

**REGISTERED POST WITH A/D.
HAND DELIVERY
AFFIXATION ON PROPERTY**

**ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT, KOLKATA
(ERSTWHILE KOLKATA PORT TRUST)**

(Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-
Central Act)

Public Premises (Eviction of Unauthorized Occupant) Act 1971

OFFICE OF THE ESTATE OFFICER

6, Fairley Place (1st Floor)

KOLKATA - 700 001

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

REASONED ORDER NO. 09 DT 19.12.2022
PROCEEDINGS NO.1769 OF 2019

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

-Vs-

B.B Paul & Co

F O R M - "BB"

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

WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that the work created/completed/commenced by **M/s. B.B Paul & Co of 10 Clive Row, 2nd Floor, Room No.206/4 Kolkata-700001** on the public premises specified in the Schedule is in contravention of the provisions of the said Act, or not authorized by the competent authority;

And whereas, by a written notice dated 12.03.2020 you were called upon to remove or to show cause by 02.04.2020 why you should not remove such building/immovable structure/fixture from the said public premises;

And whereas you have omitted/refused to show cause/remove such building/immovable structure/fixture from the said public premises;

REASONS

- 1) That O.P has violated the fundamental condition of tenancy under long term lease as granted by SMPK.
- 2) That O.P has unauthorisedly converted the Lease hold land of SMPK without having any authority of law.
- 3) That O.P has made encroachment upon SMPK's vacant land violating the condition of such long term lease.
- 4) That the notice dated 02.04.2019 as served upon O.P. by the Port Authority is valid, lawful and binding upon the parties and O.P is liable to pay damages/encroachment fees to SMPK till the date of removal of such encroachment.

PLEASE SEE ON REVERSE

(2)

A copy of the reasoned order No.9 dated 19.12.2022 is attached hereto which also forms a part of the reasons.

Now, therefore, in exercise of the powers conferred by Sub-section(1) of Section 5B of the said Act, I hereby order **M/s. B.B Paul & Co of 10 Clive Row, 2nd Floor, Room No.206/4 Kolkata-700001** that the said work shall be demolished. In the event of your refusal or failure to comply with this order, the said work shall be demolished by the Estate Officer or the officer authorized by him and the expenses of such demolition shall be recovered from you.

SCHEDULE

Plate No.HL-611

The said piece and parcel of land measuring about 7821.41 Sq.mts comprising of High land measuring about 2888.35 Sq.mts and Low land msg. about 4933.06 sq.mts situated at Timber pond, Shibpore, Howrah Police Station A.J.C Bose B. Garden District and Registration District: Howrah. It is bounded on the North partly by the Trustees vacant land partly by Trustees land occupied by City Engineering Co., on the East partly by Trustees land beyond which is Trustees spur road no3 and partly by Trustees' land occupied by City Engineering Co, on the South by the river Hooghly, and on the West by the Trustees' land leased to M/s Engser India Pvt

Dated: 21.12.2022 .


Signature & Seal of
Estate Officer.

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

o/c

**REGISTERED POST WITH A/D.
HAND DELIVERY
AFFIXATION ON PROPERTY**

**ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT, KOLKATA
(ERSTWHILE KOLKATA PORT TRUST)**

(Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-
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Public Premises (Eviction of Unauthorized Occupant) Act 1971

OFFICE OF THE ESTATE OFFICER

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KOLKATA - 700 001

Court Room At the 1st Floor
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REASONED ORDER NO. 09 DT. 19.12.2022
PROCEEDINGS NO.1769 OF 2019

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

-Vs-

B.B Paul & Co

FORM - "BB"

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

WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that the work created/completed/commenced by M/s. B.B Paul & Co of 10 Clive Row, 2nd Floor, Room No.206/4 Kolkata-700001 on the public premises specified in the Schedule is in contravention of the provisions of the said Act, or not authorized by the competent authority;

And whereas, by a written notice dated 12.03.2020 you were called upon to remove or to show cause by 02.04.2020 why you should not remove such building/immovable structure/fixture from the said public premises;

And whereas you have omitted/refused to show cause/remove such building/immovable structure/fixture from the said public premises;

REASONS

- 1) That O.P has violated the fundamental condition of tenancy under long term lease as granted by SMPK.
- 2) That O.P has unauthorisedly converted the Lease hold land of SMPK without having any authority of law.
- 3) That O.P has made encroachment upon SMPK's vacant land violating the condition of such long term lease.
- 4) That the notice dated 02.04.2019 as served upon O.P. by the Port Authority is valid, lawful and binding upon the parties and O.P is liable to pay damages/encroachment fees to SMPK till the date of removal of such encroachment.

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
09/12/22
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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



Proceedings No. 1769 of 2019 Order Sheet No. 9

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/s B.B. PAUL & CO.

FINAL ORDER

Factual aspect involved in this matter is required to be put forward in a nutshell in order to link up the chain of events leading to this proceeding. It is the case of Syama Prasad Mookerjee Port, Kolkata (erstwhile Kolkata Port Trust/KoPT) hereinafter referred to as SMPK, the applicant herein, that land altogether measuring about 7821.41 sq.m comprising of high land msg about 2888.35 Sq.m and Low land msg. about 4933.06 Sq.m, is situated at Timberpond, Shibpore, Howrah, Thana : A.J.C Bose B. Garden Police Station, comprised under Plate No.HL-611 was allotted to **M/s. B.B Paul & Co, O.P.** herein on long term lease basis for a period of 15 years w.e.f 01.10.2010 with certain terms and conditions as embodied in the Registered Lease Deed being No.08845 dated 13.09.2013 as executed by and between both the parties on 11.09.2013 and O.P. violated the condition of tenancy as granted under lease by way of conversion of a portion of high land msg. about 642 sq.m into low land and a portion of low land msg. about 1847 Sq.m into high land and also by way of encroachment upon SMPK's vacant land msg about 1548 Sq.m from 01.11.2017 by erecting boundary wall, marine vessel building and also by way of keeping/dumping iron materials and wooden pillars. It is also the case of SMPK that O.P. has not only made such breaches but also failed to restore the high land and low land into its original condition in terms of the notice dated 02.04.2019. It is argued on behalf of SMPK that O.P. is liable to restore the subject premises in its original form and shape and also liable to remove encroachment upon SMPK's vacant land msg about 30 Sq.m as mentioned in the said notice dated 02.04.2019 and also liable to pay damages/encroachment fees for wrongful use and enjoyment of the Port Property in question. This Forum of Law formed its opinion to proceed against O.P. and issued Show Cause Notice U/s 5B of the Act (for adjudication of the prayer for order of restoration of the land in its original condition & for refraining O.P from making illegal activities) dated 12.03.2020.

09
19.12.2022

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 Ass'tant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
19.12.22

P



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

1769 of 2019 Order Sheet No. 10

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S B. B. PAUL & CO.

09
19.12.2022

On perusal on record, I find that Show Cause Notice has been duly served upon O.P. by speed Post/hand delivery. The Report of the Process Server also depicts that such notice was also affixed on the subject premises in question on 14.03.2020 as per the mandate of the P.P Act.

O.P. entered appearance through its duly authorized representative Mr. Ashok Khandelwal on virtual platform and contested the matter by way of filing reply to the Show Cause Notice on 21.10.2021. O.P vide their reply claimed that they had been engaged in fabrication of ships and barges and doing job work for Garden Reach Shipyard for Indian Navy and SPMPT over last 10 years and had never encroached upon any land of SMPK and also not converted any low land into high land as alleged by SMPK. Only a small toilet facility was constructed/installed for the use of locals/workers on their request which was completely under the knowledge of the Officers of SMPK. Hence, the instant proceeding against O.P. should be dropped. Thereafter SMPK also filed their rejoinder to said reply to the Show Cause notice filed by O.P on 02.11.2021. Denying the averments of O.P's submission, SMPK argued that contention made by O.P in their reply are totally false and derogatory because O.P never obtained any prior permission from SMPK for erecting any kind of construction or for occupying any vacant public premises and never made any attempt for remedying the breaches of conversion and removal of encroachment inspite of repeated request from SMPK vide their Letter dated 28.11.2017, 22.06.2018, 06.08.2018 and 02.04.2019. Further, from a recent inspection it appeared that O.P had converted a portion of highland msg. about 642 Sq.m into low land and a portion of low land msg. about 1847 Sq.m into high land and also made an encroachment upon SMPK's vacant land msg. about 1548 Sq.m from 01.11.2017 by erecting boundary wall, marine vessel building and keeping /dumping iron materials and wooden boundary wall. Although subsequently O.P removed encroachment from 1518 Sq.m of land but 30 Sq.m of SMPK's land are still under the occupation of O.P. On

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
21.12.22

Q



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. 1769 of 2019 Order Sheet No. 11

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/s B. B. PAUL & CO.

11.11.2021, during the course of hearing, O.P emphasised on joint inspection of the subject premises but SMPK totally disagreeing with O.P's view, submitted that joint inspection can't serve any fruitful purpose because except a small area of 30 sq.m., no encroachment could be ascertained from such inspection and O.P had already removed the major encroachments. However, hearing both the parties the Forum passed an order of joint inspection on the same day. Thereafter, on 01.12.2021 Minutes of such joint inspection signed by both the parties was filed and after hearing both the parties on the contents of such joint inspection, the matter was reserved for passing final order on 16.12.2021. Now, while passing the Final Order, after carefully considering the documents on record and the submissions of the parties. I find the following issues for my adjudication/decision:

- I) Whether O.P has unauthorisedly converted the Lease hold land of SMPK or not;
- II) Whether O.P has made any encroachment upon SMPK's vacant land or not;
- III) Whether the notice dated 02.04.2019 issued by SMPK asking O.P to restore the high land low land and remove encroachment and pay damages is valid, lawful or not;

The **issues No.I & II** are taken up together for convenient discussion. O.P vide their reply to the Show Cause dated 21.10.2021 claimed that they had been engaged in fabrication of ships and barges and doing job work for Garden Reach Shipyard for Indian Navy and SPMPT over last 10 years and had never encroached upon any land of SMPK and also not converted any low land into high land as alleged by SMPK. Only a small toilet facility was constructed/installed for the use of locals/workers on their request which was completely under the knowledge of the Officers of SMPK. However in my view such allegation of O.P. has no basis because SMPK has already filed copy of some letter/s before this Forum addressing the O.P. (such

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
21.12.22

Q



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. 1769 of 2019 Order Sheet No. 12

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S B. B. PAUL & CO.

09
19.12.2022

as letter dated 28.11.2017, 22.06.2018, 06.08.2018 and 02.04.2019) whereby SMPK has repeatedly requested O.P for removal of conversion and removal of encroachment along with other breaches but inspite of receiving the copy of those letters, O.P apparently did not pay any heed to that matter. This communication amply depicts that O.P has made conversion and encroachment of SMPK's land. Further SMPK has also come up with specific drawing/sketch Maps being No. 9915-H dated 15.01.2018 highlighting the highland in green border, Low land in blue border and encroachment in red border but O.P is silent as to how these conversion/s and encroachment can be said to be authorized in nature. The minutes of Joint Inspection along with recent sketch plan being No.9915-2-H dated 26.11.2021 as enclosed with the application dated 01.12.2021 further depicts that O.P has made encroachment upon SMPK's vacant land msg about 30 Sq.mtrs. Moreover, photographs showing the details of conversion of land filed by a Statutory Authority like SMPK cannot be disbelieved. Further O.P's plea as regards non-conversion of high land into low land and vice-versa is also in my view not sufficient to defend this type of serious allegation of conversion and encroachment. As such I am not at all inspired by O.P's submission therefore, both the issues are decided in favour SMPK.

Discussions against the foregoing issues must dominate the **Issues no. III**, leading to the conclusion that the notice dated 02.04.2019 as issued by the Port Authority, demanding restoration, removal of encroachment and recovery of damages/ encroachment fees from O.P. is very much valid, lawful and binding upon the parties. I have deeply gone into the submissions/ arguments made on behalf of the parties in course of hearing. O.P. was asked to restore the high land and low land in its original condition and was also asked to remove the encroachment and pay damages for such encroachment by the Port Authority by due service of notice dated 02.04.2019 and institution of

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
21.12.22
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

4



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

1769 of 2019 Order Sheet No 1413

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S B. B. PAUL & CO.

09
19.12.2022

proceedings against O.P. by SMPK is a clear manifestation of Port Authority's intention to get back possession of the premises. In such a situation, I have no bar to accept SMPK's contentions regarding restoration of such land by notice dated 02.04.2019, on evaluation of the facts and circumstances of the case.

NOW THEREFORE, in view of the discussions above, the issues are decided firmly in favour of SMPK and I find that this is a fit case for passing order of restoration against O.P or other interested Party whoever in occupation, and hence, being satisfied as above I hereby, passing Order of restoration under Section 5B of the Act on following reasons/grounds:

- 1) That O.P has violated the fundamental condition of tenancy under long term lease as granted by SMPK.
- 2) That O.P has unauthorisedly converted the Lease hold land of SMPK without having any authority of law.
- 3) That O.P has made encroachment upon SMPK's vacant land violating the condition of such long term lease.
- 4) That the notice dated 02.04.2019 as served upon O.P. by the Port Authority is valid, lawful and binding upon the parties and O.P is liable to pay damages/encroachment fees to SMPK till the date of removal of such encroachment.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
19.12.22
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

ACCORDINGLY, Department is directed to draw up formal order of restoration and removal of encroachment u/s 5B 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 restore the premises. I make it clear that all person/s whoever may be in occupation are liable to restore such land, in its original form and condition and remove such encroachment by this order and the Port Authority is entitled to claim damages/encroachment fees for encroachment of SMPK's vacant land till the date of removal of such encroachment. SMPK is

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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. 1769 of 2019 Order Sheet No. 14

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S B. B. PAUL & CO.

09
19.12.2022

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 u/s 5B of the Act as per Rule made under the Act.

I find that SMPK has made out an arguable claim against O.P., founded with sound reasoning, regarding the damages/encroachment fees to be paid for the unauthorised conversion of such land and encroachment. I make it clear that SMPK is entitled to claim damages/encroachment fees against O.P. for conversion and encroachment of the public premises right upto the date of restoration and removal of encroachment of the same in accordance with Law as the conversion and encroachment are still subsisting, SMPK is directed to submit a statement comprising details of its calculation of damages/encroachment fees, indicating therein, the details of the rate of such charges, and the period of the damages (i.e. till the date of removal of encroachment) together with the basis on which such charges are claimed against O.P., for my consideration for the purpose of assessment of such damages/encroachment fees 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.

By Order of:
THE ESTATE OFFICER GIVEN UNDER MY HAND AND SEAL
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
ISSUED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
Head Assistant
22.12.22
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT


(Satyabrata Sinha)
ESTATE OFFICER

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