



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

THE ESTATE OFFICER, 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
15, STRAND ROAD
(4th Floor)
KOLKATA - 700 001

Court Room At Room no. 43
of Kolkata Port Trust's
Subhash Bhavan (1st floor)
40, C.G.R. Road, Kolkata 700043.

REASONED ORDER NO. 79 DT 28.06.2018
PROCEEDINGS NO. 913 of 2007

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-

M/s Roger Engineering Pvt. Ltd. (O.P.)

F O R M - "B"

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

WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that **M/s Roger Engineering Pvt. Ltd., of P-26, Transport Depot Road, Kolkata 700088** are in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

1. That definite evidence has been produced before me to establish that O.P. has parted with possession of a large part of the premises in favour of outsiders, without any approval or authority of law;
2. That plea of O.P. of applicability of Govt. "guidelines" is not at all sustainable, in the eye of law;
3. That O.P. has failed to bear any witness or adduce any evidence in support of its occupation into the public premises as 'authorized occupant';
4. That ejectment notice dated 16.11.2006 as served upon O.P., demanding possession of the public premises by KoPT is valid, lawful and binding upon the parties;
5. That occupation of O.P. is unauthorized in view of Sec. 2 (g) of the Public Premises Act in question;
6. That O.P. is liable to pay damages for its unauthorized use and occupation of the public premises upto the date of handing over of clear, vacant and unencumbered possession to KoPT.

Please see on reverse

A copy of the reasoned order No. 79 DT 28.06.2018 is attached hereto which also forms a part of the reasons.

NOW, THEREFORE, in exercise of the powers conferred on me under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order the said **M/s Roger Engineering Pvt. Ltd., of P-26, Transport Depot Road, Kolkata 700088** 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 **M/s Roger Engineering Pvt. Ltd., of P-26, Transport Depot Road, Kolkata 700088** 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

The said piece or parcel of land msg. about 13,370.60 sqm which is situated at Transport Depot Road, PS Taratala Police Station, District- 24 Parganas (S), Registration District – Alipore. It is bounded on the North by the KoPT's land, On the South by the Trustees' road, on the east by the Trustees' land occupied by M/s Andrew Yule & Co. Ltd., on the west by the land occupied by M/s Simplex Contrete Pillar (I) Pvt Ltd.

Trustees' means the Board of Trustees for the Port of Kolkata.

Dated: 28.06.2018




Signature & Seal of the
Estate Officer.

**COPY FORWARDED TO THE ESTATE MANAGER/CHIEF LAW OFFICER,
KOLKATA PORT TRUST FOR INFORMATION.**



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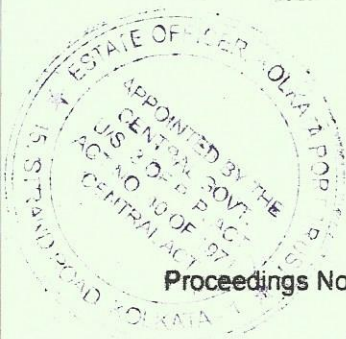
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FINAL ORDER

The matter is taken up for final disposal today. It is the case of Kolkata Port Trust (KoPT), the applicant herein, that land measuring about 13,370.60 sq. m. situated at Transport Depot Road, Thana- Taratala Police Station, Dist.-South 24 Parganas, comprised under Plate nos. D-274/12, SF-215 & SF-54 was allotted to M/s Roger Engineering Pvt Ltd, the O.P. herein, on certain terms and conditions, initially as long term lessee of 30 years, which expired on 30.04.1993, and thereafter as monthly licensee. It is the submission of KoPT that O.P. unauthorisedly sub-let the public premises to rank outsiders without any authority of law, and also that O.P. carried out unauthorized construction without any approval of the Port Authority. An application dated 09.02.2007 was filed before this Forum of Law with the prayer to issue order of eviction against O.P. and for realization of dues and damages etc. KoPT has made out that the O.P. has no authority to occupy the public premises after expiry of the period as mentioned in its Notice to Quit dated 16.11.2006 as issued upon the O.P.

This Forum of Law formed its opinion to proceed against O.P. under the relevant provisions of the P.P. Act and issued show cause notices under Sec. 4 & 7 of the Act both dated 29.10.2007 as per Rules made under the Act.

It reveals from record that O.P. contested the case and filed its Application of Objection through one Shri Rakesh Kumar Tandon, Manager of the O.P. A reference has been drawn to a Writ Petition no.



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12311(W) of 1999 in the said objection. Further to said Objection, O.P. filed an application on 26.02.2008, bringing on record certain correspondence between the parties. Subsequently, O.P. filed its Written Arguments on 09.04.2008. KoPT on 28.04.2008 filed an application and brought on record a correspondence dated 07.06.2007 received from one Yash Services, a communication dated 27.02.1999 of O.P. and also the reply of IBP Ltd. in response to query of KoPT. This was followed by a proposal for out of court settlement by the O.P.. A similar prayer was advanced again by the O.P. vide applications dated 08.06.2010 and 18.06.2011. On 26.11.2012, KoPT filed an application informing about the joint inspection of the property held on 03.10.2012 in the presence of the representatives of the O.P. However, on 26.11.2012, O.P. filed an application for rejection of the joint inspection report.

Subsequently, on 10.01.2013 KoPT filed an application together with a sketch plan allegedly showing unauthorized structures. Yet again, O.P. filed another application on 03.02.2013 objecting to the said application dated 10.01.2013 of KoPT.

It is seen from record that one Nishanta Environmental Technology Company Ltd. filed an application on 29.08.2014 with prayer for being added as a party to the proceedings. One B K Enterprises also filed its application on 20.10.2014 enclosing therewith certain documents. Hearing in the matter continued and O.P. filed an application for dismissal of the proceedings on 11.11.2014. On



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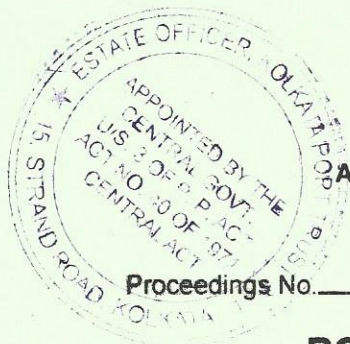
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the same date the said Nishanta Environmental also filed an application. Vide application dated 10/11.11.2014, KoPT filed another report of joint inspection of the property, duly signed by all concerned, alongwith sketch map, photographs etc. On 20.01.2015, O.P. filed a combined reply to the applications filed by Nishanta Environmental and B K Enterprises, alongwith a supplementary application for dismissal of proceedings. On 10.02.2015, an Objection came to be filed by Nishanta Environmental. KoPT filed its replies against said applications, vide its applications bearing nos. Lnd.4367/13/V/15/3770 & Lnd.4367/13/V/15/3771 both dated 17.03.2015. On 12.02.2015, O.P. filed an application together with its reply to the comments of KoPT. On same date, Written Arguments came to be filed by said Nishanta Environmental. On 23.06.2015 KoPT filed an application bearing no. Lnd. 4367/13/V/15/913 clarifying the names of the authorized sub-tenants. On 13.07.2016, an application was filed by O.P., praying inter-alia for dismissal of proceedings. This was followed by applications styled as Preliminary Reply to Show Cause, filed by the O.P. on 07.09.2016. KoPT vide its application dated 20.02.2017 provided its comments on the said Preliminary Reply filed by O.P., against which O.P. again filed its para-wise comments on 10.07.2017. Finally on 15.12.2017, during concluding hearing of the matter, O.P. filed its written submissions in the form of an application.



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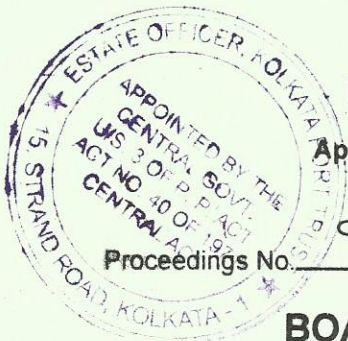
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I have carefully considered the documents on record and the submissions of the parties. At the very outset, I must mention that neither party has informed anything regarding disposal of the Writ Petition no. 12311(W) of 1999 which had apparently been filed by O.P. challenging the rent schedule notified by the Port Authority. Such being the case, I am not inclined to assess the dues/damages at this stage. Be that as it may, upon careful perusal of KoPT's notice to quit dated 16.11.2006, I find that the same was based solely on the ground of parting with possession to different parties without any authority under law. In such a scenario, I find it very futile to go through allegations of unauthorized construction/erection of unauthorized structures which have been raised by KoPT during pendency of the proceedings. In my view, the sole question involved in the proceedings is whether the O.P. was guilty of unauthorized sub-letting or not, at the time of issuance of the notice to quit.

Determination of the above issue requires elaborate discussion of facts as well as law. It is seen from record that KoPT has placed on record a printout of the web-based directory of Calcutta Telephones which show that a large number of persons/entities are operating from the public premises in question. Although it is debatable if said document provided by KoPT can be said to be relevant "evidence" as is understood in law, in my view, there are sufficient materials available in the file to decide if O.P. has parted with possession of the public premises unauthorisedly, without any approval of the Port



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Authority. First and foremost, after expiry of the 30-years lease, the O.P. was admittedly a monthly licensee under the KoPT. There is nothing in the Indian Easement Act, 1882, empowering a licensee like the O.P. to transfer or sub-let his right under license. The status of a licensee is different from a lessee. The only right a licensee has, upon revocation of the license, is reasonable time to leave the property and to remove any goods which he had been allowed to place on such property (Sec. 63 of the Easement Act). KoPT's offer letter dated 11.01.1996, conveying offer for grant of licence upon expiry of the lease, specifically mentioned that no subletting/transfer/assignment of the licence will be allowed. Of course, the terms and conditions on which the lease had been granted earlier, was also preserved by this offer letter. As such, it can be logically inferred that O.P. was, during the period of licence, allowed to continue with any authorised sub-letting that was subsisting during the period of its lease, and no more. In other words, O.P. was never granted the permission to induct fresh sub-tenancies during the period of its occupation as a licensee. It is seen from record that during the joint inspection held on 03.10.2012, a large number of companies/entities, such as M/s OSL Logistics Pvt Ltd, M/s Nerolac Paints Ltd, M/s Lloyd Insulations (India) Ltd, M/s B L Logistics, M/s B K Enterprise, M/s Nishanta Environmental Technology Co. Ltd., M/s Calcutta Tea Blenders Co. apart from the O.P., were found to be operating from the premises. It is recorded in the said minutes (signed by representatives of both the parties without any



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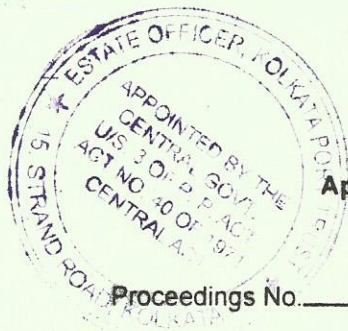
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objection or demur) that O.P. failed to produce any documents in regard to the occupation of the said entities/companies. I do not find any merit in the subsequent objection raised by the O.P. In my view, the same is only an afterthought to avoid the consequences of the law. It is very difficult to accept the contention of O.P. in its objection petition filed on 26.11.2012 that KoPT officials unilaterally recorded their views and no heed was paid to the submission of O.P.'s representatives. I am unable to comprehend how O.P.'s representatives are alleged to have been literally forced to sign the joint inspection report against their will. In any event, for the sake of natural justice, another joint inspection was ordered by this Forum and said inspection which was carried out on 31.10.2014 bore same/similar result. This time, the following companies/entities were found operating in the premises, apart from O.P.:

- i) OSL Logistics Pvt Ltd (person present – Mr Chandan Kumar Dutta, Head, Logistics & Warehousing)
- ii) Kansai Nerolac Paints Ltd (person present – Mr Jayprakash Routh)
- iii) Lloyd Insulation (India) Ltd – (person present – Mr. Vikram Kumar Singh, Store Assistant)
- iv) B K Enterprises (person present – Mr A K Chitrakar, partner of B K Enterprises)
- v) B L Logistics (person present – Mr Manishankar Pandit, Accounts Officer)



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- vi) Calcutta Tea Blenders Company (person present - Mr. Pradip Kumar Sinha, Godown Incharge)
- vii) Nishanta Environmental Technology Pvt Ltd (person present - Mr Subir Roy Chowdhury, CMD)

It is seen that sketch map and photographs are also attached with this joint inspection report, fortifying its veracity.

Now the question arises under what authority O.P. has allowed these entities to function in the public premises in question. Admittedly, permission had been granted by KoPT to O.P., as the-then lessee, for sub-letting portion of the public premises to M/s Naba Bharat Enterprises Ltd., M/s Das & Co., and M/s Calcutta Tea Blenders Company. As per KoPT's permission letters dated 27.05.1970 and 26.12.1988 (produced by the O.P. itself) it is categorically mentioned that the permission exclusively relates to the said three entities and cannot be extended to any other firm, company or individual, whatsoever the circumstances may be. Moreover, such permission to the said three entities are in respect of area specified in the permission letters, viz. 2400.706 sqm, 591.792 sqm and 1589.57 sqm respectively. In my view, O.P. is very much bound by said terms and conditions and it is not open to the O.P. to induct any person in the public premises as it chooses as per its whims and fancies. The lease deed that had been executed between the parties (on the strength of which these permissions for subletting were accorded by KoPT) clearly mentions



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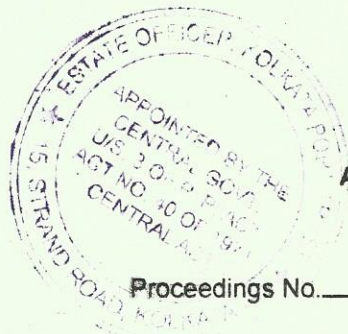
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that the lessee (O.P.) will not assign, transfer, underlet or part with the possession of the demised land or any part thereof without the prior consent in writing of the Commissioners. The lease also mentions that if permission is refused, the Commissioners shall not be called upon to assign any reasons for such refusal. I have also gone through letters dated 28.10.1991 and 26.03.1993 of the O.P., addressed to KoPT. O.P. has requested KoPT vide said letters for permission to accord subletting to M/s B K Enterprises, M/s Eisenworks Engineers Pvt Ltd, M/s Eureka Forbes Limited but no such permission was accorded by KoPT. O.P. has failed to produce a single communication from KoPT granting permission for induction of these sub-tenancies. KoPT has rather claimed that no such permission was ever communicated to the O.P.. Whereas I find that O.P. without waiting for formal approval of KoPT, went ahead with the sub-letting and handed over parts of the public premises to M/s B K Enterprises and other rank outsiders. I have no option but to treat the said act on the part of O.P. as highly irregular and not at all in accordance with law. Not only this, I find from the applications/submissions of Nishanta Environmental Technology that the said M/s B K Enterprises had gone ahead and inducted the said Nishanta Environmental Technology as its licensee, against payment of substantial amount of money. M/s B K Enterprises has not denied such induction of licensee under itself; it has claimed that such license has since expired/revoked. M/s B K Enterprises has also claimed to be a "recorded sub-



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tenant" of KoPT's recorded tenant i.e. O.P. but has failed to produce any authority from the landlord i.e. KoPT to enjoy the public premises in question. M/s B K Enterprises has however disclosed that it has been paying substantial sum of money to the O.P. I cannot appreciate the state of affairs prevailing in the public premises in question. I find that the public premises is being used only for the purpose of making unlawful gains by way of renting out to unauthorised entities and said unauthorised entities are inducting more unauthorised persons under them, leading to a chain of sitting occupants who are enjoying a prime property thereby depriving the statutory authority vis-à-vis the exchequer. I cannot allow such unlawful activities to flourish at the cost of public money. In my view, enough opportunity has been allowed to the O.P. to defend itself but it has failed to establish how it is authorised to induct such huge number of entities into the public premises in question. It is my firm view that an unauthorised occupant like M/s B K Enterprises has no authority under law to induct another occupant into the premises, that too for the purpose of making unlawful gains. I take note of the fact that apart from the entities mentioned above, other entities such as Yash Services, Usha International Ltd, IBP Ltd. have also occupied the premises at different points of time and O.P. has hopelessly failed to justify such occupations at the public premises without any prior approval of the port authority. I also take note of the fact that O.P. was fully aware of KoPT's stand in the matter and wrote to KoPT as early as 27.02.1999 praying for "ex-post



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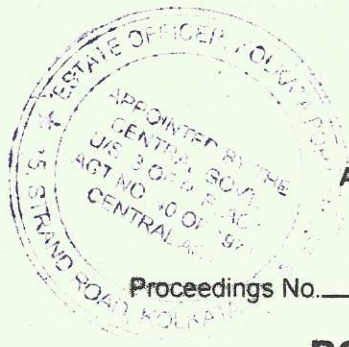
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facto approval" of sub-letting to IBP Ltd but still did not take any step to stop such unauthorised activities. When O.P. is fully aware of unauthorised activities on its part, I do not find the need to call for production of "subletting register" or any other similar document. In my view, the ground of unauthorised parting with possession is sufficiently proved against the O.P. and O.P. cannot escape the consequences of such unauthorised acts on its part.

Now the sole question survives, as to whether O.P.'s defence of over-all control of the subject premises, would be relevant in the facts and circumstances of the case. It is true that there are judicial pronouncements to the effect that mere occupation is not sufficient to infer either sub-tenancy or parting with possession. But it is also true that every case has to be judged in its own merit. In the instant case, I find that O.P. has inducted a large number of entities into the public premises, and collecting money from them in the name of rent or licence fees. The management of these entities are nowhere connected with the management of the O.P. It is not the case of O.P. that these entities are its subsidiaries or sister concerns. The occupiers so inducted by the O.P. are enjoying the liberty to induct fresh occupants under them in the garb of licensee or otherwise, apparently without any knowledge of the O.P.. Moreover, the O.P. had been originally granted the lease for the purpose of establishing factory for manufacturing centrifugal pumps, pumping sets, rice hullors, flour grinding machine, flexible shafts, grinders etc.; whereas, the



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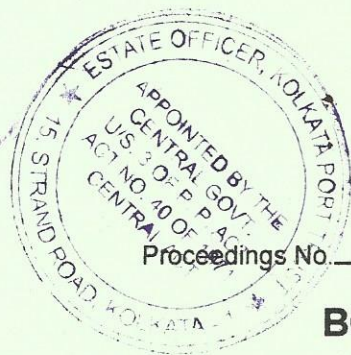
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occupiers inducted by the O.P. are found to be utilising the public premises as storage area of Tata Sky machines, paints, Bajaj motorcycles, plastic containers, engine oils etc. which have no connection at all with the business of the O.P. As such, I have no hesitation to hold that all these entities are carrying on their independent business over which O.P. has no control and O.P. is only interested in generating income in the form of rent or licence fees. This is definitely a case of parting of possession to rank outsiders, in all sense of law. It is very difficult to believe that "possession" as is understood in law is still exclusively with the O.P., in the facts and circumstances of the case. Interestingly, some of these occupiers like B K Enterprises are admittedly occupying the premises for more three decades, which gives rise to definite and reasonable conclusion that O.P. has handed over the public premises to unauthorised occupants for their use and enjoyment to the complete detriment of the Port authority. As such, I find no reason to grant any relief to O.P. even for the sake of natural justice.

Last and final defence taken by the O.P. is applicability of Govt. "guidelines". In this context, I must mention that the guideline/s are applicable for a genuine tenant and a habitual infringer like O.P. cannot claim as a "genuine tenant" and moreover, the guideline/s have not been issued by the Central Govt. to a Statutory Authority like KoPT, in pursuance of section 111 of the Major Port Trust Act 1963. In my firm view, the executive guideline/s



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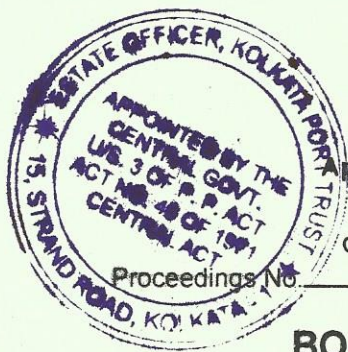
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issued by the Govt. of India cannot override the specific provisions as mandated by law. The judgement of the Hon'ble Supreme Court of India reported in (2008) 3 Supreme Court Cases 279 (New India Assurance Co. Ltd. -vs- NUSLI NEVILLE WADIA & ANR.) 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 the tenant. In my view, the point of maintainability of this proceedings in view of the "Govt. Guideline" is not acceptable in all sense and fairness of the exercise and hence only worthy of rejection.

Discussions against the foregoing paragraphs lead to the conclusion that the Notice to Quit dated 16.11.2006 of KoPT, demanding possession from O.P., is very much valid and enforceable in law. As such, I do not find any alternative but to issue order of eviction against O.P. on the following reasons,

1. That definite evidence has been produced before me to establish that O.P. has parted with possession of a large part of the premises in favour of outsiders, without any approval or authority of law;
2. That plea of O.P. of applicability of Govt. "guidelines" is not at all sustainable, in the eye of law;



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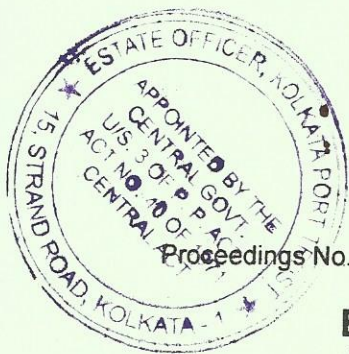
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3. That O.P. has failed to bear any witness or adduce any evidence in support of its occupation into the public premises as 'authorized occupant';
4. That ejectment notice dated 16.11.2006 as served upon O.P., demanding possession of the public premises by KoPT is valid, lawful and binding upon the parties;
5. That occupation of O.P. is unauthorized in view of Sec. 2 (g) of the Public Premises Act in question;
6. That O.P. is liable to pay damages for its unauthorized use and occupation of the public premises upto the date of handing over of clear, vacant and unencumbered possession to KoPT.

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. KoPT 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.

KoPT is further directed to submit a report regarding its claim on account of dues and damages against O.P., indicating therein the details of computation of



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such dues and damages with the rate of charges so claimed for the respective period (alongwith rates applicable for the relevant periods and the date of taking over of possession of the plot) for my consideration in order to assess the dues/damages as per the Act and the Rules made thereunder.

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 recovery of possession in accordance with law.

All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL

(S. Roy Chowdhury)

ESTATE OFFICER

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