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ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT, KOLKATA  
(erstwhile KOLKATA PORT TRUST)

(Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-Central Act)  
Public Premises (Eviction of Unauthorized Occupant) Act 1971  
OFFICE OF THE ESTATE OFFICER  
6, Fairley Place (1st Floor)  
KOLKATA - 700 001  
\*\*\*\*\*

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

REASONED ORDER NO. 14 DT 06.01.2023  
PROCEEDINGS NO. 1191 OF 2011

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

-Vs-

Balaram Pathak (O.P)

F O R M - "B"

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

WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that  
**Balaram Pathak, 24, Chetla Railway Siding K.P. Dock, Kolkata-700027** is  
in unauthorized occupation of the Public Premises specified in the Schedule  
below:

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 SMPK 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. are 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. O.P.'s contention with regard to withdrawal of 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 and does not in any way condone OP's signal failure to discharge its contractual liability with regard to payment of rental dues/occupancy charges etc.
4. That Port Authority is well within its jurisdiction to demand 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

By Order of:

THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

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

Head Assistant 09.01.2023  
OFFICE OF THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

(2)

5. That O.P. has failed to produce any evidence or document so as to defend/nullify the allegations of SMPK of unauthorized parting with the possession of Trustees' land and unauthorised change the purpose of use of such land.
6. That O.P. has failed and neglected to pay rental dues in gross violation of the condition of short term lease as granted by the Port Authority to O.P.
7. That the ejection notice dated 15.06.1992 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 15.06.1992, demanding possession by the Port Authority and accordingly, occupation of O.P. has become unauthorized in view of Sec.2(g) of the P.P. Act, 1971

A copy of the reasoned order No. 14 dated 06.01.2023 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 **Balaram Pathak, 24, Chetla Railway Siding K.P. Dock, Kolkata-700027** and all persons who may be in occupation of the said premises or any part thereof to vacate the said premises within 15 days of the date of publication of this order. In the event of refusal or failure to comply with this order within the period specified above the said **Balaram Pathak, 24, Chetla Railway Siding K.P. Dock, Kolkata-700027** 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.D-442/A

The said piece or parcel of land msg. about 133.780 sq.m or thereabouts is situate at Chetla Station Yard, Thana: New Alipore, Now Chetla P.S. District: 24 Parganas. The said or parcel of land is bounded on the North by the said Trustees' strip of open land reserved as margin of safety alongside Port Trust Railway line, on the East by the said Trustees' land leased to Shri Bhagwat Prosad Roy, on the South by the said Trustees' open land used as roadway and on the West by the said Trustees' land leased to Shri Rajeshwar Prosad Roy. Trustees' means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata).

Dated: 06.01.2023.

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  
ISSUED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
09.01.2023  
Asstt. Estate Officer  
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 Unauthorised Occupants) Act 1971  
OFFICE OF THE ESTATE OFFICER  
6, Fairlie Place (1st FLOOR) KOLKATA-700001  
\*\*\*\*\*



Court Room at the 1<sup>st</sup> Floor  
Of Kolkata Port Trust's  
Fairlie Warehouse  
6, Fairlie Place, Kolkata- 700 001.

PROCEEDINGS NO.1191/D OF 2011  
ORDER NO.14 DATED: 06.01.2023.

**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

**Balaram Pathak,  
24, Chetla Railway Siding K.P. Dock,  
Kolkata-700027.**



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

AND WHEREAS by written notice dated 14.09.2017 you are called upon to show cause on or before 11.10.2017 why an order requiring you to pay damages of Rs.4,45,610.14 (Rupees Four Lakh forty five thousand six hundred ten and paise fourteen Only) together with [compound interest] for unauthorised use and occupation of the said premises, should not be made;

AND WHEREAS I have considered your objections and/or evidence produced before this Forum;

NOW, THEREFORE, in exercise of the powers conferred on me by Sub-section (2) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971, I hereby order you to pay the sum of Rs.4,45,610.14 (Rupees Four Lakh forty five thousand six hundred ten and paise fourteen Only) for the period from 01.08.1992 to 30.06.2017(both days inclusive) assessed by me as damages on account of your unauthorised occupation of the premises to SMPK by 24.01.2023

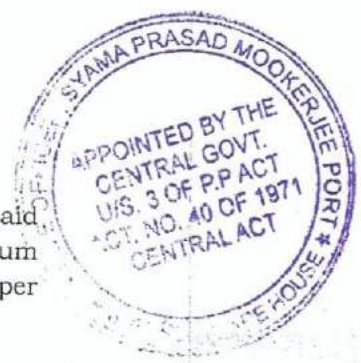
PLEASE SEE ON REVERSE

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

09.01.2023



: 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 @ 7.25 % per annum on the above sum till its final payment being the current rate of interest as per the Interest Act, 1978.

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

**SCHEDULE**

**Plate No.D-442/A**

The said piece or parcel of land msg. about 133.780 sq.m or thereabouts is situate at Chetla Station Yard, Thana: New Alipore, Now Chetla P.S. District: 24 Parganas. The said or parcel of land is bounded on the North by the said Trustees' strip of open land reserved as margin of safety alongside Port Trust Railway line, on the East by the said Trustees' land leased to Shri Bhagwat Prosad Roy, on the South by the said Trustees' open land used as roadway and on the West by the said Trustees' land leased to Shri Rajeshwar Prosad Roy. Trustees' means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata).

Date 06.01.2023.

Signature & Seal of the Estate Officer.

COPY FORWARDED TO THE ESTATE MANAGER, SMP, KOLKATA FOR INFORMATION.

Faint, illegible text, possibly a stamp or administrative note.

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

09.01.2023



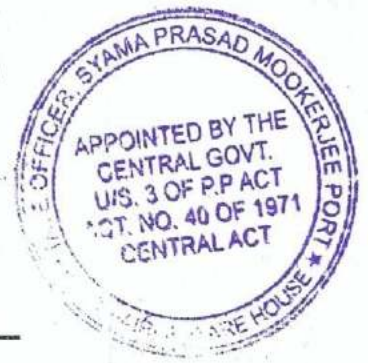
# Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 1191, 1191/D of 2011 Order Sheet No. 17

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Balaram Pathak<sup>VS</sup>



14  
06.01.2023

## FINAL ORDER

The relevant facts leading to this proceeding are required to be put forth in order to link up the chain of events. The instant proceedings No. 1191 and 1191/D of 2011 arise out of the application bearing No. Lnd 3184/72(L)/06/7844 dated 08.12.2006 filed by Syama Prasad Mookerjee Port, Kolkata [erstwhile Kolkata Port Trust/ KoPT, hereinafter referred to as 'SMPK'], 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, recovery of rental dues as well as compensation / damage charges along with accrued interest against **Balaram Pathak** (hereinafter referred to as **O.P.**).

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

09.01.2023

It is the case of SMPK that the land measuring 133.780 square mts or thereabouts, situated at Chetla Station Yard, P.S. Chetla, was allotted by SMPK to O.P. on short term Lease basis. It is the case of SMPK that the O.P. violated the condition of tenancy under lease by way of defaulting payment of monthly rents and taxes, unauthorisedly parting with the possession of the premises and changed the purpose of use for which the premises was given to O.P. without prior approval of SMPK. It is the case of SMPK that it made a request to O.P. to quit, vacate and deliver up peaceful, vacant and unencumbered possession of the subject premises on 31.07.1992 in terms of the notice to Quit dated 15.06.1992. As the O.P. did not vacate the premises after the Notice to Quit was issued, the instant proceeding was initiated before the Forum for eviction of the alleged unauthorised occupant, seeking order for realization of dues from O.P. etc. It is further the case of SMPK that O.P.'s occupation has become unauthorised on and from 01.08.1992 and O.P. is liable to pay damages/ compensation for wrongful use and enjoyment of the Port Property in question, upto the date of handing over of clear, vacant and unencumbered possession of the Port Property in question. In its application dated 09.08.2017, SMPK submitted that an amount of Rs. 1,13,352.00 was paid by O.P. in the interim and an amount of Rs. 4,45,610.14 was still payable by O.P. on account of compensation/ damage charges. During the

*[Handwritten signature]*



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

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

Proceedings No. 1191, 1191/A of 2011 Order Sheet No. 18

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

*Balaram Pathak* <sup>VS</sup>



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06.01.2023

course of hearing, SMPK, through their written submission made on 12.04.2017 to this Forum, has adduced additional breaches allegedly committed by OP, viz. those of unauthorized parting with possession and changed purpose/ use of the premises, against the O.P., in terms of SMPK's inspection of the premises. In the stated context of SMPK, I have considered that outstanding rental dues/ charges which were claimed by SMPK in its application dated 08.12.2006 stood NIL. This was contended by SMPK in its application bearing No. Lnd.3184/72(L)/17/676 dated 12.04.2017, read with SMPK's application bearing No. Lnd. 3184/72(L)/17/1548 dated 08.06.2017. It is strongly argued by SMPK during the course of hearing, that O.P.'s continued unauthorized enjoyment of the premises without paying the requisite charges for the occupation, militates against the well laid provisions of the Public Policy as enshrined in the P. P. Act and as such is highly objectionable.

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

Thereafter, this Forum of Law formed its opinion to proceed against the 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 of eviction) and u/s 7 of the Act (for adjudication of the prayer for compensation/ damage charges along with the accrued interest thereon) as per the Rules made under the Act, both dated 14.09.2017 (vide Order No. 04 dated 13.09.2017). The said Notices were served upon O.P. through 'Speed Post' at the recorded address of O.P. The hand service of the said Notices had been made effectively, as the same was received by O.P., under his acknowledgement on 03.10.2017. The report of the 'Process Server' dated 03.10.2017 indicates that the said Show Cause Notices were personally served and affixed on the premises in question on 03.10.2017 for notice to all concerned, as per the mandate of the Act.

Head Assistant  
OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
09.01.2023

The said Balaram Pathak (O.P. herein) appeared in person before the Forum on 11.10.2017 and filed the reply to show cause notice



# 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. 1191, 1191/D of 2011 Order Sheet No. 19

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

*Balaram Pathak* VS



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06.01.2023

on 06.11.2017, followed by the written arguments dated 19.03.2018. SMPK, on the other hand, filed their comments dated 12.01.2018 against the reply filed by O.P. dated 06.11.2017. After obtaining rival pleadings along with supporting documents/evidence and after hearing both the parties extensively, I now proceed to dispose of the matter. After due consideration of all relevant papers/documents/evidence as brought before me during the course of hearing, I find that following issues have come up for my adjudication:-

1. Whether the Proceedings against O.P. is maintainable or not.
2. Whether the contentions of O.P. with regard to withdrawal of public utility services has got any merit or not.
3. Whether withdrawal of railway facilities/basic civic amenities as stated by O.P., constitutes a part of contractual relationship between the parties or not.
4. Whether the contention of O.P. with regard to the non-receipt of Quit Notice dated 15.06.1992 has any merit with regard to facts and circumstances of the case or not.
5. Whether the O.P. has parted with possession of the public premises unauthorisedly, or not;
6. Whether O.P. has changed the purpose of use of the premises for which it was given by SMPK or not;
7. Whether SMPK's enhancement of rent charges on the basis of Notifications published in Calcutta Gazette have any statutory force of law in determining the quantum of dues/charges as payable by O.P. to SMPK or not.
8. Whether the notice to quit as issued by the Port Authority to O.P. dated 15.06.1992 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.
10. Whether O.P.'s contention regarding non-maintainability of the Proceedings in view of Government Guideline vide Notification dated 08.06.2002 has got any merit or not.

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

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

09.01.2023



# 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. 1194, 1191/A of 2011 Order Sheet No. 20

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

*Balaram Patthak* VS



14  
06.01.2023

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

09.01.2023

**Issues no.1** is basically related with maintainability of the present Proceedings before this Forum of Law. The properties owned and controlled by the Port Authority have 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 into 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. 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. 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 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 ever 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.**





**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. 1191, 1191/D of 2011 Order Sheet No. 21

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

*Balaram* <sup>VS</sup> *Pathak*

14  
06.01.2023

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".

Hon'ble Division Bench of Calcutta High Court had the occasion to decide the jurisdiction of the Estate Officer under P.P. Act in Civil Appellate Jurisdiction being MAT No.2847 of 2007 (The Board of Trustees of the Port of Kolkata and Anr -vs- Vijay Kumar Arya & Ors.) reported in Calcutta Weekly Note 2009 CWN (Vol.113)-P188 The relevant portion of the judgment (Para-24) reads as follows:-

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

09.01.2023

"The legal issue that has arisen is as to the extent of Estate Officer's authority under the said Act of 1971. While it is an attractive argument that it is only upon an occupier at any public premises being found as an unauthorized occupant would he be subject to the Estate Officer's jurisdiction for the purpose of eviction, the intent and purport of the said Act and the weight of legal authority that already bears on the subject would require such argument to be repelled. Though the state in any capacity cannot be arbitrary and its decisions have always to be tested against Article 14 of the Constitution, it is generally subjected to substantive law in the same manner as a private party would be in a similar circumstances. That is to say, just because the state is a Landlord or the state is a creditor, it is not burdened with any onerous covenants unless the Constitution or a particular statute so ordains"

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

Hence, the issue is decided accordingly.



# 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. 1191, 1191/A of 2011 Order Sheet No. 22

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

*Balaram Pathak* <sup>VS</sup>



14  
06.01.2023

**Issues no. 2 and 3**, are required to be discussed analogously as the issues are related with O.P's contention regarding services to be rendered by SMPK. 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 a short term lease in favour of O.P. I also do not find anything which constitutes a liability on the part of the Port Authority for providing basic amenities to O.P. and for providing public utility services in that area. Different statutory authorities have been constituted for providing public utility services like water, road and street lighting, etc. in a particular area and in absence of specific liability for providing the same by the Landlord/SMPK in the instant case, it is very difficult to accept the contention of O.P. with regard to SMPK's failure to provide basic amenities to O.P. It is my considered view that the contention in respect of providing services has got no merit in deciding the points at issue and the O.P. has pointedly failed to set up their claim to damages, allegedly suffered by them @25 times of the prevailing rent from time to time, till the restoration of the railway track facilities at Chetla railway siding. Thus, 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.

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

09.01.2023



# 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. 191, 1191/D of 2011 Order Sheet No. 23

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Belaram Pathak <sup>VS</sup>



14  
06.01.2023

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

**Issues no.4** relates to the question of non-receipt of ejection notice dated 15.06.1992. I have considered the matter seriously. There is no dispute or objection from O.P's side regarding status of O.P's tenancy under short term lease. Now, the question that arises is how far the question of non-receipt of 'notice to quit' deserves merit in the facts and circumstances of the case. It is claimed by SMPK that the said notice was served upon the O.P. at the recorded address of O.P. at the relevant point of time. SMPK has submitted in their original application dated 08.12.2006 that the said quit notice dated 15.06.1992 was served upon O.P. by registered post with 'acknowledgement due'. The notice was also simultaneously sent by SMPK under 'certificate of posting' to the recorded address of O.P. Further, another copy of the notice was served personally by SMPK's representative, by handing it over to the O.P., his representative in presence of a witness.

In my view, a notice served in official course of business cannot be contradicted/contested by a mere statement denying service of such notice. This takes me to the question of whether a lessee like O.P. can continue in occupation when the lease has been terminated vide a Notice to Quit. As per Transfer of Property Act, 1882, a lessee is under legal obligation to hand over the possession of the property to its landlord/lessor in its original condition after expiration of the period mentioned in the Notice to Quit. The tenancy of the O.P. automatically stands terminated upon expiry of period mentioned in

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

09.01.2023



**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. 191, 191/D Of 2011 Order Sheet No. 24

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

*Balaram Patil* VS

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06.01.2023

the notice to Quit. During the course of entire proceedings, O.P. failed to justify how they are entitled to enjoy the public premises after expiry of the period mentioned in the notice to quit dated 15.06.1992. No attempt has been made on behalf of O.P. to satisfy this Forum of Law about any consent granted on the part of SMPK in occupying the public premises after expiry of the said Notice period. As such, in my view, the plea of non-receipt of the Notice dated 15.06.1992 is quite insignificant in the eyes of law and I am not at all impressed by the submission of the O.P. regarding the matter. I take conscious note of the fact that SMPK never recognized O.P. as a lawful user/tenant in respect of the property in question after expiry of the period mentioned in the notice to quit and in fact, initiation of the instant proceedings, vide the original application dated 08.12.2006 of SMPK, was a logical culmination of SMPK's intent to obtain vacant and unencumbered possession of the public premises in question. The instant proceedings continued for a fairly long period of time and no intention was found on the part of SMPK to regularize the occupation of the O.P. Further, it is a settled question of law that a lessee like O.P. cannot claim any legal right to hold on to the property after expiry of the period as mentioned in the notice of ejection, unless O.P. succeeds in making a case of "Tenant Holding Over". "Holding Over" means continuance of occupation with the same terms and conditions as per the expired Lease Deed. The essential element of "consent" for constituting the matter of holding over is absent and the O.P. has failed to adduce any evidence or bear any witness in support of its contention regarding holding over. There was no element of "consent" on the part of the Port Authority, expressing the assent for continuance in such occupation after expiry of the period as mentioned in the notice to vacate the premises.

Hence the issue is decided against the O.P.

With regard to the **issue no.5 and 6**, it is seen that the allegations of SMPK against O.P. are that the O.P. has parted with the possession of the premises to outsiders and unauthorisedly changed

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

09.01.2023



**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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the purpose of use for which it was given to the O.P. in violation of the terms and conditions of the tenancy. It is reported that on an inspection of the premises by SMPK's representative, it was found that O.P. has unauthorisedly parted with the possession of the premises, which is reportedly being used for the purpose of "garage/repairing of vehicles". However, the O.P., vide his reply dated 06.11.2017, has been very evasive in its submission. As per law, reply must be specific, complete with all material evidences, and not evasive or incomplete. I find that despite getting numerous opportunities, O.P. did not specifically rebut the allegations of SMPK. Under such a situation, in my view, in absence of pointed and vociferous contention of O.P. specifically denying the charges of unauthorised parting/use of the premises in deviation of the lease agreement, brought against them by SMPK, adverse inference may be drawn against the O.P. and I intend to conclude that the O.P. has committed breaches of unauthorised parting of possession and change of purpose of use of the premises.

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

thus, the issues are decided accordingly.

09.01.2013

It would be convenient to discuss the **issues no. 7, 8, 9 and 10** analogously. It is the claim of O.P. that SMPK authorities have been enhancing the rent schedule, violating the norms provided in offer letter. O.P has also mentioned that there was an interim order of the Calcutta High Court in C.R.No. 8278(W) of 1982 (Mohit Bux and 89 Ors. -vs- Board of Trustees for the Port of Calcutta and Ors.) to accept old rate of rent and was being accepted by the authority. It is alleged that SMPK authorities suddenly refused to accept the old rate of rent and as such, O.P. was compelled to occupy the tenancy without paying the rent. I have carefully considered the submissions of the O.P. I find that O.P.'s contentions in the reply to show cause are not supported by the referred documents and O.P. has also failed to produce any document in respect of his submission. In absence of any sort of cogent evidence from the O.P., I am constrained to say that such submissions are devoid of any merit. On the other hand, the case of SMPK has been supported



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

**Balaram Pathak** <sup>VS</sup>



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06.01.2023.

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ESTATE OFFICER  
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with cogent documentary evidences from where it appears that O.P was a lessee under the Port authority in respect of the scheduled mentioned property and since O.P defaulted in making payment of rent and taxes, SMPK authority had issued Notice to Quit dated 15.06.1992 lawfully. From the rival submissions of the parties I am convinced that O.P. has not paid the rental dues together with interest till date and even did not hand over peaceful, vacant and unencumbered possession of the port property in question. In my view, there are sufficient grounds to hold that the SMPK had rightly and correctly issued the notice to quit upon the O.P. In fact, O.P. has not specifically denied non-payment of rent, in its Reply to Show Cause. The O.P. has tried to make out that occupational charges have been increased arbitrarily, but here again I find that such charges have been levied by SMPK in terms of the rates as notified, from time to time, by the Tariff Authority for Major Ports (TAMP) as per provisions of the Major Port Trusts Act, 1963. In my view, O.P. cannot claim a differential treatment from other users of the port property. Further, the plea for applicability of certain "government guidelines" is also worthy of rejection, in as much as any such guideline is applicable for genuine tenants and a defaulter like O.P. cannot claim to be a "genuine tenant". In my view, any such guideline issued by the Govt. of India cannot override the specific provision of law. The judgement of the Hon'ble Supreme Court of India reported in (2008) 3 Supreme Court Cases 279 (New India Assurance Co. Ltd. -vs- NUSLI NEVILLE WADIA & ANR.) is instrumental in deciding the question of acceptability of such "guideline". In deciding the question of acceptability of a "guideline" the Hon'ble Supreme Court of India observed that issuance of such guideline is not controlled by statutory provision and the effect thereof is advisory in character with no legal right being conferred upon a tenant. A tenant under short term lease 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 which is continuing on short term basis, that is to say, non-payment of monthly rent, does impart definite entitlement to the Port Authority to exercise its right to serve

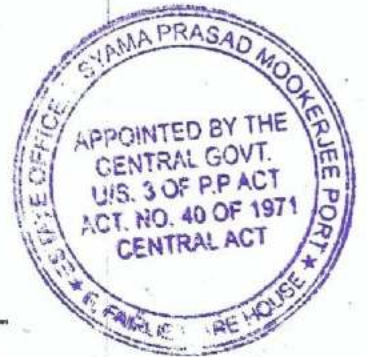
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ejection notice to O.P. A short term tenancy is continuing on the basis of conduct of both the parties. As no case has been made out by O.P. with regard to fulfillment of all the conditions of tenancy, with attestation of corroborative evidences there-of, Port Authority is free to take action against O.P. by determining such tenancy in terms of SMPK's notice to quit dated 15.06.1992.

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 as there is no demand for monthly rent from O.P, signifying SMPK's assent for such occupation. Decisions arrived at against the foregoing paragraphs will certainly lead to the conclusion that O.P. is liable to pay damages and accordingly, there is no other alternative but to hold that the ejection notice dated 15.09.1992 is valid and lawful in all senses of law.

I have deeply gone into the submissions/arguments made on behalf of the parties during the course of hearing. The properties of the Port Trust are coming under the purview of "public premises" as defined under the Act. Now the question arises how a person becomes an unauthorized occupant into such Public Premises. As per Section 2 (g) of the Act the "unauthorized occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. The 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 SMPK is a clear manifestation of Port Authority's intention to get back possession of the premises. In fact there is no material to prove O.P's intention to pay the dues/charges to SMPK, as contractual obligation on his

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

*09.01.2023*



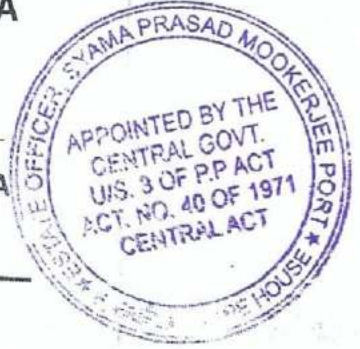
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part as per the well founded tenets of lease tenancy, and all my intention to narrow down the dispute between the parties has failed.

"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 15.06.1992, 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. 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.

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For *MM*  
Head Assistant  
D. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

09.01.2023

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

Undoubtedly, the tenancy under lease is governed by the Transfer of Property Act and there is no scope for denial of the same.

The Port Authority has a definite legitimate claim to get its revenue involved into this matter as per the SMPK's Schedule of Rent Charges for the relevant period and O.P. cannot claim continuance of its occupation without making payment of requisite charges as mentioned in the Schedule of Rent Charges. To take this view, I am fortified by the Apex Court judgment reported in JT 2006 (4) Sc 277 (Sarup Singh Gupta -Vs- Jagdish Singh & Ors.) wherein it has been



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clearly observed that in the event of termination of lease, the practice followed by Courts is to permit the landlord to receive each month by way of compensation for use and occupation of the premises, an amount equal to the monthly rent payable by the tenant. In course of hearing, it is submitted on behalf of SMPK that the charges claimed on account of damages is on the basis of the SMPK's Schedule of Rent Charges as applicable for all the tenants/occupiers of the premises in a similarly placed situations and such Schedule of Rent Charges is *the* notified rates of charges under provisions of the Major Port Trusts Act 1963. In my view, such claim of charges for damages by SMPK, is based on sound reasoning and should be acceptable by this Forum of Law. As per law, when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. I have no hesitation to observe that O.P's act in continuing occupation is unauthorized and O.P. is liable to pay damages for unauthorized use and occupation of the Port property in question upto the date of delivering vacant, unencumbered and peaceful possession to SMPK. With this observation, I must reiterate that the ejection notice, demanding possession from O.P. as stated above has been validly served upon O.P. in the facts and circumstances of the case and such notice is valid, lawful and binding upon the parties.

In view of the discussions above, the issues are decided clearly in favour of SMPK.

NOW THEREFORE, in view of the above, I am left with no other alternative but to issue the 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

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Ar. P. M. Assistant  
OFFICER IN CHARGE  
SYAMA PRASAD MOOKERJEE PORT

09.01.2023



**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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of arrear of dues/damages etc. as prayed for on behalf of SMPK 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. are 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. O.P.'s contention with regard to withdrawal of 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 and does not in any way condone OP's signal failure to discharge its contractual liability with regard to payment of rental dues/occupancy charges etc.
4. That Port Authority is well within its jurisdiction to demand 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.
5. That O.P. has failed to produce any evidence or document so as to defend/nullify the allegations of SMPK of unauthorized parting with the possession of Trustees' land and unauthorised change the purpose of use of such land.
6. That O.P. has failed and neglected to pay rental dues in gross violation of the condition of short term lease as granted by the Port Authority to O.P.
7. That the ejection notice dated 15.06.1992 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 15.06.1992, demanding possession by the Port Authority and

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

09.01.2023

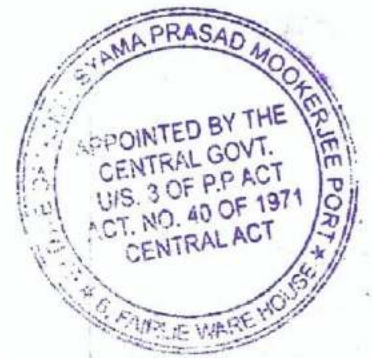
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(Eviction of Unauthorised Occupants ) Act 1971

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accordingly, 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 there-under, giving 15 days time to O.P. to vacate the premises. I make it clear that all person/s whoever may be in occupation, are liable to be evicted by this order as their occupation into the Public Premises is/are unauthorised in view of sec. 2(g) of the Act. SMPK is directed to submit a comprehensive status report of the Public Premises in question on inspection of the property after expiry of the 15 days as aforesaid so 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. 4,45,610.14 ( Rupees Four Lakhs Forty Five Thousand Six Hundred Ten and paise Fourteen only) for the period from 01.08.1992 up to 30.06.2017 (both days inclusive) is due and recoverable from O.P. by the Port authority on account of arrear compensation/ damage charges and O.P. must have to pay the rent fees to SMPK on or before 24.01.2023.

Such dues attract Compound Interest @ 7.25% 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 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.

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

I make it clear that SMPK is entitled to claim damages against O.P. for unauthorized use and occupation of the public premises right upto the date of recovery of clear, vacant and unencumbered possession of the same in accordance with Law, and as such the liability of O.P. to pay damages, extends beyond 30.06.2017 as well,

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Head Assistant  
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SYAMA PRASAD MOOKERJEE PORT

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till such time the possession of the premise continues to be under the unauthorized occupation with the O.P. SMPK is directed to submit a statement comprising details of its calculation of damages after 30.06.2017, 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 O.P., for my consideration for the purpose of assessment of such damages as per Rule made under the Act.

I make it clear that in the event of failure on the part of O.P. to pay the dues/charges as aforesaid; SMPK is at liberty to recover the dues etc. in accordance with law.

All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL

*(Signature)*  
(Kaushik Chatterjee)  
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  
OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
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