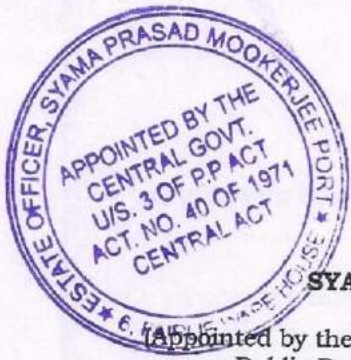


SCAN



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  
\*\*\*\*\*

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  
11/11/2022

Court Room at the 1st Floor  
of SMPK's  
Fairley Warehouse  
6, Fairley Place, Kolkata- 700 001.

REASONED ORDER NO. 49 DT 31.10.2022  
PROCEEDINGS NO. 1384 OF 2013

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

**M/s. Durlabhaji Bhurabhai Metalware Pvt. Ltd (O.P)**

**F O R M - "B"**

**ORDER UNDER SUB-SECTION (1) OF SECTION 5 OF THE PUBLIC  
PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1971**

WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that **M/s. Durlabhaji Bhurabhai Metalware Pvt. Ltd, Godown No.16, Clive Warehouse, Strand Road, Kolkata-700001** is in unauthorized occupation of the Public Premises specified in the Schedule below:

**REASONS**

1. That contentions on behalf of O.P regarding non-maintainability of the proceedings have got no merit in the facts and circumstances of the case.
2. That the Show Cause Notice/s as issued by this Forum to O.P are valid binding and lawful.
3. That the contentions of O.P. with regard to non-maintainability of proceedings on the plea of "Estoppel, waiver & acquiescence" has got no merit in the facts and circumstances of the case.
4. That O.P. has violated the condition of monthly lease as granted by the Port Authority by way of not making payment of rental dues and taxes to SMPK, for a prolonged period of time.
5. That O.P. cannot take the plea of waiver of Quit Notice, taking the shield of acceptance of rent by SMPK.
6. That O.P. cannot take the plea of time barred claim by SMPK, taking the shield of Limitation Act.
7. That the O.P or any other person/occupant has failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation".
8. That the notice to quit dated 04.12.2007 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.
9. 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

*Handwritten signature/initials*

(2)

A copy of the reasoned Order No. 49 dated 31.10.2022 is attached hereto which also forms a part of the reasons.

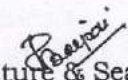
NOW, THEREFORE, in exercise of the powers conferred on me under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order the said **M/s. Durlabhaji Bhurabhai Metalware Pvt. Ltd, Godown No.16, Clive Warehouse, Strand Road, Kolkata-700001** and 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 **M/s. Durlabhaji Bhurabhai Metalware Pvt. Ltd, Godown No.16, Clive Warehouse, Strand 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.SW-121**

Compartment No.8 being Godown space msg.about 719.069 sq.m on the 1<sup>st</sup> floor of Kolkata Port Trust's Pathuriaghat Warehouse in the presidency town of Kolkata. Trustees' means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata).

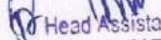
Dated: 1/11/2022

  
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

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

1/11/2022



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  
6, Fairlie Place Warehouse  
Kolkata-700001.

**Form "E"**

PROCEEDINGS NO.1384/R OF 2013  
ORDER NO.49 DATED: 31.10.2022

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

To  
M/s. Durlabhaji Bhurabhai Metalware Pvt. Ltd,  
Godown No.16, Clive Warehouse,  
Strand 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 10.07.2013 you are called upon to  
show cause on or before 21.08.2013 why an order requiring you to pay a sum  
of Rs.18,32,185/- (Rupees Eighteen Lakh thirty two thousand one hundred  
eighty five 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.18,32,185/- (Rupees Eighteen  
Lakh thirty two thousand one hundred eighty five only) for the period from 1<sup>st</sup>  
day of April, 2004 upto 30<sup>th</sup> day of December, 2007 (both days inclusive) to  
SMPK by 16.11.2022

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  
OFFICE OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
1/11/2022



: 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 @ 6.90 % per annum on the above sum till its final payment being the current rate of interest as per the Interest Act, 1978.

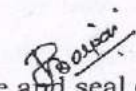
In case the said sum is not paid within the said period or in the said manner, it will be recovered as arrears of land revenue through the Collector.

**SCHEDULE**

**Plate No.SW-121**

Compartment No.8 being Godown space msg.about 719.069 sq.m on the 1<sup>st</sup> floor of Kolkata Port Trust's Pathuriaghat Warehouse in the presidency town of Kolkata. Trustees' means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata).

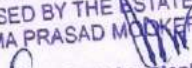
Dated: 1/11/2022

  
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  
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

1/11/2022



## 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. 1384, 1384/R of 2013 Order Sheet No. 44

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

**VS**  
M/S. DURLABHAJI BHURABHAI METALWARE (P) LTD.

49

31.10.2022

#### FINAL ORDER

For delivering final order, factual aspect involved in this matter is required to be considered in a nutshell. It is the case of Syama Prasad Mookerjee Port, Kolkata [erstwhile Kolkata Port Trust/KoPT], hereinafter referred to as 'SMPK', the Applicant herein, that M/s Durlabhaji Bhurabhai Metalware Pvt. Ltd, hereinafter referred to as 'Opposite Party/ O.P.', was inducted in the Port property Compartment No.8 being godown space msg. 719.069 sq.m.(under Plate No.SW-121) situated on the 1st floor of SMPK's Pathuriaghat Warehouse, Thana: North Port Police Station in the Presidency town of Kolkata as a short term lessee on month to month basis with certain terms and conditions as embodied therein and O.P. violated the condition for grant of tenancy under such monthly term lease by way of defaulting in payment of monthly rent and taxes including accrued interest thereon. It is the specific case of SMPK that O.P. has failed to liquidate such huge outstanding dues in spite of repeated request or demand from SMPK. In course of hearing, it is argued that O.P. has no authority under law to occupy the Port premises, being the public premises in question after due service of ejection notice dated 04.12.2007, demanding possession on the expiry of the month of December, 2007.

This Forum of Law formed its opinion to proceed against O.P. under the relevant provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and issued show Cause Notices u/s 4 of the Act (for adjudication of the prayer for eviction) and u/s 7 of the Act (for adjudication of the prayer for realization of Rent etc.) as per the Rules made under the Act, both dated 10.07.2013 (vide order no. 04 dated 03.04.2013).

*Sd/-*

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

1/11/2022

# 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. 1384, 1384/R of 2013 Order Sheet No. 245

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

**VS**  
**DCR LABHARI BHURABHAI METALWARE (P) LTD.**

31.10.2022

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  
11/11/2022

The O.P. appeared before this Forum through their Ld. Advocate and contested the case and filed several applications/ objections. It reveals from record that O.P. filed their reply to the Show Cause Notice on 12.03.2018. The O.P. also filed their Written Notes of Arguments on 01.04.2019, SMPK on the other hand, filed their rejoinder/comments dated 18.05.2018 in response to the reply to Show cause filed by O.P.

The main contentions of O.P. can be summarized as follows:-

- 1) The application of the Port Authority for evicting the O.P is not maintainable under law as well as fact.
- 2) Being a statutory authority, SMPK has failed to act in accordance with principles of fair play, equity and justice. Thus the action of the Port authority is perverse, arbitrary, unjustified and incolourable exercise of power without authority.
- 3) The said application of the Port authority is concocted with same false and frivolous allegations and/or statement for having illegal gain from Ld' Estate Officer.
- 4) The said application is barred by the principles of waiver, acquiescence and estoppel.
- 5) The said application is also barred by the law of limitation.
- 6) The said application is misconceived one and created with an intention to harass the Opposite Party of the instant case.
- 7) That the present Proceeding is not maintainable as the O.P. is not unauthorised occupant and as such the preconditions of initiation of any proceeding under P.P Act has not been satisfied in the present case in any manner.



## 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. 1384, 1384/R of 2013 Order Sheet No. 46

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

**VS**  
**M/S. SURLABHATI BEURABHAI METALWARE (P) LTD.**

49

31.10.2022

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

11/10/2022

- 8) In view of the Gazette Notification dated 29<sup>th</sup> January, 2019 the schedule property is vested with the State Government therefore, Port authority as well as the Estate Officer have no jurisdiction to proceed with the instant matter.
- 9) The only ground for eviction as appended in the said notice of eviction is default and at the time of inspection no breaches was found by SMPK authority as such O.P is not required to travel beyond the ground of default.
- 10) A lump sum amount is lying in the suspense account maintained by SMPK and relating to the same no account and/or break up upon adjustment of the same is submitted before the Ld' Estate Officer and no copy of the same has also been served upon the O.P.
- 11) The show Cause notice/s does not and cannot have any reasonable nexus or live-link with the purported application and the proceeding cannot be initiated on the basis of such an old application. Thus the present proceeding is without any foundation and has no basis.
- 12) In spite of several objections and/or prayer for reconciliation by O.P., SMPK authority malafiedly denied inspection of their accounts and relevant documents thereto.
- 13) The SMPK authority has regularized the tenancy upon accepting the rents as such O.P. is not a defaulter in respect of the said premises.
- 14) That the O.P. was paying monthly rent to SMPK and the said rent was duly accepted by SMPK hence, the said eviction notice for termination of entire relationship between the parties have no

Amr

**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. 1384, 1384/R of 2013 Order Sheet No. 47

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

**VS**  
**M/S. DURLABHAI BHURABHAI METALWARE (P) LTD.**

31.10.2022

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 I.D. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
1/11/2022

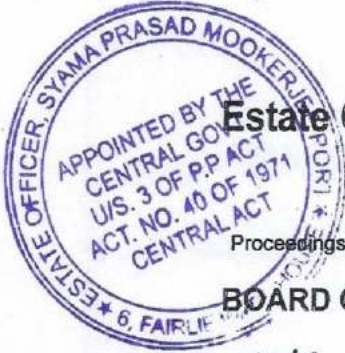
legal stand and/or wing and the occupation of O.P. cannot be termed as unauthorized.

- 15) The SMPK authority whimsically increased the rent amount upto 5% to 6% from the existing rent within a period of 12 months twice for which they have not submitted any explanation before the Estate Officer and no copy of such explanation was also served upon O.P.
- 16) No explanation was also given by SMPK authority for justification of charging higher amount than the rent amount and no copy of the same was served upon the O.P.
- 17) After reconciliation of accounts the account in respect of such premises shows zero therefore, the Notice for eviction does not stand its ground and the same is misconceived.
- 18) The method of submission of Accounting Statement in the said proceeding is bad in law.
- 19) Interest charged by SMPK for the arrear dues is exorbitant and is also contrary to the provision of Section 7(2A) of the Public premises (Eviction of Unauthorised Occupants) Act, 1971.

Referring to the above contentions, M/s Durlabhaji Bhurabhai Metalware Pvt. Ltd /O.P. has prayed for dismissal of the instant proceedings in limini.

SMPK, the petitioner, denying the claim of O.P. argued that SMPK has issued Quit Notice and instituted Proceeding against O.P. claiming rent and compensation charges within legitimate period therefore, Limitation Act has no application on the proceedings before the quasi-judicial authority like this Forum and the proceedings is very much maintainable. Further it is argued by SMPK,





## 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. 1384, 1384/R of 2013 Order Sheet No. 48

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

M/S. DURLABHATI BHURABHAI METALWARE (P) LTD. VS

49

31.10.2022

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

1/11/2022

that the rate and charges as fixed by the SMPK are not fixed whimsically however, such rate and charges are time to time fixed by the Tariff Authority of Major Ports therefore, O.P. cannot deny their liability to pay such rate, charges and interest according to the notification published by the Tariff Authority of Major Ports and such gazette notified rates are statutory and binding on all concerned. Acceptance of any payment from O.P.'s end after issuance of quit notice will not take away SMPK's right to proceed further against O.P. and any payment tendered by O.P or received from O.P's end in respect of the period subsequent to the expiry of the period as mentioned in the notice to quit will be deemed to have been tendered by O.P as compensation for wrongful use and enjoyment of such property and not as rent.

The subject Plots are not at all within the domain of the Gazette Notification dated 29.01.2019 as such the statement made by O.P. are only to mislead the Ld' Forum in passing a favourable order and also for perpetrating the miscarriage of justice.

Heard the rival arguments from both the sides and considered all the documents placed before me including SMPK's quit notice dated 04.12.2007, petition dated 25.02.2008, SMPK's application dated 04.06.2014, 03.09.2014, 01.12.2015, 09.12.2015, 24.05.2016 Inspection Report along with joint Minutes of the Inspection dated 15.07.2015, Statement of Accounts (13.03.2013, 23.07.2014, 21.07.2017), O.P.'s applications dated 14.08.2013, 06.11.2013, 02.12.2013, 04.12.2013, 06.12.2013, 09.04.2014, 23.07.2014, 06.05.2015, 14.05.2015, 22.05.2015, 04.06.2015, 10.06.2015, 12.06.2015, 24.06.2015, 08.07.2015, 14.01.2016, 08.06.2016, 12.03.2019, Applications of

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. 1384, 1384/R of 2013 Order Sheet No. 49

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

**VS**  
**DURLABHATI BHURABHAI METALWARE (P) LTD.**

31.10.2022

By Order of:  
**THE ESTATE OFFICER**  
**SYAMA PRASAD MOOKERJEE PORT**  
CERTIFIED COPY OF THE ORDER  
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SYAMA PRASAD MOOKERJEE PORT  
Head Assistant  
OFFICE OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
1/11/2022

O.P's Advocate dated 22.12.2015, 02.02.2016, 18.02.2016 & 01.06.2016, O.P's application(undated) for direction upon SMPK to produce paper relating to payment in the said Account, O.P's reply/written Objection to show cause notice filed on 12.03.2018, SMPK's comment/rejoinder dated 18.05.2018 & O.P.'s written notes of argument dated 01.04.2019.

After careful consideration of all relevant papers/documents as brought before me in course of hearing and after due consideration of all the submissions/ arguments made on behalf of the parties, I find that following issues have come up for my adjudication :-

- (i) Whether the instant proceeding is maintainable or not;
- (ii) Whether the present proceeding is maintainable in view of the State of W.B Gazette Notification dated 29<sup>th</sup> January 2019 or not;
- (iii) Whether the eviction proceedings could be termed as invalid due to delay in issuing the notice to Show Cause after filing of the instant proceeding on 25<sup>th</sup> February, 2008 or not;
- (iv) Whether the instant proceeding is hit by the principles of waiver, acquiescence and estoppel or not;
- (v) Whether O.P. is in default of making payment of rental dues to SMPK or not;
- (vi) Whether arrear rental dues as per SMPK's claim was required to be adjusted against the Suspense Deposit held at the credit of O.P.(lying with SMPK) or not;

**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. 1384, 1384/R of 2013 Order Sheet No. 50

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

MIS. DURLABHAI VS  
BHURABHAI METALWAR & (P) LTD.

49

31.10.2022

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

- (vii) Whether O.P. can take the shield of time barred claim under Limitation Act to contradict the claim of SMPK on account of rental dues or not;
- (viii) Whether SMPK's claim on account of interest for delayed payment is sustainable and if so, to what extent such claim on account of interest is sustainable;
- (ix) Whether the plea taken by O.P. about waiver of notice to quit dated 04.12.2007 by the SMPK, has got any merit or not;
- (x) Whether the notice demanding possession from O.P. by the Port Authority dated 04.12.2007 is valid and lawful or not;
- (xi) Whether O.P's occupation has become unauthorised in terms of Sec.2(g) of the P.P. Act and whether O.P. is liable to pay damages for wrongful occupation and enjoyment of the Port Property to SMPK or not;

*sd.*

**Issues No. (i) & (ii)** are taken up together for convenient discussion, I must say that the properties owned and controlled by the Port Authority has been declared as "public premises" by the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and Section-15 of the Act puts a complete bar on Court's jurisdiction to entertain any matter relating to eviction of unauthorized occupants from the public premises and recovery of rental dues and/or damages, etc. SMPK has come up with an application for declaration of O.P's status as unauthorized occupant in to the public premises with the prayer for order of eviction, recovery of rental dues and compensation/damages etc. against O.P. on the ground of termination of authority to occupy the premises as

# Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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



Proceedings No.

1384, 1384/R of 2013

Order Sheet No.

51

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA  
VS  
DURLABHATI BHURABHAI METALWARE (P) LTD.

31.10.2022

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

1/11/2022

earlier granted to O.P. in respect of the premises in question. So long the property of the Port Authority is coming under the purview of "public premises" as defined under the Act, adjudication process by serving Show Cause Notice/s u/s 4 & 7 of the Act is very much maintainable and there cannot be any question about the maintainability of proceedings before this Forum of Law. In fact, proceedings before this Forum of Law is not statutorily barred unless there is any specific order of stay of such proceedings by any competent court of law.

As regards the issue of Gazette Notification of State of W.B. dated 29<sup>th</sup> January 2019 as annexed by O.P with the application dated 12.03.2019, I must say that such notification is of no effect today because being aggrieved by the said Notification dated 29.01.2019, SMPK has preferred a Writ Petition being W.P. No. 74 of 2019 before the Hon'ble Calcutta High Court and Hon'ble High Court has already vide its Judgement dated 10.08.2020 allowed such W.P. No 74 of 2019 by setting aside such Notification dated 29<sup>th</sup> January 2019 with the following observations:-

"..... A) that the original notice dated 25<sup>th</sup> October, 2018 was both subject and purpose specific.

B) That the contents of the original notice dated 25<sup>th</sup> October, 2018 had the effect of enticing the Board to take a legal position qua Municipal Premises number 68 and 69 comprising in all 12 Bighas and 7 Cottahs of land.

C) In a well thought out manoeuvre by the State respondents the Board was allowed to hold on its position over a Lot A, while, simultaneously unleashing the provisions of the 2012 Act declaring the surprise Board to be a persona non grata qua Lots B1 and B2.

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

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Proceedings No. 1384, 1384/R of 2013 Order Sheet No. 52

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

M/S. DURABAHATI BHURABHAI METALWARE (P) LTD.  
**VS**



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31-10-2022

By Order of :  
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SYAMA PRASAD MOOKERJEE PORT  
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SYAMA PRASAD MOOKERJEE PORT  
Head Assistant  
OFFICE OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
11/11/2022

D) Finding itself outmanoeuvred, the Board has pressed this action by claiming title also in respect of several properties in Lots B1 and B2 in respect of which neither the KMC has measured nor declared the Municipal Premises No. to fulfill the conditions precedent of an inquiry inherent in the 2012 Act.

E) The KMC decided to aid the arbitrary state action by failing to identify and/or correlate the Municipal Premises Nos. of the property in issue with its corresponding area/boundary.

In the backdrop of the above discussion, this Court is persuaded to interdict the passage of the Royal Horse. This Court finds the action impugned of the Respondents to be foundationally flawed and accordingly sets it aside....."

In view of the decisions as cited above, I have no hesitation in my mind to decide the issues in favour of the Port Authority.

Regarding **Issue No. (iii)**, no case has been made out by O.P. as to how the delay, if any, in proceeding with the matter on the basis of the application dated 25.02.2008 as filed by the Port Authority could be considered as an embargo to proceed with the matter under the relevant provisions of the Act. It reveals from record that Application of SMPK before this Forum of Law was filed on 25.02.2008 and this Forum of Law formed its opinion to proceed against O.P. by issuing Show Cause Notice on 10.07.2013 (vide order No.4 dated 03.04.2013). As Limitation Act has no application to the proceedings before this Forum of Law as it is not a Civil Court, Hence,

sof

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VS  
DURAABHAI BHURABHAI METALWARE (P) LTD.

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there is no legal bar to proceed against O.P. on the basis of the said application of the Port Authority dated 25.02.2008.

As regards the **issue No. (iv)**, I must say that according to law the question of estoppels arise when one person has, by his declaration, act or omission, **intentionally** caused or **permitted** another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceedings between himself and such person or his representative, to deny the truth of that thing. In other words to constitute an estoppel there must be an intention or permission to believe certain thing. There is no material in O.P's objection by which it can be proved that there was any intention or permission on the part of SMPK about O.P's occupation in the said public premises in question or SMPK has knowingly **acquiesced** the infringement of their right. Further 'Waiver' of a right gets its essence from estoppel and thus, there will be no waiver where there is no estoppel in place. In this instant matter as there is no plea of estoppel sustains other statutory plea like waiver or acquiescence also cannot sustain in the present fact and circumstances. Thus the issue is decided in favour of SMPK.

With regard to the issue of non-payment of SMPK's rent and taxes in **issue No.(v)**, reply & Written Notes of Argument on behalf of O.P. filed on 12.03.2018 and 01.04.2019 contradicts/denies SMPK's claim on account of rental dues on the plea that payment was being regularly made by O.P against such monthly term lease without any default and the same has been accepted by SMPK. In course of hearing, it is also stated by O.P. that SMPK authority within a tenure of 12 months had



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

M/S. BURLABHAI AHURABHAI METALWARE (P) LTD.

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SYAMA PRASAD MOOKERJEE PORT

abnormally increased the rent upto 5% to 6% from the existing rent which is without jurisdiction and has no basis and further enhancement of charges for occupation without intimation to O.P. is also not permissible. However, in my view, such statement of O.P has no justification against the outstanding dues claimed by SMPK. Moreover, during the course of hearing SMPK has filed several Statement of Accounts on various dates in respect of said occupation, which clearly indicates the huge dues on the part of the O.P. 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. 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 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. In the aforementioned circumstances, being satisfied as above, I have no hesitation to uphold the claim of the Port Authority.

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VS  
M/S. DURLABHAJI BHURABHAI METALWARE (P) LTD.

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I also do not find any substance to the plea of enhancement of charges without intimation as argued on behalf of O.P. when notification in Official Gazette as per the Central Act (MPT Act 1963) is very much within the authority of law and nobody can deny the enforceability of the same after publication of any Schedule of Rent Charges in the Official Gazette. In view of the discussion above, the issue is decided in favour of SMPK.

As regards the issue of adjustment of suspense deposit as raised by O.P. in **issue No.(vi)**, I do not find any merit because application of SMPK dated 25<sup>th</sup> February 2008 indicates that Rs.27,05,113/- as rental dues against O.P. whereas deposits held at the credit of O.P. in suspense account indicates an amount of Rs. 8,72,928/-. Apparently, at the time of filing the application before this Forum of Law there was no excess amount at the credit of O.P. To come into such conclusion, I must say that the amount held at the credit of O.P. for the relevant period was duly adjusted against the principal amount of rental dues and Show Cause Notice u/s 7 on account of rent for Rs.18,32,185/- was validly issued against O.P. as an intimation after such adjustment. Thus the issue is also decided in favour of Port Authority.

*and*

**Issue No.(vii)**, i.e on the question of time barred claim of SMPK on the issue of "limitation" and applicability of Limitation Act-1963, I have carefully considered all the submissions/ arguments made on behalf of O.P. before the Forum. It is the case of O.P. that SMPK's claim against O.P. is hopelessly barred by applying the Law of Limitation, 1963. However, as per settled law, the Limitation Act has no application in the proceedings before the Estate Officer which is not a Civil Court, governed by the Civil Procedure Code. Sec. 15 of the P.P.





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

**VS**  
**M/S. SURABHATI BHURABHATI METALWARE (P) LTD.**

By Order of :  
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**SYAMA PRASAD MOOKERJEE PORT**  
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Head Assistant  
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Act puts a complete bar in entertaining any matter before the Civil Court in respect of Public Premises. As such, I am firm in holding that Limitation Act has no application in the instant case. Hence, the issues is decided against O.P.

With regard to **issue No. (viii)**, I must say that the plea taken by O.P. for denial of SMPK's claim on account of interest is required to be adjudicated seriously as the issue involves mixed question of fact and law as well. It is the case of Kolkata Port Trust (read as SMPK) that claim of interest for delayed payment is in accordance with the Schedule of Rent Charges as per provision of the Major Port Trusts Act 1963, after obtaining sanction of the Central Govt. as per provision of the said Act. It is contended that notification published under Authority of Law has statutory force of law and O.P. cannot deny the claim of SMPK on the strength of such notification. It is also contended that continuing in occupation of the public premises must necessarily mean that O.P. is under legal obligation to pay such charges on account of interest also in case of failure to pay SMPK's demand as per Schedule of Rent Charges. It is, however, the contention of O.P. that Interest charged by SMPK for the arrear dues is exorbitant and is also contrary to the provision of Section 7(2A) of the Public premises (Eviction of Unauthorised Occupants) Act, 1971. I have duly considered the submissions/ arguments made on behalf of the parties. 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. Needless to mention that one of the basic conditions of short term lease that the lessee/ O.P. is liable to pay rents in timely manner to the lessor SMPK and any breach in such terms shall

*[Handwritten signature]*

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

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**M/S. DURLAGMAJI BHURABATI METALWARE (P) LTD. VS**

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31.10.2022

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By Head Assistant  
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SYAMA PRASAD MOOKERJEE PORT

1/11/2022

invariably attract the penal charges by way of interest. All canons of law permits charging of interest if payments are being made in delayed fashion. O.P cannot deny such liability of payment of interest as it has failed to pay the principal amount due to be payable by him more so this forum has no power in the matter of waiver of interest for which O.P has to pray before 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.

However, as regards the extent of such claim of interest, I am very much convinced by O.P's submission. In my view, this Forum must exercise the power mentioned in Sec. 7 (2-A) of the P.P. Act, 1971 as amended in the year 2015, which mentions that interest is to be charged as per the current rate of interest within the meaning of the Interest Act, 1978. The relevant portion of the amended Section 7 of the PP Act is reproduced below:-

***"Section 7 - Power to require payment of rent or damages in respect of public premises***

(2A) While making an order under sub-section (1) or sub-section (2), the estate officer may direct that the arrears of rent or, as the case may be, damages shall be payable together with compound interest at such rate as may be prescribed, not being a rate exceeding the current rate of interest within the meaning of the interest Act, 1978."

It may be noted that the words "compound interest" in the sub-section (2A) above were substituted by the said



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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/S. DURLABHAI BHURABHAI METALWARE (P) LTD

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Notification for the original words "simple interest". I must mention that I am not convinced with the submission of SMPK that the rate notified by the TAMP, should be applied in the instant case. For the purpose of determining the current rate of interest within the meaning of the Interest Act, 1978, I have gone through the website of the State Bank of India as well as the Reserve Bank of India, and in my view, the rate of 6.90 % (compound interest) is applicable as the same is the present highest rate of interest as mentioned in the Interest Act, 1978.

In view of the discussion as above, having regard to the conduct of O.P., it is my considered view that natural justice will prevail, if O.P. is allowed to pay the amount of interest due at the above rate of 6.90%.

As regards the **Issue No.(ix)**, O.P. vide their reply dated 12.03.2018 submitted that the O.P. was paying monthly rent to SMPK and the said rent was duly accepted by SMPK hence, the said eviction notice for termination of entire relationship between the parties have no legal stand and/or wing and the occupation of O.P. cannot be termed as unauthorized. However, in my view, mere acceptance of rent or other charges during pendency of the eviction proceedings does not confer any better right to O.P. and it does not amount to waiver of quit notice. As per law, in order to constitute a waiver of notice to quit, O.P. must have to prove that SMPK by accepting rent had intended to treat the lease as subsisting. In absence of any such intention on the part of SMPK being proved, mere acceptance of an amount tendered by O.P. during pendency of the proceedings can't be said to be a "waiver" on the part of SMPK. In the present case in hand SMPK actively prosecuted the proceedings for ejection

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**VS**  
**M/S. DURLABHAI BHURABHAI METALWARE (P) LTD.**

31.10.2022

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For Head Assistant  
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SYAMA PRASAD MOOKERJEE PORT

1/11/2022

against O.P. and as such it cannot be an accepted proposition that the notice to quit is infructuous by any sense of law.

In view of the discussion above the issue is decided in favour of SMPK.

**Issues (x) and (xi)** are taken up together, as the issues are related with each other. On evaluation of the factual aspects involved in this matter, the logical conclusion which could be arrived at is that SMPK's notice dated 04.12.2007 as issued to O.P., demanding possession of port property from O.P. is valid and lawful and binding upon the O.P. 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 lease granted to O.P. was determined and the Port Authority by due service of notice to Quit demanded possession from O.P. SMPK's application for order of eviction is a clear manifestation of Port Authority's intention to get back possession of the premises. In course of hearing, the representative of SMPK submits that O.P. cannot claim its occupation as "authorized" without receiving any rent demand note. The lease was doubtlessly determined by SMPK's notice demanding possession, whose validity for the purpose of deciding the question of law cannot be questioned by O.P. Therefore, there cannot be any doubt that the O.P. was in unauthorized occupation of the premises, In such

*Handwritten signature/initials*



## Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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**MIS. DURLABHAI BHURABHAI METALWARE (P) LTD.**  
**VS**

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31.10.2022

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1/11/2022

a situation, I have no bar to accept SMPK's contentions regarding enforceability of the notice dated 04.12.2007, on evaluation of the facts and circumstances of the case. With this observation, I must reiterate that the notice to quit, demanding possession from O.P. as stated above have 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. As per law O.P. is bound to deliver up vacant and peaceful possession of the public premises in its original condition to SMPK after expiry of the period as mentioned in the said notice to quit.

"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 of ejection, O.P. has lost its authority to occupy the public premises, on the evaluation of factual aspect involved into this matter and O.P. is liable to pay damages for such unauthorized use and occupation.

NOW THEREFORE, SMPK's prayer for order of eviction against O.P. is hereby allowed and accordingly Department is directed to draw up formal order of eviction u/s.5 of the Act for the following reasons/grounds:

1. That contentions on behalf of O.P regarding non-maintainability of the proceedings have got no merit in the facts and circumstances of the case.
2. That the Show Cause Notice/s as issued by this Forum to O.P are valid binding and lawful.
3. That the contentions of O.P. with regard to non-maintainability of proceedings on the plea of

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VS  
M/S. DORLABHAI BHURABHAI METALWARR (P) LTD.

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"Estoppel, waiver & acquiescence" has got no merit in the facts and circumstances of the case.

4. That O.P. has violated the condition of monthly lease as granted by the Port Authority by way of not making payment of rental dues and taxes to SMPK, for a prolonged period of time.
5. That O.P. cannot take the plea of waiver of Quit Notice, taking the shield of acceptance of rent by SMPK.
6. That O.P. cannot take the plea of time barred claim by SMPK, taking the shield of Limitation Act.
7. That the O.P. or any other person/occupant has failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation".
8. That the notice to quit dated 04.12.2007 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.
9. 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

And



## Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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M/S. DURLABHATI BHURABHAI METALLURG (P) LTD.

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31.10.2022

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SYAMA PRASAD MOOKERJEE PORT  
for Head Assistant  
OFFICE OF THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
11/11/2022

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.

It is my considered view that a sum of Rs.18,32,185/- (Rupees Eighteen Lakh thirty two thousand one hundred eighty five only) for the period From 1<sup>st</sup> day of April, 2004 to 30<sup>th</sup> December, 2007 (both days inclusive) is due and recoverable from O.P. by the Port authority on account of rental dues and O.P. must have to pay the rental dues to SMPK on or before 16.11.2022. Such dues attract compound interest @ 6.90 % 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 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 unauthorised 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.,

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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

By Order of:  
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SYAMA PRASAD MOOKERJEE PORT

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

1/11/2022

*J.P. Boipai*  
(J.P. Boipai)  
ESTATE OFFICER

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