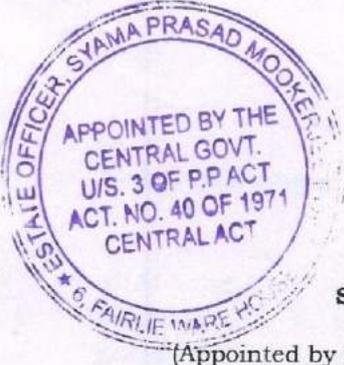


SCAN



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

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

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

OFFICE OF THE ESTATE OFFICER

6, Fairley Place (1st Floor)

KOLKATA - 700 001

Court Room at the 1st Floor
of SMPK's
Fairley Warehouse
6, Fairley Place, Kolkata- 700 001.

REASONED ORDER NO.08 DT 01.06.2023
PROCEEDINGS NO. 1999 OF 2023

**SYAMA PRASAD MOOKERJEE PORT, KOLKATA
(ERSTWHILE BOARD OF TRUSTEES OF THE PORT OF KOLKATA)**

-Vs-

M/s. Veerprabhu Marketing Ltd (O.P)

F O R M - "B"

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

WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that **M/s. Veerprabhu Marketing Ltd, 30, Jawaharlal Neheru Road, Kolkata-700016** is in unauthorized occupation of the Public Premises specified in the Schedule below:-

REASONS

1. That the proceedings against O.P. is very much maintainable.
2. That you have defaulted in making payment of rental dues to SMPK in gross violation to the fundamental condition of tenancy under lease as granted by the Port Authority.
3. That you have failed to bear any witness or adduce any evidence in support of your occupation as 'authorized occupation'.
4. That the lease granted to O.P. for 15 years had expired on 05.07.2022, in all sense of law.
5. That the Notice demanding possession from O.P. as issued by SMPK dated 04.01.2023 is valid, lawful and binding upon the parties and O.P. had no authority under law to occupy the Public Premises after expiry of the contractual period of lease in question that is from 06.07.2022.
6. That O.P.'s occupation is unauthorized after expiry of period of lease in question and O.P.'s occupation has become unauthorized in view of Section 2(g) of PP Act.
7. That O.P. is liable to pay damages for wrongful use and enjoyment of the Port property upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

By Order of :

**THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT**

PLEASE SEE ON REVERSE

CERTIFIED COPY OF THE ORDER
ISSUED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

Head Assistant 02.06.2023
THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



(2)

A copy of the reasoned order No. 08 dated 01.06.2023 is attached hereto which also forms a part of the reasons.

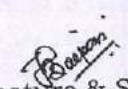
NOW, THEREFORE, in exercise of the powers conferred on me under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order the said **M/s. Veerprabhu Marketing Ltd, 30, Jawaharlal Neheru Road, Kolkata-700016** and all persons who may be in occupation 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. Veerprabhu Marketing Ltd, 30, Jawaharlal Neheru Road, Kolkata-700016** 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

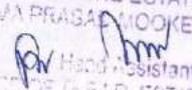
Plate No. D-702

The said piece and parcel of land measuring 6018.39 sq.m. or thereabouts is situated at the junction of Remount Road and Bhuiya Kailash Road, Police Station:-South Port, District-24 Parganas(South), Registration district-Alipore. It is bounded on the North by the SMP, Kolkata land, on the East by Bhuiya Kailash Road, on the South by Remount Road and on the West by SMP, Kolkata land.

Dated: 02.06.2023


Signature & Seal of
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

Head Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

02.06.2023



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. 1999/1999/R, 1999/DO/ 2023 Order Sheet No. 10

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/s, VEERPRABHU MARKETING LTD

08

01.06.2023

FINAL ORDER

The matter is taken up today for final disposal. The factual aspect involved in this matter is required to be put forward in nutshell in order to link up the chain of events leading to the this proceedings. It is the case of Syama Prasad Mookerjee Port, Kolkata (Erstwhile Kolkata Port Trust/KoPT), hereinafter referred to as 'SMPK', the applicant herein that **M/s. Veerprabhu Marketing Ltd** (O.P.) came into occupation of the SMPK's property being land msg. 6018.39 Sq.m. situated at the junction of Remount Road and Bhukailash Road, comprised under occupation/Plate no. D-702 as a long term lessee for a period of 15 years with effect from 06.07.2007 for the purpose of "Business building, mercantile(etail) building and storage building(except the purpose of shops, refreshment stalls, petrol pumps and weighbridge(public use)" and such lease in respect of the land in question expired on 05.07.2022 due to efflux of time. It is the case of SMPK that O.P. has defaulted in payment of rent and taxes of the subject premises in question and also not utilized the premises properly as per the conditions of such lease. It is also the case of SMPK that O.P. prefers to continue in occupation after expiry of the period of lease and that too after demand for possession in terms of the notice dated 04.01.2023 to handover possession on 20.01.2023.

This Forum of Law was informed and formed its opinion to proceed against O.P. and issued Show Cause Notice u/s 4 of the Act (for adjudication of the prayer for order of eviction) dated 10.03.2023(vide order No.03 dated 06.03.2023) under the provisions of the Act and Rules made thereunder.

As the aforesaid notice dated 10.03.2023 could not be served upon the O.P. due to some unavoidable circumstances, O.P. did not appear before the Forum on 13.03.2023 for giving reply to the Show Cause. However, the record depicts that such Notice was sent to O.P both by hand and Speed Post as

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

02.06.2023

BY

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. 1999, 1999/R, 1999/DO 2023 Order Sheet No. 11

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
MIS. VEERPRABHU MARKETING LTD



08

01.06.2023

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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SYAMA PRASAD MOOKERJEE PORT

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

02.06.2023

per addresses available on record vide a subsequent order of the Forum dated 13.03.2023.

It reveals from the report of the Process Server dated 15.03.2023 that Show Cause Notice u/s 4 was affixed on the subject premises on 15.03.2023 at about 14:30 P.M. It is also seen that one representative has received the same on behalf of O.P and Ld, Advocates of O.P. thereafter appeared before the Forum on 20.03.2023 by filing their "Vakalatnama" along with Letter of Authority executed on behalf of O.P. with a prayer for time to file their reply to the Show Cause. It reveals that during the course of hearing on 03.04.2023, Ld, Advocates of O.P further prayed a repeated adjournment before the Forum for filing their reply to the Show Cause. However, as the present proceedings is strictly confined within the four corners of P.P Act and summary in nature all that is desirable is the Reply to Show Cause to be filed by O.P., within the statutory limit of 7 (seven) days with the supporting documents/evidence in support of the case and it is needless to mention that in this instant proceeding O.P. without filing their reply to the Show Cause u/s-4 prayed adjournments, on one pretext or the other, which frustrates the basic spirit of the Act. As such, I am not at all convinced by the prayer of adjournment made by the O.P. and the hearing of the instant matter is therefore, concluded on 03.04.2023.

Subsequently O.P filed an application dated 12.04.2023 for recalling the order dated 03.04.2023 and also filed an "alleged forced reply" to the Show Cause on 17.04.2023 to contest the instant matter. Considering the O.P's reply, Forum thereafter allowed opportunity to SMPK to file their comment on such reply of O.P and accordingly the written notes of arguments were submitted by both the parties on 25.04.2023 and 07.05.2023 respectively.

The main contentions of O.P. can be summarized as follows:-

- 1) The attempt of eviction of O.P by issuing Show Cause Notice is bad in law.



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. 1999, 1999/R, 1999/D of 2023 Order Sheet No. 12

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/s VEERPRABHU MARKETING LTD
VS

08

01.06.2023

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THE ESTATE OFFICER
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SYAMA PRASAD MOOKERJEE PORT
M/s Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

02.06.2023

- 2) The agreement of O.P with SMPK is more of a development agreement rather than an ordinary lease agreement as such the claim of SMPK with regard to the issue of O.P's unauthorised occupation does not match with the letter and spirit of the object of P.P Act.
- 3) No opportunity for placing evidence was granted to either of the parties, therefore, the entire proceeding is vitiated due to non-observance of natural justice.
- 4) The land was allotted for commercial purposes and for attaining such objectives some permissions /sanctions were needed and SMPK was required to take necessary actions in that regard but SMPK failed either in applying within a reasonable time or obtaining permission within a reasonable time for which O.P had lost their business opportunity for a considerable period.

Referring to the above contentions, the M/s Veerprabhu Marketing Ltd /O.P. has prayed for dismissal of the instant proceedings in limini.

After carefully considered the documents on record and the submissions of the parties, I find that following issues have come up for my adjudication:

- I. Whether the proceedings is maintainable against O.P: or not;
- II. Whether the attempt of eviction of O.P by issuing notice under S. 4 is bad in law or not;
- III. Whether the instant proceeding is hit by the principles of natural justice and principles of biasness or not;
- IV. Whether O.P's contention regarding Cross-Examination of all the officers of SMPK involved in the matter is at all relevant in the facts and circumstances of the case or not;
- V. Whether O.P. has defaulted in making payment of rental dues to SMPK or not;



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. 1999, 1999/R, 1999/Dot 2023 Order Sheet No. 13

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S. VEER PRAGHU MARKETING LTD

08

01.06.2023

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

01.06.2023

VI. Whether after alleged expiry of such long term lease O.P. or any other occupation could be termed as "unauthorised occupation" in view of Sec.2 (g) of the P.P. Act and whether O.P. is liable to pay damages to SMPK during the period of its unauthorised occupation or not;

Regarding the **issue No.I**, I must say that the properties owned and controlled by the Port Authority has been declared as "public premises" by the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and Section-15 of the Act puts a complete bar on Court's jurisdiction to entertain any matter relating to eviction of unauthorized occupants from the public premises and recovery of rental dues and/or damages, etc. SMPK has come up with an application for declaration of O.P's status as unauthorized along with the prayer for order of eviction against O.P. on the ground of termination of authority to occupy the premises as earlier granted to O.P. in respect of the premises in question. So long the property of the Port Authority is coming under the purview of "public premises" as defined under the Act, adjudication process by serving Show Cause Notice/s u/s 4 & 7 of the Act is very much maintainable and there cannot be any question about the maintainability of proceedings before this Forum of Law. In fact, proceedings before this Forum of Law is not statutorily barred unless there is any specific order of stay of such proceedings by any competent court of law. To take this view, I am fortified by an unreported judgment of the Hon'ble High Court, Calcutta delivered by Hon'ble Mr. Justice Jyotirmay Bhattacharya on 11.03.2010 in Civil Revisional Jurisdiction (Appellate Side) being C.O. No. 3690 of 2009 (M/s Reform Flour Mills Pvt. Ltd. -Vs- Board of Trustees' of the Port of Calcutta) wherein it has been observed specifically that the Estate Officer shall have jurisdiction to proceed with the matter on merit even there is an interim order of status-quo of any nature in respect of possession of any public premises in favour of anybody by the Writ Court. Relevant portion of the said order is reproduced below:



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. 1999, 1999/R, 1999/D of 2023 Order Sheet No. 14

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S. VEERPRABHU MARKETING LTD

08

01.06.2023

By Order of:

**THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT**
CERTIFIED COPY OF THE ORDER
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SYAMA PRASAD MOOKERJEE PORT

Head Assistant
OFFICER OF THE I.D. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

02.06.2023

"In essence the jurisdiction of the Estate Officer in initiating the said proceedings and/or continuance thereof is under challenge. In fact, the jurisdiction of the Estate Officer either to initiate such proceedings or to continue the same is not statutorily barred. As such, the proceedings cannot be held to be vitiated due to inherent lack of jurisdiction of the Estate Officer. The bar of jurisdiction, in fact, was questioned because of the interim order of injunction passed in the aforesaid proceedings".

Hon'ble Division Bench of Calcutta High Court had the occasion to decide the jurisdiction of the Estate Officer under P.P. Act in Civil Appellate Jurisdiction being MAT No.2847 of 2007 (The Board of Trustees of the Port of Kolkata and Anr - vs- Vijay Kumar Arya &Ors.) reported in Calcutta Weekly Note 2009 CWN (Vol.113)-P188 The relevant portion of the judgment (Para-24) reads as follows:-

"The legal issue that has arisen is as to the extent of Estate Officer's authority under the said Act of 1971. While it is an attractive argument that it is only upon an occupier at any public premises being found as an unauthorized occupant would he be subject to the Estate Officer's jurisdiction for the purpose of eviction, the intent and purport of the said Act and the weight of legal authority that already bears on the subject would require such argument to be repelled. Though the state in any capacity cannot be arbitrary and its decisions have always to be tested against Article 14 of the Constitution, it is generally subjected to substantive law in the same manner as a private party would be in a similar circumstances. That is to say, just because the state is a Landlord or the state is a creditor, it is not burdened with any onerous covenants unless the Constitution or a particular statute so ordains".

In view of the discussions above, the issues I is decided against O.P.



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. 1999, 1999/R, 1999/201 2023 Order Sheet No. 15

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S. VEERPRABHU MARKETING LTD.

08

01.06.2023

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

02.06.2023

With regard to **issue No.II**, I do not find any argument on behalf of O.P., save and except statement against issuance of notice u/s.4 of the Act. It is my considered view based on careful consideration of the materials brought before me that SMPK's case needs to be adjudicated by way of issuing Show Cause Notice/s for initiation of proceedings under the relevant provisions of the Act and Rules made thereunder. Port premises being public premises as defined under the Act, I have definite jurisdiction to entertain the matters relating to the prayer for order of eviction and recovery of arrear rental dues/damages etc. as per provision of the Act. No right has been taken away from O.P. by way of issuing Show Cause Notice/s. In fact, to start with the adjudication process as envisaged under the Act, issuance of Show Cause Notice/s is a sine-qua-non. One cannot go beyond the statutory mandate of an enactment (P. P. Act) which provides a complete code for adjudication of any matter before this Forum of Law. Formation of opinion to proceed against O.P. on the basis of the materials connected with the occupation of O.P. cannot be blamed without establishing irregularity, if any, under the statutory mandate. In such a situation, I do not find any merit to the submissions/statement on behalf of O.P. in this regard and as such, the issue is decided against O.P.

As regards the **issue No. III** i.e on the issue of violation of natural justice and principles of biasness, O.P. vide their Written notes of arguments dated 02.05.2023 alleged that no opportunity for placing evidence was granted to either of the parties, in total contravention of the statutes and in total violation of the principles of natural justice. However, in my view, such allegation of O.P has no basis because the Estate Officer discharges his official function under the law. He acts as a tribunal and has no private interest. He cannot be said to be both the prosecutor and the judge. No material has been produced or no case has been made out by O.P as to how this forum of law is involved with any work relating to O.P's tenancy or related to any decision making process of the 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. 1999, 1999/R, 1999/DT 2023 Order Sheet No. 16

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S, VEERPRABHU MARKETING LTD.

08

01.06.2023

Authority to seek prayer for eviction against O.P etc. As such I do not find any merit to the submissions made on behalf of O.P in this regard.

With regard to **Issue No. IV**, O.P's case centered round the question of adducing evidence and cross examination of all the officers of SMPK. Now the question arises as to who should lead evidence first. It is clear that statement of accounts together with papers/documents as desired by O.P. was provided to them. On the issue of service of ejection notice for determination of tenancy under lease, O.P. has not denied such service of notice from SMPK's side. The representative of SMPK has identified the same in course of proceedings and this Forum of Law formed its opinion on the basis of such ejection notice and others. At this stage, this Forum of Law has nothing to disbelieve such notice which were kept in official course of business of a statutory authority like SMPK. Moreover, there is no paper/document to consider it otherwise. The Hon'ble Apex Court judgment in New India Assurance case reported in (2008)3 Supreme Court cases 279 provides a sufficient guideline in deciding matters relating to evidence. It is observed by the Hon'ble Apex Court as under "the procedural aspect as to who should lead evidence first in the proceedings for eviction of unauthorized occupant, may have to be determined on the basis of the issues arising into the matter."

In the matter before me, where there is no document/paper to show subsistence of lease and/or authorization to hold the property by O.P, I am of the view that O.P. should lead evidence first to contradict or demolish the grounds for issuance of Show Cause Notice u/s.4 of the Act which was issued to O.P. as per Rule with direction to adduce evidence or bear any witness in support of its case. But O.P. failed to adduce any evidence or bear any witness to support its contention. In my view, the decision of the Apex Court in New India Assurance case differs very much in factual aspect. The judgment of the Apex Court is in relation to eviction of

sd/

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

02.06.2023



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. 1999, 1999/R, 1999/B of 2023 Order Sheet No. 17

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
MIS. VEERPRABHU MARKETING LTD

08

01.06.2023

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

02.06.2023

unauthorized occupant on the ground of requirement of the public premises for accommodating Sr. Executives of the Insurance Company and here possession has been claimed on the basis of ejection notice after expiry of such long term lease, demanding possession. The Hon'ble Apex Court observed that when eviction is based on the grounds which requires positive evidence on the part of Land Lord, it would be for the Land Lord to adduce evidence first. Here the situation is entirely different from that of New India Assurance Case. No legal right has been disclosed by O.P. as to how O.P. is entitled to hold such property after expiry of such long term lease, particularly when SMPK had stopped sending monthly bill/demand note to O.P. to treat O.P.'s occupation as valid occupation. It may be recalled that this Forum of Law is not bound to follow procedure as per Evidence Act and the contention/plea of O.P. regarding cross examination and/or adducing evidence has no leg to stand upon evaluation of the factual aspect involved in this matter. Hence, the issue is decided accordingly.

sr.

Issues No.V & VI are taken up together for convenient discussion, I must say that a lessee like O.P. cannot claim any legal right to hold the property after expiry of the period of lease. O.P has failed to satisfy this Forum about any consent on the part of SMPK in occupying the public premises. I am consciously of the view that SMPK never recognized O.P. as a lawful user/tenant in respect of the property in question after expiry of the period of such long term lease. As per Section 2 (g) of the P. P. Act 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 in 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. Further, as per the Transfer of



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. 1999/R.1999/D of 2023 Order Sheet No. 18

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S. VEERPRABHU MARKETING LTD

01.06.2023

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

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

02.06.2023

Property Act, a lease of immovable property determines either by efflux of time limited thereby or by implied surrender or on expiration of notice to determine the lease or to quit or of intention to quit, the property leased, duly given by one party to another. It is also a settled question of law that O.P, occupier cannot claim any legal right to hold the property after expiry of the lease, without any valid grant or allotment from SMPK's side. Moreover, as per the Transfer of Property Act, 1882, a lessee is under legal obligation to hand over possession of the property to its landlord/lessor in its original condition after expiration of tenancy under lease. The tenancy of the O.P. automatically stands terminated upon expiry of the lease-hold period and no additional Notice is required in the eye of law on the part of the landlord to ask the O.P. to vacate the premises. In other words, in case of a long term lease having a specific date of expiration, there is no legal compulsion upon the landlord to issue any Notice to Quit. The landlord is; however, free to issue such a Notice as a reminder or as an act of gratuity. In the instant case, the landlord i.e. SMPK adopted such a course and claims to have issued a Notice to O.P. dated 04.01.2023 asking for vacation of the said premises on 20.01.2023. Whether such Notice has been received by O.P. or not is quite immaterial inasmuch as O.P. was duty bound to hand over possession to SMPK after expiry of such lease which it had failed to do so. Therefore, O.P's occupation is unauthorized.

Now, when the status of the O.P. is found to be "unauthorised" as above, any discussion as to rental dues before expiry of lease is purely academic. However, since SMPK has relied on default of rent as well, in the Notice to Quit dated 04.01.2023, I find it prudent to discuss the said allegation before concluding the proceedings. It is seen from record that the rental dues were not satisfied by O.P. within the time prescribed. In as much I do not find in the record any single scrap of paper which can substantiate O.P's payment of such dues. In my view, the statement of accounts produced by a statutory authority has definite evidentiary value which

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. 1999, 1999/R, 1999/201 2023 Order Sheet No. 19

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S. VEERPRABHU MARKETING LTD

08

01.06.2023

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

02.06.2023

cannot be ignored by this Forum of law. As such, I hold that the O.P. was also in arrears of rent, at the time of expiry of the lease in question. Moreover, the Letter of O.P dated 18.01.2023 as addressed to the Estate Manager, SMPK, sufficiently depicts that O.P has sufficiently admitted their dues by asking waiver of rent to SMPK in their favour. Therefore, I must hold that the occupation of the O.P. is not entitled to any protection, even for the sake of natural justice.

"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 after expiry of the lease, O.P. has lost its authority to occupy the public premises and O.P. is liable to pay damages for such unauthorized use and occupation.

To come into such conclusion, I am fortified by the decision/observation of the Hon'ble Supreme Court in Civil Appeal No.7988 of 2004, decided on 10th December 2004, reported (2005)1 SCC 705, para-11 of the said judgment reads as follows.

Para:11-" under the general law, and in cases where the tenancy is governed only by the provisions of the Transfer of Property Act 1882, once the tenancy comes to an end by determination of lease u/s.111 of the Transfer of Property Act, the right of the tenant to continue in possession of the premises comes to an end and for any period thereafter, for which he continues to occupy the premises, he becomes liable to pay damages for use and occupation at the rate at which the landlord would have let out the premises on being vacated by the tenant.

The Port Authority has a definite 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 as "authorized occupation" without making payment of requisite charges. I am fortified by the Apex Court judgment reported in JT 2006 (4) Sc 277 (Sarup Singh Gupta -vs- Jagdish Singh & Ors.) wherein it has



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. 1999/R, 1999/P of 2023 Order Sheet No. 20

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

MIS. SE FOR PRAGATI MARKETING LTD.

08

01.06.2023

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

02.06.2023

been clearly observed that in the event of termination of lease the practice followed by Courts is to permit landlord to receive each month by way of compensation for use and occupation of the premises, an amount equal to the monthly rent payable by the tenant. In my view, the case in hand is very much relevant for the purpose of determination of damages upon the guiding principle as laid down by the Hon'ble Apex Court in the above case. In course of hearing, it is submitted on behalf of SMPK that the charges claimed on account of damages is on the basis of the SMPK's Schedule of Rent Charges as applicable for all the tenants/occupiers of the premises in a similarly placed situation and such Schedule of Rent Charges is 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 expired by efflux of time and party continues their occupation unauthorisedly, the another party who suffers by such violation is entitled to receive, from the party who has violated the terms of the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such violation of the terms, or which the parties knew, when they made the contract to be likely to result from the such violation.

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O.P. failed to substantiate as to how its occupation could be termed as "authorised" in view of Sec. 2(g) of the P.P Act, after expiry of the period as mentioned in the SMPK's notice dated 04.01.2023, demanding possession from O.P. I have no hesitation to observe that O.P's act in continuing occupation after expiry of the lease is unauthorized and O.P. is liable to pay damages for unauthorized use and occupation of the Port property in question upto the date of delivering vacant, unencumbered and peaceful possession to SMPK. With this observation, I must reiterate that the ejection notice, demanding possession from O.P. as stated above has been validly served upon O.P. in the facts and circumstances of the



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Proceedings No. 1999, 1999/R, 1999/D of 2023 Order Sheet No. 21

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S. VEERPRABHU MARKETING LTD

08

01.03.2023

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

02.06.2023

case and such notice is valid, lawful and binding upon the parties. In view of the discussions above, the issues are decided in favour of SMPK.

NOW THEREFORE, the logical conclusion which could be arrived at that O.P's occupation and the occupation of anybody asserting any right through O.P. have become unauthorized and they are liable to be evicted u/s.5 of the Act on the following grounds/reasons.

1. That the proceedings against O.P. is very much maintainable.
2. That you have defaulted in making payment of rental dues to SMPK in gross violation to the fundamental condition of tenancy under lease as granted by the Port Authority.
3. That you have failed to bear any witness or adduce any evidence in support of your occupation as 'authorized occupation'.
4. That the lease granted to O.P. for 15 years had expired on 05.07.2022, in all sense of law.
5. That the Notice demanding possession from O.P. as issued by SMPK dated 04.01.2023 is valid, lawful and binding upon the parties and O.P. had no authority under law to occupy the Public Premises after expiry of the contractual period of lease in question that is from 06.07.2022.
6. That O.P.'s occupation is unauthorized after expiry of period of lease in question and O.P.'s occupation has become unauthorized in view of Section 2(g) of PP Act.
7. That O.P. is liable to pay damages for wrongful use and enjoyment of the Port property upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

ACCORDINGLY, Department is directed to draw up formal order of eviction u/s.5 of the Act as per Rule made there



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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Proceedings No. 1999, 1999/R, 1999/D of 2023 Order Sheet No. 22

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S. VEERPRABHU MARKETING LTD.

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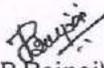
01-06-2023

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 Law up to the date of recovery of possession of the same.

SMPK is further directed to submit a report regarding its claim on account of rental dues and damages against O.P., indicating there-in, the details of the computation of such rental dues/damages with the rate of charges so claimed for the respective periods (details of computation with rates applicable for the relevant periods) for my consideration in order to assess the rent/damages as per the Act and the Rules made thereunder.

I make it clear that in the event of failure on the part of O.P. or the unauthorised occupants to hand over possession of the public premises to SMPK as aforesaid, Port Authority is entitled to proceed further for recovery of possession in accordance with law. All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL


(J.P Boipai)
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 LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

02-06-2023