



O/C

SCAN

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

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  
\*\*\*\*\*

02/12/2022

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

REASONED ORDER NO. 18 DT 01.12.2022  
PROCEEDINGS NO. 1819 OF 2020

BOARD OF TRUSTEES OF THE PORT OF KOLKATA  
-Vs-  
ESTATE OF MAHADEO SAH,  
Being represented by Shri Murari Dhar Sah

F O R M - "B"

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

14850

WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that  
Estate of Mahadeo Sah, Being represented by Shri Murari Dhar Sah, Plot  
No. 42, Chetla Station Yard, Kolkata - 700 027 AND 85, Peary Mohan Roy  
Road, Kolkata - 700 027 AND ALSO OF Vill :Nishihara, P.O. : Kendua,  
Thana: Haveli, Kharagpore, Dist.: Munger, Bihar is in unauthorized  
occupation of the Public Premises specified in the Schedule below:

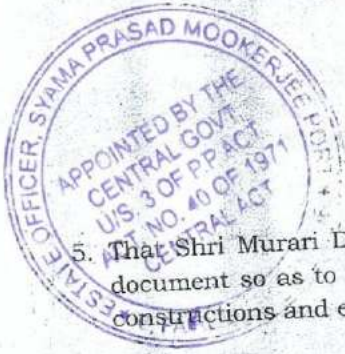
14851

14852

REASONS

1. That this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrear of dues/damages etc. as prayed for on behalf of SMP, Kolkata and the Notice/s issued by this Forum are in conformity with the provisions of the Public Premises (Eviction of Unauthorized Occupant) Act 1971.
2. That proceedings against O.P. is very much maintainable under law and O.P.'s contention regarding non-maintainability of proceedings in view of Govt. Guideline vide notification dated 08.06.2002 has got no merit for the purpose of deciding the question of "unauthorized occupation" of O.P.
3. That the contention with regard to the public peace and tranquility or public utility services/Railway facilities etc. has got no merit to support O.P.'s occupation as "authorized occupation" in the facts and circumstances of the case.
4. That Port Authority is well within its jurisdiction to demand for rental dues and/or charges for occupation into the Public Premises in question in terms of Schedule of Rent Charges notified in the Official Gazette in terms of the provisions of the Major Port Trusts Act, 1963.

Please see on reverse



:2:

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FORWARDED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

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

02/12/2022

5. That Shri Murari Dhar Shaw/ O.P. has failed to produce any evidence or document so as to defend the allegations by SMP, Kolkata of unauthorized constructions and encroachment into the Trustees' land.
6. That the O.P. has failed and neglected to pay rental dues in gross violation to the condition of monthly term lease as granted by the Port Authority to O.P.
7. That the ejectment notice dated 21.03.1992 as served upon O.P. is valid, lawful and binding upon the parties and O.P. is liable to pay damages for wrongful use and enjoyment of Port Property in question upto the date of handing over of clear vacant and unencumbered possession to the Port Authority.
8. That no case has been made out on behalf of O.P. as to how its occupation in the Public Premises could be termed as "authorised occupation" after issuance of notice dated 21.03.1992, demanding possession by the Port Authority and occupation of O.P. has become unauthorized in view of Sec.2(g) of the P.P. Act, 1971
9. That right from the date of expiry of the period as mentioned in the said notice to quit dated 28.11.1988, O.P. has lost its authority to occupy the Public Premises and O.P. is liable to pay damages for wrongful use and enjoyment of the Port Property upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

A copy of the reasoned order No. 18 dated 01.12.2022 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 Estate of Mahadeo Sah, Being represented by Shri Murari Dhar Sah, Plot No. 42, Chetla Station Yard, Kolkata - 700 027 AND 85, Peary Mohan Roy Road, Kolkata - 700 027 AND ALSO OF Vill :Nishihara, P.O. : Kendua, Thana: Haveli, Kharagpore, Dist.: Munger, Bihar** 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 **Estate of Mahadeo Sah, Being represented by Shri Murari Dhar Sah, Plot No. 42, Chetla Station Yard, Kolkata - 700 027 AND 85, Peary Mohan Roy Road, Kolkata - 700 027 AND ALSO OF Vill :Nishihara, P.O. : Kendua, Thana: Haveli, Kharagpore, Dist.: Munger, Bihar** concerned are liable to be evicted from the said premises, if need be, by the use of such force as may be necessary.

Please see on reverse



Plate no - D 532

:3:

### SCHEDULE

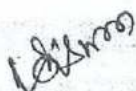
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SYAMA PRASAD MOOKERJEE PORT  
Head Assistant  
OFFICE OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

02/12/2022

The said piece or parcel of land Msg. 163.973 Sq.m thereabouts is situate at Chetla Station Yard, Thana: New Alipore, Dist.: 24 Parganas, Registration District Alipore. It is bounded on the North by the lessors strip of open land alongside their Nikashi Drain on the East by the lessor's boundary wall and partly by the lessor's open land on the South by the lessor's open land used as passage and on the west by the lessor's land leased to Roy Coal Concern.

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

Dated: 02.12.2022

  
Signature & 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  
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Court Room At the 1<sup>st</sup> Floor  
of Kolkata Port Trust's  
Fairley Warehouse  
6, Fairley Place, Kolkata- 700 001.

REASONED ORDER NO. 18 DT 01.12.2022  
PROCEEDINGS NO. 1819/D of 2020

**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  
**Estate of Mahadeo Sah,**  
**Being represented by Shri Murari Dhar Sah**  
**Plot No. 42, Chetla Station Yard,**  
**Kolkata - 700 027**  
**AND**  
**85, Peary Mohan Roy Road,**  
**Kolkata - 700 027**  
**AND ALSO OF**  
**Vill :Nishihara, P.O. : Kendua, Thana: Haveli,**  
**Kharagpore, Dist.: Munger, Bihar.**

By Order of:  
**THE ESTATE OFFICER**  
**SYAMA PRASAD MOOKERJEE PORT**  
CERTIFIED COPY OF THE ORDER  
MADE BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
Head-Modelant  
THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

02/12/2022

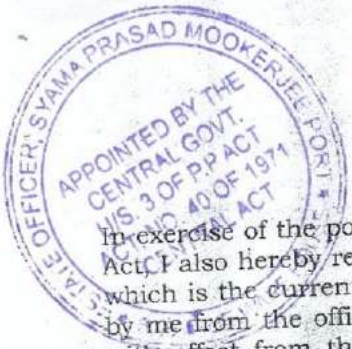
Whereas I, the undersigned, am satisfied that you were in unauthorised  
occupation of the public premises mentioned in the Schedule below:

And whereas by written notice dated 16.03.2021 you were called upon to  
show- cause on/or before 06.04.2021 why an order requiring you to pay a sum  
of Rs. 8,02,176.43 (Rupees Eight Lakhs Two Thousand One Hundred Seventy Six  
and paise Forty Three only) for the period from 30.06.1992 to 04.02.2021 being  
damages payable together with compound interest for unauthorised use and  
occupation of the said premises, should not be made.

AND WHEREAS I have considered your objection and/or the evidence  
produced by you,

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. 8,02,176.43 (Rupees Eight  
Lakhs Two Thousand One Hundred Seventy Six and paise Forty Three only) for the  
period from 30.06.1992 to 04.02.2021 assessed by me as damages on account of  
your unauthorised occupation of the premises to Kolkata Port Trust, by  
16.12.2022

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 @ 6.90 % 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) on the above sum with effect from the date of incurrence of liability, till its final payment in accordance with Notification Published in Official Gazette/s.

A copy of the reasoned order no. 18 dated 01.12.2022 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 - D 532**

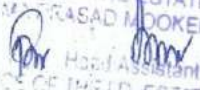
The said piece or parcel of land Msg. 163.973 Sq.m thereabouts is situate at Chetla Station Yard, Thana: New Alipore, Dist.: 24 Parganas, Registration District Alipore. It is bounded on the North by the lessors strip of open land alongside their Nikashi Drain on the East by the lessor's boundary wall and partly by the lessor's open land on the South by the lessor's open land used as passage and on the west by the lessor's land leased to Roy Coal Concern.

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

Dated: 02.12.2022

  
Signature and seal of the  
Estate Officer.

COPY FORWARDED TO THE ESTATE MANAGER, KOLKATA PORT TRUST FOR INFORMATION.

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Head Assistant  
OFFICE OF THE LD. ESTATE OFFICER  
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02/12/2022

18  
 01.12.2022

**FINAL ORDER**

The instant proceedings No. 1819, 1819/D of 2020 arise out of the application bearing No. Lnd 3184/118/II dated 21.07.1993, followed by the applications bearing No. Lnd 3184/49/(L)/20/2448 dated 10.11.2020, Lnd 3184/118/II/20/2745 dated 08.12.2020, Lnd 3184/118/II/20/2937 dated 29.12.2020 and 3184/118/II/21/513 dated 08.02.2021 filed by Syama Prasad Mookerjee Port, Kolkata [erstwhile Kolkata Port Trust/ KoPT, hereinafter referred to as '**SMP, Kolkata**'], the applicant herein, under the provisions of the **Public Premises (Eviction of Unauthorised Occupants) Act, 1971** (hereinafter referred to as '**the Act**') praying for an order of eviction and recovery of compensation dues/mesne profit/ damages and other charges etc. along with accrued interest in respect of the public premises, being the piece or parcel of land measuring about 136.973 sqm or thereabouts situated as Chetla Railway Siding, against **Shri Mahadeo Sah**, (hereinafter referred to as **O.P.**).

The fact of the case in a nutshell is that one Mahadeo Sah, since deceased, had been a monthly tenant under the then Board of Trustees of the Port of Calcutta (now known as Syama Prasad Mookerjee Port, Kolkata), in respect of the Public Premises morefully described under the Schedule 'A' of the SMP, Kolkata's said application dated 21.07.1993. It is the case of SMP, Kolkata that the O.P. has failed and neglected to pay the dues of SMP, Kolkata, unauthorisedly parted with the possession of the premises and made unauthorised constructions in the form of RTR, CTR and ASBR structures measuring about 24 sqm 18.3 sqm and 39.93 sqm, respectively, upon the premises in complete violation of the terms and conditions of tenancy. It is further the case of SMP, Kolkata that the tenancy with the

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 Head Assistant  
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02/12/2022

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

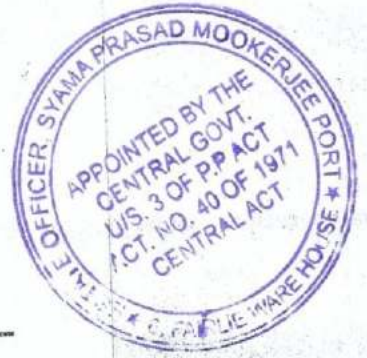
Appointed by the Central Govt. Under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971

Proceedings No. 1819, 1819/D of 2020 Order Sheet No. 20

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

**VS**

MAHADEO SAH



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01.12.2022

O.P. was determined in terms of the Notice to Quit dated 21.03.1992 and the O.P. failed and neglected to vacate/hand over the possession of the premises in terms of the said Notice to Quit. SMP, Kolkata has made out a case that O.P. has no right to occupy the premises after the determination of tenancy in question upon service of a quit notice dated 21.03.1992.

After a careful perusal of the papers/ documents filed under the cover of the said applications dated 21.07.1993, 10.11.2020, 08.12.2020, 29.12.2020 and 08.02.2021, this Forum of Law formed its opinion to proceed against O.P. and issued 2 (two) no. of Show Cause Notices upon the O.P. The first one was issued u/s 4 of the Act for adjudication of the prayer of eviction and the second one was issued u/s 7 of the Act for adjudication of the prayer of damages/ compensation dues/ mesne profit alongwith the accrued interest thereon etc., both dated 16.03.2021 (vide Order No. 10 dated 16.03.2021), as per the Rules made under the Act.

The said Notices were sent through 'Speed Post' to the 3 no. of recorded addresses of O.P., viz., at 'Plot No 42, Chetla Station Yard, Kolkata- 700 027', '85, Peary Mohan Roy Road, Kolkata - 700 027' and 'Vill: Nishihara, P.O. Kendua, Thana: Haveli, Kharagpore, Dist: Munger, Bihar'. The notices sent to the said addresses at '85, Peary Mohan Roy Road, Kolkata - 700 027' and 'Vill: Nishihara, P.O. Kendua, Thana: Haveli, Kharagpore, Dist: Munger, Bihar' return undelivered by the Postal Department. However, the Notices sent to the O.P., at 'Plot No 42, Chetla Station Yard, Kolkata- 700 027' did not return undelivered by the Postal Department raising a presumption of its due delivery to the addressee. Further, it appears from the Report of the 'Process Server' dated 29.03.2021 that the Notices have been received at the recorded address of O.P., viz. at Chetla

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Head Assistant  
OF THE LD. ESTATE OFFICER  
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02/12/2022

**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. 1819, 1819/D of 2020 Order Sheet No. 21

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

MAHADEO SAH

**VS**



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01.12.2022

Station Yard, by one Shri Murari Dhar Shaw under acknowledgement on 29.03.2021. On the day fixed for Show Cause by the O.P., viz. on 06.04.2021, said Shri Murari Dhar Shaw appeared before this Forum and represented himself as the son/ legal heir of Mahadeo Sah/ O.P., since deceased. Shri Murari Dhar Shaw filed the Reply to show Cause along with a photocopy of the death certificate of Mahadeo Sah/ O.P., since deceased. The photocopy of Aadhaar Card and PAN card of Shri Murari Dhar Shaw have been filed in support of his relationship with Mahadeo Sah/ O.P.

Perused the Reply to show cause as filed by Shri Murari Dhar Shaw, viz. the son / legal heir of Mahadeo Sah/ O.P., since deceased. It is stated in the said Reply to show Cause dated 06.04.2021 that the O.P. had been the oldest tenant of SMP, Kolkata/ Kolkata Port Trust and used to carry business in coal and firewood. The goods used to be carried by railway Wagon, which the Port Authorities stopped without any notice in the year 1982 and due to which all the tenants of SMP, Kolkata suffered loss immensely, specially those who used the Wagon for their business purposes. It is stated that since then the entire Chetla Station Yard area has fallen vacant and the business community of the area had to pay rent and taxes to SMP, Kolkata authority without income and the system continued for long. It is further stated in the said Reply that that Mahadeo Sah/ O.P., since deceased used to look after the said business and after the demise of Mahadeo Sah/ O.P., his son Shri Murari Dhar Shaw had been in dark and since then the rent and taxes of SMP, Kolkata authorities has fallen due. It has been admitted that as no business is being carried out in premises, Shri Murari Dhar Shaw was unable to pay the rent and taxes of SMP, Kolkata properly on regular basis. However, the allegations of SMP, Kolkata

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

02/12/2022



# 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. 1819, 1819/D Of 2020 Order Sheet No. 22

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

VS

MAHADEO SAH



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01.12.2022

with regard to the encroachment and unauthorised construction have been denied by Shri Murari Dhar Shaw. It is stated that he has no objection if a joint inquiry with regard to the status of the premises is being taken in order to establish the correct factual position. He further stated that he has erected a boundary wall for the protection of the property, as the area is full of miscreants and anti social elements. It is further stated that the northern portion of the subject premises is being occupied by miscreants for a very long period (prior to 1991) and for which several correspondences have been made with SMP, Kolkata and the Police authorities, but with no effect and some portion of the premises on the southern side, by the side of the road, is being occupied by outsiders for which SMP, Kolkata authority took no action. It is further stated that on the Northern side of the occupation, Kolkata Municipal Corporation (KMC) has constructed a metal road and a pucca drain, beneath the road, forcefully in the year 1998 and as such, the actual area of the public premises in question has become shorter. However, SMP, Kolkata authorities charging rent on the area initially handed over to O.P., without taking into consideration the taking over of land by KMC Authority.

Thereafter, SMP Kolkata has filed their comments on 02.11.2021 against the Reply filed by Shri Murari Dhar Shaw, viz. the legal heir/ son of Mahadeo Sah/ O.P., since deceased. It is stated in the said application that as per policy decision the railway track facility was withdrawn and there is no relation of said railway track with the purpose for which land was leased out to the O.P. It is stated that said Shri Murari Dhar Shaw neither wanted to hand over the property back to SMP, Kolkata authority due to the loss suffered by him as stated, nor any steps has been taken by him to inform SMP Kolkata authority about the said demise

By Order of:

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SYAMA PRASAD MOOKERJEE PORT

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

02/12/2022

# 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. 1819, 1819/D of 2020 Order Sheet No. 23

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

MAHADEO SAH

**VS**



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of Mahadeo Sah/ O.P. It is stated that Shri Murari Dhar Shaw has himself admitted non-payment of dues of SMP, Kolkata in the said Reply to Show Cause. It is stated that Shri Murari Dhar Shaw is in occupation of the premises and uses the premises for the purpose of residence and shop, in total contravention of the terms and conditions of the lease. It is stated that SMP, Kolkata is no way responsible for the loss of the business community of Chetla Station Yard area, as stated by Shri Murari Dhar Shaw and by making such statements the legal heir of O.P., viz. Shri Murari Dhar Shaw cannot evade his responsibilities to liquidate the dues of SMP, Kolkata. It is stated that there is encroachment on the SMP, Kolkata's khas property measuring about 10 sqm and in support of such encroachment a sketch plan has already been filed on 29.12.2020. It is stated that neither the information was given or nor the permission was sought from SMP, Kolkata by Shri Murari Dhar Shaw while constructing the boundary wall and as such, the boundary wall has been constructed unauthorisedly. Regarding the activity of the miscreants antisocial, it is stated that several correspondences have been made by SMP, Kolkata to the local Police Authorities for rendering police assistance to remove the antisocial elements but no fruitful results achieved. The construction of the Metal Road, as has been stated by Shri Murari Dhar Shaw, was however, denied by SMP, Kolkata. It is submitted that no payment since 1992 has been made by O.P. though the bills were regularly being raised. It is stated that Shri Murari Dhar Shaw is occupying the premises, unauthorisedly, as SMP, Kolkata authorities has no privity of contract with such person. It is further stated that dues with regard to the public premises in question has become huge and hence, the Order of eviction and an order for payment of dues are required.

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# Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 1819, 1819/D of 2020 Order Sheet No. 24

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

MAHADEO SAH

VS



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1.12.2022

Now, while passing the Final Order I must say that I have satisfactorily heard the submissions/arguments advanced by the parties and carefully considered the papers/documents/ evidence produced before this Forum. After due consideration of all relevant papers/documents as brought before me in course of hearing, I find that the present case against the Mahadeo Sah/ O.P., since deceased, is being contested by the son of O.P., viz. Shri Murari Dhar Shaw and the following issues have come up for my adjudication:-

1. Whether the Proceedings against O.P. is maintainable or not.
2. Whether the contentions of Shri Murari Dhar Shaw/O.P. with regard to withdrawal of public utility services has got any merit or not.
3. Whether withdrawal of railway facilities as stated by Shri Murari Dhar/O.P. Shaw constitutes a part of contractual relationship between the parties or not.
4. Whether the activity of the miscreants, antisocial in the area as stated by Shri Murari Dhar Shaw/O.P. has got any merit in determining the respective rights and liabilities of the parties in the present proceedings or not.
5. Whether the O.P. has defaulted in payment of rent and taxes of SMP, Kolkata authorities for continuous use and enjoyment of the port property in question or not.
6. Whether SMP, Kolkata's enhancement of rent charges on the basis of Notifications published in Calcutta Gazette have any force of law in determining the quantum of dues/charges as payable by O.P. to SMP, Kolkata or not.

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

02/12/2022

**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. 1819, 1819/15 of 2020 Order Sheet No. 25

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

**MAHADEO SAH**

**VS**



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01.12.2022

7. Whether the O.P. has made encroachment on the SMP, Kolkata's khas property unauthorisedly or not and whether O.P. has carried out unauthorized construction or not;
8. Whether the notice to quit as issued by the Port Authority to O.P. dated 21.03.1992 is valid and lawful or not.
9. Whether O.P. is liable to pay damages for wrongful use and enjoyment of the Port property or not.

With regard to **issues no. 1**, 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. SMP, Kolkata 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 damages against O.P. on the plea of issuance of Notice demanding possession from 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.

To take this view, I am fortified by an unreported judgment of the Hon'ble High Court, Calcutta delivered by Hon'ble Mr. Justice Jyotirmay Bhattacharya on 11.03.2010 in Civil Revisional Jurisdiction (Appellate

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SYAMA PRASAD MOOKERJEE PORT**

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SYAMA PRASAD MOOKERJEE PORT**

*[Signature]*  
Head Assistant  
**THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT**

02/12/2022

**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

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Side) being C.O. No. 3690 of 2009 ( M/s Reform Flour Mills Pvt. Ltd. -Vs- Board of Trustees' of the Port of Calcutta) wherein it has been observed specifically that the Estate Officer shall have jurisdiction to proceed with the matter on merit even there is an interim order of status quo of any nature in respect of possession of any public premises in favour of anybody by the Writ Court. Relevant portion of the said order is reproduced below:

"In essence the jurisdiction of the Estate Officer in initiating the said proceedings and/or continuance thereof is under challenge. In fact, the jurisdiction of the Estate Officer either to initiate such proceedings or to continue the same is not statutorily barred. As such, the proceedings cannot be held to be vitiated due to inherent lack of jurisdiction of the Estate Officer.

The bar of jurisdiction, in fact, was questioned because of the interim order of injunction passed in the aforesaid proceedings".

In view of the authoritative decision as cited above, I have no hesitation in my mind to decide that the proceedings before this Forum of Law within the four corners of P.P. Act is very much maintainable.

**Issues no. 2, 3 and 4** are required to be discussed analogously as the issues are related with the O.P's contention regarding services to be rendered by SMP, Kolkata. After a careful perusal of the records/ documents of the proceeding I do not find any contractual liability on the part of Port Authority for providing railway service to O.P. which constitutes a condition for grant of tenancy under monthly lease in

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Head Assistant  
OFFICE OF THE ESTATE OFFICER  
**SYAMA PRASAD MOOKERJEE PORT**

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

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

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favour of O.P. Regarding the alleged activity of miscreants, antisocial etc. I am of the view that different statutory authorities have been constituted for providing public utility services like public peace and tranquility, road etc. in a particular area and in absence of specific liability for providing the same by the Landlord/SMP, Kolkata in the instant case it is very difficult to accept the contention of O.P. with regard to SMP, Kolkata's failure to provide amenities to O.P. I also do not find anything, which constitutes a liability on the part of the Port Authority for providing public peace and tranquility or public utility services like Railway facility in that area. It is my considered view that the contentions in respect of providing services has got no merit in deciding the points at issue. I am firm in holding that O.P. cannot take the plea of non-availability of service facilities as a shield for withholding payment of rental dues and/or charges for occupation into the public premises.

In this connection I am fortified by the Order dated 06.08.2018 passed by the Hon'ble Calcutta High Court dismissing the W.P. No.6269 (W) of 2009 with the following observations:

" ....Tariff is fixed on the basis of the nature of the land and not on the basis of occupants. It cannot be said that the port trust authorities had discriminated against the members of the petitioner by not taking into consideration the occupation of the land rather than the land itself. In fact, it is a wholesome policy to fix the rates on the basis of the nature of the land rather than the occupants.

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So far as the withdrawal of facilities as claimed is concerned, it is for the petitioner to decide on continuing

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with the occupation of the land or not. The so-called withdrawal of railway tracks is of no consequence. The port trust authorities do not provide railway services.

In such circumstances, there is no merit in the present writ petition. WP No.6269(W) of 2009 stands dismissed....."

Hence the issues are decided against O.P.

With regard to issue no **5 and 6**, I have considered the detailed statement of account in respect of the premises dated 04.02.2021 and 04.02.2022 as filed by SMP, Kolkata. It appears from the said statements of account that no payment has been made by the O.P. since decades altogether since 1992. In my view, such accounts of statement maintained by a statutory authority/ SMP, Kolkata in its usual course of business has definite evidentiary value, unless challenged with fortified documents/evidences etc, ready to bear the test of legal scrutiny. I cannot appreciate the state of affairs prevailing in the public premises in question. I am of the view that the public premises is being used only for the purpose of making unlawful gains by depriving the statutory authority vis-à-vis the exchequer.

During the course of hearing, I am given to understand by SMP, Kolkata that the rent as well as mesne profit/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 and non-payment of dues by O.P. appears to be established, as discussed above.

Hence the issues are decided against O.P.

Regarding **issues no 7**, the representative of SMP, Kolkata has filed a Survey Report being no 10364-D-1 dated 24.11.2020 and submitted that certain portion of

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For Head Assistant  
OF THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

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Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

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SMP, Kolkata's khas property has been encroached by the O.P. Further, the Report of SMP, Kolkata being no 10364-D-I dated 24.11.2020, as filed under the cover of application dated 29.12.2020, indicates certain portion constructions of the premises as unauthorised.

Upon consideration of the facts as aforesaid, I think that the breaches as claimed by SMP, Kolkata is very much established against the O.P. and the issue has been decided accordingly.

It would be convenient to discuss the issues no. 8 and 9 analogously. There is no averment on the part of Shri Murari Dhar Shaw /O.P. that the claim of SMP, Kolkata in respect of the property in question is not on the basis of SMP, Kolkata's Schedule of Rent charges. In fact Shri Murari Dhar Shaw/ O.P. has admitted vide reply filed on 06.04.2021, the matter of non-payment of rental dues to SMP, Kolkata. When SMP, Kolkata Schedule of Rent charges as time to time published in the Official Gazette in exercise of powers conferred under the provisions of the Major Port Trusts Act, 1963 have been upheld by the Hon'ble High Court, O.P. is bound to pay bound to pay the charges in terms of SMP, Kolkata's Schedule of Rent charges for occupation and enjoyment of the Port property in question.

A lessee like O.P. is bound to comply with all the terms and conditions for grant of tenancy and failure on the part of O.P. to comply with the fundamental condition for grant of such tenancy that is to say non-payment of monthly rent is definitely entitled the Port Authority to exercise its right to serve ejection notice to O.P. As no case has been made out by Shri Murari Dhar Shaw / O.P. with regard to fulfillment of the conditions of tenancy, Port Authority is free to take action against O.P. by determining such tenancy in terms of SMP, Kolkata's

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

02/12/2022



# 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

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notice to quit dated 21.03.1992. In view of the circumstances, it is my considered view that O.P's continuance in occupation in the public premises was never consented by the Port Authority. Decisions against the foregoing paragraphs will certainly lead to the conclusion that there is no alternative but to hold that the ejection notice dated 21.03.1992 is valid and lawful in all sense of law. Further, 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 tenancy granted to O.P. was undoubtedly determined by the Port Authority by due service of notice to quit and institution of proceedings against O.P. by SMP, Kolkata 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 SMP, Kolkata and all my intention to narrow down the dispute between the parties has failed.

"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 21.03.1992, 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.

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SYAMA PRASAD MOOKERJEE PORT

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

02/12/2022

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

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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 judgment 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 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. ....*

Therefore, there cannot be any doubt that the O.P. was in unauthorized occupation of the premises, once the tenancy which was continuing on monthly basis was duly determined by due service of ejection notice 21.03.1992.

The Port Authority has a definite legitimate claim to get its revenue involved into this matter as per the SMP, Kolkata'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

MA

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

Appointed by the Central Govt. Under Section 3 of the Public Premises  
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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 SMP, Kolkata that the charges claimed on account of damages is on the basis of the SMP, Kolkata'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 SMP, Kolkata 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 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 Shri Murari Dhar Shaw/ O.P's act in continuing occupation is unauthorized and the estate of Mahadeo Sah/ O.P., since deceased is liable to pay damages for unauthorized use and occupation of the Port property in question upto the date of delivering vacant, unencumbered and peaceful possession to SMP, Kolkata. With this observation, I must reiterate that the ejectment 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 issues are decided clearly in favour of SMP, Kolkata.

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

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

Proceedings No. 1819, 1819/D of 2020 Order Sheet No. 33

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

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NOW THEREFORE, in view of the above, 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 this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrear of dues/damages etc. as prayed for on behalf of SMP, Kolkata and the Notice/s issued by this Forum are in conformity with the provisions of the Public Premises (Eviction of Unauthorised Occupant) Act 1971.
2. That proceedings against O.P. is very much maintainable under law and O.P's contention regarding non-maintainability of proceedings in view of Govt. Guideline vide notification dated 08.06.2002 has got no merit for the purpose of deciding the question of "unauthorized occupation" of O.P.
3. That the contention with regard to the public peace and tranquility or public utility services/Railway facilities etc. has got no merit to support O.P's occupation as "authorized occupation" in the facts and circumstances of the case.
4. That Port Authority is well within its jurisdiction to demand for rental dues and/or charges for occupation into the Public Premises in question in terms of Schedule of Rent Charges notified in the Official Gazette in terms of the provisions of the Major Port Trusts Act, 1963.

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By Head Assistant  
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SYAMA PRASAD MOOKERJEE PORT

02/12/2022

**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

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5. That Shri Murari Dhar Shaw/ O.P. has failed to produce any evidence or document so as to defend the allegations by SMP, Kolkata of unauthorized constructions and encroachment into the Trustees' land.
6. That the O.P. has failed and neglected to pay rental dues in gross violation to the condition of monthly term lease as granted by the Port Authority to O.P.
7. That the ejection notice dated 21.03.1992 as served upon O.P. is valid, lawful and binding upon the parties and O.P. is liable to pay damages for wrongful use and enjoyment of Port Property in question upto the date of handing over of clear vacant and unencumbered possession to the Port Authority.
8. That no case has been made out on behalf of O.P. as to how its occupation in the Public Premises could be termed as "authorised occupation" after issuance of notice dated 21.03.1992, demanding possession by the Port Authority and occupation of O.P. has become unauthorized in view of Sec.2(g) of the P.P. Act, 1971

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. SMP, Kolkata is directed to submit a comprehensive status report of the Public Premises in question on inspection of the property after expiry of the

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SYAMA PRASAD MOOKERJEE PORT

02/12/2022

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

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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.

As per law, in case of death of a lessee, the legal heirs/representatives are very much liable to bear the liabilities of the deceased. In the case in hand, Shri Murari Dhar Shaw has himself stated that he is the legal heir of Mahadeo Sah/ O.P. and SMP, Kolkata did not object to the submissions of the said Shri Murari Dhar Shaw being one of the legal heirs of Late Mahadeo Sah. It is my considered view that a sum of Rs. 8,02,176.43 (Rupees Eight Lakhs Two Thousand One Hundred Seventy Six and paise Forty Three only) for the period from 30.06.1992 upto 04.02.2021 is due and recoverable from the estate of Mahadeo Sah/ O.P., since deceased by Port Authority on account of compensation dues/ damages/ mesne profit and O.P. must have to pay the rental dues to SMP, Kolkata on or before 16.12.2022. Such dues shall attract compound interest @ 6.90 % 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 SMP, Kolkata's books of accounts. I sign the formal orders u/s 7 of the Act.

I make it clear that SMP, Kolkata is entitled to claim damages against estate of Mahadeo Sah/ O.P. for unauthorized use and occupation of the public premises right upto the date of recovery of clear, vacant and unencumbered possession of the same in accordance with Law, and as such the liability of O.P. to pay damages extends beyond 04.02.2021 as well, till such time the possession of the premise continues to be under

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SYAMA PRASAD MOOKERJEE PORT

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the unauthorized occupation with the O.P. SMP, Kolkata is directed to submit a statement comprising details of its calculation of damages after 04.02.2021, indicating therein, 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 estate of Mahadeo Sah/ 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 estate of Mahadeo Sah/ O.P. to pay the amounts to SMP, Kolkata as aforesaid, Port Authority is entitled to proceed further for recovery of its claim in accordance with law.

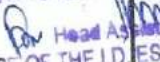
All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL

  
(Nirmalya Biswas)  
ESTATE OFFICER

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

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SYAMA PRASAD MOOKERJEE PORT

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

02/12/2022