

SCAN



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

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

Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-Central Act)  
Public Premises (Eviction of 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.1581/D OF 2017  
ORDER NO.21 DATED: 26.05.2022

**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

M/s Deep Services Pvt. Ltd  
C-1, Hide Road  
Kolkata-700043.

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 21.09.2021 you are called upon to show cause on or before 05.10.2021 why an order requiring you to pay damages of Rs.4,89,65,178/- (Rupees Four Crore eighty nine lakh sixty five thousand one hundred seventy eight Only) together with [compound interest] for unauthorised use and occupation of the said premises, should not be made;

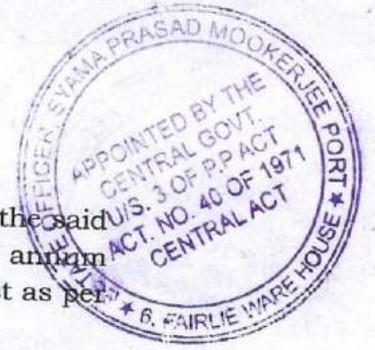
AND WHEREAS I have considered your objections and/or evidence produced before this Forum;

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. Rs.4,89,65,178/- (Rupees Four Crore eighty nine lakh sixty five thousand one hundred seventy eight Only) assessed by me as damages on account of your unauthorised occupation of the premises for the period from 31.03.2018 to 25.06.2020 (both days inclusive) to SMP, Kolkata by 14.06.2022.

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
CERTIFIED COPY OF THE ORDER  
PASSED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
Head Assistant  
OFFICE OF THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
22/05/2022

PLEASE SEE ON REVERSE

: 2 :



In exercise of the powers conferred by Sub-section (2A) of Section 7 of the said Act, I also hereby require you to pay compound interest @ 6.30 % 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-804**

KoPT structure msg.1550.92 Sq.mtrs and appurtenant land msg. 2277.81 Sq.mtrs. appurtenant develop land msg. 310 Sq.mtrs. at Hide Road in the Presidency town of Kolkata under Plate No.D-804. It is bounded on the North by Sonai Road, on the South partly by the Trustees' vacant land and partly by the Trustees' open land on the East by Hide Road and on the West by the Trustees' land occupied by Sunil Investment.

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

Date 26.05.2022

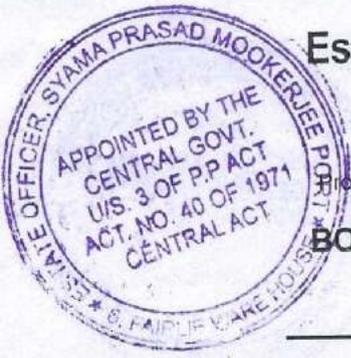
*MSK*  
Signature & Seal of the  
Estate Officer.

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

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

27/05/2022

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



# 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. 1581, 1581/D Of 2017 Order Sheet No. 28

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

**VS**  
M/S. DEEP SERVICES (PVT) LTD.

21

26.05.2022

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  
22/05/2022

### FINAL ORDER

The instant proceedings No. 1581/D of 2017 arises out of the application bearing No. Lnd.5547/21/2671 dated 16.07.2021 filed by the Syama Prasad Mookerjee Port, Kolkata [erstwhile Kolkata Port Trust, hereinafter referred to as 'SMP, Kolkata'], the applicant herein, praying for an order of recovery of damages/compensation and other charges etc. along with accrued interest in respect of the subject public premises, against **M/s Deep Services Pvt. Ltd.** (hereinafter referred to as **O.P.**), under relevant provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

The fact of the case in a nutshell is that the O.P. came into occupation of the Port property being structure measuring about 1550.92 Sq.mtrs along with appurtenant land msg.2277.81 sq.mtrs and appurtenant developed land msg. About 310 sq.mtrs situated at Hide Road, in the presidency town of Kolkata, P.S-West Port Police Station, under occupation Plate No. D-804, on license basis for a period of 11 months on certain terms and condition. Thereafter, such license was determined after elapse of 11 months by way of a notice of revocation of license dated 13.11.2014 and a proceeding was initiated by SMP, Kolkata before this Forum against the O.P. under relevant provisions of the Act, which was numbered as Proceeding No 1581, 1581/D of 2017. The O.P. appeared before this Forum and contested the case. Thereafter, the Final Order of eviction and payment of damages/compensation by the O.P. was passed on 27.09.2019. It appears that thereafter SMP, Kolkata vide their applications dated 16.07.2021 has intimated that the possession of the subject premises was taken over by the SMP, Kolkata on 25.06.2020 in terms of the said Order of eviction dated 27.09.2019. It has also been intimated by SMP, Kolkata vide the said application as referred above that huge amount of damages/compensation/ mesne profit was still due and recoverable from the O.P for the respective Plate in question. After considering the submissions and the allegations levelled by SMP, Kolkata against the O.P that while in possession of Port property, the O.P. has defaulted in making payment of damages /compensation and taxes and also accrued interest thereon, this Forum being prima facie satisfied with the claim of SMP, Kolkata has issued Notice to Show Cause dated 21.09.2021 (vide Order-14 dated 21.09.2021) upon the O.P. u/s 7 of the Public Premises (Eviction of Unauthorized Occupation) Act, 1971 to show cause as to why an order

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(Eviction of Unauthorised Occupants ) Act 1971

Proceedings No. 1581, 1581/D of 2017 Order Sheet No. 29

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

*VS*  
*M/S. DEEP SERVICES (PVT) LTD,*



requiring to pay arrear damages /compensation together with interest should not be made against the O.P. The O.P. was also called upon to appear before this forum in person or through authorized representative capable to answer of material question connected with the matter along with the evidence which the opposite party intends to produce in support of this case.

It is the case of SMP, Kolkata that the O.P. was asked to pay damages/compensation upto 25.06.2020 as because the subject premises was taken over by SMP, Kolkata, on 25.06.2020.

The said notice was served through Speed Post as well as by hand delivery to the recorded address of O.P. at C-1, Hide Road, Kolkata-700043. It appears from record that the Notice sent to O.P. through Speed Post returned undelivered to the Forum. However, the report of the Process Server dated 23.09.2021, depicts that the said Notice was received by the representative of O.P. on 23.09.2021. Thereafter, on the scheduled date of appearance and filing of reply to the Show Cause, one Sujit Sarkar expressing himself as a representative of O.P appeared before the Forum and filed his reply and Additional reply to the Show Cause on 05.10.2021 and 14.12.2021 denying the claim of SMP, Kolkata. It is submitted by O.P. that SMP, Kolkata's claim of compensation amounting to Rs.4,89,65,178/- including penal rate @ 3 x SoR is incorrect and unreasonable. O.P. was never given any possession on the subject premises on 17.06.2013 and no demolition, addition, alteration or change of SMP, Kolkata's structure was ever made by O.P. in violation of such license agreement therefore, the claim of the Port authority is false. It was further submitted by O.P that the possession of such property was received in a damaged condition therefore, O.P had to undergo some repairing works for making it usable but SMP, Kolkata without giving any rebate for the repairing period raised their bill continuously. Further SMP, Kolkata had taken over possession of the subject premises wholly misusing the provision of Public premises Act and security deposit of Rs.36,31,807/- along with interest which is lying with the SMP, Kolkata had also not been adjusted by SMP, Kolkata till date.

SMP, Kolkata also filed their rejoinder on the said reply to the Show Cause as filed by O.P. on 04.01.2022. Refuting the O.P's claim SMP, Kolkata submitted that O.P. was allotted such

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26.05.2022

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
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PASSED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
He Assistant  
OF THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

22/05/2022

LD

# 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. 1581, 1581/D of 2017 Order Sheet No. 30

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

VS  
M/S. DEEP SERVICES (PVT) LTD



21  
26.05.2022

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

28/05/2022

property on license on as is where is basis as per Clause No. 1 of GTC of the tender terms and O.P violated the condition of such tender term by making repair works without taking prior permission from SMP, Kolkata. O.P had also made breaches like non payment of licence fees and also demolition and change of SMP, Kolkata's structure. Further O.P continued their occupation after expiry of the license period. Therefore, O.P.'s occupation was unauthorised and O.P is liable to pay compensation to SMP, Kolkata. The matter was finally heard on 04.01.2022 when after giving direction to both the parties for submission of their respective Written Notes of Arguments, the matter was reserved for final order.

I have duly considered the O.P's reply/effective reply to the Show Cause as filed on 05.10.2021 and 14.12.2021 and O.P's application dated 02.02.2022 and also the rejoinder filed by SMP, Kolkata on 04.01.2022. After due consideration of the submissions/arguments made on behalf of the parties, I find that following issues have come up for my adjudication/decision:

- I) Whether the demand of occupational charges and/or compensation on the basis of SMP, Kolkata's Schedule of Rent Charges is valid and correctly payable by O.P. or not.
- II) Whether O.P's contention as regards the non applicability of Compensation charges @ 3xSoR has got any merit or not;
- III) Whether arrear dues as per SMP, Kolkata's claim was required to be adjusted against the Security Deposit held at the credit of O.P.(lying with SMP, Kolkata) after taking over of possession of the property by SMP, Kolkata on 25.06.2020 or not.

Issues No I & II are taken up together for convenient discussion. O.P. vide their initial reply to the Show Cause dated 05.10.2021 has challenged the claim of SMP, Kolkata. It is the categorical submission of O.P. that damages amounting to Rs.4,89,65,178/- including penal rate of 3xSoR are totally incorrect. However, in my view Port Authority has a definite legitimate claim to get its revenue involved into the Port Property in question as per the SMP, Kolkata's Schedule of Rent Charges for the relevant period and O.P. cannot deny such payment of requisite charges as mentioned in the Schedule of Rent Charges. O.P. is required to pay occupational charges as

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Proceedings No. 1581, 1581/D of 2017 Order Sheet No. \_\_\_\_\_ 3)

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

VS  
M/S, DEEP SERVICES (PVT) LTD



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Assistant  
OFFICE OF THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
22/05/2022

per notification of SMP, Kolkata(Schedule of Rent Charges) as time to time notified by the Tariff Authority for Major Ports (TAMP). O.P. cannot challenge or dispute anything about applicability and/or enforceability of such notification issued under authority of law. Therefore, O.P. is bound to pay the charges for occupation in terms of the notifications concerning Schedule of Rent Charges until such charges are varied by subsequent notifications for the relevant period. I am firm in holding that such such notification has a statutory force of law and tenants/occupiers cannot deny the charges. Moreover, I must say that Occupation and enjoyment of a Public Premises without making payment of requisite charges for such occupation is very much unfair in all sense. Such activity is opposed to Public Policy as O.P's enjoyment of such Port Property without paying charges as applicable to others occupiers/users of the Port Property in a similarly placed situation, not only creates differentiation with regular tenant and tenant under default like O.P. but also fundamentally encourages the illegal activity of a wrong doer. Therefore, I am not at all inspired by the submission of O.P. In my view, O.P's contention is baseless and devoid of any merit. O.P cannot get any protection under fact or law.

On the issue of three times rent charges, O.P. has claimed in their Application/s dated 05.10.2021 and 14.12.2021 that charging compensation /damages @ 3x SoR by SMP, Kolkata from O.P or ex-licensee or occupants is only to create pressure upon O.P. such claim of SMP, Kolkata is incorrect. However, I must say that as per law, when any occupant enjoys possession without having any valid authority, the party whose interest is hampered by such unauthorised occupation is entitled to receive, from the party who is occupying unauthorisedly, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from any breach, or which parties knew, when they made the contract to be likely to result from the breach of it. As regards the three times rate of compensation in respect of unauthorised occupation, the order dated 03.09.2012 passed by Hon'ble Justice Dipankar Datta in WP no. 748 of 2012 (M/s Chowdhury Industries Corporation Pvt. Ltd. versus Union of India & others) is very relevant. The said Order reads as follows:

".....  
*It is undisputed that there has been no renewal of the lease prior to its expiry or even thereafter. There is also no fresh grant of lease. The petitioner has been occupying the property of the Port Trust unauthorisedly and, therefore, the Port Trust is well within*

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# Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

**VS**  
**m/s. DEEP SERVICES (PVT) LTD.**

21

26.05.2022

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

22/05/2022

*its right to claim rent at three times the normal rent in terms of the decision of the TAMP, which has not been challenged in this writ petition.*

Contd....

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*Furthermore, enhancement to the extent of three times the normal rent for persons in unauthorised occupation of Port Trust property does not appear to be utterly unreasonable and arbitrary warranting interference of the Writ Court.*

....."

Moreover, after expiry of the license such license was revoked by a Notice dated 13.11.2014., such being the case, O.P. is debarred from taking the plea of exorbitant rent/charges. In fact, the question of rent charges @ 3x SoR for occupation or any question about abnormally high rate of rent cannot be entertained by this Forum as the charges for occupation of Port Property is fixed up by Tariff Authority of Major Ports by their notification published under authority of law in accordance with the provisions of the Major Port Trusts Act, 1963 (now Major Port Authorities Act, 2021) as time to time amended. The issues are thus decided accordingly in favour of the Port Authority.

**Issue No.III** i.e the issue of adjustment of Security deposit of Rs.36,31,807/- (Approx) as raised by O.P. has received the due attention of the Forum. As per settled principles of law "payment of security deposit" is an essential condition attached with every tenancy and one must have to pay such amount to the landlord at the beginning of every tenancy in advance and is refunded when such tenancy comes to an end by vacating the premises. Landlord can adjust such security deposit against any arrears of rent or other charges as agreed under tenancy agreement. In this instant case as O.P. has specifically claimed for adjustment of such security deposit, I am convinced by O.P.'s submission. In my understanding, O.P. should get such opportunity of adjustment of their security deposit against the claim of SMP, Kolkata. Further I have nothing to disbelieve in respect of SMP, Kolkata's claim against O.P. as per statement of accounts maintained regularly in SMP, Kolkata's office in regular course of business.

It is my considered view that a sum of Rs.4,89,65,178/- ( Rupees Four Crore eighty nine lakh sixty five thousand one hundred seventy eight Only) for the period 31.03.2018 to 25.06.2020 (both days inclusive) for the respective plate in question is due and recoverable from O.P. by the Port

M

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

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Proceedings No. 1581, 1581/D of 2017 Order Sheet No. \_\_\_\_\_

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

**M/S. DEEP SERVICES (PVT) LTD. VS**

21  
26.05.2022

authority on account of damages and O.P. must have to pay such dues to SMP, Kolkata on or before 14.06.2022. The said damages shall attract compound interest @ 6.30 % per annum, which is the current rate of interest as per the Interest Act, 1978 (as gathered by me from the official website of the State Bank of India) from the date of incurrence of liability, till the liquidation of the same, as per the adjustment of payments, if any made so far by O.P., in terms of SMP, Kolkata's books of accounts. Accordingly, the amount submitted by O.P. as security deposit shall be adjusted against such accrued interest as payable to SMP, Kolkata only after ascertainment of such amount and on receipt of valid T.R (Treasury Receipt) from O.P. I sign the formal orders u/s 7 of the Act.

Department is directed to draw up formal order as per Rule u/s 7 of 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; SMP, Kolkata 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)*  
(Nirmalya Biswas)  
ESTATE OFFICER

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

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