

**MUMBAI PORT AUTHORITY**  
**OFFICE OF THE ESTATE OFFICER**  
**UNDER PUBLIC PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1971**  
The Estate Officer, 7<sup>th</sup> Floor, Vijay Deep bldg., S. V. Marg, Ballard Estate, Mumbai – 400 001.

Case No. EO/E/(01) Of 2022

Case No. EO/E/(01) Of 2022

**IN THE MATTER OF:**

**The Board of Mumbai Port Authority**

A Statutory Corporation, Successor in title

Of the Board of Trustees of the port of Mumbai

Having its registered office at Vijay Deep, Shoorji Vallabhdas Marg, Ballard Estate,  
Mumbai – 400 001. .....Petitioner

V/s

**1. ~~Shri Shantilal Rawji (Deceased)~~**

**All the Legal Heirs and Representatives of Shri Shantilal Rawji**

3/21, Bhutta Niwas, Dr. Ambedkar Road,

Matunga, Mumbai 400 019

**Also at**

New Shop No. 3 P.T., Structure known as Bldg No. 8,

Wadi Bunder, Mumbai 400 010

**2. Shri Hiren Jayantilal**

**3. Shri Subhash Lalji Jaiswal**

New Shop No. 3, MbPT Chawl, Wadi Bunder Road,

Santacruz Estate, Mumbai 400 010 ....Respondents

**Coram: Shri S.C. Sonavane**

(Estate Officer)

(Appointed under Section 3 of the Public Premises (Eviction of Unauthorized Occupants) Act,  
1971 vide Gazette Notification dated 13.09.2021)

**Represented by: -**

**Advocate for Petitioner:** Adv. Prajit Vora i/b Navdeep Vora & Associates

**Petitioner Representative:** Shri. A. D. Hardikar, Assistant Executive Engineer

**Advocate for Respondent No. 3:** Adv. Prerak Chaudhary

**ORDER**

1. This Petition has been preferred by the Petitioner for eviction under Section 5 and 7 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as 'PPE Act').
2. Perusal of the record reveals that the present Petition was initially filed on 29.11.2022 wherein it was prayed that summary proceedings be initiated against the Respondents under Sections 4 to 7 of the PPE Act. Further, it is submitted by the Petitioner that on account of illegal acts committed by the Respondents in the nature of unauthorized subletting and change of user. The Petitioners vide their Notices dated 15.12.2021 has terminated the monthly tenancy of Respondent No.1 and without prejudice to the said notice the petitioners vide notice dated 24.03.2022 have terminated the holding over of the petition premises with regard to the piece of land, admeasuring 21.45 sq. mtrs situated at New Shop No. 3, Building No. 8, Wadi Bunder Chawl, Santacruz Estate,



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Mumbai (hereinafter referred to as 'subject premises') which was let out by the Petitioner's predecessor in title, the Trustees of the Port of Mumbai to the Respondents *inter alia* claiming an amount of Rs. 30,74,752.92 ps. upto 31.01.2022 as total arrears of compensation.

3. The Petitioner is a Statutory Corporation, constituted under Section 3 of the Major Port Authorities Act, 2021 being the successor in title to the Board of Trustees of the Port of Mumbai, constituted under the Major Port Trust Act, 1963 since repealed, having its office at the above mentioned address.
4. From the perusal of the pleadings and documents filed by the parties following facts came to fore:

***As per the Petition filed by the Petitioner:***

- i. Pursuant to Charge Certificate dated 13.12.1976 monthly tenancy was granted by Petitioner's predecessor in title, Trustees of the Port of Bombay to Shri Shantilal Rawji. The terms and conditions of the monthly tenancy were quoted vide letter dated 01.10.1975 and 15.12.1975 which were accepted by the Respondent No.1 vide letter dated 24.10.1975 and 08.01.1976 and the sanctioned use of the said premises is for the Grocery Shop.
  - ii. The Petitioner claims that the Respondent No.1 has committed breaches in terms of:
    - a) unauthorized subletting to Shri Hiren Jayantilal from 03.10.2008 and change of user from grocery shop to Lottery Centre from 03.10.2008
    - b) unauthorized subletting to Shri Subhash Lalji Jaiswal from 10.10.2012 and change of user from grocery shop to Office from 10.10.2012 and subsequently to residence and despite the tenancy being terminated by Petitioners the Respondent No. 2 and 3 are still occupying the premises hence, are in an unauthorized occupation.
  - iii. The Petitioners vide their Notices dated 15.12.2021 has terminated the monthly tenancy of Respondent No.1 and without prejudice to the said notice the petitioners vide notice dated 24.03.2022 have terminated the holding over of the said premises. Further, the Petitioner have submitted that the Notice was duly served upon Respondent No.1 through pasting on the petition premises and copy of the notice has been received by personal service by Respondent No.2 & 3.
  - iv. Petitioner submitted that the said premises is now required by them for its own bona fide use in accordance with the Master Plan approved under Trustees Resolution No. 13 of 2018.
5. This forum of Law formed its opinion to proceed under the relevant provisions of the Act and issued Show Cause Notices under Sections 5 to 7 of the Act dated 27.02.2023 as per the Rules made under the Act. The issuance of show cause notice and affixation of the same was done as per the statutory mandate the particulars of which can be referred to as provided below-

Sr. No.	Particulars	Date
1.	Show Cause Notice u/s 4 (for adjudication of the prayer of the Petitioner for order of eviction.	27.02.2023





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Case No. EO/E/(01) Of 2022

2.	Show Cause Notice u/s 7 (for damages together with interest and recovery of arrears).	27.02.2023
3.	Notices were personally served on Respondent No.3 along with original acknowledgments. Respondent No.1 & 2 were served by way of pasting	10.03.2023

6. On the first date of the hearing i.e. on 17.03.2023, the Respondent No. 2 and 3 appeared and requested time to appear with an advocate to plead in the matter. Respondent No.2 & 3 had informed the Ld. Authority that Respondent No.1 had expired on 04.12.2017 along with the copy of Death Certificate subsequently amendment was carried on 26.06.2023. Copy of amended petition was served on HLR of Respondent No.1 on 14.07.2023 by way of pasting on petition premises. It is pertinent to note that on 05.04.2023 Miscellaneous Application challenging the jurisdiction of Estate Officer was filed by Respondent No. 2 and 3 by their Advocate, thereafter, the Petitioner filed their reply to the aforesaid Miscellaneous Application on 27.04.2023 thereafter Respondent filed its rejoinder to Petitioner's reply on 16.05.2023. On 26.06.2023 written arguments on the issue of jurisdiction were filed by Respondents. Order was passed by the Learned Authority on 02.06.2023 regarding jurisdiction of Estate Officer. Thereafter, the matter was adjourned for filing written statement by the Respondent and on 22.08.2023 written statement was filed by Respondent No.2 & 3 wherein it was contended that petitioner's show cause notice under section 4(1), 4(2), clause b(2), 5 (2), 7(2) of PPE Act 1971 are patently illegal and without jurisdiction. Respondents also contended provision of Rent Control Act, 1999 would be applicable and not PPE Act as they were protected tenants under the Rent Act. Respondent had also stated that the compromise proposal laid down by the apex court in the case of Jamshedji Hormusji Wadia v BPT was not adhered to by Petitioner. Draft Issues was filed by petitioner on 04.09.2023 and Respondent filed its draft issues on 11.09.2023. Thereafter final issues were tendered to both parties on 13.09.2023.
7. On 13.09.2023 following final issues were framed:
- "Whether the Petitioners prove that Respondent No. 1 to 3 have committed breaches of the terms and conditions of the tenancy and whether the monthly tenancy of the Respondents have been determined validly and properly vide Notices dated 15.12.2021 and 24.03.2022?"*
  - Whether the Petitioners prove that the Respondents became unauthorized occupants after the termination of notice service upon the Respondents?*
  - Whether the Petitioners prove that they are entitled to claim arrears of rent, compensation, damages, interest as stated in the Petition?*
  - Whether the Petitioners prove that they are entitled for order of eviction?*
  - What Order?"*
8. Affidavit of Evidence was filed by the Petitioner on 27.09.2023. List of Documents relied on by the Petitioner Witness-1 Shri. Abhay Dattatraya Hardikar, on 27.09.2023 are mentioned below and the same are exhibited.

ITEM NO.	PARTICULARS	Exhibit No.
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**Case No. EO/E/(01) Of 2022**

1.	Terms and Conditions dated 01.10.1975	PW 1- A
2.	Terms and Conditions dated 15.12.1975	PW 1- B
3.	Acceptance Letter dated 24.10.1976	PW 1- C
4.	Acceptance Letter dated 08.01.1976	PW 1- D
5.	Charge Certificate dated 13.02.1976	PW 1- E
6.	Inspection Report dated 03.11.2008	PW 1- F
7.	Inspection Report dated 10.10.2012	PW 1- G
8.	Trustees Resolution No. 69/2021	PW 1- H
9.	Trustees Resolution No. 13/2018	PW 1- I
10.	Statement of Arrears	PW 1- J
11.	Statement of Damages	PW 1- K
12.	Trustees Resolution No. 365/1991	PW 1- L
13.	Trustees Resolution No. 296 of 2020	PW 1- M
14.	TAMP Notification No. 54 of 24.11.2021	PW 1- N
15.	Breach conveying letter dated 23.03.2009	PW 1- O
16.	Breach conveying letter dated 29.10.2012	PW 1- P
17.	Breach conveying letter dated 02.11.2020	PW 1- Q
18.	Personal acknowledgement of breach conveying letters dated 23.03.2009	PW 1- R
19.	Termination notice dated 15.12.2021	PW 1- S
20.	Termination notice dated 24.03.2022	PW 1- T
21.	Personal service acknowledgement	PW 1- U
22.	Original pasting Report	PW 1- V
23.	Reply of Respondents Advocate dated 26.04.2022	PW 1- W
24.	Letter of Authority	PW 1- X

Thereafter, the matter was adjourned for admission and denial of documents and on 25.10.2023 documents were marked as Exhibits subject to Cross Examination. Further the matter was adjourned for Cross Examination of PW 1 and finally due to non-appearance of Respondent's advocate to cross examine on 25.10.2023, 10.11.2023, 23.11.2023, 24.11.2023,





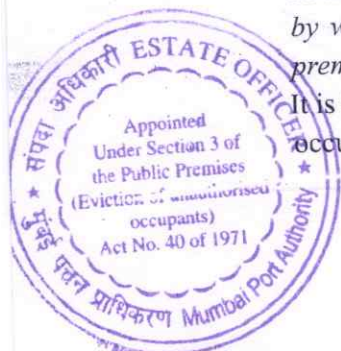
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- Cross-Examination of PW1 was closed on 29.11.2023. Subsequently, Respondent filed various applications for setting aside no cross order/ deferral of present proceeding, which were rejected considering the proceeding to be summary in nature and keeping in view the old and dilapidated condition of the structure.
10. Thereafter, opportunity was given to the Respondents for filing Affidavit of Evidence but no evidence was led by the Respondents and therefore the matter was adjourned for final arguments. Although Respondent No.2 & 3 were present during the proceeding they chose not to participate in the trial proceeding despite various EO orders.
11. On 08.12.2023 the advocate for the Petitioner submitted written arguments. Petitioners by their written arguments have submitted that the monthly tenancy is validly terminated by petitioners vide notice dated 15.12.2021 and 24.03.2022 and that Respondents are unauthorisedly occupying the petition premise after expiry of notice period. Petitioners have also submitted that despite several opportunities being provided, Respondents have failed to lead any evidence to support their contentions.
12. On the same date, Respondents failed to submit the arguments and were given a second chance to submit the same on 13.12.2023. Respondents did not produce any evidence even after giving another chance and finally on 14.12.2023 matter was kept for issuing Final Orders.
13. Based on the evidence adduced by the Petitioner in support of their claim as per the Inspector reports dated 03.11.2008 and 10.10.2012 (**Exhibit F and G**) of the Petitioners showing unauthorized subletting, change of user it can be stated that the Respondents have committed breaches in terms of change of user, unauthorized subletting and hence, the Petitioners vide their Notices dated 15.12.2021 has terminated the monthly tenancy of Respondent No.1 and without prejudice to the said notice the petitioners vide notice dated 24.03.2022 have terminated the holding over of the said premises. The Petitioner's notice dated 15.12.2021 and 24.03.2022 was served to Respondents by way of pasting in presence of two witnesses on 17.12.2021 and the pasting report of the same is taken on record and copy of the Notices was received personally by Respondent No.3. Hence, notices were validly served and despite the receipt of said notice the Respondents have failed to comply with the requisitions contained therein. Petitioners have submitted inspection Report Dated 03.11.2008, 10.10.2012 wherein it is shown Respondent have committed various breaches such as unauthorized subletting and change of user thereby violating T&C of monthly tenancy given by petitioner. Therefore, I hold that Issue No. 1 is proved.
14. After the termination of monthly tenancy authority of the Respondents to occupy the petition premise was withdrawn. However, the Respondent did not handover the possession of the petition premises to the Petitioner hence the status of Respondents with regard to petition premises became that of an '*unauthorized occupant*' in terms of Section 2 (g) of the PPE Act. The same is reproduced here for the sake of reference-

**Section 2 (g)**- "*Unauthorized occupation, in relation to any premises, means the occupation of 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 as expired or has been determined for any reason whatsoever.*"

It is to be noted that after the expiry of the notice period, the Respondents are in unauthorized occupation of the premise in the petition. I therefore, hold that Issue no 2 is proved.





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15. The Respondents are in arrears of rent/compensation along with interest thereon in respect of the demise premise, amounting to Rs. 30,94,679.54 and damages at the rate of three times of Rs. 1028.60 per sq. mtrs. Per month along with the interest and outstanding charges as enclosed in the statement of arrears which is duly produced on record and signed by Mr. A.D. Hardikar, Assistant Estate Manager (Gr. 1) and marked as **Exhibit PW1- J** and **Exhibit PW1- K**. The Respondents have not adduced any documentary evidence to support their claim. It is to be noted that for such unauthorized occupation, the Respondents are the unlawful occupants of the petition premises and they have neither adduced any evidence to support their claim as 'authorized' nor have they adduced any evidence to refute the claims of arrears/damages by Petitioner. Based on the above findings, and the documentary evidence submitted by the Petitioner, the Respondents are liable to pay damages/mesne profits for wrongful use and occupation of the subject premise from the date of petition up to the date of recovery of premise. The Petitioners are entitled to recover from the Respondents the vacant and peaceful possession of the petition premises, and the arrears of rent, compensation, damages and interest as stated. Therefore, I hold Issue Nos. 3 and 4 are proved.
16. The nature of the above proceeding is summary and the same needs to be followed in its strictest sense. Respondents have failed to adhere to the summary nature of the proceeding. The object of PPE proceeding has been up-held by Apex Court in the case of Jain Ink Manufacturing Company v Life Insurance Company AIR 1981 SC 670 wherein it was categorically held that *"the object of the Premises Act is to provide for eviction of unauthorized occupants from public premises by a summary procedure so that the premises may be available to the authorities mentioned in the Premises Act which constitute a class by themselves"*
17. Upon perusal of the petition, written arguments, and documents submitted on record, it is observed that the Petitioner validly and lawfully terminated monthly tenancy of Respondents. In the circumstances, being satisfied as above, I, therefore, declare that the Respondents are in unauthorized occupation of the premises. I hereby declare Respondents as unauthorized occupants and pass orders for payment of arrears of compensation, taxes, and other charges under section 7(1) (2) (2A) of the 1971 Act against the Respondents and I also hereby pass an order under section 5(1) of the PPE Act, 1971 for eviction from the said premises. Accordingly, orders in **Form 'B', and Form 'G'** are issued.
18. Upon perusal of the evidence, I have assessed the Petitioners Statement of Arrears and Statement of Damages adduced with this order as compensation/arrears pay the sum of Rs. 36,20,494.00 (Rs. Thirty Six lakhs Twenty Thousands Four Hundred and Ninety four) assessed by me as damages/mesne profit on account of your unauthorized occupation of the premises and to pay the compensation arrears upto 31.01.2022 with interest as on 30.11.2023 amounting to Rs. 30,94,679.54 (Rs. Thirty lakhs Ninety four Thousands Six Hundred Seventy nine and Fifty four paise) including damages and compensation arrears. I hereby order Respondents to pay the same.

Place: Mumbai  
Date: 14.12.2023



  
(S.C.Sonavane)  
**ESTATE OFFICER**



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Case No. EO/E/(01) Of 2022

**Form B**

*Order under sub-section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971*

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Having its registered office at Vijay Deep, Shoorji Vallabhdas Marg, Fort,  
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.....Petitioner

V/s

**1. ~~Shri Shantilal Rawji (Deceased)~~**

**All the Legal Heirs and Representatives of Shri Shantilal Rawji**

3/21, Bhutta Niwas, Dr. Ambedkar Road,  
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**Also at**

New Shop No. 3 P.T.,  
Structure known as Bldg No. 8,  
Wadi Bunder, Mumbai 400 010

**2. Shri Hiren Jayantilal**

**3. Shri Subhash Lalji Jaiswal**

New Shop No. 3, MbPT Chawl, Wadi Bunder Road,  
Santacruz Estate, Mumbai 400 010

....Respondents

**ORDER**

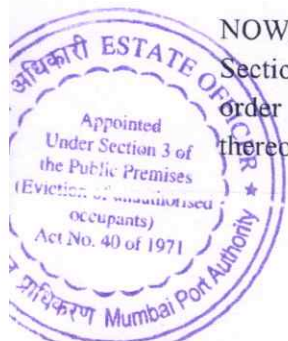
WHEREAS, I, the undersigned am satisfied for the reasons recorded hereinabove that the Respondents, are in unauthorized occupation of Public Premises specified in the **Schedule** below and have failed to hand over vacant and peaceful possession despite termination of tenancy.

**REASON**

Upon perusal of the petition, documents on record and heard the argument of the advocate, it is, *prima facie*, observed that:

1. The Petitioners vide their Notices dated 15.12.2021 has terminated the monthly tenancy of Respondent No.1 and without prejudice to the said notice the petitioners vide notice dated 24.03.2022 have terminated the holding over of the petition for the reasons of unauthorized subletting and change of user. Hence, the Respondents are unauthorized occupants in the petition premises.

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 Respondents and others 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



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**Case No. EO/E/(01) Of 2022**

the event of refusal or failure to comply with this order within the period specified above, the Respondents and all other concerned are liable to be evicted from the said premises, if needed, by the use of such force as may be necessary.

**SCHEDULE**


**Description of the Petition Premises**

Port Trust structure bearing New Shop No. 3 in Building No. 8 at Wadi Bunder Chawl, Santacruz Estate admeasuring 21.45 sq. mtrs. and bounded as follows:

Bounded on or toward the North by - Port Trust Land  
Bounded on or toward the South by - Port Trust Land  
Bounded on or toward the East by - New Shop No. 4 of the Port Trust structure known as Building No. 8  
Bounded on or toward the West by - New Shop No. 2 of the Port Trust structure known as Building No. 8

**Place: Mumbai**  
**Date: 14.12.2023**



  
(S.C.Sonavane)  
**ESTATE OFFICER**  
Signature & Seal of the Estate Officer



**MUMBAI PORT AUTHORITY**  
**OFFICE OF THE ESTATE OFFICER**  
**UNDER PUBLIC PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1971**  
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**Case No. EO/E/(01) Of 2022**

**Form G**

*Order under sub-sections (2) and (2-A) of Section 7 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971*

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.....Petitioner

V/s

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**All the Legal Heirs and Representatives of Shri Shantilal Rawji**

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**2. Shri Hiren Jayantilal**

**3. Shri Subhash Lalji Jaiswal**

New Shop No. 3, MbPT Chawl, Wadi Bunder Road,  
Santacruz Estate, Mumbai 400 010

....Respondents

**ORDER**

WHEREAS I, the undersigned am satisfied that you the Respondents are unauthorized occupation of the Public Premises in the **Schedule** below.

AND WHEREAS, by written notice dated 27.02.2023 you were called upon to show cause on 17.03.2023, why an order requiring you to pay **damages** for wrongful use and occupation of the premises amounting to Rs.36,20,494.00 (Rs. Thirty Six lakhs Twenty Thousands Four Hundred and Ninety four) should not be made;

AND WHEREAS, I have considered the objections produced by you,

NOW, THEREFORE, in the exercise of the powers confirmed on me by sub-section 2 of Section (7) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order you to pay the sum of Rs. 36,20,494.00 (Rs. Thirty Six lakhs Twenty Thousands Four Hundred and Ninety four) assessed by me as damages/mesne profit on account of your unauthorized occupation of the premises.

In exercise of the power conferred by sub-section (2-A) of Section 7 of the said Act, I also hereby order you to pay the compensation upto 31.01.2022 with interest as on 30.11.2023 amounting to Rs.30,94,679.54 (Rs. Thirty lakhs Ninety four Thousands Six Hundred Seventy nine and Fifty four paise) including damages and compensation arrears.



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**Case No. EO/E/(01) Of 2022**

In the event of your refusal or failure to pay the total sum including damages and compensation arrears as **Rs. 67,15,173.54** (Rs. Sixty seven Lakhs Fifteen Thousands One Hundred Seventy three and Fifty four paise) or any installments thereof within the said period or in the manner aforesaid, the amount will be recovered as arrears of land revenue.

**SCHEDULE**

**Description of the Petition Premises**

Port Trust structure bearing New Shop No. 3 in Building No. 8 at Wadi Bunder Chawl, Santacruz Estate admeasuring 21.45 sq. mtrs and bounded as follows:

Bounded on or toward the North by - Port Trust Land  
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Bounded on or toward the West by - New Shop No. 2 of the Port Trust structure known as Building No. 8

**Place: Mumbai**  
**Date: 14.12.2023**



(S.C. Sonavane)

**ESTATE OFFICER**

Signature & Seal of the Estate Officer.