

N/B

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

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

REASONED ORDER NO. 22 DT 19.09.2022
PROCEEDINGS NO 1140/D of 2011

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 Asian Marketing Co. Ltd.
Of 38, Netaji Subhas Road, 2nd Floor,
Kolkata- 700 001

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 17.08.2015 you were called upon to show- cause on/or before 07.10.2015 why an order requiring you to pay a sum of Rs 30,44,034.02 (Rupees Thirty Lakhs Forty Four Thousand Thirty Four and paise Two only) being damages payable together with compound interest for unauthorised use and occupation of the said premises, should not be made.

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

Now, therefore, in exercise of the powers conferred on me by Sub-section (2) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971, I hereby order you to pay the sum of Rs 30,44,034.02 (Rupees Thirty Lakhs Forty Four Thousand Thirty Four and paise Two only) for the period from 01.09.1982 to 17.05.2012 assessed by me as damages on account of your unauthorised occupation of the premises to Kolkata Port Trust, by 07.10.2022.

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 @ 6.45 % 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) on the above sum with effect from the date of incurrance of liability, till its final payment in accordance with Notification Published in Official Gazette/s.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
20.09.2022
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

Please see on reverse

:2:

A copy of the reasoned order no. 22 dated 19.09.2022 is attached hereto.

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.

SCHEDULE

Plate no - SW-15

Compartment No.12 measuring about 213.276 sq.m. (under plate no SW-15) or thereabouts on the 1st Floor of the Trustees' godown known as Canning Warehouse situated on the west side of Strand Road 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)

Dated: 20.09.2022.



Signature and seal of the
Estate Officer.

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

By Order of :
THE ESTATE OFFICER
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CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
20.09.2022
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

1140/D Of 2011 Order Sheet No. 22

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S ASIAN MARKETING CO. LTD

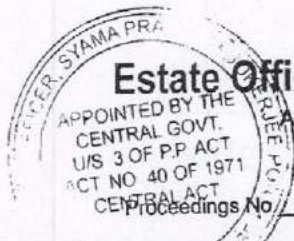
FINAL ORDER

The instant proceeding No. 1140/D of 2011 is preferred by **Syama Prasad Mookerjee Port, Kolkata** [erstwhile Kolkata Port Trust, hereinafter referred to as '**SMPK**'], the applicant herein, praying for an order of recovery of dues on account of Rent and Compensation/ Damage charges, along with accrued interest thereon, in respect of the subject public premises, against **Asian Marketing Co. Ltd**, (hereinafter referred to as **O.P.**), under the relevant provisions of **Public Premises (Eviction of Unauthorized Occupants) Act, 1971** (hereinafter referred to as '**the Act**').

The fact of the case in a nutshell is that the O.P. came into occupation of the port property of godown space measuring about 213.276 sqm situated at the 1st floor of SMPK's Warehouse known as Canning Warehouse on the west side of the Strand Road, Kolkata comprised under occupation plate no SW 15, as a lessee of SMPK. As the O.P. defaulted in making payment of SMPK's rents, SMPK initiated eviction proceedings before this Forum of Law against the O.P. and the Order of eviction dated 27.04.2012 was passed. Thereafter the possession of the premises was taken over by SMPK on 17.05.2012. Thereafter, SMPK in terms of the application dated 28.11.2014 has submitted its claim on account of arrear rents as well as compensation/ damage charges, which reportedly was due and recoverable from the O.P. for its use and enjoyment of the port property in question. The claim of SMPK on account of rent was ^{found} to be in ignorance of the Order dated 27.04.2012 as such claim on account of rent had already been assessed by this Forum in terms of the said Order dated 27.04.2012. Accordingly, after considering the claim of SMPK on account of compensation/ damage charges, this Forum formed its opinion to proceed against the O.P. and

22
19.09.2022

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Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
20.09.2022



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

1140/D of 2011 Order Sheet No. 23

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S ASIAN MARKETING CO. LTD

22
19.09.2022

issued Show Cause Notice dated 17.08.2015 (vide Order no. 14 dated 10.08.2015) u/s 7 of the Public Premises (Eviction of Unauthorized Occupation) Act, 1971. The Notice was issued calling upon the O.P. to show cause as to why an order requiring payment of arrear compensation/ damage charges together with interest would not be made against the O.P. The Notice was sent through 'Speed Post' to the recorded addresses of O.P. at '38, Netaji Subhas Road, 2nd Floor, Kolkata- 700 001'. However, the notice was returned undelivered by the Postal Department with the remarks "Left". The 'Process Server' attached with this Forum, for service of such Notices/ Orders etc., has submitted the Report dated 21.08.2015 stating that the Notice could not be served personally upon the recorded address of O.P. as the "O.P. was not found". However, it appears from the said Report of Process Server dated 21.08.2015 that the notice was affixed on a conspicuous part of the premises, as per mandate of the Act. Thereafter, the matter has been assigned to the undersigned in 2021 after superannuation from service of my erstwhile Estate Officer. It appeared from records that inspite of the efforts as stated above made, the appearance of O.P. could not be procured and the efforts remained futile. In such circumstances, the possibility of O.P. having an alternative address was explored by this Forum and SMPK was directed vide Order dated 11.08.2021 to provide the same. In response, SMPK submitted the application dated 18.05.2022 stating that they have no alternative address of O.P. for communications. Thus, a decision was taken vide Order dated 18.05.2022 to publish a notice in a local English newspaper for a notice to all concerned about the pendency of the instant proceeding in order to give a chance to the O.P. to appear before this Forum and to represent their case. Such notice was published in 'The Times of India (Kolkata edition)' on 04.06.2022 fixing the date for the O.P's appearance, filing

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20.09.2022
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

1140/D Of _____ Order Sheet No. 24

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S ASIAN MARKETING CO. LTD

02
19.09.2022

reply to Show Cause on 15.06.2022. A notice was published in SMPK's official website also. On 15.06.2022 neither the O.P. nor anyone interested in the property approached the Forum or made a contact in the meantime in connection with the Show Cause Notice issued by this Forum. Considering the situation that the attendance of O.P. could not be procured by this Forum at any point of time inspite of every possible efforts made, even after the publication of a Notice in the English daily newspaper and thereafter, I have been constrained to proceed ex-parte against the O.P.

I find that SMPK has produced detailed statement of accounts dated 16.10.2012 under the cover of the application dated 14.11.2012 in respect of the public premises in question. It appears from the said statements of accounts that no payment, whatsoever, was made by O.P. in respect of the premises for decades. In my view, such statements maintained by a statutory authority/ SMPK in its usual course of business has definite evidentiary value, unless challenged with fortified documents/evidence etc., ready to bear the test of legal scrutiny. During the course of hearing, I am given to understand by SMPK that the compensation/ damages 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. Non-payment of dues by O.P. for decades is very much prominent and established, as discussed above. Hence, I have no bar to accept the claim of SMPK on account of damages/compensation charges. I have nothing to disbelief in respect of SMPK's claim against O.P. as per statement of accounts maintained regularly in SMPK's office in regular course of business.

[Handwritten signature]

By Order of:
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SYAMA PRASAD MOOKERJEE PORT
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
19.09.2022

[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. 1140/D Of 2011 Order Sheet No. 25

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S ASIAN MARKETING CO. LTD

22
19.09.2022

Thus, it is my considered view that a sum of Rs 30,44,034.02 (Rupees Thirty Lakhs Forty Four Thousand Thirty Four and paise Two only) is due and recoverable from the O.P. for the period from 01.09.1982 to 17.05.2012 by the Port authority on account of compensation/ mesne profit/ damage charges.

The O.P. must have to pay such dues to SMPK on or before 07.10.2022.

Interest is the natural fallout for delayed payments of Rent/ Compensation and as such, the O.P. is liable to pay interest for the same. Such dues attracts Compound Interest @ 6.45% per annum, which is the current rate of interest as per the Interest Act, 1978 (as gathered from the official website of the State Bank of India) from the date of incurrance 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.

The formal order u/s 7 of the Act is signed accordingly.

I make it clear that in the event of failure on the part of O.P. to pay the dues/charges as aforesaid; SMPK 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

(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:
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SYAMA PRASAD MOOKERJEE PORT
19.09.2022
Head Assistant
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