



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

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

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

6, Fairley Place (1st Floor)
KOLKATA - 700 001

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

REASONED ORDER NO.31 DT 06.7.2022.
PROCEEDINGS NO. 1155 OF 2011

**BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-**

M/s MOTHER DAIRY CALCUTTA

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 Mother Dairy Calcutta, LB-2, Sector III, Salt Lake, Kolkata- 700 098 is in
unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

- By Order of:
**THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT**
1. That O.P. has been found to be in arrears of License Fees/ rent and taxes for long period, in clear defiance of the contractual terms and conditions.
2. That SMPK's notice dated 12.11.2008 demanding possession of Port property from O.P. is very much valid, lawful and enforceable in the facts and circumstances of the case.
3. 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 "authorized" after expiry of the period mentioned in the Notice to Quit, and accordingly, the occupation of O.P. has definitely become unauthorized in view of Sec.2(g) of the P.P. Act, 1971.
4. That, right since expiry of the period as mentioned in the Notice to Quit dated 12.11.2008, O.P. has lost its bonafide authority to occupy the Public Premises and accordingly, O.P. is liable to pay compensation charges/damages, in terms of rates as fixed by a statutory authority like TAMP and notified in Govt. Gazette, with interest, for wrongful use and enjoyment of the Public Property from that date upto the date of handing over of clear, vacant and unencumbered possession of the same to the Port Authority.

Please see on reverse

:2:

A copy of the reasoned order No. 31 dated 06.7.2022 is attached hereto which also forms a part of the reasons.

NOW, THEREFORE, in exercise of the powers conferred on me under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order the said M/s. Mother Dairy Calcutta, LB-2, Sector III, Salt Lake, Kolkata- 700 098 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. Mother Dairy Calcutta, LB-2, Sector III, Salt Lake, Kolkata- 700 098 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

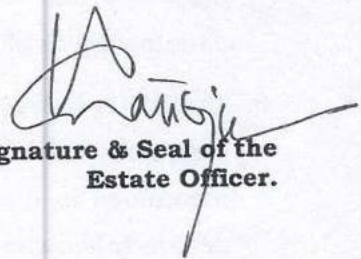
Plate no - D-608

The said piece or parcel of land msg.32.516 sq.m. or thereabouts situated at Remount Road off Diamond Harbour Road, Thana-South Port Police Station. Dist:- 24 Parganas (South) Registration District Alipore. It is bounded on the North by the Trustees' open land inside the Trustees' Remount Road Quarters, on the East by the open space then Remount Road Quarters No.3, on the South by the open space then Remount Road and the West by the open space the Remount Road Quarters No.1

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

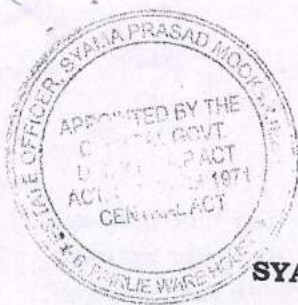
Dated: 06.7.2022




Signature & Seal of the
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
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



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

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

(Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-Central Act)
Public Premises (Eviction of Unauthorised Occupants) Act 1971
OFFICE OF THE ESTATE OFFICER
6, Fairlie Place (1st FLOOR) KOLKATA-700001

Form "E"

PROCEEDINGS NO. 1155/R of 2011
ORDER NO. 31 DATED: 06.7.2022

Form of order under Sub-section (1) and (2A) of Section 7 of the Public
Premises (Eviction of Unauthorised Occupants) Act, 1971

To
M/s. Mother Dairy Calcutta,
LB-2, Sector III,
Salt Lake,
Kolkata- 700 098

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
06.7.2022
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

WHEREAS you are in occupation of the public premises described in the
Schedule below. (Please see on reverse).

AND WHEREAS, by written notice dated 16.10.2017 (Vide Order No 09
dated 04.10.2017) you were called upon to show cause on/or before
15.11.2017 why an order requiring you to pay a sum of Rs.2,24,351/- (Rupees
Two Lakhs Twenty Four thousand Three hundred Fifty One only) being the
rent payable together with compound interest in respect of the said premises
should not be made;

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

NOW, THEREFORE, in exercise of the powers conferred by sub-section (1)
of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act
1971, I hereby require you to pay the sum of Rs.2,24,351/- (Rupees Two
Lakhs Twenty Four thousand Three hundred Fifty One only) for the period 1st
day of December'2004 upto the 14th day of December'2008 (both days
inclusive) to Kolkata Port Trust by 25.7.2022.

PLEASE SEE ON REVERSE

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, 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) till liquidation of the same from the date of incurrence of liability in accordance with the notification of KoPT issued under Authority of Law as per adjustments of payments made so far by O.P. as per KoPT's books of accounts.

A copy of the reasoned order no. 31 dated 06.7.2022. is attached hereto.

In case the said sum is not paid within the said period or in the said manner, it will be recovered as arrears of land revenue through the Collector.

SCHEDULE

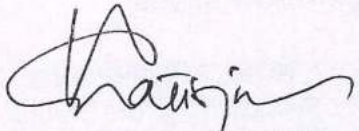
Plate no - D-608

The said piece or parcel of land msg.32.516 sq.m. or thereabouts situated at Remount Road off Diamond Harbour Road, Thana-South Port Police Station. Dist:- 24 Parganas (South) Registration District Alipore. It is bounded on the North by the Trustees' open land inside the Trustees' Remount Road Quarters, on the East by the open space then Remount Road Quarters No.3, on the South by the open space then Remount Road and the West by the open space the Remount Road Quarters No.1

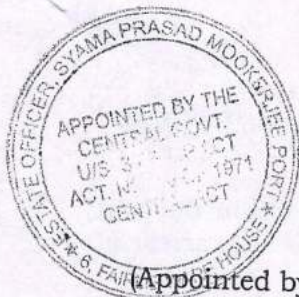
Trustee's means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata.)

Dated: 06.7.2022.




**Signature and seal of the
Estate Officer**

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



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

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

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

OFFICE OF THE ESTATE OFFICER
6, Fairley Place (1st Floor)
KOLKATA - 700 001

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

REASONED ORDER NO. 31 DT 06.7.2022
PROCEEDINGS NO. 1155/D of 2011

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. Mother Dairy Calcutta,
LB-2, Sector III,
Salt Lake,
Kolkata- 700 098

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
06.7.2022
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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

And whereas by written notice dated 16.10.2017 you were called upon to show- cause on/or before 15.11.2017 why an order requiring you to pay a sum of Rs.6,64,700/- (Rupees Six Lakhs Sixty Four thousand Seven hundred *only*.) being damages payable together with compound interest for unauthorised use and occupation of the said premises, should not be made.

And whereas you have not made any objections or produced any evidence before the said date;

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.6,64,700/- (Rupees Six Lakhs Sixty Four thousand Seven hundred *only*.) for the period from 15.12.2008 to 30.09.2017 assessed by me as damages on account of your unauthorised occupation of the premises to Kolkata Port Trust, by 25.7.2022.

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, which is the current rate of interest as per the Interest Act, 1978 (as gathered by me from the official website of the State Bank of India) on the above sum with effect from the date of incurrance of liability, till its final payment in accordance with Notification Published in Official Gazette/s.

Please see on reverse

:2:

A copy of the reasoned order no. 31 dated 06.7.2022. is attached hereto.

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

SCHEDULE

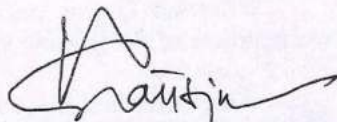
Plate no - D-608

The said piece or parcel of land msg.32.516 sq.m. or thereabouts situated at Remount Road off Diamond Harbour Road, Thana-South Port Police Station. Dist:- 24 Parganas (South) Registration District Alipore. It is bounded on the North by the Trustees' open land inside the Trustees' Remount Road Quarters, on the East by the open space then Remount Road Quarters No.3, on the South by the open space then Remount Road and the West by the open space the Remount Road Quarters No.1

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

Dated: 06.7.2022.




Signature and seal of the
Estate Officer.

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

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

1

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. 1155, 1155/R, 1155/D of 2011 Order Sheet No. - 31

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/s Mother Dairy ^{VS} Calcutta

31
06.7.2022

FINAL ORDER

The instant proceedings No. 1155, 1155/R and 115/D of 2011 arise out of the application bearing No. Lnd.4814/09/12207 dated 25.03.2009 filed by **Syama Prasad Mookerjee Port, Kolkata** [erstwhile Kolkata Port Trust/ SMPK], 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 and recovery of arrear licence fees, compensation/damages/ mesne profit and other charges etc. along with accrued interest in respect of the Public Premises as defined under Schedule- 'A' of the said application, against **M/s Mother Dairy, Kolkata** (hereinafter referred to as **O.P.**).

The fact of the case in a nutshell is that the O.P. came into occupation of the port property (under Plate Nos. D -608) on license basis at Remount Road, off Diamond Harbour Road, Thana- South Port Police Station, District- 24 Parganas (South), Registration District- Alipore, morefully described in the Schedule 'A' of the SMPK's application dated 25.03.2009. The allegations levelled by SMPK against the O.P are that the O.P defaulted in payment of monthly licence fees and taxes with cumulation of accrued interest thereon, made unauthorized construction at the premises, in gross violation of the terms and conditions of the license. It is the case of SMPK that the license with the O.P. was revoked w.e.f. 15.12.2008 in terms of the Notice to Quit dated 12.11.2008. It is the case of SMPK that the O.P. failed and neglected to vacate/ hand over the possession of the premises after service of the said Notice to Quit. SMPK has made out a case that O.P. has no right to occupy the premises after the termination of the lease in question upon service of a quit notice dated 12.11.2008.

By Order of :
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
ISSUED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
06.7.2022
ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 1155, 1155/R, 1155/D Of 2011 Order Sheet No. - 32 -

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/s Mother Dairy Calcutta. ^{VS}

31
06.7.2022.

This Forum of Law formed its opinion to proceed against O.P. under the relevant provisions of the Public Premises Act, 1971 and issued 3 (three) no of Show Cause Notices under Sec. 4 & 7 of the said Act, all dated 16.10.2017 (vide Order No. 9 dated 04.10.2017) as per the Rules made under the Act.

Thereafter the matter was heard by this Forum extensively on different occasions. It is seen from records that O.P. contested the matter by filing its Reply to Show Cause / 'Written Statement' dated 13.02.2018, when SMPK pointed out that the O.P., inadvertently or otherwise, included documents relating to all the plates in the said reply, wherein it is a fact that different proceedings had been initiated against various plate numbers of O.P., with the premises being situated at separate locations/ relating to different sections. Subsequently, the O.P. was advised to file a supplementary reply limiting it to the particular proceeding/premises under adjudication. Such supplementary reply to show cause/ additional 'Written Statement' was filed by O.P. on 11.04.2018. An additional reply to the Show Cause Notice was filed by O.P. on 25.05.2018. SMPK filed its comments on the said Reply/ Supplementary Reply of O.P. on 27.09.2018. The hearing of the matter was concluded when both parties submitted that their pleadings are complete and they have nothing more to depose.

The main contentions of O.P., as can be summarized from the said Reply/ Supplementary Reply/ Additional Reply dated 13.02.2018, 11.04.2018 and 22.05.2018 are as follows:

1. With a view to extending facility to SMPK's large number of employees, a mutually beneficial agreement was made by and between SMPK (erstwhile Kolkata Port Trust) and

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

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. 1155/R.1155/D

Of 2011

Order Sheet No. - 33-

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/s Mother Dairy ^{VS} Calcutta

31

06.7.2022.

NDDDB (National Dairy Development Board) so that the employees of SMPK could get good quality milk and dairy products from Mother Dairy, Calcutta, at an affordable price throughout the year.

2. The parcel of land was allotted to Mother Dairy Kolkata/ NDDDB by SMPK against monthly rentals, at a nominal rate, as Mother Dairy Calcutta will supply milk and milk products to the employees of SMPK as a public service to the people in the vicinity.
3. O.P. being under the aegis of a West Bengal State Government project, the primary objective of the organisation has been declared as a 'public utility' service.
4. The milk booth was found to be un-remunerative from the initial days. The situation had not improved even after long 24 years of existence, and the turnover of the milk booth in terms of sales volume or earnings was still very discouraging. In spite of that, O.P. decided to continue with the milk booth for the use of SMPK's employees so that those employees are not abruptly put into any inconvenience due to sudden closure of the milk booth.
5. SMPK has provided the parcel of land to Mother Dairy Kolkata at a nominal rate as a separate status of public service. SMPK had never revised such rent of these lands so provided to Mother Dairy Kolkata, in spite of the hike in the rates of rent by SMPK in the year 1983, 1998 and 1999, effected through public notification in the Calcutta Gazettes.

By Order of
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
1155/R.1155/D OF 2011
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

[Signature]



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. 1155, 1155/R, 1155/D Of 2011 Order Sheet No. -34-

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/s Da Mother^{VS} Dairy Calcutta

31
06.7.2022.

6. SMPK has been realising rent from the O.P. on a monthly basis, at the same old rates for more than 25 years and suddenly, in July 2007 SMPK, raised supplementary bill for the entire period of 25 years from September, 1983 to July, 2007 in respect of the said plot of land, handed over to the O.P.
7. The O.P. has duly paid rent to SMPK in respect of the said plot of land upto July 2008. The O.P. denied that arrears of rent from 1st December, 2004 upto 14th December, 2008 in respect of the said premises, is due and payable by the O.P. to SMPK.
8. In a meeting conducted by the Principal Secretary, Transport Department, Government of West Bengal on 18.02.2015, in presence of the Authorised Representative of SMPK, the Principal Secretary, Transport Department, Government of West Bengal requested SMPK to bilaterally sort out the issues of rate of licence fees with Mother Dairy Calcutta as early as possible.

I have carefully gone through the rival contentions made by SMPK and O.P. and the supporting documents submitted in this respect. On perusal of submissions and materials available on record, I find that the O.P. had issued letter bearing no CO/MDC/Mkt/KPT/858 dated 22.09.2007 requesting SMPK to provide detailed break-up of the bills, following alleged receipt of exorbitant bills from SMPK. I find that the Port Authority replied to the said letter issued by the O.P. vide SMPK's letter bearing no Lnd 4814/07/3202 dated 12.11.2007 indicating the breakup of SMPK's bills and also forwarding the copies of the relevant portions of the Gazette Notification of Tariff Authority for Major Ports (TAMP). It

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

[Signature]

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. 1155, 1155/R, 1155/A of 2011

Order Sheet No. - 35-

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/s Mother Dairy VS Calcutta

31

06.7.2022

appears that the main contention of O.P. revolves around the alleged enhancement of SMPK's bills for the subject occupation of O.P. It requires mention here that Kolkata Port Trust is the Successor in Interest of the erstwhile Commissioners for the Port of Kolkata which is a 'Local Authority', as defined under the General Clauses Act, 1897 (Section 3) and West Bengal General Clauses Act, 1899 [Section 3(23)]. The Port Trust Authority from time to time by issuance of notification in the Official Gazette, fixed the scale of rates on which lands and structures belonging to Port Authority are to be let out. In terms of the power granted U/s 52 of the Major Port Trusts Act, 1963, the Central Government was to approve such rates before it was made applicable. In 1997, Sec. 52 was repealed and an alternate mechanism was evolved by which power to fix rent was assigned to the Tariff Authority of the Major Ports. Sec. 49 of M.P.T Act was also amended by the Port Laws (Amendment) Act 1997 with effect from 09.01.1997. The validity of these provisions of the MPT Act was upheld by the Hon'ble Supreme Court in the case of **Luga Bay Shipping Corporation -Vs- Board of Trustees of the Port of Cochin and Ors. Reported in AIR 1997 SC 544 = 1997(1) SCC 631.**

Admittedly, O.P is in occupation and enjoyment of the Public Premises after expiry of the period mentioned in the notice of ejectment dated 12.11.2008. The reply to the show cause notice u/s 4 of the Act as filed by O.P dated 13.02.2018 and the additional replies as filed by O.P. dated 11.04.2018 and 22.05.2018 clearly demonstrate that O.P is admitting their liability towards payment of occupational charges to the Port Authority for the period of their occupation into the Port property, subject to payment of license fees/ rent at the old rate, after expiry of the period as mentioned in the ejectment notice in question. Thus O.P is in clear and open admittance

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
06.7.2022
Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 1155, 1155/R, 1155/ of 2011 Order Sheet No. - 36 -

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

m/s Mother Dairy ^{VS} Calcutta

31
06.7.2022.

of their liability towards payment of charges for occupation and merely disputing SMPK's claim as per SMPK's demand on the basis of notification issued by the TAMP (Tariff of Authority for Major Ports). Admittedly, O.P is disputing SMPK's claim at the enhanced rate with the contentions that such claims are unreasonable etc. No argument has been advanced on behalf of O.P as to how their claim for continuing payment at the old rate of rent, after expiry of the period mentioned in ejectment notice issued by SMPK, way back in December 2008, more than thirteen years ago, is valid under authority of law, except making the contention that they have been running a 'Public Utility' service, supposedly for the benefit of SMPK's employees, residing in the vicinity of the Milk Booth. It appears from records that an appeal has been made by O.P. to SMPK, vide letter bearing no 23-MC&ADS(D)/ARD/2015 dated 16.02.2015 for waiver of the enhanced license fees for Milk Booths etc. However, no papers/ documents have been filed nor any indication given during the course of proceedings before this Forum, regarding the possible disposition of the appeal made by O.P. On the contrary, it is the contention of SMPK that the charges for occupation have been claimed against O.P on the basis of Schedule of Rent charges, in force for the relevant periods. I am taking note of the fact that SMPK's enhancement of rent charges is on the basis of notified rate of rent as per notification issued by the authority of law as per provisions of the Major Port Trusts Act, 1963, as amended from time to time. It is a settled position that such notified rates of rent (Rent Schedule) has been upheld by the Hon'ble Apex Court (in Luga Bay Shipping Corporation -Vs- Board of Trustees) and that any dispute/question relating to arbitrariness/ unreasonableness with regard to enforceability of such notified rates of rent charges, is beyond the jurisdiction/scope of this forum of law.

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



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. 1155, 1155/R, 1155/D of 2011 Order Sheet No. -37-

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

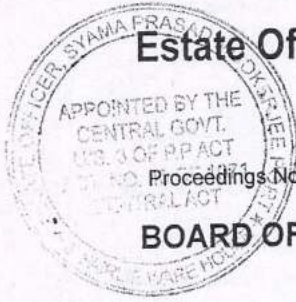
M/s Mother Dairy Calcutta VS

31
06.7.2022.

Even O.P.'s plea of sudden increase of License fees/ rent by SMPK through a supplementary bill in July 2007 does not stand the test of legal scrutiny as the non-application of Limitation Act does not permit O.P to take the plea of "time barred claim", while being in occupation and enjoyment of the property, as per Sec.22 of the Limitation Act, in the event of continuing commitment of breaches on the part of O.P., after expiry of the period mentioned in the ejectment notice. It is submitted with argument that as per law, O.P was under obligation to hand over possession of the property to SMPK in vacant and unencumbered condition and failure on the part of O.P. to discharge such statutory liability is a breach of contract.

It is my well considered view that unless there is any material/argument to substantiate O.P.'s claim regarding their entitlement to pay at old rate charges/dues for occupation into the public premises, duly endorsed by a competent authority, a mere statement disputing/contesting SMPK's claim is not acceptable under the general tenets of law. It is very futile to assert that O.P. can restrict their liability to pay at the old rate/charges for occupation and enjoyment of the Port Property, subsequent to the publication of notification by the Tariff Authority for Major Ports, in exercise of the power under the Major Port Trusts Act 1963. Needless to mention that a Gazette Notification is made by the Government for a notice to all concerned and a separate or personal intimation of a Gazette Notification is not required in the eyes of law. During the course of hearing, I am given to understand by the Port Authority that the rent charged from time to time is based on the rates notified by the Tariff Authority for Major Ports (TAMP) in the Official Gazette, which is binding on all users of the port property. In fact, O.P.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
ISSUED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
06.7.2022
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 1155, 1155/R, 1155/D Of 2011 Order Sheet No. - 38 -

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/s Mother Dairy Calcutta ^{VS}

31
06.7.2022.

cannot claim differential treatment from other occupiers/users of the Port Property, in similarly placed situations, many of whom carries on 'public utility' service as well, for making concessional payment of charges, in deviation of those as indicated in terms of the gazette notification, unless the same are categorically endorsed by a competent authority. A careful perusal of the record of the proceeding reveals that there is no paper/document of evidentiary value regarding SMPK's grant/ permission for a special treatment to be accorded to O.P. with regard to fixation of license fees/ rent for the subject occupation of O.P.

Further, I find the documents relied upon by O.P. in their defense dated 13.02.2018 deal with a different piece of land altogether (being occupation no D-607), which is not the subject matter of the instant proceeding/s. For instance, the document such as the SMPK's letter bearing no Lnd 4814/15/3330 dated 11.02.2015 relied upon by O.P. deals with another piece of land being occupation no D-607, while the subject occupation of the instant proceeding is D-608. It also appears from the Minutes of the meeting conducted by the Principal Secretary, Transport Department, Government of West Bengal on 18.02.2015 that the Secretary had requested SMPK to bilaterally sort out issues of rate of licence fees with O.P., while alluding to SMPK's letter dated 11.2.2015 which relates to the other occupation no D-607, and does not have any bearing on the present proceeding. In view of the above, I do not find any merit in the contentions of O.P. regarding SMPK's possible differential/preferential treatment with O.P., unlike other tenants of SMPK or in the rationale of possible fixation of a nominal rate for O.P., on the ground of the said 'public service', being run by O.P. As such, in my view, there is no scope to grant any differential treatment to the O.P. in any manner whatsoever. It is a settled question of law that in

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

[Signature]

9
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. 1155/1155/R, 1155/D of 2011

Order Sheet No. -39-

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/s Mothu Dairy VS Calcutta

31

06.7.2022.

a license agreement like the one granted to the O.P., the jural relationship between the two parties in the agreement continues on liquidation of bills by the licensee in the prescribed mode, within the prescribed period of time as bound by the limits of the contract. Such a relationship comes to surcease even in the event of a default of payment of any one bill/license fee. In other words, the continuance of such a relationship is very much pivotal to the "conduct" of the parties. The moment the licensor refuses to accept the licensee, owing to non-payment of license fees, nothing survives in the relationship. In the instant case, SMPK has produced document/s substantiating arrears of payment towards license fees/ rent by the O.P., which has not been denied by the O.P. The O.P., has in turn prayed for waiver of the enhanced license fees from SMPK and stated to have cleared up the dues upto July, 2008 through their reply dated 13.02.2018. I take note of the fact that such statement is only for a particular period and not the entire period of occupation of the O.P. As such, in my view, there is a definite element of truth in the submission of SMPK that the O.P. is in arrear of licence fees/ rent. It is also my firm opinion that the O.P. was definitely in arrears of licence fees at the time of issuance of notice to quit by the Port authority. Moreover, I must mention that the said notice to quit specifically mentions that SMPK has no intention or desire to revive the status of OP as tenant under the Board of Trustees for Kolkata Port and that any payment tendered by the O.P. after expiry of the period mentioned therein, will be deemed to have been tendered as compensation for wrongful use and occupation, and not as rent/licence fees. Therefore, as I find, even any payment made by the O.P. after 15.12.2008 cannot waive/condone or excuse the breach of non-payment of licence fees. Discussion against the foregoing paragraphs will certainly lead to the conclusion that the ejection notice dated 12.11.2008 as issued by the

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
ISSUED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
06.7.22
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 1155, 1155/R, 1155/D Of 2011 Order Sheet No. -40-

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/s Mother ^{VS} Dairy Calcutta

31
06.7.2022.

Port Authority, demanding possession from O.P. is very much valid, lawful and binding upon the parties. The properties of the Port Trust are definitely coming under the purview of "public premises" as defined under the Act. The license granted to O.P. was undoubtedly revoked due to service of Notice to Quit dated 12.11.2008 and institution of proceedings against O.P. by SMPK under the ambit of the P.P. Act., is a clear manifestation of Port Authority's intention to get back possession of the premises. In such a situation, I have no bar to accept SMPK's contentions regarding revocation of the license, on evaluation of the facts and circumstances of the case.

On the issue of 'unauthorised construction', neither SMPK, nor the O.P. has produced any substantial/ bankable piece of evidence, enabling this Forum to consider the case. Though SMPK in terms of their original application dated 25.03.2009 has submitted that the O.P. has erected unauthorized construction on the premises, no approved plan with regard to the structures could be produced by SMPK before this Forum of Law. On the other hand, the O.P. merely denied the charges of unauthorized construction without producing any relevant paper/ document in support of their statement. Law provides that the onus to prove an allegation rests upon the person, who levels such allegation and not upon the person who defends it. It is the case of SMPK that the O.P. has made unauthorized constructions and naturally, Law casts the duty upon SMPK to establish its case with supporting evidence. However, no evidence/ document in support of its case of unauthorized construction has been produced by SMPK. Hence, this Forum is under no obligation to deal/decide the issue and the same has been kept outside the purview of present adjudication.

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



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. 1155, 1155/R, 1155/D of 2011 Order Sheet No. - 41 -
BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/s Mother Dairy VS
Calcutta

31

06.7.2022.

As such, I hereby conclude that the occupation of the O.P. is definitely unauthorized after expiry of the period mentioned in the Notice to Quit dated 12.11.2008. I must reiterate that the ejectment notice, demanding possession as stated above, has been validly served upon O.P., in the facts and circumstances of the case, and such the notice is valid, lawful and binding upon the parties.

NOW THEREFORE, I consider it a fit case for allowing SMPK's prayer for eviction against O.P. i.e. M/s Mother Dairy, Calcutta u/s 5 of the Act on the following grounds/reasons:

1. That O.P. has been found to be in arrears of License Fees/rent and taxes for long period, in clear defiance of the contractual terms and conditions.
2. That SMPK's notice dated 12.11.2008 demanding possession of Port property from O.P. is very much valid, lawful and enforceable in the facts and circumstances of the case.
3. 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 "authorized" after expiry of the period mentioned in the Notice to Quit, and accordingly, the occupation of O.P. has definitely become unauthorized in view of Sec.2(g) of the P.P. Act, 1971.
4. That, right since expiry of the period as mentioned in the Notice to Quit dated 12.11.2008, O.P. has lost its bonafide authority to occupy the Public Premises and accordingly, O.P. is liable to pay compensation charges/damages, in terms of rates as fixed by a statutory authority like TAMP and notified in Govt. Gazette, with interest, for wrongful use and enjoyment of the Public Property from that date upto the date of handing over of clear, vacant and

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
1 06.07.2022
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

12

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. 1155, 1155/R, 1155/D of 2011 Order Sheet No. -42-

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/s Mother Dairy VS Calcutta

31
06.7.2022.

unencumbered possession of the same to the Port Authority.

ACCORDINGLY, a formal order of eviction u/s 5 of the Act as per Rule made there-under, is drawn giving 15 days' time to O.P. and any person/s whoever may be in occupation, 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 and the Port Authority is entitled to claim damages for unauthorized use and enjoyment of the property against O.P. in accordance with the Law, up to the date of recovery of clear and unencumbered possession of the same.

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.

Regarding payment of rental dues to SMPK, I must say that Rs. 2,24,351/- as claimed by the Port Authority in relation to the Plate in question, is correctly payable by O.P. for the period 01.12.2004 to 14.12.2008 (both days inclusive) and it is hereby ordered that O.P. shall make payment of the aforesaid sum.

On the issue as to whether O.P. is liable to pay mesne profit/damages and taxes etc., to the Port Authority, for the use and occupation of the public premises, as claimed by SMPK it is noted that the O.P. was requested to arrange for vacation of the subject premises on 15.12.2008, free from all encumbrances. No reason or evidence has been brought forth by the O.P. as to how their occupation beyond 15.12.2008 (i.e. the date earmarked by SMPK for surrender of vacant and

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 LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATAAppointed by the Central Govt. Under Section 3 of the Public Premises
(Eviction of Unauthorised Occupants) Act 1971**BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA***m/s Mother Dairy^{VS} Calcutta*

31

06.7.2022.

peaceful possession of the subject premises by OP to SMPK in terms of the Notice to Quit dated 12.11.2008) could be termed as "authorised occupation" in the absence of any grant of permission on behalf of SMPK. For occupation and enjoyment of Public Premises, one must have to pay requisite charges for occupation. "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, on evaluation of all factual aspects involved into this matter, right from the date of revocation of the license in question, O.P. has lost its authority to occupy the public premises, and that O.P. is liable to pay damages for such unauthorized use and occupation. It is contended that SMPK's intention to get back possession is evident from the conduct of the Port Authority and O.P. cannot claim its occupation as "authorized" without receiving any rent demand note from SMPK. Therefore, there cannot be any doubt that the O.P. was in unauthorized occupation of the premises, once the license was revoked. The Port Authority has a definite and 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 the requisite charges as mentioned in the Schedule of Rent Charges. It has been held by the Hon'ble Apex Court of India that a person continuing in possession of the premises after termination, withdrawal or revocation of license/lease, continues to occupy it as a trespasser or as a person who has no semblance of any right to continue in occupation of the premises. Such person, by no stretch of imagination, can be called a bonafide licensee/lessee. In course of hearing, it is submitted on behalf of SMPK that the charges claimed on account of damages are on the basis of the SMPK's Schedule of Rent Charges, as applicable, for all the tenants/occupiers of the premises insimilarly placed

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE
ORDER PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
06.7.2022
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 1155, 1155/R, 1155/D Of 2011 Order Sheet No. 44-

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/s Mother Dairy Calcutta ^{VS}

31
06.7.2022.

situations and such Schedule of Rent Charges is but 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 breached/broken the party who suffers by such breach, is entitled to receive, from the party who has ostensibly 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 agreed to tenets of the contract, to be likely to result from the breach of it. Moreover, as per law, O.P. is bound to deliver up vacant and peaceful possession of the public premises to SMPK after revocation of the license in question in its original condition. I am of the considered view that OP cannot repudiate the claim of SMPK towards damages for wrongful occupation after revocation of the license in question. Further, in the absence any submission or evidence, contradicting SMPK's allegation of unauthorized occupation, by the O.P. beyond the period as mentioned in the Notice to Quit dated 12.11.2008, this Forum is left with no other alternative but to consider the possession of the public premises by the O.P. beyond 15.12.2008 as "unauthorized occupation" within the meaning of sec 2 (g) of the P.P. Act, 1971, which reads as under:

"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."

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

[Signature]



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. 1155, 1155/R, 1155/D Of 2011 Order Sheet No. -45-

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/s Mothu Dairy K. Calcutta ^{VS}

31

06.7.2022

In view of the foregoing, I am of the considered view that the claim of the Port Authority regarding the damages cannot be said to be arbitrary or unreasonable.

I think it is a fit case for issuance order for recovery of damages u/s 7 of the Act as prayed for on behalf of SMPK. I am firm in holding that O.P. is liable to pay compensation charges/ damages of Rs. 6,64,700/- (Rupees Six Lakhs Sixty Four Thousand and Seven Hundred Only) to SMPK for the period 15.12.2008 to 30.09.2017.

The O.P. must have to pay such dues to SMP, Kolkata on or before 25.7.2022.

Such dues attract Compound Interest @ 6.30 % 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 full and final liquidation of the same, as per the adjustment of payments, if any made so far by O.P., in terms of SMP, Kolkata's books of accounts.

I 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 30.09.2017 as well, 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 30.09.2017, 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 clear, vacant and unencumbered possession) together with the basis on which

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 LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 1155, 1155/R, 1155/D Of 2011 Order Sheet No. - 46-

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

m/s Mother Dairy Calcutta ^{VS}

31
06.7.2022

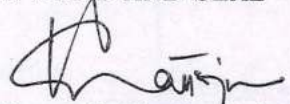
such charges are claimed against O.P., for my consideration for the purpose of assessment of such damages as per Rule made under the Act.

The formal Orders u/s 7 of the Act are signed accordingly.

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


(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***

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