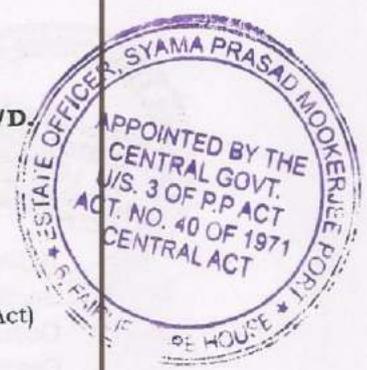


SCAN



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.43 DT 31.07.2023
PROCEEDINGS NO. 1573 OF 2017

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

-Vs-
M/s. Shanti Builders (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. Shanti Builders, 137, Canning Street, Kolkata -700001 AND ALSO AT 20,
Netaji Subhas Road, 1st Floor, Kolkata-700001 is in unauthorized occupation of the
Public Premises specified in the Schedule below:

REASONS

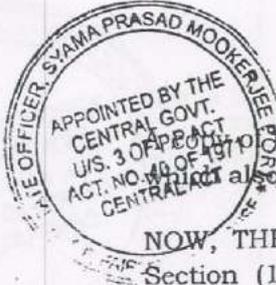
- 1) That the proceedings against O.P. is very much maintainable.
- 2) That you have violated the condition of tenancy under licence as granted by the Port Authority by way of not making payment of licence fees/rental dues to SMPK.
- 3) That O.P.'s contention regarding "Statutory Tenant" has got no merit in the facts and circumstances of the case.
- 4) That the licence as granted to the O.P. by SMPK had doubtlessly expired on 01.03.2016.
- 5) That no case has been made out on behalf of O.P. as to how its occupation in the Public Premises could be termed as "authorised occupation" after expiry of the licence.
- 6) That the instant Proceeding is not barred by the doctrine of Estoppel, waiver and acquiescence.
- 7) That O.P. has failed to make out any case in connection with "abatement of rent" as pleaded.
- 8) That the O.P. had no authority to occupy the Public Premises after expiry of licence and service of the Notice to Quit dated 11.08.2016 and O.P.'s occupation is "unauthorized" in view of Sec.2(g) of the P.P. Act, 1971 and O.P. is liable to pay compensation charges with interest for wrongful use and enjoyment of the Public 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
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

01.08.2023

PLEASE SEE ON REVERSE

22



(2)

The reasoned order No. 43 dated 31.07.2023 is attached hereto and the same also forms a part of the reasons.

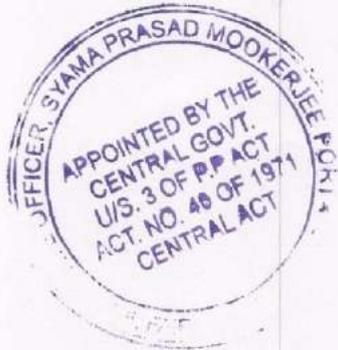
NOW, THEREFORE, in exercise of the powers conferred on me under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order the said **M/s. Shanti Builders, 137, Canning Street, Kolkata -700001 AND ALSO AT 20, Netaji Subhas Road, 1st Floor, Kolkata-700001** 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. Shanti Builders, 137, Canning Street, Kolkata -700001 AND ALSO AT 20, Netaji Subhas Road, 1st Floor, Kolkata-700001** 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

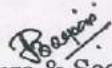
Plate No. CG-283

Godown space msg. about 86.028 Sq.m and verandah space msg. about 13.378 sq.m at Compartment No.8 of Kolkata Port Trust's Import Warehouse(North) under North Port Police Station in the presidency town of Kolkata. It is bounded on the North partly by the Trustees' godown occupied by Soor Neogi Coomar & Co. Pvt. Ltd. and partly by Port Sharamik Co-operative, on the East by the Trustees' open land alongside Stand Road, on the South by the Trustees' open land alongside Strand Road, on the South by the Trustees' godown occupied by Dinco Engineering and on the West by asbestos verandah alongside strip of open land.

Trustees' means the Board of Syama Prasad Mookerjee Port, Kolkata Authority (Erstwhile Board of Trustees' for the Port of Kolkata).



Dated: 01.08.2023


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
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

01.08.2023



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
6, Fairlie Place Warehouse
Kolkata-700001.

Form "E"

PROCEEDINGS NO.1753/R OF 2017
ORDER NO. 43 DATED: 31.07.2023

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

To
M/s. Shanti Builders,
137, Canning Street,
Kolkata -700001.
AND ALSO AT
20, Netaji Subhas Road,
1st Floor, Kolkata-700001.

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

01.08.2023

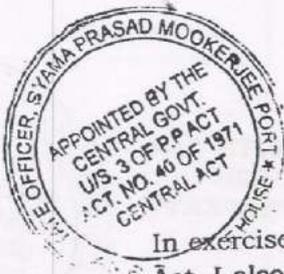
WHEREAS you are in occupation of the public premises described in the
Schedule below. (Please see on reverse).

AND WHEREAS, by written notice dated 07.06.2017 you are called upon to
show cause on or before 05.07.2017 why an order requiring you to pay a sum
of Rs.6,95,525/- (Rupees Six lakh ninety five thousand five hundred twenty five
only) being the rent payable together with compound interest in respect of the
said premises should not be made;

AND WHEREAS, I have considered your objections and/or the evidence
produced by you;

NOW, THEREFORE, in exercise of the powers conferred by sub-section (1) of
Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act
1971, I hereby require you to pay the sum of Rs.6,95,525/- (Rupees Six lakh
ninety five thousand five hundred twenty five only) for the period from 2nd day
of April, 2015 upto 1st Day of March, 2016 (both days inclusive) to SMPK
by 16.08.2023

PLEASE SEE ON REVERSE



: 2 :

In exercise of the powers conferred by Sub-section (2A) of Section 7 of the said Act, I also hereby require you to pay compound interest @ 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 case the said sum is not paid within the said period or in the said manner, it will be recovered as arrears of land revenue through the Collector.

SCHEDULE

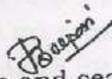
Plate No. CG-283

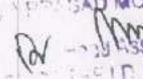
Godown space msg. about 86.028 Sq.m and verandah space msg. about 13.378 sq.m at Compartment No.8 of Kolkata Port Trust's Import Warehouse(North) under North Port Police Station in the presidency town of Kolkata. It is bounded on the North partly by the Trustees' godown occupied by Soor Neogi Coomar & Co. Pvt. Ltd. and partly by Port Sharamik Co-operative, on the East by the Trustees' open land alongside Stand Road, on the South by the Trustees' open land alongside Strand Road, on the South by the Trustees' godown occupied by Dinco Engineering and on the West by asbestos verandah alongside strip of open land.

Trustees' means the Board of Syama Prasad Mookerjee Port, Kolkata Authority (Erstwhile Board of Trustees' for the Port of Kolkata).



Dated: 01.08.2023


Signature and seal of the
Estate Officer

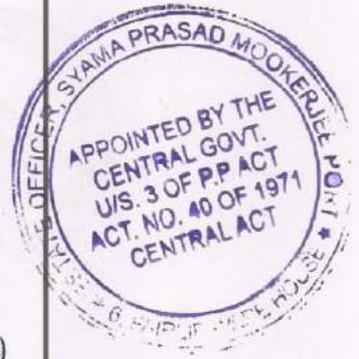
By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
ISSUED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

Assistant
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

01.08.2023

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



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



ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT, KOLKATA
(Erstwhile KOLKATA PORT TRUST)

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

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

PROCEEDINGS NO.1753/D OF 2017
ORDER NO. 43 DATED: 31.07.2023

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

M/s. Shanti Builders,
137, Canning Street,
Kolkata -700001.
AND ALSO AT
20, Netaji Subhas Road,
1st Floor, Kolkata-700001.

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

01.08.2023

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

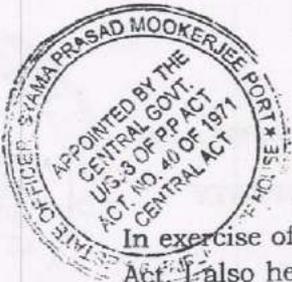
AND WHEREAS by written notice dated 07.06.2017 you are called upon to show cause on or before 05.07.2017 why an order requiring you to pay damages of Rs. 28,85,130/- (Rupees Twenty eight lakh eighty five thousand one hundred thirty only) together with [compound interest] for unauthorised use and occupation of the said premises, should not be made;

AND WHEREAS, I have considered your objections and/or the evidence produced by you;

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. 28,85,130/- (Rupees Twenty eight lakh eighty five thousand one hundred thirty only) assessed by me as damages on account of your unauthorised occupation of the premises for the period from 04.03.2015 to 31.12.2016 (both days inclusive) to SMPK by 16.08.2023.

PLEASE SEE ON REVERSE

2/2



: 2 :

In exercise of the powers conferred by Sub-section (2A) of Section 7 of the said Act, I also hereby require you to pay compound interest @ 7.50 % per annum on the above sum till its final payment being the current rate of interest as per the Interest Act, 1978.

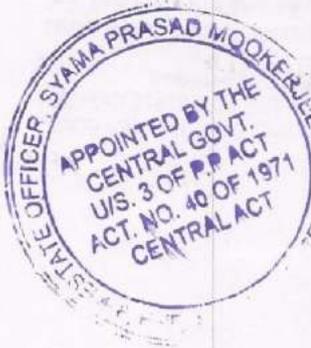
In the event of your refusal or failure to pay the damages within the said period or in the manner aforesaid, the amount will be recovered as an arrear of land revenue through the Collector.

SCHEDULE

Plate No. CG-283

Godown space msg. about 86.028 Sq.m and verandah space msg. about 13.378 sq.m at Compartment No.8 of Kolkata Port Trust's Import Warehouse(North) under North Port Police Station in the presidency town of Kolkata. It is bounded on the North partly by the Trustees' godown occupied by Soor Neogi Coomar & Co. Pvt. Ltd. and partly by Port Sharamik Co-operative, on the East by the Trustees' open land alongside Strand Road, on the South by the Trustees' open land alongside Strand Road, on the South by the Trustees' godown occupied by Dinco Engineering and on the West by asbestos verandah alongside strip of open land.

*Trustees' means the Board of Syama Prasad Mookerjee Port, Kolkata Authority (Erstwhile Board of Trustees' for the Port of Kolkata).



Date 01.08.2013

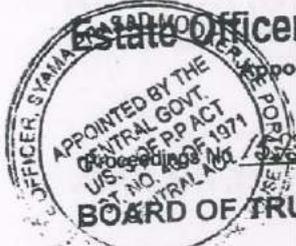
Signature & Seal of the Estate Officer.

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
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

01.08.2013

COPY FORWARDED TO THE ESTATE MANAGER, SYAMA PRASAD MOOKERJEE PORT,
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

Order Sheet No. 35

53, 153/R, 153/D of 2017

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA



M/s. SHANTI BUILDERS

FINAL ORDER

The matter is taken up today for final disposal. Godown space measuring 86.028 sq.m and verandah space msg.13.378 Sq.m at Compartment No.8 of Kolkata Port Trust(Now Syama Prasad Mookerjee Port)'s Import Warehouse(North) under North Port Police Station, within the Presidency town of Kolkata, comprised under occupation No.CG-283 was allotted to **M/s. Shanti Builders** (O.P) on licence for 11 months w.e.f 04.04.2014 by Syama Prasad Mookerjee Port, Kolkata(Erstwhile Kolkata Port Trust/KoPT), hereinafter referred to as 'SMPK', The Applicant herein, on certain terms and conditions. The said licence was extended for a further period of 11 months from 02.04.2015 to 01.03.2016. It is the case of SMPK that O.P. had failed and neglected to pay arrear licence fees/rent and taxes along with interest since long and continued to occupy the premises after expiry of such licence period illegally in violation of the terms of the tenancy. SMPK demanded possession of the Public Premises from O.P. by notice dated 11.08.2016 and it is argued that after expiry of the period as mentioned in the said notice, O.P. has no authority under law to occupy the Public Premises and O.P. is liable to pay damages for wrongful use and enjoyment of the Port Property as per SMPK's Schedule of rent charges in course together with interest accrued thereon for delayed payment.

This Forum issued Show Cause Notice u/s 4 of the Act (for adjudication of the prayer for order of eviction etc.) and Show Notice u/s 7 of the Act (for adjudication of the prayer for recovery arrear rental dues and damages etc.) all dated 07.06.2017(vide Order No.1 dated 05.06.2017).

It appears from the record that subject proceedings followed a court case being Title Suit No.729 of 2016 before the Ld. 7th bench City Civil Court, Calcutta. As it is learnt upon inquiry that there is no order of stay in connection with the said Title Suit in question, the Forum proceeded with the speedy disposal of the instant matter under the four corner of P.P Act. It also reveals that subject proceedings also followed a Misc

31.07.2023

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

01.08.2023

22

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. 1573, 1573/R, 1573/D of 2017

Order Sheet No. 36

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/s. SHANTI BUILDERS

43

31.07.2023



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

01.08.2023

Appeal being No.26 of 2019 filed by O.P. challenging the Order dated 11.03.2019 passed by the Ld' Estate Officer. O.P. prayed for Order of Oral Examination/Cross Examination of Parties in addition to filing of Affidavit of Evidence. The Misc appeal was taken up for hearing before the Ld' Judge, Bench-X, City Civil Court, Calcutta. After hearing the parties vide its order dated 18.11.2021, Ld' Court was pleased to confirm the Order of the Estate Officer with some variation/modification of the impugned order. Such order of the Ld' Court is reproduced below:-

"That the instant Misc Appeal, being No.26 of 2019, stands disposed of with some variation/modification of the impugned order as passed by the Ld. Estate Officer in the Proceeding No.1573, 1573/R, 1573/D of 2017(Board of Trustees for the Port of Kolkata Vs. M/s. Shanti Builders), but without any order as to cost as per the provision of order 41 rule 32 of the Code of Civil Procedure.

The impugned order dtd.11.03.2019, passed by the Ld. Estate Officer in Proceeding No.1573, 1573/R, 1573/D of 2017(Board of Trustees for the Port of Kolkata vs M/s. Shanti Builders) is confirmed with certain variation/modification to the effect that present Opposite Party/Appellant be allowed to submit their Affidavit -in-Evidence in support of their case, if the same has not yet been submitted on behalf of the Opposite Party/Appellant along with final notes of argument."

ar.

It is seen that ^{ar.}earlier O.P. had duly been entered into appearance through its Advocate and contested the matter by filing written objection/reply to the Show Cause/s on 01.09.2017. O.P. filed its Affidavit in Chief on 25.03.2019 and also filed applications on 18.04.2019 and 22.04.2019 praying adjournment of the instant hearing on the ground of pendency of such Misc Appeal being No.26 of 2019. It is submitted by the Advocate for O.P. that Forum of law has the power of Civil Court u/s.8 of the Public premises (Eviction of unauthorised occupant) Act-1971 for the purpose of holding inquiry under this Act. It is further argued on behalf of O.P that this Forum

sd



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

573, 1573/R, 1573/DoI 2017 Order Sheet No. 37



BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S. SHANTI BUILDERS

43
31.07.2023

must have to follow the procedure under the relevant Rules in connection with hearing of the suits and examination of witnesses, adducing evidence and cross-examination. SMPK on the other hand submitted with argument that Estate Officer is a quasi judicial authority under P.P Act and not a Civil Court to be governed by the Civil Procedure Code for adjudication of the matter before him. Indian Evidence Act need not be followed in toto as in case of Civil Court's Practice and Procedure and this Forum of Law is bound to proceed according to the rules made under the P.P. Act. It is strongly argued that papers/documents produced in course of hearing on behalf of SMPK forms a part of the record of this proceeding which are sufficient to prove SMPK's case against O.P.

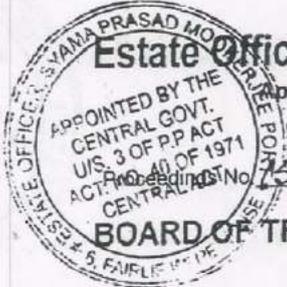
I have duly considered the documents filed on behalf of O.P. and the reply to the Show Cause Notice/s as filed on 01.09.2017. The petitions filed on behalf of O.P. on various dates including the application/comments of SMPK dated 23.10.2017 has also received my attention. I have applied my mind to the Evidence on affidavit filed by O.P on 21.02.2022 and submissions/arguments made on behalf of the parties. After due consideration of all relevant papers/documents as brought before me in course of hearing and after careful consideration all the rival submission made on behalf of the parties, I find that following issues have come up for my adjudication.

- I) Whether instant Proceedings against O.P is maintainable or not;
- II) Whether SMPK has any cause of action against O.P. or not;
- III) Whether O.P's contention regarding "Statutory tenant" after expiry of the period of licence by way of payment of licence fees/charges and acceptance of the same by the Port Authority has got any merit or not;

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
01.08.2023

22



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. 1573, 1573R, 1573D of 2017 Order Sheet No. 38

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S. SHANTI BUILDERS

43

31.07.2023



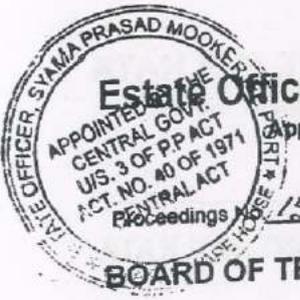
By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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

01.08.2023

- IV) Whether O.P. has defaulted in making payment of requisite licence fees/rent to SMPK or not.
- V) Whether SMPK's claim of compensation @ 3 times of the defaulted amount is justifiable or not;
- VI) Whether the proceedings at the instance of SMPK against O.P. is barred by law of estoppel waiver and acquiescence or not;
- VII) Whether the averment made by O.P. in their Evidence on Affidavit filed on 21.02.2022 (Para-14, 35) regarding repairs to the godown at the cost of O.P. has got any merit or not;
- VIII) Whether SMPK's notice dated 11.08.2016 as issued to O.P., demanding possession from O.P. is valid and lawful or not;
- IX) Whether O.P.'s occupation could be termed as "unauthorised occupation" in view of Sec.2 (g) of the P.P. Act and O.P. is liable to pay damages to SMPK during the period of its unauthorised occupation or not;

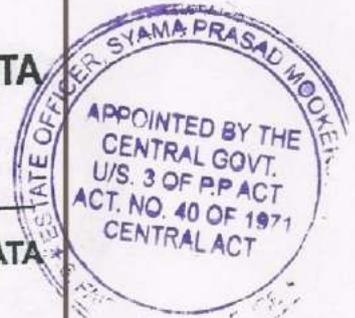
On **issue No. I**, I must say that the properties owned and controlled by the Port Authority has been declared as "public premises" by the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and Section-15 of the Act puts a complete bar on Court's jurisdiction to entertain any matter relating 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, recovery of dues etc on the ground of expiry/revocation 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 u/s 4 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



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

1573, 1573/R, 1573/D of 2017 Order Sheet No. 39



BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/s. SHANTI BUILDERS

43

31.07.2018

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.

With regard to **issue No.II**, there is no dispute about occupation of O.P. into the Port Property in terms of 11 months licence. Admittedly, O.P. is enjoying the property and never disputed SMPK's claim on account of licence fees/rental dues. In fact, O.P. has admitted the default in making payment of rental dues to SMPK and O.P. time to time made certain payments to SMPK as per condition of such licence. In this circumstances, SMPK as Land Lord/Licensor of the premises has definite cause of action against O.P./Licensee to demand possession of the premises and for recovery of dues/charges for continuous use and enjoyment of the Port Property in question. Hence, the issue is decided against O.P.

With regard to **issue No.III**, it is the case of O.P. that after determination of licence in question, SMPK has accepted Rs.1,09,352/- from O.P. and as such the licence is deemed to have been renewed and O.P. should be treated as 'Statutory tenant'. O.P. is not liable pay any abnormal damages to SMPK. SMPK on the other hand submits that nothing has been accepted as "rent" after expiry of the period of lease in question. Heard the submissions of both the parties. It appears that during the course of hearing no case has been made out or nothing has been produced on behalf of O.P. as to how their contention regarding acceptance of payment of Rs.1,09,352/- by SMPK after expiry of the period of licence in question could be substantiated. As per Transfer of Property Act, acceptance or payment made after institution of proceedings cannot be considered as waiver to the right of lessor to get back possession of the property in question. In my view, the same principle of law applies in the case of licence as well although licence is governed by the principles/provisions of the Indian Easement Act. In fact O.P. cannot claim "renewal of licence" in question as a matter of right. Therefore the issue is decided in favour of SMPK.

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

01.08.2018

sd/



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

7/23, 15/23/R, 15/23/D or 2017 Order Sheet No. 40

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S. SHANTI BUILDERS

43

31.07.2023



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Issue No.IV and V are taken up together for convenient discussion. Regarding the issue of outstanding licence fees/rental dues, I have come across letter dated 16.03.2016 issued by the Port Authority, demanding the payment of said dues even before expiry of the licence in question. Nothing appears to have been furnished by the O.P. at the time of filing their reply/written objection, denying such contentions. That being so, I have no reason to disbelieve the claim of SMPK, regarding arrears of licence fees/rent prevailing at the time of expiry of such licence. Further, the detailed Statement of Accounts as submitted by SMPK on 20.04.2018 also depicts that there is huge dues on the part of O.P. Such Statement dated 20.04.2018 has already been handed over to O.P. There is no reason to disbelief such submission, of the statutory authority like SMPK.

On the issue of three times compensation charges by SMPK w.e.f 04.03.2015, O.P. has claimed in their reply dated 01.09.2017 that by charging compensation @ 3times of licence fees SMPK is acting contrary to the principles of fair play and equity, justice and good conscience. Such claim of SMPK is abnormal and unjustified. Demand of three times of the defaulting amount is nothing but an attempt to make gain of an unjust enrichment. 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. As regards the three times rate of compensation in respect of unauthorised occupation, the order dated 03.09.2012 passed by Hon'ble Justice Dipankar Datta in WP no. 748 of 2012 (M/s Chowdhury Industries Corporation Pvt. Ltd. versus Union of India & others) is very relevant. The said Order reads as follows:

"....."



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Order Sheet No. 41



BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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It is undisputed that there has been no renewal of the lease prior to its expiry or even thereafter. There is also no fresh grant of lease. The petitioner has been occupying the property of the Port Trust unauthorisedly and, therefore, the Port Trust is well within its right to claim rent at three times the normal rent in terms of the decision of the TAMP, which has not been challenged in this writ petition.

Furthermore, enhancement to the extent of three times the normal rent for persons in unauthorised occupation of Port Trust property does not appear to be utterly unreasonable and arbitrary warranting interference of the Writ Court.

....."

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SYAMA PRASAD MOOKERJEE PORT

01.08.2023

Moreover, in clause (xx) of the Offer Letter for extension of licence dated 13.05.2015 it is specifically mentioned that "after expiry or termination of licence, if you do not vacate the space within the due date, compensation @3times the last licence fees paid will be charged from the due date upto the date when the space is returned to SMPK in unencumbered and vacant condition." such being the case, O.P. is debarred from taking the plea of exorbitant licence fees/rent/charges. In fact, the question of compensation @3times the last licence fees or any question about abnormally high rate of occupational charges cannot be entertained by this Forum as the charges for occupation of Port Property is fixed up by Tariff Authority of Major Ports by their notification published under authority of law in accordance with the provisions of the Major Port Trusts Act, 1963 as time to time amended. O.P. cannot challenge or dispute anything about applicability and/or enforceability of such notification issued under authority of law. The issues are thus decided accordingly in favour of the Port Authority.

Regarding the **issue No.VI**, I must say that according to law the question of estoppel arise when one person has by his declaration, act or omission, **intentionally** caused or



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Proceedings No. 1573, 1573/R, 1573/D of 2017 Order Sheet No. 42

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

MS. SHANTI BUILDERS

43

31.07.2023



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SYAMA PRASAD MOOKERJEE PORT

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

01-08-2023

permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceedings between himself and such person or his representative, to deny the truth of that thing. In other words, to constitute an estoppel there must be an intention or permission to believe certain thing. There is no material to prove any intention or permission on the part of SMPK to consider/accept O.P's status into the Public Premises as "licensee" in respect of Proceedings No. 1573, 1573/R, 1573/D of 2017 and to withdraw/cancel the notice dated 11.08.2016. Mere claim of O.P. that nothing is lying due and payable by O.P. cannot be treated as waiver of their (SMPK's) right. It is my considered view that the question of 'estoppel', 'waiver' and 'acquiescence' as raised on behalf of O.P. does not arise at all in view of the facts and circumstances of the case. Thus the issue is also decided against O.P.

Regarding the **issue No.VII**, O.P vide their reply dated 01.09.2017 as well as Evidence on affidavit contended that due to reconstruction, repair and renovation of the godown O.P had already incurred a total sum of Rs.5,41,834/- and managed to convert the same in a habitable condition and due to such renovation work O.P had to wait for 4 months to such godown for commercial purposes however, inspie of knowledge of those difficulties, SMPK had collected the monthly rent for the said period. It is also the case of O.P that the expenses incurred by O.P for repair, renovation and bringing electricity in the godown should duly be credited by SMPK. However, SMPK vide their rejoinder strongly denied such submission of O.P. Now the question arises as to the rent/charge claimed by SMPK for the said period of 4 months is justifiable or not. It is seen that nothing has been produced or shown to me in course of hearing, which establishes the responsibility of SMPK for maintenance of the property in question. Such being the case, O.P. is debarred from taking the plea of abatement of rent/charges. Moreover, the clause (xvi) of the Letter dated 13.05.2015 as issued by SMPK to O.P specifically

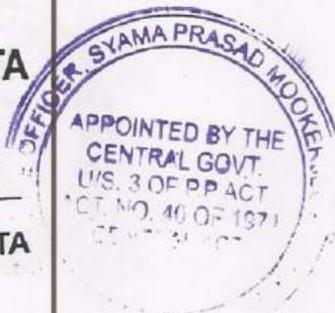
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1528/1528/R, 1528/D of 2017 Order Sheet No. 43



BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
MR. SHANTI BUILDERS

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31.07.2023

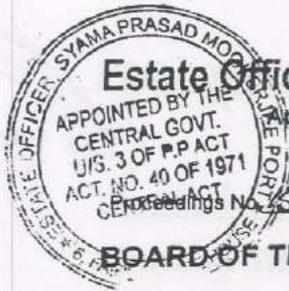
mentioned that such repair/maintenance of the licensed premises may be undertaken by O.P at their own cost to the entire satisfaction of the SMPK's Chief Engineer. In the aforementioned fact and circumstances, the question of abatement of charges for occupation into the Port Property being the Public Premises in question is not tenable under law. The issues is thus decided against O.P accordingly.

Issues VIII and IX are also required to be discussed analogously. Discussion against the foregoing paragraphs will certainly lead to the conclusion that the notice for revocation of licence dated 11.08.2016 as issued by the Port Authority, demanding possession from O.P. is very much valid, lawful and binding upon the parties. I have deeply gone into the submissions/ arguments made on behalf of the parties in course of hearing. The properties of the Port Trust (read as Syama Prasad Mookerjee Port, Kolkata) are coming under the purview of "public premises" as defined under the Act. Now the question arises as to how a person becomes unauthorized occupant into such public premises. As per Section 2 (g) of the 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 of the public premises after the authority(whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has **expired** or has been determined for any reason whatsoever. The licence granted to O.P. had undoubtedly expired and institution of proceedings against O.P. by SMPK is a clear manifestation of Port Authority's intention to get back possession of the premises. In such a situation, I have no bar to accept SMPK's contentions regarding expiry of licence and service of notice to quit dated 11.08.2016, on evaluation of the facts and circumstances of the case. "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 licence, O.P. has lost its authority to occupy

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THE LD ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

01.08.2023

my



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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Order Sheet No. 44
No. 1573, 1573/R, 1573/D of 2017

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S. SHANTI BUILDERS

43

31.07.2023



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SYAMA PRASAD MOOKERJEE PORT
By [Signature]
Asst. Estate Officer
SYAMA PRASAD MOOKERJEE PORT

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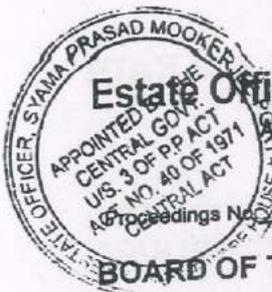
the public premises, on the evaluation of factual aspect involved into this matter and O.P. is liable to pay damages for such unauthorized use and occupation. To come into such conclusion, I am fortified by the decision/observation of the Hon'ble Supreme Court in Civil Appeal No.7988 of 2004, decided 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

Although the above case-law was in respect of lease, the same principle of law applies in the case of licence as well. 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 licensee. It is contended that SMPK's intention to get back possession is evident from the conduct of the Port Authority. The licence had doubtlessly expired, whose validity for the purpose of deciding the question of law cannot be questioned by O.P. Therefore, there cannot be any doubt that the O.P. was in unauthorized occupation of the premises, once the licence had expired. 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 licensee.

The Port Authority has a definite legitimate claim to get its revenue involved into this matter as per the rate of licence fees/occupational charges payable for the premises in question and/or SMPK's Schedule of Rent Charges for the

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Proceedings No. 1573/1573/D of 2017 Order Sheet No. 45

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relevant period and O.P. cannot claim continuance of its occupation without making payment of such requisite charges.

To take this view, 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 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 my view, the claim of charges for damages by SMPK based on sound reasoning and should be acceptable by this Forum of Law. As per law, when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract to be likely to result from the breach of it.

It appears that Godown space measuring 86.028 sq.m and verandah space msg. 13.378 Sq.m in a Prime location Kolkata was allotted to O.P., whose authority was subsequently terminated by SMPK vide Notice dated 11.08.2016 and since then O.P has been enjoying possession of the Prime piece of land under the shield of a Title Suit being No. T.S. 729 of 2016 preferred by him before the Ld. 7th Bench City Civil Court, Calcutta. Being empowered under the provision of the P.P. Act, I do not find any constraint to adjudicate the matter filed by SMPK, especially in a situation when severe loss has already been occurred to Public exchequer due to default of O.P. for a long period of time.

From the discussions as aforesaid, I have no hesitation to observe that O.P's act. in continuing occupation is unauthorized and O.P. is liable to pay damages for

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OFFICE OF THE LD. ESTATE OFFICER
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01.08.2023



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

Order Sheet No. 46
1573/R.1573/D of 2017

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
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31.07.2023



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 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, I consider it is a fit case for allowing SMPK's prayer for eviction against O.P. u/s 5 of the Act for the following grounds/ reasons:

- 1) That the proceedings against O.P. is very much maintainable.
- 2) That you have violated the condition of tenancy under licence as granted by the Port Authority by way of not making payment of licence fees/rental dues to SMPK.
- 3) That O.P.'s contention regarding "Statutory Tenant" has got no merit in the facts and circumstances of the case.
- 4) That the licence as granted to the O.P. by SMPK had doubtlessly expired on 01.03.2016.
- 5) That no case has been made out on behalf of O.P. as to how its occupation in the Public Premises could be termed as "authorised occupation" after expiry of the licence.
- 6) That the instant Proceeding is not barred by the doctrine of Estoppel, waiver and acquiescence.
- 7) That O.P. has failed to make out any case in connection with "abatement of rent" as pleaded.
- 8) That the O.P. had no authority to occupy the Public Premises after expiry of licence and service of the Notice to Quit dated 11.08.2016 and O.P.'s occupation is "unauthorized" in view of Sec.2(g) of the P.P. Act, 1971 and O.P. is liable to pay compensation charges with interest for wrongful use and enjoyment of the Public Property upto the date

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Dr. Heena Assistant
OFFICER OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

01.08.2023

Dr

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

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

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31.07.2013

of handing over of clear, vacant and unencumbered possession to the Port Authority.

ACCORDINGLY, formal order of eviction u/s 5 of the Act as per Rule made there under, is drawn giving 15 days time to the 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.

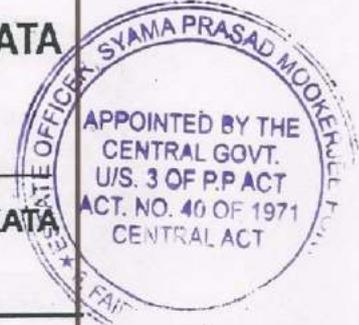
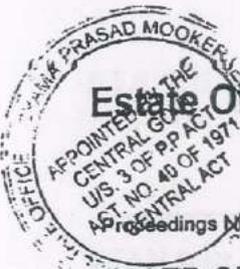
It is my considered view that a sum of Rs.6,95,525/- (Rupees Six Lakh ninety five thousand five hundred twenty five only) for the period from 2nd day of April, 2015 upto 1st Day of March, 2016 (both days inclusive) is due and recoverable from O.P. by the Port authority on account of rental dues and O.P. must have to pay the rental dues to SMPK on or before 16.08.2013 Such dues 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 far by O.P., in terms of SMPK's books of accounts.

Likewise, I find that SMPK has made out an arguable claim against O.P., founded with sound reasoning, regarding the damages/compensation to be paid for unauthorised occupation. As such, I must say that Rs.28,85,130/- (Rupees Twenty eight Lakh eighty five thousand one hundred thirty only) as claimed by the Port Authority as damages in relation to the subject premises in question, is correctly payable by

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OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

01.08.2013

and



47

Order Sheet No.



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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Order Sheet No. 48 of 1573, 1573/K, 1573/D of 2017

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

SHANTI BUILDERS

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31.07.2023



O.P. for the period 04.03.2015 to 31.12.2016 (both days inclusive) and it is hereby ordered that O.P. shall also make payment of the aforesaid sum to SMPK by ~~16.08.2023~~ ^{16.08.2023}. The said damages shall also 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 far by O.P., in terms of SMPK's books of accounts. I sign the formal orders 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 31.12.2016 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 31.12.2016, 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

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

01.08.2023