



REGISTERED POST WITH A/D.
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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.16 DT 02.05.2023
PROCEEDINGS NO. 1700 OF 2019

Syama Prasad Mookerjee Port, Kolkata
(Erstwhile Board of Trustees' for the Port of Kolkata)
-Vs

Sri Rama Shankar Singh, O.P.

F O R M - "B"

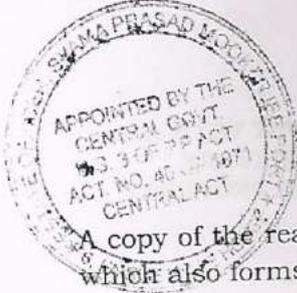
**ORDER UNDER SUB-SECTION (1) OF SECTION 5 OF THE PUBLIC
PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1971**

WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that **Sri Rama Shankar Singh of P-12/6, Strand Bank Road(Near Cossipore Launch Ghat), Kolkata-700002** is in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

- 1) That this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrear damages/compensation etc. as prayed for on behalf of SMPK.
- 2) That O.P. cannot claim "renewal of lease" as a matter of right particularly when the lease in question does not contain any provision for exercising any option for renewal.
- 3) That O.P. has violated the condition of long term lease as granted by the Port Authority by way of unauthorisedly occupying such premises after expiry of such lease by efflux of time.
- 4) That O.P. has erected unauthorised constructions over the subject premises in question without having any authority of law.
- 5) That there is no foundation or basis to the contentions of O.P. as "Tenant Holding Over" in terms of Sec.116 of the T.P. Act.
- 6) That O.P. has failed to bear any witness or adduce any evidence in support of their occupation as "authorised occupation" inspite of repeated chances for a considerable period and O.P.'s act of continuing in occupation in the Public Premises without paying requisite charges is opposed to public policy.
- 7) That O.P.'s occupation has become unauthorized in view of Sec. 2(g) of the P.P. Act and O.P. is liable to pay damages as claimed by SMPK for unauthorized use and enjoyment of the Port Property right from the date

Order of
ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
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REGISTERED BY THE ESTATE OFFICER
Head Assisnt
OFFICE OF THE LD. ESTATE
SYAMA PRASAD MOOKERJEE PORT
5/2019



(2)

A copy of the reasoned order No. 16 dated 02.05.2023 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 **Sri Rama Shankar Singh of P-12/6, Strand Bank Road(Near Cossipore Launch Ghat), Kolkata-700002** 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 **Sri Rama Shankar Singh of P-12/6, Strand Bank Road(Near Cossipore Launch Ghat), Kolkata-700002** 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 - SB-559

All that the said piece or parcel of land Msg.533.263 Sq.m or thereabouts is situated at Cossipore, Thana: North Port Police Station, in Presidency Town of Kolkata. It is bounded on the **North** partly by the Strand Bank Road and partly by the Trustees' land allotted to Union Carbide Ltd., on the **East** partly by the Trustees' land allotted to Union Carbide Ltd and partly by the Trustees' land allotted to Indian Steel Equipment, on the **South** partly by the Trustees' land allotted to Kripa Narayan Mishra, partly by the Trustees' land allotted to Cossipore Kanch Sangha and partly by the Trustees' land allotted to Indian Steel Equipment and on the **West** partly by the Trustees' land allotted to Cossipore Kanch Sangha, partly by the Trustees' land allotted to Kripa Narayan Mishra and partly by the Strand Bank Road.

Dated: 03.05.2023.

Signature & Seal of
Estate Officer.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
Head Assistant
3/5/2023
OFFICE OF THE LD. ESTATE OFFICER
MOOKERJEE PORT



R.O NO
217 DT. 02.05.23
o/c

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Court Room at the 1st Floor
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Fairlie Warehouse
6, Fairlie Place, Kolkata- 700 001.

PROCEEDINGS NO.1700/D OF 2019
ORDER NO.16 DATED: 02.05.2023

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

Sri Rama Shankar Singh
P-12/6, Strand Bank Road(Near Cossipore Launch Ghat),
Kolkata-700002.

3686

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

AND WHEREAS by written notice dated 20.05.2019 you are called upon to show cause on or before 10.06.2019 why an order requiring you to pay damages of Rs.10,95,905.74 (Rupees Ten Lakh ninety five thousand nine hundred five and paisa seventy four Only) together with [compound interest] for unauthorised use and occupation of the said premises, should not be made;

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

NOW, THEREFORE, in exercise of the powers conferred on me by Sub-section (2) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971, I hereby order you to pay the sum of Rs.10,95,905.74 (Rupees Ten Lakh ninety five thousand nine hundred five and paisa seventy four Only) assessed by me as damages on account of your unauthorised occupation of the premises for the period from 01.03.2012 to 28.02.2019 (both days inclusive) to SMPK by 16.05.2023.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
ISSUED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
15/2023

PLEASE SEE ON REVERSE



: 2 :

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 @ 7.50 % per annum on the above sum till its final payment being the current rate of interest as per the Interest Act, 1978.

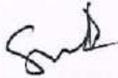
In the event of your refusal or failure to pay the damages within the said period or in the manner aforesaid, the amount will be recovered as an arrear of land revenue through the Collector.

SCHEDULE

Plate No - SB-559

All that the said piece or parcel of land Msg.533.263 Sq.m or thereabouts is situated at Cossipore, Thana: North Port Police Station, in Presidency Town of Kolkata. It is bounded on the **North** partly by the Strand Bank Road and partly by the Trustees' land allotted to Union Carbide Ltd., on the **East** partly by the Trustees' land allotted to Union Carbide Ltd and partly by the Trustees' land allotted to Indian Steel Equipment, on the **South** partly by the Trustees' land allotted Kripa Narayan Mishra, partly by the Trustees' land allotted to Cossipore Kanch Sangha and partly by the Trustees' land allotted to Indian Steel Equipment and on the **West** partly by the Trustees' land allotted to Cossipore Kanch Sangha, partly by the Trustees' land allotted to Kripa Narayan Mishra and partly by the Strand Bank Road.

Date 03.05.2023.


Signature & Seal of the
Estate Officer.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
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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

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



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceeding No. 1700, 1700/D of 2019 Order Sheet No. 13

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

SRI RAMA SHANKAR SINGH
VS
SRI RAMA SHANKAR SINGH

16
02.05.2023

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/SMPK), hereinafter referred to as 'SMPK', the applicant herein that **Sri Rama Shankar Singh** (O.P.) came into occupation of the Port Trust's property being land msg. 533.263 sq.m. situated at Strand Bank Road, Cossipore in the presidency town of Kolkata, comprised under occupation no. SB-559 as a long term lessee for a period of 20 years without any option of renewal with effect from 01.03.1992 and such lease in respect of the land in question was expired on 28.02.2012 due to efflux of time. It is 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 31.03.2017 to handover possession on 02.05.2017. It is also the case of SMPK that O.P. has unauthorizedly erected structures on the subject premises in question in contravention of the conditions of such lease.

This Forum of Law formed its opinion to proceed against O.P. and issued Show Cause Notice/s u/s 4 of the Act (for adjudication of the prayer for order of eviction) and u/s 7 of the Act (for adjudication of the prayer for realisation of damages etc.) both dated 20.05.2019(vide order No.09 dated 18.04.2019) under the provisions of the Act and Rules made thereunder.

One Mr. Abdul Hamid Shakh and another one Mr. Kingsuk Mondal expressing themselves as the Ld. Advocates of O.P. appeared before the Forum and filed their "Vakalatnama" executed on behalf of O.P. for contesting the instant matter. It reveals from record that O.P. filed their reply to the Show Cause Notice/s on 20.06.2019. The O.P. also filed their

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OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
23/5/2023



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. 1700, 1700/D of 2019 Order Sheet No. 14

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

SRI RAMA SHANKAR SINGH

16
02.05.2023

other hand, filed their comments/rejoinder dated 29.07.2019 in response to the reply to Show cause filed by O.P.

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

- 1) After expiry of the long term lease on 28.02.2012, O.P. has made several representations to the Land Manager, SMPK for renewal of such lease. However, the SMPK authority has neither pay any heed to such representation nor has given any reply thereto but accepted rent tendered by O.P.
- 2) The Port authority has arbitrarily issued notice to quit dated 31.03.2017 to the O.P. and purportedly claim 3 times compensation charges which the SMPK authority has no power to charge under the statute.
- 3) The Port authority is not entitled to claim rent from O.P. at 3 times the schedule rate when the prayer for renewal of O.P is still pending before them and they are accepting rent from the O.P as a tenant.
- 4) SMPK, being an authority under the Major Port Trust Act, 1963 and guided inter-alia, by the Public Premises(Eviction of Unauthorised Occupants) Act, 1971, cannot charge any amount from the O.P contrary to the provisions of Major Port Trust Act, 1963 and dehors the provisions of the Public Premises(Eviction of Unauthorised Occupants)Act, 1971.
- 5) The Land Policy of 2010 and 2017 as allegedly adopted by the Ministry of Shipping and Surface Transport also cannot empower the petitioner/ SMPK to charge at 3 times the market value.
- 6) The purported acts and/or actions on the part of the SMPK are without authority of law and are liable to be set aside.
- 7) SMPK being a statutory body, cannot act as a private landlord and has to act in a fair, proper and bonafide

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SYAMA PRASAD MOOKERJEE PORT
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Proceedings No. 1700, 1700D of 2019 Order Sheet No. 15

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

SRI RAMA SHANKAR SINGH

16

02.05.2023

improper and violative of Article 14, Art-19(1) (g), Art-21 and 300A of the Constitution of India.

Referring to the above contentions, Sri Rama Shankar Singh/O.P. has prayed for dismissal of the instant proceedings in limini.

SMPK, the Petitioner, argues that the O.P has been in unauthorized occupation of the subject premises since 01.03.2012 hence, the compensation bill has been raised at 3 times of the current schedule rate as per the existing policy of SMPK. The charges so claimed by SMPK is on the basis of Schedule of Rent charges as time to time notified by the Tariff Authority of the Major Ports by giving notification in the Official Gazette and such charges is applicable for all the tenants/occupiers in a similarly placed situation. It is again argued on behalf of SMPK that they had no intention to renew the aforesaid lease of O.P further after its expiry and such intention of SMPK will be evident from their letter dated 25.06.1992 as issued to O.P.

After due consideration of all the petitions/reply/objections and after careful consideration of all the submissions/arguments made on behalf of the parties, including the written notes on argument on behalf of O.P. as filed on 08.08.2019, I find that following issues have come up for my adjudication :-

- I. Whether this Forum of Law has jurisdiction to entertain the application of SMPK with the prayers for order of eviction and damages etc. or not;
- II. Whether O.P. can claim renewal of lease in question as a matter of right or not;
- III. Whether O.P.'s contention that no formal lease deed was

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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

1700, 1700/D of 2019 Order Sheet No. 16

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
SRI RAMA SHANKAR SINGH

16
02.05.2023

- V. Whether the claim of O.P. as "Tenant Holding Over" in terms of Sec.116 of The Transfer of Property Act has got any merit or not;
- VI. Whether O.P. has got any authority under law to occupy the Public Premises after expiry of the lease period in question or not;
- VII. Whether the notice demanding possession from O.P. issued by the Port Authority dated 31.03.2017 is valid and lawful or not;
- VIII. Whether O.P. is liable to pay damages as claimed by SMPK for unauthorised use and enjoyment of the Port Property immediately after expiry of the lease period in question or not;

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KOLKATA
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KOLKATA
3/5/2023
Hear Assistant
OFFICE OF THE ESTATE OFFICER,
SYAMA PRASAD MOOKERJEE PORT,
KOLKATA

With regard to **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 occupant in to the public premises with the prayer for order of eviction and recovery of damages/compensation against O.P. on the plea of expiry of the lease period in question on and from 01.03.2012 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



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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Proceedings No. 1700, 1700/P of 2019 Order Sheet No. 18

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
SRI RAMA SHANKAR SINGH

16 -
04.05.2023

all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of the property, or of such matter, except the document itself, or secondary evidence of its content in cases in which secondary evidence is admissible under the provision here-in-before contained."

In the case in hand, the period of commencement of lease according to the registered lease deed of 2002 specifically provides for commencement of the period of lease from 1st day of March, 1992 for 20 years without any option for renewal and O.P. came into possession in the year 1992. As O.P never raised any dispute regarding the Possession and enjoyment of the property from the year 1992, I am also not inclined to accept any contention of O.P in this issue. The issue is thus decided accordingly against O.P.

As regards **issue IV**, I must mention that once the lease is accepted to have expired in all sense of law, the occupation of the O.P. is definitely "unauthorised" in terms of Sec. 2 (g) of the P.P. Act, 1971 and as such any discussion as to existence of any other breaches are purely academic. If at all I have to discuss these breaches, then I must say that the allegation of unauthorised construction is very much established against the O.P., in the facts and circumstances of the case. The Letter issued by SMPK addressing the O.P. dated 28.12.2012 as filed with the rejoinder of SMPK on 29.07.2019, enclosing sketch plan being No.8329-K dated 30.07.2009 sufficiently reveals the existence of unauthorised structure shown in red hatch. Hence, there is no bar to conclude that the matter relating to carrying out of unauthorised construction as alleged on behalf of SMPK is sufficiently established.

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OFFICE OF THE I.D. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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1700, 1700/D of 2019 Order Sheet No. 17

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
SRI RAMA SHANKAR SINGH

16
02.05.2023

In view of the above, I have no hesitation in my mind to decide that this Forum of Law is very much competent to adjudicate upon the matter in the facts and circumstances of the case.

On **issue No. II**, there is no scope to extend the matter by elaborate discussion. The lease in question was expired on 28.02.2012 and from 01.03.2012 O.P's occupation is unauthorized and there was no provision in the expired lease for exercising any option for renewal of the same. In absence of any "renewal clause" that is to say any provision for exercising option for renewal by O.P., I do not find any scope to consider any matter of "renewal of lease" in favour of O.P. In fact O.P. cannot claim "renewal of lease" in question as a matter of right. Hence the issue is decided against O.P.

In **issue No. III** O.P's submission as regards the formal execution of lease deed also receive the serious attention of the Forum. In the Written Notes of Arguments dated 08.08.2019 by referring some citations, it is argued by the Ld. Advocate of O.P. that no formal lease deed was executed except letter dated 25.06.1992 therefore, it is a clear case of lease by correspondence with no registered lease deed. However, it appears from the record that such long term lease was executed between O.P and SMPK on 06.06.2002 and such lease dated 06.06.2002 clearly indicates that O.P's status as lessee continued from 1.03.1992 on the basis of such Registered Lease Deed. As such the question raised by O.P. regarding the lease in question in my view, has no merit and I am not convinced by O.P's submission. I am firm in holding that O.P. entered into possession of the public premises in the year 1992 as lessee and continued to enjoy the property as a lessee upto 28.02.2012 in terms of the lease deeds executed and registered in the year 2002 as stated above. Therefore, it is my considered view that the case of SMPK which has been made out on the basis of the expiry of the contractual period

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Head Assistant
OFFICE OF THE L.D. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
3/5/2023



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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Proceedings No. 1700, 1700/D of 2019 Order Sheet No. 20

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
SRI RAMA SHANKAR SINGH

16
02.05.2023

demised land as a whole unto the Trustees with all buildings and erections, if any, erected thereon that shall not have been previously removed by the Lessee”

This clause of handing over possession after expiry of the lease period is a clear manifestation of SMPK’s intention to get back possession after expiry of the lease period which was “an agreement to the contrary” within the meaning of Sec.116 of the T.P. Act.

In view of the discussion above, I have no hesitation to hold that the plea taken by O.P. as “tenant holding over has got no merit in the facts and circumstances on the case and O.P’s occupation has become unauthorised in view of Sec. 2(g) of the P.P. Act. Hence the issues are decided accordingly.

Discussion against the foregoing paragraphs are bound to dominate the **issue No. VII**. I have no hesitation to conclude that the notice dated 31.03.2017 is valid, lawful and binding upon the parties. I should rather say that the Port authority is well within its jurisdiction to serve such notice, demanding possession from O.P. after expiry of the lease period. However, such notice is not at all mandatory for the Port Authority to get back possession from O.P.

The judgment of the Hon’ble High Court, Calcutta reported in 2015 (5) CHN (Cal) 399(Om Prakash Sakshna –vs- Kolkata Port Trust) is strikingly relevant in deciding the question of requirement of Service of Notice in respect of the Public Premises in question. The relevant portion of the judgment reads as follows:-

“As to whether a person in occupation of any public premises is in unauthorised occupation thereof needs necessarily to be assessed in the light of the definition of the expression in Section 2(g) of the Act”.

“What is clear from the aforesaid provision and the definition of

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1700, 1700/D of 2019 Order Sheet No. 19

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

BRI RAMA SHANKAR SINGH

16
02.05.2023

prefers to continue in occupation with the consent of Land Lord/lessor. In order to constitute a case of 'holding over' one must have to establish that there is consent on the part of lessor/Land Lord in continuing such occupation. No case has been made out on behalf of O.P. to entertain any matter with regard to any case for "Tenant Holding Over" as per section 116 of the T.P. Act. The provision u/s 2(g) of the P.P. Act is very much clear about its intent and object. The provision is clearly applicable to the occupation of O.P. for declaration of O.P's status into the Public Premises as "Unauthorised Occupant" and I do not find any scope to interpret the provision for assistance to O.P. by considering it otherwise.

In the case in hand there is no option for exercising renewal of the lease in question and SMPK never accepted any payment either in the form of rent or in the form of any charges from O.P. It is the case of O.P. that rent tendered by them on and from March, 2012 were accepted and encashed by SMPK without any objection and/or denial and by conduct SMPK accepted O.P. as monthly tenant. SMPK on the other hand denies the submission of O.P. In my view, a lessee, having right to exercise option for renewal of lease is holding a property with superior status than that of a lessee holding property without any option for renewal. In interpreting Sec.116 of T.P. Act with regards to its applicability and the effect of "holding over", I must say that it is necessary to obtain ascent of the Landlord for continuation of lease after expiry of lease period and mere acceptance of rent by the lessor, in absence of agreement to the contrary, for subsequent months where lessee continues to occupy lease premises cannot be said to be conduct signifying assent on its part. I have duly taken note of the provision of the expired lease deed in question which contained the responsibility of O.P./lessee regarding eliding of the demised land at the expiry or determination of the term as per clause 11 under "lessees

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23/5/2023



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Proceedings No. 1700, 1700/D of 2019 Order Sheet No. 21

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
SRI RAMA SHANKAR SINGH

16
02.05.2023

period would also amount to unauthorised occupation. It necessarily follows that it is not imperative that a notice to quit has to be issued by the owner of the public premises before proceeding under the 1971 Act. The notice has to be issued only if the right of a party to occupy the public premises is determined during the period that the party is authorised by any grant or any other mode of transfer to occupy the public premises; for, without the notice there would be no determination of the grant".

"The statute does not mandate that a person in unauthorised occupation of any public premises has to be issued a specific notice to quit and vacate the premises before such party is proceeded against under the 1971 Act."

In view of the discussion above, issue is decided in favour of SMPK against O.P.

Issue No. VIII, does not require elaborate discussion. The properties of the Port Authority are coming under the purview of "public premises" as defined under the Act. Now the question arises how a person become unauthorised occupant into such public premises. As per Section 2 (g) of the Act the "unauthorised 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. As per Transfer of 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. Here

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Proceedings No.

1700, 1700/D of 2019

Order Sheet No.

22

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

GRI RAMA SHANKAR SINGH

16
02.05.2023

"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 period as mentioned in the lease which was expired long back on and 15.09.2002, O.P. had lost its authority to occupy the public premises, on the evaluation of factual aspect involved into this matter and O.P. is liable to pay damages for such unauthorized use and occupation.

Undoubtedly, the tenancy under lease is governed by the provisions of the Transfer of Property Act 1882 and there is no scope for denial of the same.

In course of hearing, the representative of SMPK states and submits that Port Authority never consented in continuing O.P.'s occupation into the public premises and never expressed any intention to accept O.P. as tenant. 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. The question of "Holding Over" cannot arise in the instant case as the Port Authority never consented to the occupation of O.P. In the instant case, the lease was doubtlessly determined by efflux of time limited thereby. Therefore, there can be no doubt that the O.P. was in unauthorized occupation of the premises, once the lease was determined. In my opinion, institution of this proceedings against O.P. is sufficient to express the intention of SMPK to obtain an order of eviction and declaration that SMPK is not in a position to recognize O.P. as tenant.

In the instant case there was no consent on the part of the Port Authority either by way of accepting rent from O.P. or by

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Recordings No. 1700, 1700/D of 2019 Order Sheet No. 23

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
SRI RAMA SHANKAR SINGH

16
02.05.2023

continuance of its occupation without making payment of requisite charges as mentioned in the Schedule of Rent Charges. In course of hearing, it is submitted on behalf of SMPK that as the O.P's occupation is unauthorized after the expiry of the lease, compensation bills have been raised @ 3 times of the current schedule rent as per the extant policy of SMPK and O.P is liable to pay such compensation charges at such rate upto the handing over of the clear, vacant and unencumbered possession to SMPK. O.P. in their reply to the Show Cause dated 20.06.2019 contended that SMPK's claim on account of compensation charges @ 3 times the schedule rent is unjustified and O.P is not liable to pay such 3 times compensation bill. It is further contented by O.P that neither the Major Port Trust Act, 1963 nor the Public Premises(Eviction of Unauthorised Occupants) Act, 1971 authorises SMPK to fix or recover any amount towards rent or compensation at 3 times the schedule rates. However, I must say that as per law, when any occupant enjoys possession without having any valid authority, the party whose interest is hampered by such unauthorised occupation, is entitled to receive, from the party who is occupying unauthorisedly, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from any breach, or which parties knew, when they made the contract to be likely to result from the breach of it.

In my view, such claim of charges for damages at the rate of 3 times of the rent by SMPK is based on sound reasoning and should be acceptable by this Forum of Law. As such, the issue is decided in favour of SMPK.

I have no hesitation to observe that O.P's act in continuing in occupation 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 possession.

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Proceedings No. 1700, 1700/D of 2019 Order Sheet No. 24

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

BRI RAMA SHANKAR SINGH

16
02.05.2023

upon O.P. in the facts and circumstances of the case and such notice is valid, lawful and binding upon the parties. In view of the discussions above, the issue is decided in favour of SMPK.

It is made clear that I have not gone into the merit of SMPK's allegations against O.P. regarding carrying out of unauthorized construction as in my view, expiry of the period of lease in question is sufficient for considering O.P's occupation as "unauthorized occupation" in the context of Sec. 2(g) of the P.P. Act.

NOW THEREFORE, it is a fit case for allowing SMPK's prayer for order of eviction u/s 5 of the Act on the following grounds/reasons :

- 1) That this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrear damages/compensation etc. as prayed for on behalf of SMPK.
- 2) That O.P. cannot claim "renewal of lease" as a matter of right, particularly when the lease in question does not contain any provision for exercising any option for renewal.
- 3) That O.P. has violated the condition of long term lease as granted by the Port Authority by way of unauthorisedly occupying such premises after expiry of such lease by efflux of time.
- 4) That O.P. has erected unauthorised constructions over the subject premises in question without having any authority of law.
- 5) That there is no foundation or basis to the contentions of O.P. as "Tenant Holding Over" in terms of Sec.116 of the T.P. Act.

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Proceedings No. 1700, 1700/D of 2019 Order Sheet No. 26

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
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far by O.P., in terms of SMPK's books of accounts. I sign the formal order u/s 7 of the Act.

I make it clear that SMPK is entitled to claim further 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 28.02.2019 as well, till such time the possession of the premises continues to be under the unauthorised occupation with the O.P. SMPK is directed to submit a statement comprising details of its calculation of damages after 28.02.2019, 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

(Sourav Mitra)
ESTATE OFFICER

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



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(Eviction of Unauthorised Occupants) Act 1971

Proceedings No. 1700, 1700/D Of 2019 Order Sheet No. 25

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
BRI RAMA SHANKAR SINGH

16

02.05.2023

occupation in the Public Premises without paying requisite charges is opposed to public policy.

- 7) That O.P.'s occupation has become unauthorized in view of Sec. 2(g) of the P.P. Act and O.P. is liable to pay damages as claimed by SMPK for unauthorized use and enjoyment of the Port Property right from the date of expiry of the lease period on and from 01.03.2012 in question upto the date of handing over of 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 Law up to the date of recovery of 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.

It is my considered view that a sum of Rs.10,95,905.74 (Rupees Ten Lakh ninety five thousand nine hundred five and paisa seventy four only) for the period 01.03.2012 to 28.02.2019(both days inclusive) is due and recoverable from O.P. by the Port authority on account of damages/ compensation charges for unauthorized occupation and O.P. must have to pay such dues to SMPK on or before 16.05.2023 It is clarified that such dues will attract compound interest @ 7.50 % per annum, which is the current rate of interest as per the Interest Act, 1978 (as gathered by me from the official website of the State Bank of India) from the date of incurrence of liability, till the liquidation of the same, as per the adjustment of payments, if any made so

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