

**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 the 2nd Floor
of Kolkata Port Trust's
Head Office, Old Buildings
15, Strand Road, Kolkata- 700 001.

REASONED ORDER NO. 29 DT 14.05.2019
PROCEEDINGS NO. 1237 OF 2011

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-

Md. Saukat Ali (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 **Md. Saukat Ali, of Hawkers Stall no. 2, Block no. C, 52, CGR Road (Opposite Khidderpore Tram Depot) Kolkata 700023** is in unauthorized occupation of the Public Premises specified in the Schedule below:

R E A S O N S

1. That O.P. has failed to appear before this Forum and/or represent its case through his duly authorised representative.
2. That O.P. has violated the condition of monthly license as granted by the Port authority by way of not making payment of license fees to KoPT and by way of unauthorised parting of possession of subject premises in favour of rank outsiders.
3. That O.P. has failed to make out any case in support of its occupation as “authorised occupation”.
4. That the strangers in occupation of the public premises have also failed to establish or justify their occupation of the premises as “authorised occupation”.
5. That O.P. or any other persons asserting any right through O.P. has failed to bear any witness or adduce any evidence in support of its occupation as “authorised occupation”.
6. That the notice to quit dated 29.04.2005 as served upon O.P. by the Port authority is valid, lawful and binding upon the parties and O.P.'s occupation and that of any other occupant of the premises has become unauthorised in view of Sec.2 (g) of the P.P. Act.
7. That O.P. is liable to pay damages for wrongful use and occupation of the public premises up to the date of handing over the clear, vacant and unencumbered possession to the port authority.

Please see on reverse

A copy of the reasoned order No. 29 dated 14.05.2019 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 **Md. Saukat Ali, of Hawkers Stall no. 2, Block no. C, 52, CGR Road (Opposite Khidderpore Tram Depot) Kolkata 700023** 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 **Md. Saukat Ali, of Hawkers Stall no. 2, Block no. C, 52, CGR Road (Opposite Khidderpore Tram Depot) Kolkata 700023** 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. 3.72 sqm or thereabouts, situated at Circular Garden Reach Road, P.S. South Port, District – 24 Parganas. It is bounded on the North by the Circular Garden Reach Road, on the East by the Trustees' land licensed to Sk Azim, on the South by the Trustees' land licensed to the Calcutta Dock Labour Board and on the West by the Trustees' land licensed to Md Asgar.

Trustees mean the Board of Trustees for the Port of Kolkata.

Dated: 14.05.2019


Signature & Seal of the
Estate Officer.

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

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

ESTATE OFFICER, 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
15, STRAND ROAD (4TH FLOOR) KOLKATA-700001

Form " E "

PROCEEDINGS NO.1237/R OF 2011
ORDER NO. 29 DATED: 14.05.2019

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

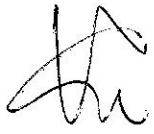
To
Md. Saukat Ali,
Hawkers Stall no. 2, Block no. C,
52, CGR Road (Opposite Khidderpore Tram Depot)
Kolkata 700023

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

AND WHEREAS, by written notice dated 13.11.2017 you were
called upon to show cause on/or before 08.12.2017 why an order
requiring you to pay a sum of Rs. 16,758/- (Rupees Sixteen
Thousand seven hundred and fifty eight only.) being the rent
payable together with compound interest in respect of the said
premises should not be made;

And whereas you have failed to appear before me either in
person or through duly authorised representative.

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. 16,758/- (Rupees Sixteen Thousand seven hundred and
fifty eight only.) for the period 01.12.1991 to 31.05.2005 (both days
inclusive) to Kolkata Port Trust by 10.06.2019.



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 simple interest @ 15% per annum upto 18.09.1996 and thereafter @ 18% per annum upto 06.04.2011 and thereafter @ at the rate of 14.25% per annum on the above sum till its final payment in accordance with Kolkata Port Trust Notification Published in Official Gazette/s.

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

The said piece or parcel of land msg. 3.72 sqm or thereabouts, situated at Circular Garden Reach Road, P.S. South Port, District - 24 Parganas. It is bounded on the North by the Circular Garden Reach Road, on the East by the Trustees' land licensed to Sk Azim, on the South by the Trustees' land licensed to the Calcutta Dock Labour Board and on the West by the Trustees' land licensed to Md Asgar.

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

Dated: 14.05.2019


Signature and seal of the
Estate Officer

ESTATE OFFICER, 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
15, STRAND ROAD (4TH FLOOR) KOLKATA-700001

FORM -G

PROCEEDINGS NO. 1237/D OF 2011
ORDER NO. 29 DATED: 14.05.2019

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

To

Md. Saukat Ali,

Hawkers Stall no. 2, Block no. C,

52, CGR Road (Opposite Khidderpore Tram Depot)

Kolkata 700023

Whereas I, the undersigned, am satisfied that you are in unauthorised occupants of the public premises described in the schedule below:

AND, whereas, by written notice dated 13.11.2017 you were called upon to show cause on or before 08.12.2017 why an order requiring you to pay a sum of Rs. 81,488/- (Rupees Eighty One Thousand Four Hundred and Eighty Eight only) being the damages payable together with compound interest in respect of the said premises should not be made;

AND, whereas, you have failed to appear before me either in person or through duly authorized representative;

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 require you to pay the sum of Rs. 81,488/- (Rupees Eighty One Thousand Four Hundred and Eighty Eight only) assessed by me as damages on account of your unauthorised occupation of the public premises for the period 01.06.2005 to 30.09.2017 to Kolkata Port Trust by 10.06.2019.



PLEASE SEE ON THE REVERSE

:: 2 ::

IN exercise of the powers conferred by Sub-section (2-A) of Section 7 of the said Act, I also hereby require you to pay simple interest @ 18% per annum upto 06.04.2011 and thereafter @14.25% per annum on the above sum till its final payment in accordance with Kolkata Port Trust's Notification Published in Calcutta Gazette.


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.

S C H E D U L E

The said piece or parcel of land msg. 3.72 sqm or thereabouts, situated at Circular Garden Reach Road, P.S. South Port, District - 24 Parganas. It is bounded on the North by the Circular Garden Reach Road, on the East by the Trustees' land licensed to Sk Azim, on the South by the Trustees' land licensed to the Calcutta Dock Labour Board and on the West by the Trustees' land licensed to Md Asgar.

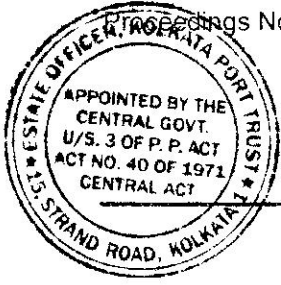
The Trustees' means the Board of Trustees for the Port of Kolkata.

Dated: 14.05.2019


Signature and Seal of the
Estate Officer

Estate Officer, Kolkata Port Trust

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



Case No. 1237 Of 2011 Order Sheet No. -28-

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Md. Soukat Ali **VS**

28
23-05-2018.



Present: K.Dhar, Asst. Estate Manager
P. Roychowdhury, JME

For Kolkata Port Trust (KoPT)
Mahnaz Parveen, Advocate
For Opposite Party (O.P.)

Matter is taken up for hearing. Representative of O.P. appears before this Forum and submits that he has not been able to contact Saukat Ali. Sri. Kalam further submits that he has never seen O.P. and the Vakaltnama was handed over to him by the agent of Saukat Ali. On an enquiry by this Forum regarding physical whereabouts/status of O.P. etc. who was specifically advised to be present before this Forum in person vide the Forum's order sheet dated 18.5.2018, Mr. Kalam conceded that he has personally never met O.P.

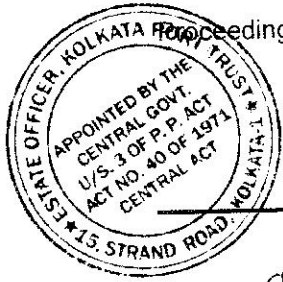
It is further submitted by both the parties that the pleadings on behalf of both the parties are complete and they have nothing more to add.

Let Final order be reserved. All concerned are directed to act accordingly.

[Signature]
ESTATE OFFICER

Estate Officer, Kolkata Port Trust

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



Proceedings No. 1237, 1237/R A 1237/D Of 2011 Order Sheet No. 29

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Md. Saukat ^{VS} Ali

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14-05-2019

FINAL ORDER

The matter is taken up today for final disposal. It is the case of Kolkata Port Trust (KoPT), Applicant herein, that Md. Saukat Ali (O.P. herein) came into occupation of the Port property measuring about 3.72 sq.mtr. at Circular Garden Reach Road (Plate No. D-576) as a monthly licensee and he had defaulted in making payment of the arrear dues, and parted with possession of the property in favour of rank outsiders without prior approval of KoPT, in clear violation of the terms and conditions of the license in question.

It is submitted that O.P. has no authority under law to occupy the public premises after issuance of notice to quit dated 29.04.2005 and was required to hand over the peaceful vacant possession of the property in question to KoPT in terms of the said notice to quit. My attention is drawn with a strong argument that the cause of action arises upon failure on the part of the O.P. to hand over possession in terms of the said notice as served upon O.P. and thereafter.

In terms of Order no. 17 dated 25.10.2017, on 13.11.2017 this Forum issued Show Cause Notice/s under section 4 and 7 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971 for adjudication of the prayer of passing of Order of Eviction, recovery of license fees, damages etc.

On receipt of the Show Cause Notices, one Md. Kalam, Advocate appeared before this Forum by filing a Vakalatnama issued by one "Ganesh Kr Gupta" and submitted that they have made an adhoc payment of a certain sum to KoPT and sought regularisation. The said Advocate further filed a Reply to the Show Cause Notices, denying unauthorised parting with possession and unauthorised occupation of O.P. in the said Port Property with a prayer for regularisation of the tenancy. It has however been admitted in the application filed on 10.01.2018 that allegation of non-payment of license fees and taxes is correct inasmuch

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(Eviction of Unauthorised Occupants) Act 1971

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Md. Saukat Ali ^{VS}

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as the O.P. was suffering from paucity/lack of fund and hence could not make the payments in due course of time.

On 07.03.2018, representative of KoPT filed the rejoinder to the said Reply, with a copy served to Md Kalam, Advocate, wherein, KoPT has vehemently opposed the submissions and reiterated the allegations as per their original application made before this forum on 26.04.2006. KoPT further requested that O.P. should be directed to produce the trade licence for ascertaining whether O.P. is actually carrying out business from the said premises or not.

It was submitted by Md. Kalam vide his application dated 25.04.2018 that O.P. being small tea stall owner has no trade licence and again prayed for regularization. Parties were directed to carry out a joint inspection of the premises pursuant to which on 15.05.2018, a joint inspection report was filed. In the said joint inspection report, it is stated that O.P. (Md Saukat Ali) was not present during the time of inspection and that one Ram Chandra Mira introduced himself as the worker of O.P. without production of any valid papers. It has also been stated in the report that there has been an amalgamation of the plot of land allotted to O.P. with the plot allotted to Azim Khan/Sk. Azim but none could produce a piece of paper justifying such amalgamation. KoPT prayed for the presence of O.P. before the Forum along with corroborative photo identity proof.

On 23.05.2018, the said Md Kalam, Advocate, admitted to the utter astonishment of this Forum that he had never seen the O.P. (Md Saukat Ali) and neither knew any whereabouts of the O.P. It was further submitted that the Vakalatnama in question had been handed over to him by an agent of the O.P.. Upon such revelation, I deemed it appropriate not to continue with the proceedings any further and reserved the matter for passing the final order.



Estate Officer, Kolkata Port Trust

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(Eviction of Unauthorised Occupants) Act 1971

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VS
Md. Saukat Ali.

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Now while delivering the final order, the first and foremost question to be decided is whether Md. Kalam, Advocate, can be said to be representative of the O.P. (Md Saukat Ali) or not. As per P.P. Act, 1971 the O.P. must appear before this Forum either in person or through a duly authorised representative. Here, the Vakalatnama is given by one "Ganesh Kr Gupta" who does not disclose his identity or relationship with the O.P. Despite continuance of proceedings for a prolonged period, the notice/s of which were duly served to O.P./interested parties, no effort has been made on behalf of the holder of the said Vakalatnama to establish the identity of his client. Even as per general law, the Advocate bearing the Vakalatnama is supposed to know his client atleast for the purpose of identifying him before a Court of Law, but in the instant case, Md Kalam, Advocate, admittedly has never seen the O.P. at all. In my view, in such a situation, the representation/submission of Md. Kalam before this Forum cannot be treated as representation of O.P. and I have no hesitation to observe that the proceedings must be treated as "ex-parte" O.P. In such a situation, the applications/replies filed by Md Kalam can at best be treated as applications of an "interested party" under the P.P. Act but here again, there is no explanation or clarification as to how Md Kalam, who, under oath, holds the brief on behalf of one Ganesh Kr Gupta, has "interest" in the premises, since no legally valid relationship/antecedents could be established between Shri Gupta and Md. Saukat Ali.

This apart, I have carefully gone through the complaints of breaches made by KoPT against the O.P. along with supporting documents submitted in this respect. In my view, the allegation of unauthorised parting of possession in favour of rank outsiders is fairly justified and proved in the instant case. I find that the O.P. is non-existent (not only absent before this Forum but also absent from the land in question) whereas strangers are carrying on business in the premises without a single scrap of paper justifying their occupation. Even no trade license of O.P. could be



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(Eviction of Unauthorised Occupants) Act 1971

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
Md. Souket Ali

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produced before this Forum. Moreover, a monthly license as was granted to O.P. is neither heritable nor transferable and there was a clear bar in the offer of KoPT (dated 09.01.1980) to sub-let or part with possession of the premises. As such, in my firm view, this is a clear case of parting of possession by O.P. in favour of strangers who are unauthorisedly in occupation of the public premises. As regards the allegation of non-payment of license fees and taxes, such non-payment is fairly clear from the detailed statement of accounts produced on behalf of KoPT. While O.P. is absent, even the stranger/s who contested the matter have admitted such dues. As such, there is little doubt in my mind as to the genuineness of the contentions of KoPT and I hereby hold that the issues are fit to be decided in favour of KoPT.

As per Section 2 (g) of the P.P. Act, 1971, the "unauthorized occupation", in relation to any public premises, means the occupation by any person of the public premises **without authority for such occupation** and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. The monthly license granted to O.P. was undoubtedly determined by the Port Authority by due service of notice to quit dated 29.04.2005 and institution of proceedings against O.P. by KoPT is a clear manifestation of Port Authority's intention to get back possession of the premises for violation of the fundamental conditions of the license.

As such, I am left with no other alternative but to issue the order of eviction against O.P. ex-parte as prayed for on behalf of KoPT on the following grounds/ reasons:

1. That O.P. has failed to appear before this Forum and/or represent its case through his duly authorised representative.



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Appointed by the Central Govt. Under Section 3 of the Public Premises
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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

^{VS}
Md. Souket Ali.

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2. That O.P. has violated the condition of monthly license as granted by the Port authority by way of not making payment of license fees to KoPT and by way of unauthorised parting of possession of subject premises in favour of rank outsiders.
3. That O.P. has failed to make out any case in support of its occupation as "authorised occupation".
4. That the strangers in occupation of the public premises have also failed to establish or justify their occupation of the premises as "authorised occupation".
5. That O.P. or any other persons asserting any right through O.P. has failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation".
6. That the notice to quit dated 29.04.2005 as served upon O.P. by the Port authority is valid, lawful and binding upon the parties and O.P.'s occupation and that of any other occupant of the premises has become unauthorised in view of Sec.2 (g) of the P.P. Act.
7. That O.P. is liable to pay damages for wrongful use and occupation of the public premises up to the date of handing over the clear, vacant and unencumbered possession to the port authority.

ACCORDINGLY, I sign the formal order of eviction u/s 5 of the Act as per Rule made there-under, giving 15 days time to O.P. and any person/s whoever may be in occupation to 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 upto the date of recovery of possession of the same. 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 may be taken for execution of the order of eviction u/s. 5 of the Act as per Rule made under the Act.



Estate Officer, Kolkata Port Trust

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

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
Md. Soumit Ali.

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14.05.2019

It is my considered view that a sum of Rs. 16,758/- for the period 01.12.1991 to 31.05.2005 (both days inclusive) is due and recoverable from O.P. by the Port authority on account of rental dues and O.P. must have to pay the rental dues to KoPT on or before 10.06.2019. Such dues attract interest @ 15% per annum upto 18.09.1996 and thereafter @ 18% per annum upto 06.04.2011 and thereafter @ 14.25% per annum, till the liquidation of the same, from the date of incurrance of liability in accordance with the notification of KoPT, issued under Authority of Law, as per adjustment of payments made so far by O.P., in terms of KoPT's books of accounts.

Likewise, I find that KoPT has made out an arguable claim against O.P., founded with sound reasoning, regarding the damages/compensation to be paid for unauthorised occupation. As such, I must say that Rs. 81,488/- as claimed by the Port Authority as damages in relation to the Plate in question, is correctly payable by O.P. for the period 01.06.2005 to 30.09.2017 (both days inclusive) and it is hereby ordered that O.P. shall also make payment of the aforesaid sum to KoPT by 10.06.2019. The said damages shall carry simple interest @ 18% per annum till 06.04.2011 and thereafter @14.25% per annum on the above sum from the date of incurrance of liability till its final payment in accordance with the relevant notification/s published in Official Gazette. The formal orders u/s 7 of the Act are signed accordingly.

I make it clear that KoPT 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, as and till such time the possession of the premises continues to be under the unauthorised occupation with the O.P.. KoPT is directed to submit a statement comprising details of its calculation of



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VS
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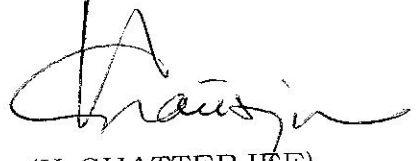
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damages after 30.09.2017, indicating there-in, the details of the rate of such charges, and the period of the damages (i.e. till the date of taking over of possession) together with the basis on which such charges are claimed against O.P., for my consideration for the purpose of assessment of such damages as per Rule made under the Act.

I make it clear that in the event of failure on the part of O.P. to comply with this Order, Port Authority is entitled to proceed further for execution of this Order in accordance with law.

All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL


(K. CHATTERJEE)
ESTATE OFFICER

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