have already paid the rental dues for the relevant period. The only case which has been agitated by O.P. is with regard to the abnormal increase of licence fees/rental dues from 430/- to 76,101.45. It is argued by O.P. that such claim of SMPK is without jurisdiction and has no basis. Admittedly, a licence on month to month basis was granted to O.P. by the Port Authority on certain terms and conditions which includes a rate for grant of such licence and O.P. continued in occupation of the Port Premises on the basis of such grant. The matter of default in payment of licence fees/rental dues arises during the period 1<sup>st</sup> day of April, 2005 to 31<sup>st</sup> March, 2016. Now question arises as to how far, O.P.'s plea against enhancement of monthly licence fees/rent for occupation into the Port Property is relevant in the facts and circumstances of the case. It is my firm and considered view that as per law a licensee like O.P. cannot raise any dispute about the enhancement of charges for occupation by SMPK/Land Lord and it is pertinent to mention that such enhancement and/or imposition of monthly charges for occupation into the Port Property is governed by the provisions of the Major Port Trusts Act, 1963 on the basis of schedule of rent charges as time to time notified in Calcutta Gazette under Authority of Law and O.P. must have constructive notice in respect of publication of such notification as per law like all tenant/occupier of Port Premises. In fact nobody can deny the existence and enforceability of such notification under law. Further,

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
CERTIFIED COPY OF THE ORDER  
PASSED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
202.08.2022  
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. 1663, 1663/R & 1663/D of 2018 Order Sheet No. 31

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

VS

THE PRESIDENT GANGIA SEVA SAMITY

34

02.08.2022

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
FORWARDED COPY OF THE ORDER  
BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
22.02.08.2022  
Head Assistant  
OFFICE OF THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

it appears from the submission of SMPK that at the time of enhancement of rent in the year 2011, O.P was given opportunity like all other tenants to avail the concessational rate however, O.P has failed to approach before the appropriate authority of SMPK in this regard. In my view, such conduct of the O.P. does not inspire any confidence and I am not at all inclined to protect the occupation of the O.P. even for the sake of natural justice. In absence of any agreement between the parties or any specific commitment on the part of the Port Authority regarding charging of any rate of charges for occupation of the Port Property (other than the rate specified in the SMPK' schedule of Rent Charges), I am not inclined to accept any contention regarding non-applicability of the SMPK's Schedule of Rent Charges which is statutory in nature.

The notice for revocation of licence as claimed to have been issued by the Port Authority on 15.03.2016 bearing No. Lnd. 14/ 22/III/16/3963 appears to have been served upon O.P. in recorded address/s of O.P. Under Certificate of Posting and Registered Post with A/D. It appears that the said notice has been served in official course of business of a Statutory Authority like SMPK bearing despatch Nos.31638 & 31639. As such notice must have some probative value of the substance and presumption of law must go in favour of SMPK.

A monthly licenece is continuing on month to month basis on the basis of conduct of both the parties. To clarify the position of a monthly licensee, I must say that O.P. is recognized as a monthly licensee on the basis of renewal of licence by monthly demand and O.P. in turn acknowledges such grant of licence by way of making payment to SMPK on the basis of such demand from SMPK's end. O.P. cannot claim as a licensee without making payment of monthly licence fees on demand from SMPK. Licensee like O.P. is holding a lesser right to occupy the premises that is to say not like a lessee. There is no material to show as to how O.P. can claim its occupation as subsisting tenancy under licence without receiving or paying any valid demand. The moment, Port Authority decided to stop sending demand/bill to O.P., such act on the part

LA



# 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. 1663, 1663/R/1663/D of 2018 Order Sheet No. 32

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

**VS**

THE PRESIDENT GANGA SEVA SAMITY

34  
02.08.2022

of SMPK is required to be considered under law as unwillingness on the part of the Port Authority to recognize O.P. as licensee in respect of the property in question. Even at the cost of reiteration, I must say that a licensee like O.P. cannot claim its occupation as "subsisting tenancy" without making payment of monthly licence fees for a particular month on evaluation of the factual aspect involved in this matter. True to say that there cannot be any licensee without making payment of monthly licence fee and the licence shall be deemed to have been revoked even when there is no existence of formal notice for revocation of licence.

In my view, O.P's continuance in occupation in the Public Premises was never consented by the Port Authority as there is no demand for monthly licence fees from O.P. signifying SMPK's non assent for such occupation. As per law, institution of proceedings/suit is sufficient to express the intention of the landlord and no notice for revocation of licence is necessary to evict a licensee like O.P. In view of the discussion as aforesaid, the issues are decided against O.P.

**Issues No.III & IV** i.e issues of unauthorised construction and encroachment are also taken up together for convenient discussion. O.P. vide their reply as well as Written Notes of Arguments dated 05.09.2018 and 04.10.2019 denies both the allegations of unauthorised construction & encroachment. It is the categorical submission of O.P. that the allegation of unauthorized construction is fabricated and baseless as no structural changes has been effected since inception of the tenancy and it is also not clear as to how SMPK has pointed out such measurement of occupied place at 13.71 Sq.m. However, such allegations of O.P. are not at all acceptable to me because it appears from a Sketch plan being No.8311-1-K dated 04.02.2019 as annexed with the application dated 16.09.2021 as filed by SMPK that such unauthorised construction (as highlighted in magenta hatch) and encroachment (as highlighted in red hatch) over the subject premises were very much in existence which were sufficiently

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
CERTIFIED COPY OF THE ORDER  
PASSED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
02.08.2022  
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. 1663, 1663/R & 1663/D of 2018 Order Sheet No. 33

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

**VS**

**THE PRESIDENT GANGA SEVA SAMITY**

34

02.08.2022

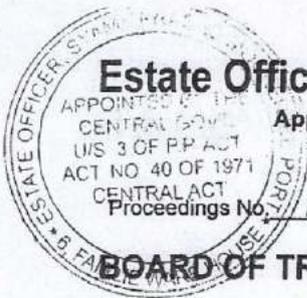
detected on 18.03.2019 during joint inspection. Further it can be added that as per the P.P Act 1971, once the Notice U/S-4 is issued, burden is on the O.P to Show Cause and/or produce evidence but in this case O.P has hopelessly failed to do so. In my view, the O.P. has sufficiently admitted about the existence of unauthorized construction and encroachment 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 and encroachment were existing when the notice to quit in terms of revocation of licence dated 15.03.2016 came to be issued by the Port Authority.

**Issues No.V & VI** are taken up together for convenient discussion. In view of the discussion against the foregoing paragraphs, there is no alternative but to hold that the notice for revocation of licence dated 15.03.2016 is valid, lawful and binding upon the parties.

At the cost of reiteration I must say that a licensee like O.P. is bound to pay the monthly demand as licence fees/rent as per demand of SMPK in order to constitute a valid licence in respect of the Property in question and failure on the part of O.P. to comply with the fundamental condition for grant of such licence that is to say non-payment of monthly licence fee is definitely entitled the Port Authority to exercise its right to revoke the licence by due notice to O.P. A monthly licence is continuing on month to month basis on the basis of conduct of both the parties. To clarify the position of a monthly licensee, I must say that O.P. is recognized as a monthly licensee on the basis of renewal of licence by monthly demand and O.P. in turn acknowledges such grant of licence by way of making payment to SMPK on the basis of such demand from SMPK's end. O.P. cannot claim as a licensee without making payment of monthly licence fees on demand from SMPK. As no case has been made out by O.P. with regard to fulfillment of all the conditions of licensee in terms of the offer from SMPK, Port Authority is free to take action against O.P. by revoking the licence. In my view, a licensee like O.P. has no right to object or raise any dispute about the

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
CERTIFIED COPY OF THE ORDER  
ISSUED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
Head Assistant  
OFFICE OF THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
02.08.2022

Handwritten signature/initials at the bottom of the page.



# 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. 1663, 1663/R 9 1663/D Of 2018 Order Sheet No. 34

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

**VS**

**THE PRESIDENT GANGA SEVA SAMITY**

34  
02.08.2022

SMPK's claim against O.P. for licence fees or rent for occupation and enjoyment of the Port property in question. Licensee like O.P. is holding a lesser right to occupy the premises that is to say not like a lessee. There is no material to show as to how O.P. can claim its occupation as authorized occupation or subsisting tenancy under licence without receiving or paying any valid demand. The moment, Port Authority decided to stop sending demand/bill to O.P., such act on the part of SMPK is required to be considered under law as unwillingness on the part of the Port Authority to recognize O.P. as licensee in respect of the property in question. Even at the cost of reiteration, I must say that a licensee like O.P. cannot claim its occupation as "subsisting tenancy" without making payment of monthly licence fees for a particular month on evaluation of the factual aspect involved in this matter. True to say that there cannot be any licence without making payment of monthly licence fee and the licence shall be deemed to have been revoked even there is no existence of formal notice for revocation of licence. Hence, I am convinced that there is no merit to the contentions made on behalf of O.P. on the plea of non-receipt of notice for revocation of licence. Moreover, it is the contention of SMPK that notice for revocation of licence has been served upon O.P. followed by stoppage of sending monthly rent demand note. In view of the circumstances, I find no merit to the submissions made on behalf of O.P. regarding O.P's occupation as "authorized occupation" for want of any notice for revocation of licence though notice to quit in question has been identified by SMPK's representative and such notice has been kept and/or maintained by SMPK in its Estate Department in official course of business. I must observe that papers/documents kept regularly in official course of business by a statutory authority like SMPK has a definite probative value of substance.

It is my considered view that O.P's continuance in occupation in the public premises was never consented by the Port Authority as there is no demand for monthly licence fees from O.P. signifying SMPK's non assent for such occupation. As per law

By Order of :  
**THE ESTATE OFFICER**  
**SYAMA PRASAD MOOKERJEE PORT**

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

02.08.2022  
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. 1663, 1663/R & 1663/D of 2018 Order Sheet No. 35

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

VS  
THE PRESIDENT GANGA SEVA SAMITY

34  
02.08.2022

institution of proceedings/suit is sufficient to express the intention of the landlord and no notice for revocation of licence is necessary to evict a licensee like O.P.

Decisions against the foregoing paragraphs will certainly lead to the conclusion that O.P. is liable to pay damages.

I have deeply gone into the submissions/arguments made on behalf of the parties in course of hearing. The properties of the Port Trust (read as SMPK) are coming under the purview of "public premises" as defined under the Act. Now the question arises how a person become unauthorized occupant into such public premises. As per Section 2 (g) of the Act the "unauthorized occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. The licence granted to O.P. was undoubtedly revoked by the Port Authority by due service of notice for revocation of licence and institution of proceedings against O.P. by SMPK is a clear manifestation of Port Authority's intention to get back possession of the premises. In fact there is no material to prove O.P.'s intention to pay the dues/charges to SMPK and all my intention to narrow down the dispute between the parties has failed. In such a situation, I have no bar to accept SMPK's contentions regarding revocation of licence by notice dated 15.03.2016, on evaluation of the facts and circumstances of the case.

"Damages" are like "mesne profit" that is to say the profit arising out of wrongful use and occupation of the property in question. I have no hesitation in mind to say that after expiry of the period as mentioned in the said notice to Quit dated 15.03.2016, O.P. has lost its authority to occupy the public premises, on the

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
CERTIFIED COPY OF THE ORDER  
PASSED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
02-08-2022  
Head Assistant  
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. 1663, 1663 R & 1663 D of 2018 Order Sheet No. 36

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

VS

THE PRESIDENT GANGA SEVA SAMITY

34

02.08.2022

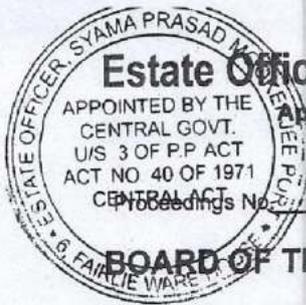
evaluation of factual aspect involved into this matter and O.P. is liable to pay damages for such unauthorized use and occupation. To come into such conclusion, I am fortified by the decision/observation of the Hon'ble Supreme Court in Civil Appeal No.7988 of 2004, decided on 10<sup>th</sup> December 2004, reported (2005)1 SCC 705, para-11 of the said judgement reads as follows.

Para:11-" under the general law, and in cases where the tenancy is governed only by the provisions of the Transfer of Property Act 1882, once the tenancy comes to an end by determination of lease u/s.111 of the Transfer of Property Act, the right of the tenant to continue in possession of the premises comes to an end and for any period thereafter, for which he continues to occupy the premises, he becomes liable to pay damages for use and occupation at the rate at which the landlord would have let out the premises on being vacated by the tenant. ....

Undoubtedly, the tenancy under licence is governed by the principles/provisions of the Indian Easement Act and there is no scope for denial of the same. Though the status of a "licencee" is entirely different from the status of a "lessee", the principle established by the Hon'ble Apex Court of India in deciding any question about "damages" in case of a "lease" may be accepted as guiding principle for determining any question about damages in case of a "licence".

In course of hearing, the representative of SMPK states and submits that Port Authority never consented in continuing O.P's occupation into the public premises and never expressed any intention to accept O.P as tenant. It is contended that SMPK's intention to get back possession is evident from the conduct of the Port Authority and O.P. cannot claim its occupation as "authorized" without receiving any rent demand note. The licence was doubtlessly revoked by the landlord by notice, whose validity for the purpose of deciding the question of law cannot be questioned by O.P.

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
CERTIFIED COPY OF THE ORDER  
PASSED BY THE ESTATE OFFICER,  
SYAMA PRASAD MOOKERJEE PORT  
2022.08.2022  
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

Proceedings No. 1663/1663/R & 1663/D of 2018 Order Sheet No. 37

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

**VS**  
**THE PRESIDENT GANGA SEVA SAMITY**

34  
02.08.2022

Therefore, there cannot be any doubt that the O.P. was in unauthorized occupation of the premises, once the licence was revoked. In my opinion, institution of this proceedings against O.P. is sufficient to express the intention of SMPK to obtain an order of eviction and declaration that SMPK is not in a position to recognize O.P. as tenant under monthly licence.

The Port Authority has a definite legitimate claim to get its revenue involved into this matter as per the SMPK's Schedule of Rent Charges for the relevant period and O.P. cannot claim continuance of its occupation without making payment of requisite charges as mentioned in the Schedule of Rent Charges. To take this view, I am fortified by the Apex Court judgment reported in JT 2006 (4) Sc 277 (Sarup Singh Gupta -Vs- Jagdish Singh & Ors.) wherein it has been clearly observed that in the event of termination of lease the practice followed by Courts is to permit landlord to receive each month by way of compensation for use and occupation of the premises, an amount equal to the monthly rent payable by the tenant. In course of hearing, it is submitted on behalf of SMPK that the charges claimed on account of damages is on the basis of the SMPK's Schedule of Rent Charges as applicable for all the tenants/occupiers of the premises in a similarly placed situation and such Schedule of Rent Charges is notified rates of charges under provisions of the Major Port Trusts Act 1963. In my view, such claim of charges for damages by SMPK is based on sound reasoning and should be acceptable by this Forum of Law. As per law, when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract to be likely to result from the breach of it. I have no hesitation to observe that O.P.'s act in continuing occupation 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

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
CERTIFIED COPY OF THE ORDER  
PASSED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
02.08.2022  
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. 1663, 1663/R & 1663/D of 2018 Order Sheet No. 38

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

VS  
THE PRESIDENT GANGA SEVA SAMITY

34  
02.08.2022

peaceful possession to SMPK. With this observation, I must reiterate that the ejection notice, demanding possession from O.P. as stated above has been validly served upon O.P. in the facts and circumstances of the case and such notice is valid, lawful and binding upon the parties. In view of the discussions above, the issue are decided in favour of SMPK.

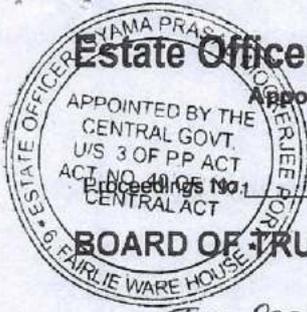
NOW THEREFORE, in view of the discussion above against foregoing issues, I am left with no other alternative but to issue order of eviction u/s 5 of the Act against O.P. for the following reasons/grounds;

1. That O.P. has defaulted in making payment of monthly licence fees/rental dues to SMPK in gross violation to the condition for grant of tenancy under monthly term licence.
2. That O.P. has erected unauthorised constructions and also encroached upon the SMPK's khas land msg. about 13.71 Sq.m. without having any authority of law.
3. That O.P. has failed to bear any witness or adduce any evidence in support of its "Authorised Occupation".
4. That notice for revocation of licence dated 15.03.2016 issued by the Port Authority to O.P., demanding possession is valid, lawful and binding upon the parties.
5. That O.P's occupation has become unauthorised in view of Sec.2 (g) of the P.P. Act.
6. That O.P. is liable to pay damages for its wrongful use and enjoyment of the Port Property upto the date of handing over of clear vacant and unencumbered possession to SMPK.

Accordingly, I sign the formal order of eviction under Sec. 5 of the Act as per Rules made thereunder, giving 15 days time to O.P. 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 as their occupation into the Public Premises is/are unauthorised in view of sec. 2(g) of the Act. 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

HA A

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
CERTIFIED COPY OF THE ORDER  
PASSED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
02-08-2022  
Assistant



# 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. 1669, 1669/R & 1669/D of 2018 Order Sheet No. 39

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

VS  
THE PRESIDENT GANGA BEVA SAMITY

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.63,15,371/- (Rupees Sixty three lakh fifteen thousand three hundred seventy one only) for Plate No.SB-515 for the period from 01.04.2005 to 31.03.2016(both days inclusive) is due and recoverable from O.P. by the Port authority on account of licence fees/rental dues and O.P. must have to pay such dues to SMPK on or before 18.08.2022. Such dues attract compound interest @ 6.30 % per annum, which is the current rate of interest as per the Interest Act, 1978 (as gathered by me from the official website of the State Bank of India) from the date of incurrence of liability, till the liquidation of the same, as per the adjustment of payments, if any made so far by O.P., in terms of SMPK's books of accounts.

Likewise, 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 unauthorised occupation. As such, I must say that Rs.36,56,364/-(Rupees Thirty six lakh fifty six thousand three hundred sixty four only) for the above referred Plate in question as claimed by the Port Authority as damages in relation to the subject premises in question, is correctly payable by O.P. all for the period 01.04.2016 to 30.06.2017 (both days inclusive) and it is hereby ordered that O.P. shall also make payment of the aforesaid sum to SMPK by 18.08.2022. The said damages shall attract compound interest @ 6.30% per annum, which is the current rate of interest as per the Interest Act, 1978 (as gathered by me from the official website of the State Bank of India) from the date of incurrence of liability, till the liquidation of the same, as per the adjustment of payments, if any made so far by O.P., in terms of SMPK's books of accounts. I sign the formal orders u/s 7 of the Act.

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

34  
02.08.2022

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
CERTIFIED COPY OF THE ORDER  
ISSUED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
Head Assistant  
OFFICE OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
02.08.2022



# 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. 1663, 1663/R & 1663/D of 2018 Order Sheet No. 40

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

VS

THE PRESIDENT GANGA BEVA SAMITY

34  
02.08.2022

same in accordance with Law, and as such the liability of O.P. to pay damages extends beyond 30.06.2017 as well, till such time the possession of the premises continues to be under the unauthorised occupation with the O.P. SMPK is directed to submit a statement comprising details of its calculation of damages after 30.06.2017, 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

(Kausik Kumar Manna)  
ESTATE OFFICER

\*\*\* 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  
02.08.2022  
Head Assistant  
OFFICE OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT