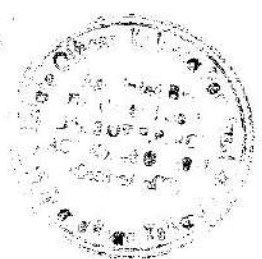


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**REGISTERED POST WITH A/D.
HAND DELIVERY
AFFIXATION ON PROPERTY**

THE ESTATE OFFICER, KOLKATA PORT TRUST
(Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-Central Act)
Public Premises (Eviction of Unauthorized Occupant) Act 1971
1st Floor, 6, Fairlie Place Warehouse,
Kolkata-700001

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

REASONED ORDER NO. 84DT - 06/11/2019
PROCEEDINGS NO.763 OF 2006

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-
M/s. Hopes Metal Industries(India) Ltd.

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. Hopes Metal Industries (India) Ltd., OF P-23, Transport Depot Road,
Kolkata-700088 And P-3, Transport Depot Road, Kolkata-700088** 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 arrears of rental dues/damages etc. as prayed for on behalf of KoPT and the Notice/s issued by this Forum are in conformity with the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act 1971.
2. That in gross violation of the terms and conditions of the subject monthly lease, O.P have defaulted in making payment the rental dues and taxes payable to KoPT.
3. That O.P. have unauthorisedly parted with possession of the Public Premises and failed to vacate the premises upon determination of the period as mentioned in the notice to quit dated 21.07.2005 as issued by the Port Authority.
4. That O.P. are under obligation to vacate the premises on demand from the Port Authority and O.P's act of inducting unauthorized concerned/ organization is not at all supported by law.

PLEASE SEE ON REVERSE



::2::

5. That KoPT's notice dated 21.07.2005 demanding possession of Port property from O.P. is very much valid, lawful and enforceable in the facts and circumstances of the case.
6. That while O.P. are in possession and enjoyment of the Port Property and while O.P. itself acknowledging the jural relationship as debtor to KoPT, O.P. cannot take the shield of "time barred claim" under Limitation Act.
7. That O.P. cannot claim relief against forfeiture of the lease in question, in the facts and circumstances of the case.
8. 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 issuance of notice dated 21.07.2005, demanding possession by the Port Authority.
9. That O.P. has failed to bear any witness or adduce any evidence in support of their contention regarding "authorised occupation" and O.P.'s occupation has become unauthorized in view of Sec. 2(g) of the P.P. Act.
10. That O.P.'s occupation has become unauthorised in view of Sec. 2(g) of the P.P. Act and O.P. is liable to pay damages for unauthorised use and enjoyment of the Port Property in question upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

A copy of the reasoned Order No. 84 dated 06/11/2019 is attached hereto which also forms a part of the reasons.

NOW, THEREFORE, in exercise of the powers conferred on me under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order the said **M/s. Hopes Metal Industries (India) Ltd., OF P-23, Transport Depot Road, Kolkata-700088 And P-3, Transport Depot Road, Kolkata-700088** 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. Hopes Metal Industries (India) Ltd., OF P-23, Transport Depot Road, Kolkata-700088 And P-3, Transport Depot Road, Kolkata-700088** 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.



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

THE ESTATE OFFICER, KOLKATA PORT TRUST
(Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-Central Act)
Public Premises (Eviction of Unauthorized Occupant) Act 1971
1st Floor, 6, Fairlie Place Warehouse,
Kolkata-700001

Form G

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

PROCEEDINGS NO.763/D OF 2006
ORDER NO.84 DATED: 08/11/2019

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-
M/s. Hopes Metal Industries (India) Ltd.

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. Hopes Metal Industries(India) Ltd.,
P-23, Transport Depot Road,
Kolkata-700088.
And Also
P-3, Transport Depot Road,
Kolkata-700088.

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 04.12.2006 you were called upon
to show cause on/or before 05.02.2007 why an order requiring you to pay
damages of Rs.5,58,257.00 (Rupees Five Lakhs Five Eight Thousand Two
Hundred and Fifty Seven only.) together with simple interest for unauthorised
use and occupation of the said premises, should not be made.

And whereas I have considered your objection 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.5,58,257.00 (Rupees Five Lakhs
Five Eight Thousand Two Hundred and Fifty Seven only.) for the period
16.08.2005 to 31.12.2005 assessed by me as damages on account of your
unauthorised occupation of the premises to Kolkata Port Trust by 14.11.2019.

PLEASE SEE ON REVERSE

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

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.

SCHEDULE

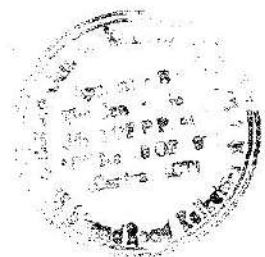
The said piece or parcel of land Msg. about 10115.465 sqm which is situated at Transport Depot Road, Thana Taratala Police Station, Kolkata, Dist. 24 Parganas (South), Registration District Alipore, under Plate No. D-343/4/B. It is bounded on the North partly by the Trustees Land occupied by M/s. Universal Autocrafts (P) Ltd. and partly by Transport Depot Road, on the East by the Trustees land occupied by Post and Telegraph, on the South partly by Trustees' land occupied by Post and Telegraph and partly by mosque and on the West partly by Trustees Railway Siding and partly by mosque.

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

Dated: 08/11/2019



Signature and seal of the
Estate Officer.



SCHEDULE

The said piece or parcel of land Msg. about 10115.465 sqm which is situated at Transport Depot Road, Thana Taratala Police Station, Kolkata, Dist. 24 Parganas (South), Registration District Alipore, under Plate No. D-343/4/B. It is bounded on the North partly by the Trustees Land occupied by M/s. Universal Autocrafts (P) Ltd. and partly by Transport Depot Road, on the East by the Trustees land occupied by Post and Telegraph, on the South partly by Trustees' land occupied by Post and Telegraph and partly by mosque and on the West partly by Trustees Railway Siding and partly by mosque.

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

Dated: 08/11/2019

Signature & Seal of the
Estate Officer.

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





Estate Officer, Kolkata Port Trust

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

Proceedings No. 763, 763/R, 763/D of 2006 Order Sheet No. 81

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

(Plate no. 343/4/B)

M/s Hopes Metal Industries (India) Ltd. VS

FINAL ORDER

84
06.11.2019

The instant proceedings No. 763,763/R and 763/D all of 2006 is for adjudication of an application being No. Lnd. 4367/1/IV/06/362 dated 30.01.2006 filed by Kolkata Port Trust (KoPT), Applicant herein, praying for order of eviction and recovery of arrear rent, taxes and damages along with interest against M/s Hopes Metal Industries(India)Ltd., O.P. herein, on the ground of being in unauthorised occupation of the public premises. The material facts of the case are summarised below.

A lease for a period of 30 years w.e.f. 19.08.1990 without any option of renewal was granted by KoPT to M/s Hopes Metal Industries(India)Ltd. in respect of a piece of land measuring about 10,115.46 sq. m. situated at Transport Depot Road, Thana - Taratala, Registration Dist. Alipore, 24 Parganas (S) comprised under Occupation no. D-343/4/B. The lease was terminated vide Notice to quit dated 21.07.2005 due to non-payment of rental dues and unauthorised parting with possession to rank outsiders. Prior to such termination of the lease several reminder letters dated 10.02.2003, 02.04.2003, 03.03.2004 and 12.04.2004 were written to O.P. requesting for liquidation of arrear rent and taxes and to remove other breaches like unauthorised parting with possession etc. As O.P. failed to liquidate the arrear rental dues and taxes and also failed to remove the unauthorised occupants from the subject premises, KoPT thereafter issued notice to quit dated 21.07.2005 asking the O.P. to quit, vacate and deliver up the premises in question to KoPT on 16.08.2005.

As O.P. failed to vacate the subject premises in contemplation to the Notice to Quit dated 21.07.2005, KoPT filed an application being No. Lnd. 4367/1/IV/06/362 dated 30.06.2006 before this Forum praying for eviction and recovery of outstanding dues/charges payable by O.P. and hence this instant proceeding was initiated under the statute The Public Premises (Eviction of Unauthorised Occupants) Act, 1971(hereinafter referred to as the PP Act).

Stamp: 11.11.2019
Stamp: 06.11.2019
Stamp: OFFICE OF THE ESTATE OFFICER, KOLKATA PORT TRUST

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Estate Officer, Kolkata Port Trust
Appointed by the Central Govt. Under Section 3 of the Public Premises
(Eviction of Unauthorised Occupants) Act 1971

Cs No. 763, 763/R, 763/D of 2006 Order Sheet No. 82

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS (Plate no. 343/4/B)
M/S Hopes Metal Industries (India) Ltd.

84
06.11.2019

On the basis of the application of KoPT dated 30.01.2006 and the documentary evidence produced, this Forum prima facie formed its opinion to issue the show cause Notice/s u/s 4, 7(1) and 7(2) under the PP Act on 04.12.2006.

One Sri Bijoy Das who claims to be the Director of O.P. appears before this Forum for the first time but without any documentary evidence in proof of his identity as the Director of Hope's Metal Industries(India) Limited. Neither any Board Resolution and/or the Company details like the Memorandum of Association etc. were produced before this Forum. The said Sri Bijoy Das filed a reply to the Show cause Notice issued by this Forum on 05.02.2007. Thereafter, one Sri Shankar Ranjan Sen, Advocate enters his appearance and filed effective reply to the show cause notice dated 16.07.2007, denying all the allegations made by KoPT against the O.P.. The main contentions of the said reply and the effective reply to the show cause are summarised below:

- a. It is the case of O.P. that when the Company is ready and willing to pay all rent as may be fair, reasonable and firmed up in accordance with law, the notice to quit dated 21.07.2005 is bad in law.
- b. It is the case of O.P. that KoPT failed to provide the breakup of the rent as may have accrued from time to time on repeated request.
- c. KoPT failed to demand the rent accrued and therefore cannot demand rent at a belated stage which falls beyond the period of limitation and is barred by the law of Limitation.
- d. The schedule of rent is also challenged being enhanced at a massive rate and the same is also being challenged.
- e. It is the case of O.P. that Port Trust cannot fix rent which is higher than the standard rent under the West Bengal Premises Tenancy Act, 1956.

[Signature]

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KOLKATA PORT TRUST
KOLKATA
06.11.2019



Estate Officer, Kolkata Port Trust

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

Proceedings No. 763, 763/R, 763/D of 2006 Order Sheet No. 83

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

(Platano. 343/4/B)

VS
M/S Hopes Metal Industries (India) Ltd.

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06.11.2019

Thereafter, One Sri Chinmoy Guha Thakurta, Advocate was authorised to represent the case by O.P. by a letter of authorisation dated 16.06.2008. Series of pay orders mentioned in several applications filed by Mr. Guha Thakurta, Advocate against the outstanding dues payable by O.P. which was tendered periodically to KoPT

The reply to the show cause notice filed by O.P. on 16.07.2007 was further countered by KoPT by filing rejoinder dated 14.08.2007. KoPT also filed documentary evidence on 18.02.2007 in the form of Telephone Directory alleging that several occupants are operating from the subject premises. The same is filed in support of their allegation of unauthorised parting with possession.

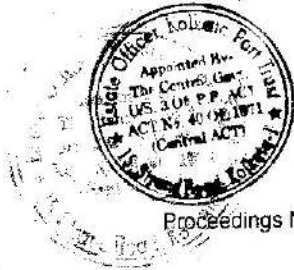
Thereafter, O.P. filed an application u/s 114 of the Transfer of property Act, before this Forum praying inter alia relieving O.P. against forfeiture and allow to retain the possession of the subject premises.

The subject proceedings further follows certain court cases which deserve a brief mention:

During continuance and/or pendency of the proceeding, O.P. preferred a Writ Petition bearing No. 19743(W) of 2012 praying for a direction upon this Forum to decide the applicability of the application filed by O.P. under Section 114 of the Transfer of Property Act filed on 19.07.2012. The Hon'ble Court was pleased to pass an order upon this Forum to decide the application filed under Section 114 of the T.P. Act within a month. Thereafter, the matter was taken up by the Ld. Estate Officer and vide order No. 60 dated 25.09.2012 an order was passed allowing the prayer of KoPT for inspection of the subject premises to determine the exact numbers of unauthorised occupants and only after receiving the report of such joint inspection the applicability of Section 114 of the TP Act would be considered.

Against the said Order No. 60 dated 25.09.2012 the O.P. preferred an Appeal being Misc Appeal No. 523 of 2012 before the Seventh Additional District Judge at Alipore. The said Appeal was dismissed on contest on

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06.11.2019



Estate Officer, Kolkata Port Trust

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

Proceedings No. 763, 763/R, 763/D of 2006 Order Sheet No. 84

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

(Plate no. 343/4/B)

M/s Hopes Metal Industries (India) Ltd. VS

84
06.11.2019

03.07.2018, by which the impugned Order No. 60 dated 25.09.2012 passed by the Ld. Estate officer was affirmed.

Thereafter, O.P. filed a Civil Revision being C.O. No. 2591 of 2018 against the Misc Appeal NO. 523 of 2012 before the Hon'ble High Court at Calcutta. Accordingly, C.O. No.2591 of 2018 and CAN 7741 of 2018 were disposed of on 09.10.2018, thereby setting aside the order dated July 3, 2018 passed by the Additional District Judge, Seventh Court at Alipore in Miscellaneous Appeal No.523 of 2012 as well as the order from which the said appeal emanates, that is, Order No.60 dated September 25, 2012 passed by the Estate Officer, Kolkata Port Trust and directing the Estate Officer to dispose of the application under Section 114 of the Transfer of Property Act filed by the petitioners, including all the questions arising in connection therewith, entirely, within one working month from the date of communication of this order to the Estate Officer.

In compliance to the Order dated 09.10.2018 passed by the Hon'ble Calcutta High Court in connection with the C.O. No. 2591 of 2018 read with CAN 7741 of 2018 the application under Section 114 of the Transfer of Property Act, 1882 was decided by this Forum vide Order No. 78 dated 12.09.2019.

Challenging the Order No. 78 dated 12.09.2019 passed by this Forum, O.P. preferred a Writ Petition being W.P. No. 18572 (W) of 2019 before the Hon'ble High Court Calcutta, which is still pending without any order of restrain.

I have duly considered the application of O.P. as filed on 05.02.2007, 09.10.2007, 19.07.2012 etc. After due consideration of the submissions/arguments made on behalf of the parties, I find that following issues have come up for my adjudication/decision:

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06.11.2019

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KOLKATA PORT TRUST
06.11.2019



Estate Officer, Kolkata Port Trust

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

Proceedings No. 763, 763/R, 763/D of 2006 Order Sheet No. 85

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

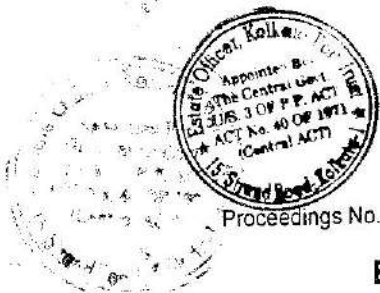
M/S Hopes Metal Industries (India) Ltd. vs (Plate no 343/4/B)

84
06.11.2019

1. Whether the proceedings under P.P. Act is maintainable or not;
2. Whether the lease is a long term lease or monthly lease and whether O.P. can claim relief against forfeiture of lease u/s 114 of the T.P. Act or not;
3. Whether O.P. has defaulted in making payment of rental dues to KoPT at the time of issuance of the notice to quit dated 21.07.2005 or not;
4. Whether the payments so far tendered by O.P. after issuing ejection notice is the rental amount or occupational/compensation charges;
5. Whether the O.P. has parted with possession of the public premises unauthorisedly, or not;
6. Whether KoPT's notice dated 21.07.2005 as issued to O.P., demanding possession from O.P. is valid and lawful or not;
7. Whether O.P.'s 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 KoPT during the period of its unauthorised occupation or not.
8. Whether the plea taken by O.P. with regard to fixation of "fair rent" by the Rent Controller under the West Bengal Premises Tenancy Act, 1997 has got any merit or not.
9. Whether O.P. can take the shield of time barred claim under Limitation Act to contradict the claim of KoPT on account of rental dues while in possession and enjoyment of the Port Property in question or not.

Regarding Issue no. 1, 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

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06.11.2019
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KOLKATA PORT TRUST



Estate Officer, Kolkata Port Trust

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

Proceedings No. 763, 763/R, 763/D of 2006 Order Sheet No. 86

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
(Plate no. 343/4/B)

M/s Hopes Metal Industries (India) Ltd.
VS

84
06.11.2019

jurisdiction to entertain any matter relating to eviction of unauthorized occupants from the public premises and recovery of rental dues and/or damages, etc. KoPT has come up with an application for declaration of O.P's status as unauthorized occupant into the public premises with the prayer for order of eviction, recovery of rental dues and damages 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. I must also mention that the Limitation Act has no application before quasi-judicial authorities like this Forum of Law which is not a civil court to be governed by the Civil Procedure Code. The Limitation Act applies to "suits" to be governed by CPC and Indian Evidence Act. When the basic elements for adjudication of a "suit" are totally absent for proceedings under P.P. Act, 1971, it is futile to advance any argument for the application of Limitation.

In view of the aforesaid facts and circumstances, I have no hesitation in my mind to decide the issue in favour of the Port Authority.

With regard to issue no. 2, which is required to be decided upon appraisal/evaluation of factual aspect involved in this matter. Admittedly, O.P. came into possession on the basis of a valid grant from KoPT's end, which was constituted on the basis of valid offer of the terms and conditions but agreement of lease never got registered and not a single scrap of documents is found in the record from where the presumption can be drawn as to the registration of the lease deed. In this context the position of law is very clear and settled here that in the event of non-registration of a lease deed the status of an allottee

[Signature]

STATE
KOLKATA
06.11.2019
[Handwritten notes and stamps]



Estate Officer, Kolkata Port Trust

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

Proceedings No. 763, 763/R, 763/D of 2006 Order Sheet No. 87

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

(Plate no 343/4/B)

VS
M/s Hopes Metal Industries (India) Ltd.

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06.11.2019

like O.P. is nothing but a "monthly tenant". Of course such monthly tenancy or monthly term lease must be governed by the terms and conditions for agreement for lease in question. Section 107 of the T.P. Act provides that a lease of immovable property from year to year or for any terms exceeding one year or reserving a yearly rent can be made only by a registered instrument. And all other leases of immovable property may be made either by registered instrument or by oral agreement accompanied by delivery of possession. To take this view, I am fortified by judgment of the Hon'ble Karnataka High Court reported in AIR 2006 Kart 295. It was decided by the Hon'ble High Court that where lease was for a period beyond one year and the same was created by an unregistered instrument, the lease must be a monthly lease as lease beyond one year can only be created by Registered Instrument u/s 107 of the T.P. Act. Hence, a monthly terms lease is not a compulsory registerable document under law. Once the parties enter into a contract then every word stated therein has to be given its due meaning. No part can be considered as redundant, unless it is contrary to any statute. Every word has to be given meaning which reveals the rights and obligations of the parties. Section 108 of the Transfer of Property Act imposes no restriction on the right of the parties to enter into a contract and stipulate terms and conditions and restrictions mutually agreed upon. In fact Section 108 expressly permits contracts contrary to its provisions. It stands with the word "in absence of a contract or local usage to the contrary". Further, it appears that O.P. did not produce any records to support that they approached KoPT for execution and registration of the deed of lease which was so essential for creation of lease hold right and interest for 30 years w.e.f 19.08.1990 as per law. In any event O.P. cannot deny its responsibility/obligations under the agreement for lease in question and O.P. cannot defend its possession as "authorized occupant" without performing the duties and responsibilities as assigned to them on the basis of the agreement for lease by and between the parties, which however may not be a registered instrument. The contention of O.P. deserves

BY ORDER OF
ESTATE OFFICER
KOLKATA PORT TRUST
F.S.D.E.
06.11.2019
HEAD ASST
OFFICE OF THE ESTATE OFFICER
KOLKATA PORT TRUST



Estate Officer, Kolkata Port Trust

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

Proceedings No. 763, 763/R, 763/D of 2006 Order Sheet No. 88

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

(Plate no. 343/4/B)

M/S Hopes Metal Industries (India) Ltd. ^{VS}

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06.11.2019

no merit for further consideration when the port property being the public premises in question is governed by the P.P. Act and O.P. cannot avoid the applicability of the definition of "unauthorized occupation" as per Section 2 (g) of the P.P. Act. Hence the issue is decided against O.P.

As regard the application dated 31.08.2012 praying for waiver/relief against forfeiture u/s 114 of the T.P. Act this Forum had already decided the issue and disposed of by rejecting the said application vide its Reasoned Order No. 78 dated 12.09.2019.

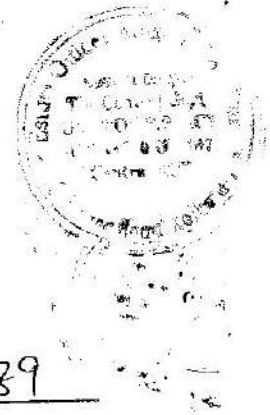
Issue no. 3 and 4 are taken together which relate to non-payment of rental dues as alleged against O.P. by KoPT and payments tendered by O.P. after the issuance of quit Notice. It requires discussions on the basis of the correspondences exchanged between the parties as and when demand was raised by KoPT and reply of O.P. to such demand. The letters demanding arrear rental dues and taxes from O.P. dated 10.02.2003, 09.04.2003, 03.03.2004 and 12.04.2004, clearly indicates that O.P. was not paying the rent amount along with taxes. The fall out of such non-payment of rental dues along with other breaches compelled KoPT to issue Quit Notice dated 21.07.2005. The statement of accounts and the amount mentioned in the Schedule 'B' of KoPT's application dated 30.01.2006 clearly indicates that there were arrear rental dues with interest which O.P. failed to liquidate at the time of issuance of quit notice dated 21.07.2005. After issuance of the show cause Notice/s under Section 4 and 7 of the PP Act, O.P. in its reply dated 05.02.2007 and 16.07.2007 stated that the outstanding rental amount was paid by way of pay order dated 10.01.2007 drawn on Central Bank, Alipore Branch for the sum of Rs. 1,03,999/-. It further reveals from a document dated 10.09.2007 written to the land Manager, KoPT where O.P. has admitted at paragraph 3 of the said application that rental dues/charges were due and payable and the said arrear rent had been cleared and it is also stated that they are ready and willing to pay consistently the current rent at the existing rate of rent.

Wants

BY ORDER OF THE ESTATE OFFICER, KOLKATA PORT TRUST
10/11/2019
DEPUTY ASSISTANT ESTATE OFFICER, KOLKATA PORT TRUST



Estate Officer, Kolkata Port Trust
Appointed by the Central Govt. Under Section 3 of the Public Premises
(Eviction of Unauthorised Occupants) Act 1971



Case No. 763, 763/R, 763/D of 2006 Order Sheet No. 89

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
(Plate no 343/4/B)

VS
M/S Hopes Metal Industries (India) Ltd.

84
06.11.2019

Therefore, O.P. admitted in their reply to the show cause notice that there was arrear rent payable to KoPT at the time of issuance of quit notice dated 21.07.2005. Such admission of arrear rental dues is a fact which KoPT in their reply dated 14.08.2007 also confirmed by way of documentary evidence.

I further take into consideration the periodical payments which O.P. tendered after issuance of ejectment notice and which KoPT adjusted against the outstanding dues/charges which are reflected in the statement of accounts maintained by KoPT. Now the question arises whether the payments tendered by O.P. and which subsequently got adjusted by KoPT in the books of accounts is to be reckoned as rental dues or compensation/ mesne profit/damages. In the course of hearing, representative of KoPT stated that after issuance of ejectment notice, bills are being raised as bills of compensation and not Rent bills. Therefore, any payments made by O.P. is the compensation charges/occupational charges for unauthorised use and occupation by O.P. A specimen copy of the bill was shown before this Forum which literally speaks in the same line. More so, the Ejectment Notice dated 21.07.2005 served upon O.P. clearly spells out that any payment tendered by O.P. after 16.08.2005 i.e. the date of expiry of the period to vacate the subject premises, is deemed as compensation for wrongful use and occupation and acceptance of such payments will be strictly without prejudice to this notice to quit and also to the Kolkata Port Trust's right to take further action in the matter. The said notice to quit further states that Kolkata Port Trust (applicant herein) has no intention /desire to revive O.P's status as tenant under the Board of Trustees for the Port of Kolkata.

As such, I have no bar to accept that a sum of Rs 1,03,999/- had fallen due against O.P. at the time of issuance of ejectment notice by the Port Authority dated 21.07.2005 and is still due on account of rent. The payments so far tendered by O.P. is the compensation/occupational dues/charges for unauthorised use and occupation and not rental dues which is still due and payable by O.P. The language in

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quit Notice dated 21.07.2005 is unambiguous and there is nothing to disbelieve the intent of KoPT to terminate the relationship with O.P.

With regard to issue no. 5 it is the specific case of KoPT that O.P. has parted with possession of the Public Premises to rank outsiders in clear violation of the terms and conditions of the lease in question. The allegation of parting with possession has been proved beyond doubt by KoPT by producing the Calcutta Telephone's(BSNL) Web Directory which shows the following names and organisations operating from the subject premises involved in the instant proceedings being at Transport Depot Road on the Trustees land under plate No. D-343/4/B. The said print out was taken on 06.02.2007 as stated in the application dated 08.02.2007 filed by KoPT before this Forum. The following names with the Telephone numbers are produced below in a table format:

Directory Enquiry-Organisation Total No. Of records matched 9

Phone Number	Name	Address
24489943	B N TEA SERVICES	P-23 Transport Depot Road Brace Bridge 700088
24495214	COOPER PLASTICS PVT LTD	P-23 Transport Depot Road Brace Bridge 700088
24491426	HILTECH LOGISTICS LIMITED	P-23 Transport Depot Road Brace Bridge 700088

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ESTATE OFFICER
KOLKATA PORT TRUST
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28692373	PUBLIC OFFICE(ALP/KPD/GDN REACH)CGM/CTD(PCO)AJAY PANDEY	CALL	P-23 Transport Depot Road Brace Bridge 700088
28391125	PUBLIC OFFICE(ALP/KPD/GDN REACH) PANDEY(STD/P)	CALL AJAY	P-23 Transport Depot Road Brace Bridge 700088
24483841	TK ENTERPRISES PVT LTD	WAREHOUSING	P-23 Transport Depot Road Brace Bridge 700088
24568029	SVDK LOGISTICS PVT LTD		P-23/4 Transport Depot Road Brace Bridge 700088
24568031	SVDK LOGISTICS PVT LTD		P-23/4 Transport Depot Road Brace Bridge 700088
24568032	SVDK LOGISTICS PVT LTD		P-23/4 Transport Depot Road Brace Bridge 700088

It is pertinent to mention here that on the prayer of O.P. vide an application dated 09.10.2007 for allowing for change of the nature of business and granting warehousing and storing facility, a joint inspection was allowed as desired and the date was fixed on 22.04.2009 at 10.30A.M vide Order dated 06.04.2009.



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Therefore, as it appears that the purpose of the Joint inspection held on 22.04.2009 was on the basis of the prayer of O.P. for allowing change of purpose. Therefore, the purpose of the joint inspection during the continuation of the instant proceeding is clear from paragraph 4 of the application dated 09.10.2007 filed before this Forum by O.P..

Therefore, this Forum should take into consideration the evidence/s in the form of Telephone directory as a sacrosanct piece of documents furnished by KoPT instead of the evasive denials in the reply to the show cause notice filed by O.P. as regards parting with possession. I do not have any hesitation to rule the allegation of parting with possession against O.P.

Discussions against the foregoing issues must dominate the Issues no. 6 and 7, leading to the conclusion that the notice to quit dated 21.07.2005 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 are coming under the purview of "public premises" as defined under the Act. Now the question arises as to how a person become 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 lease granted to O.P. was undoubtedly determined by the Port Authority by due service of notice to quit and institution of proceedings against O.P. by KoPT is a clear manifestation of Port Authority's intention to get back possession of the premises. In such a situation, I have no bar to accept KoPT's contentions regarding determination of lease by notice dated 21.07.2005, on evaluation of the facts and circumstances of the case. "Damages" are like

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Office of the Estate Officer, Kolkata Port Trust



Estate Officer, Kolkata Port Trust

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"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 said notice to Quit dated 21.07.2005, O.P. has 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. 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.

In course of hearing, the representative of KoPT 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 KoPT'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 monthly lease was doubtlessly determined by the landlord by notice, 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 lease was determined. In my opinion, institution of this proceedings against O.P. is sufficient to express the intention of KoPT to obtain an order of

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ASSISTANT
ESTATE OFFICER

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Estate Officer, Kolkata Port Trust

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eviction and declaration that KoPT is not in a position to recognize O.P. as tenant under lease.

The Port Authority has a definite legitimate claim to get its revenue involved into this matter as per the KoPT's Schedule of Rent Charges for the relevant period and O.P. cannot claim continuance of its occupation without making payment of requisite charges as mentioned in the Schedule of Rent 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 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 KoPT that the charges claimed on account of damages is on the basis of the KoPT'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 KoPT is 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. Moreover, as per law O.P. is bound to deliver up vacant and peaceful possession of the public premises to KoPT after expiry of the period as mentioned in the notice to Quit in its original condition. As such, the issues are decided in favour of Kolkata Port Trust. I have no hesitation to observe that O.P's act in continuing occupation is

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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 KoPT. 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 KoPT.

Issues No. 8 is required to be discussed in the light of the points stated below :

- a) Kolkata Port Trust is the Successor in Interest of the erstwhile Commissioners for the Port of Kolkata which is a Local Authority as defined under the General Clauses Act, 1897 (Section 3) and West Bengal General Clauses Act, 1899 (Section 3(23)).
- b) On the application of The Major Port Trusts Act, 1963, all properties, Assets and Funds etc vested in the Central Government or as the case may be, any other Authority(Commissioners for the Port of Calcutta constituted under the Bengal Act) for the purpose of Port immediately before such day shall vest in the Board(KoPT Board under Section 29 of the MPT Act).
- c) The Rent Control Act is applicable to **"premises" which means any building** or part of a building or any hut or part of a hut let separately and includes:
 - (i) the gardens, grounds and out-houses, if any, appertaining thereto, and
 - (ii) any furniture supplied by the landlord or any fittings or fixtures affixed, for the use of the tenant in such building or part of a building or hut or part of a hut, but does not include a room in a hotel or a lodging house;

The Rent Control Act never dealt with fair rent in respect of land. In the instant case M/s. Hopes Metal Industries India Ltd was lessee in respect of land

BY PROPOSER
DATE 06.11.2019
BY ESTATE OFFICER
15, SEAPORT ROAD, KOLKATA
15.11.2019
ESTATE OFFICER
KOLKATA PORT TRUST



Estate Officer, Kolkata Port Trust

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measuring 10115.465 sq. mt at Transport Depot Road. The Rent Control Act specifically excludes premises let out for non-residential purposes which carries monthly rent for more than Rs. 10,000/- within the limit of KMC and HMC. In the instant case the land was allotted to O.P. for the purpose of fabrication and the Company/ allottee used to pay more than Rs. 10,000/- as monthly rent without any dispute whatsoever.

d) The proposition for fixation of "fair rent" by the rent controller under the Rent Control Act in respect of Public Premises is not supported by law particularly when the Major Port Trust's Act 1963 prescribes a different mode for fixation of rent for use and enjoyment of the Port Properties being the Public Premises as defined under P.P. Act.

Moreover, fixation of rent charges in respect of Port Properties by the Tariff Authority of Major Ports under the Major Port Trusts Act 1963 was the subject matter of consideration before the Hon'ble Apex Court of India. The Port Trust Authority from time to time by notification in the Official Gazette fixed scale of rates on which lands and structures belonging to Port Authority to be let out. U/s 52 of the Major Port Trusts Act 1963, the Central Government was to approve such rate before it was made applicable. In 1997, Sec. 52 was repealed and different mechanism was evolved by which power to fix rent was given to the Tariff Authority of the Major Ports. Sec. 49 of M.P.T Act was also amended by the Port Laws (Amendment) Act 1997 with effect from 09.01.1997. The validity of these provisions of the MPT Act was upheld by the Hon'ble Supreme Court in the case of **Luga Bay Shipping Corporation -Vs- Board of Trustees of the Port of Cochin and Ors. Reported in AIR 1997 SC 544 = 1997(1) SCC 631.**

In view of the circumstances, I do not find any merit to the contentions of O.P. regarding fixation of "Fair Rent" by the Rent Controller under the Rent Control Act at this stage and also do not find any substance to the contentions of O.P. regarding non-payment of rental dues on the basis of KoPT's Rent Schedule (notified by the Tariff Authority of Major Ports). I do not find any

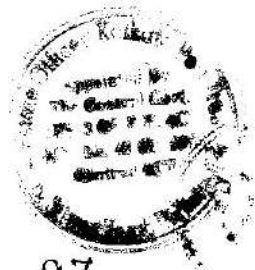
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Estate Officer, Kolkata Port Trust

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



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justification to consider any bar to come into conclusion that O.P. has failed to pay the rental dues to Kolkata Port Trust (KoPT) as per KoPT's demand. I make it clear that my findings as above regarding non-payment of rental dues by O.P. is valid and enforceable, until or unless there is any order to the contrary from any competent Court or Forum of Law.

Since the Sec.4 proceedings is for adjudication of KoPT's prayer for eviction and Sec. 7 proceedings is for adjudication of KoPT's prayer for realisation of arrear rent etc., I am well within my jurisdiction to adjudicate upon the matters under P.P. Act. Hence the issues are decided against O.P.

Issue No. 9, regarding time barred claim under the Limitation Act requires serious consideration of fact and law as well. Admittedly, O.P is in occupation and enjoyment of the Public Premises after expiry of the contractual period of the lease as granted by the Port Authority. The written objection/reply as filed by O.P on 05.02.2007(Reply of the Director of O.P), clearly demonstrate that O.P is admitting their liability towards payment of occupational charges to the Port Authority for the period of their occupation into the Port property, after expiry of the contractual period of lease in question. The relevant portion of the paragraph of the Reply to the Show Cause Notice on behalf of O.P. filed on 05.02.2007, reads as follows:

"..... We submit that by letter No. Lnd. 4367/1/V/06/362 dated 27.01.2006 it was indicated that a sum of Rs. 1,03,999/- was due on account of outstanding rent and taxes for the period from 01.10.2001 to 15.08.2005 which we have paid by a Pay Order being No. 582949 dated 10.01.2007 drawn on Central bank, Alipore Branch for the said sum of Rs. 1,03,999/-. We have also written a letter to know whether any further remaining outstanding dues are payable by us."

Thus O.P is in clear and open admittance of their liability towards payment of charges for occupation but merely disputing KoPT's claim as per KoPT's demand on the basis of notification issued by the Tariff of Authority of Major Ports. Admittedly, O.P is

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KOLKATA PORT TRUST
20/11/19
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KOLKATA PORT TRUST



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M/s Hopes Metal Industries (India) Ltd. ^{VS}

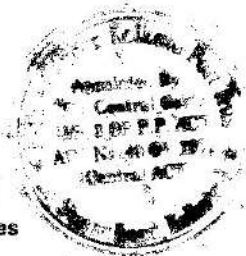
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06.11.2019

disputing KoPT's claim at the enhanced rate with the contentions that such claims are unreasonable etc. It is the contention of KoPT that the charges for occupation have been claimed against O.P on the basis of Schedule of Rent charges in force for the relevant period. I am taking note of the fact that KoPT's enhancement of rent charges is on the basis of notified rate of rent as per as per notification issued by the authority of law as per provisions of the Major Port Trusts Act, 1963, as amended from time to time. In course of hearing, it is submitted with argument that such notified rates of rent (Rent Schedule) has been upheld by the Hon'ble High Court at Calcutta and the Hon'ble Apex Court as well and that any dispute/question relating to unreasonableness /arbitrariness with regard to enforceability of such notified rates of rent charges, is beyond the jurisdiction/scope of this forum of law.

It is also argued that even Limitation Act does not permit O.P to take the plea of "time barred claim", while in occupation and enjoyment of the property as per Sec.22 of the Limitation Act as continuing breaches on the part of O.P after expiry of the contractual period of lease. It is submitted with argument that as per law, O.P was under obligation to hand over possession of the property to KoPT in vacant and unencumbered condition and failure on the part of O.P to discharge such statutory liability is a breach of contract. Now the question survives whether O.P can take the plea of time barred claim under Limitation Act, while in possession and enjoyment of the property, particularly when the liability towards payment of rental dues/charges for such occupation has been admitted by O.P. Even without considering (for the sake of argument), the question of liability towards payment of dues/charges at the enhanced rate as per claim of KoPT, it is my considered view that O.P cannot escape their liability towards payment of rental dues on the plea of "limitation" as per Sec. 25 of the Indian Contract Act, while acknowledging the jural relationship as debtor. No attempt has been made on behalf of O.P as to how O.P's 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

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06.11.2019
OFFICE OFFICER



Estate Officer, Kolkata Port Trust

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KoPT's notice dated 21.07.2005, demanding possession from O.P.

The core submissions made on behalf of KoPT regarding non-applicability of the Limitation Act in proceedings before this Forum is based on various decisions of the Hon'ble Apex Court of India and Calcutta High Court, wherein it has been decided that Limitation Act has no application before quasi-judicial authorities like this Forum of Law which is not a civil court to be governed by the Civil Procedure Code.

With the introduction of Sec 15 of the P.P. Act, 1971, there is no scope for the courts to entertain any matter regarding recovery of arrear rental dues and damages etc arising out of the public premises. In the present scenario, when the statute, in its own wisdom, has imposed a restriction upon the civil court, to adjudicate upon such matter it would be very difficult to accept the contention of O.P. with regard to application of Limitation Act in the proceedings before this Forum of law, which is not a civil court to be governed by the civil procedure code.

The judgment of the Hon'ble Apex Court of India reported in New India Assurance Case - 2008 (3) SCC 279 = AIR 2008 SC 876 is very much relevant in deciding the question whether this Forum is a court or not. It was decided by the Supreme Court that Civil Procedure Code and Indian Evidence Act are not applicable for proceedings before the Estate Officer under P.P. Act which provided a complete code. The Limitation Act applies to "suits" to be governed by CPC and Indian Evidence Act. When the basic elements for adjudication of a "suit" are totally absent for proceedings under P.P. Act, 1971, it is futile to advance any argument for its application. The judgments of different High Courts including that of Delhi High Court could be accepted as a guiding principle. In this connection, I am fortified by a judgment of the Hon'ble High Court at Calcutta in S.N. BHALOTIS -VS- L.I.C.I. & Ors. reported in 2000(1) CHN 880 with reference to the judgment reported in AIR 1972 Tripura 1 (Hemchandra Charkraborty -Vs- Union of India) wherein, it was clearly held that proceedings initiated by an Estate

BY ORDER OF
THE ESTATE OFFICER
KOLKATA PORT TRUST

06.11.2019



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Officer are not in the nature of suit nor the Estate Officer acts as a Court while deciding proceedings before him.

It is worthy to record that there is no prescribed period of limitation in the Limitation Act itself for recovery of "damages".

It would not be out of scope to mention that Limitation Act bars the remedy by way of "suit" but not the entitlement. In my view, there is a clear distinction between 'rent' and 'damages'. So long both the parties admit their relationship as licensor/landlord and tenant/licensee, the question of paying damages does not arise. In other words, if the tenant/licensee is asked to pay rent by the landlord/licensor, the element of authorized occupation could be inferred but in case of demand for damages, there is element of unauthorised use and enjoyment of the of the property (1996) 5 SCC 54 (Shangrila Food Products Ltd. & Anr vs Life Insurance Corporation of India & Another).

It is very much relevant to point out that as per Section 7(1) of the said Act, the word used is 'rent payable' whereas in Section 7(2) it is in respect of 'recovery of damages', having regard to the principle of assessment of damages. Thus the interpretation of the powers under Section 7(1) for recovery of arrears of rent has a wide range of difference between the powers exercised under Section 7(2) of the P.P Act, as there is nothing like the term 'rent payable' as used under Section 7(1) of the P.P Act in Section 7(2) of the P.P Act, 1971. Moreover, the legislative intention for recovery of damages for any time and the power conferred upon the Estate Officer is very much embedded in Section 7(2) of the Act which reads as follows:-

"Where any person is, or has at any time been, in unauthorised occupation of any Public Premises, the Estate Officer may, having regard to such principles for assessment of damages as may be prescribed, assess the damages on account of use and occupation of such premises and may, by order, require that

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
ESTATE OFFICER
APPOINTED BY THE CENTRAL GOVT. UNDER SECTION 3 OF THE PUBLIC PREMISES (EVICTON OF UNAUTHORISED OCCUPANTS) ACT, 1971
06.11.2019
OFFICE OF THE ESTATE OFFICER
KOLKATA PORT TRUST



Estate Officer, Kolkata Port Trust

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require that person to pay the damages within such time and in such instalments as may be specified in the order".

In view of the discussion above, I am of the view that this Forum of Law is very much competent under law to adjudicate the claim of KoPT against O.P. and Limitation Act has no application to the proceedings before the Estate Officer which is a quasi-judicial authority under P.P. Act and is neither a Civil Court to be governed by the Civil Procedure Code nor a "court" within the scheme of the Indian Limitation Act.

The applicability of the Limitation Act before the quasi-judicial authority like this forum of law was, the subject-matter of consideration before the Hon'ble Apex Court of India. By the judgment delivered by the Hon'ble Supreme Court of India on 23.4.2015 in Civil Appeal No. 4367 of 2004 (M.P. Steel Corporation -vs- Commissioner of Central Excise) reported in (2015) 7 SCC 58 it was emphatically observed in para 16 that

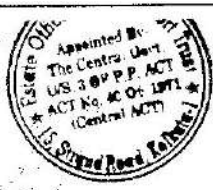
"..... On a plain reading of the provisions of the Limitation Act, it becomes clear that suits, appeals and applications are only to be considered (from the limitation point of view) if they are filed in courts and not in quasi-judicial bodies". Para-19 of the said judgment is an authority for decision that Limitation Act does not apply to quasi-judicial bodies like this Forum of Law. The relevant portion of the judgment reads as follows :

"A series of decisions of this court have clearly held that the Limitation Act applies only to courts and does not apply to quasi-judicial bodies. Thus, in Town Municipal Council, Athani -VS- Presiding Officer, Labour Court, (1969) 1 SCC 873 a question arose as to what applications are covered under Art. 137 of the Schedule of the Limitation Act.

"....."

At Para-26, a reference to judgment in Consolidated Engg. Enterprises -v- Principal Secretary, Irrigation Department, (2008) 7 SCC 169 has been made. The observations made by the Hon'ble Apex Court are

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Proceedings No. 763, 763/R, 763/D of 2006 Order Sheet No. 102

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S Hopes Metal Industries (India) Ltd. **VS** (Plate no. 343/4/B)

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authoritative and an excerpt of the said observation is reproduced below :-

"A 3- Judges Bench of this court was asked to decide whether Section 14 of the Limitation Act would apply to Section 34(3) of the Arbitration and Reconciliation Act 1996. After discussing the various provisions of the Arbitration Act and the Limitation Act, this court held :

"23. At this stage it would be relevant to ascertain whether there is any express provision in the Act of 1996, which excludes the applicability of Section 14 of the Limitation Act. On the review of the provisions of the Act of 1996 this Court finds that there is no provision in the Act which excludes the applicability of the provisions of Section 14 of the Limitation Act to an application submitted under section 34 of the said Act. **On the contrary, this Court finds that Section 43 makes the provisions of the Limitation Act, 1963 applicable to arbitration proceedings.** The proceedings under Section 34 are for the purpose of challenging the award whereas the proceeding referred to under Section 43 are the original proceedings which can be equated with a suit in a court".

"44. It may be noticed at this juncture that the Schedule of the Limitation Act prescribes the period of Limitation only to proceedings in Courts and not to any proceedings before a tribunal or quasi-judicial authority. **Consequently Section 3 and 29(2) of the Limitation Act will not apply to proceedings before the tribunal. This means that the Limitation Act will not apply to appeals or applications before the tribunals, unless expressly provided.**"

There is no scope for deciding the matter otherwise after observations made by the Apex Court in M.P. Steel Corporation case at Para 27 which reads as follows :

"Obviously, the ratio of Mukti Gopalan does not square with the observation of 3 judges Bench in Consolidated Engineering Enterprise. In the latter case, this court has unequivocally held

[Signature]

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f.s.de
06.11.2019
ESTATE OFFICER
KOLKATA PORT TRUST



Estate Officer, Kolkata Port Trust

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



Case No. 763,763/R,763/D of 2006 Order Sheet No. 103

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that Paterson Tool is an authority for proposition that the Limitation Act will not apply to quasi-judicial bodies or Tribunals. To the extent that Mukti Gopalan is in conflict with the Judgment of Consolidated Engineering Enterprises case, it is no longer good law".

In my view, Hon'ble Supreme Court's judgement in M.P. Steel Corporation Case (Supra) has gone to the root of the question regarding applicability of the Limitation Act before quasi-judicial proceedings. Thus, the plea taken by O.P. regarding applicability of Limitation Act in the proceedings before the Estate Officer under P.P. Act has, to my considered view, got no merit. I have taken a note of Sec.29 of The Limitation Act, 1963 read with Sec.25 of the Indian Contract Act, 1872. It is my well considered view that even if for the sake of argument, Limitation Act is taken to apply to the proceedings before the Estate Officer (not admitting), Sec.25 of the Indian Contract Act will definitely come into play against O.P's plea for "time barred" claim under Limitation Act. I am of the view that O.P. acknowledged its relationship as debtor and Sec.25 of the Contract Act debars O.P. to take the plea of "barred by limitation", in the facts and circumstances of the case. Hence, the issue is decided in favour of KoPT.

NOWTHEREFORE, I think it is a fit case for allowing KoPT's prayer for eviction against O.P. u/s 5 of the Act for 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 arrears of rental dues/damages etc. as prayed for on behalf of KoPT and the Notice/s issued by this Forum are in conformity with the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act 1971.

[Signature]

F.S.D.
06/11/2019



Estate Officer, Kolkata Port Trust

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

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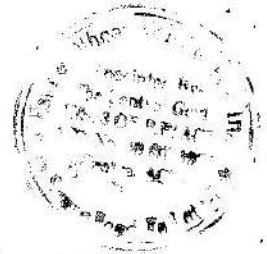
BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s Hopes Metal Industries (India) Ltd. ^{VS} (Plate no. 343/4/B)

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2. That in gross violation of the terms and conditions of the subject monthly lease, O.P have defaulted in making payment the rental dues and taxes payable to KoPT.
3. That O.P. have unauthorisedly parted with possession of the Public Premises and failed to vacate the premises upon determination of the period as mentioned in the notice to quit dated 21.07.2005 as issued by the Port Authority.
4. That O.P. are under obligation to vacate the premises on demand from the Port Authority and O.P's act of inducting unauthorized concerned/ organization is not at all supported by law.
5. That KoPT's notice dated 21.07.2005 demanding possession of Port property from O.P. is very much valid, lawful and enforceable in the facts and circumstances of the case.
6. That while O.P. are in possession and enjoyment of the Port Property and while O.P. itself acknowledging the jural relationship as debtor to KoPT, O.P. cannot take the shield of "time barred claim" under Limitation Act.
7. That O.P. cannot claim relief against forfeiture of the lease in question, in the facts and circumstances of the case.
8. 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 issuance of notice dated 21.07.2005, demanding possession by the Port Authority.

ESTATE OFFICER
KOLKATA PORT TRUST
06.11.2019
HEAD ASSISTANT
ESTATE OFFICER
KOLKATA PORT TRUST



Estate Officer, Kolkata Port Trust
 Appointed by the Central Govt. Under Section 3 of the Public Premises
 (Eviction of Unauthorised Occupants) Act 1971

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9. That O.P. has failed to bear any witness or adduce any evidence in support of their contention regarding "authorised occupation" and O.P's occupation has become unauthorized in view of Sec.2(g) of the P.P. Act.

10. That O.P's occupation has become unauthorised in view of Sec. 2(g) of the P.P. Act and O.P. is liable to pay damages for unauthorised use and enjoyment of the Port Property in question 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 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. KoPT is directed to submit a comprehensive status report of the Public Premises in question on inspection of the property after expiry of the 15 days as aforesaid so that necessary action could be taken for execution of the order of eviction u/s 5 of the Act as per Rule made under the Act.

In my opinion KoPT's claim for damages from 16.08.2005 to 31.12.2005 for Rs. 5,58,257/- against Plate No. D-343/4/B (excluding interest for delayed payment) for wrongful occupation may be payable by O.P. as it is gathered in course of hearing that the charges so claimed by KoPT is on the basis of the Schedule of Rent Charges published under the Authority of Law as per provisions of the Major Port Trusts Act 1963. In course of hearing, I find that KoPT has made out an arguable claim against O.P., founded with sound reasoning. I make it clear that Kolkata Port

BY ORDER OF
 THE ESTATE OFFICER
 KOLKATA PORT TRUST
 06.11.2019
 ASSISTANT
 OFFICE OF THE ESTATE OFFICER
 KOLKATA PORT TRUST



Estate Officer, Kolkata Port Trust

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

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Trust is entitled to claim damages against O.P. for unauthorized use and occupation of the public premises upto the date of recovery of clear, vacant and unencumbered possession of the same in accordance with Law and KoPT is entitled to claim interest upon dues/charges right from the date of incurrence of liability by O.P. as per KoPT's Rule.

NOW THEREFORE, I hereby assess the damages payable by the O.P. for wrongful and unauthorised occupation of the public premises in question, for the period 16.08.2005 to 31.12.2005 for Rs. 5,58,257/- (principal amount). In terms of Section 7 (2-A) of the PP Act, 1971, such dues attracts interest @ 15% per annum upto 18.09.1996 and thereafter @ 18% per annum upto 06.04.2011 and thereafter @ 14.25% per annum till its liquidation of the same from the date of incurrence of liability in accordance with the Notification/s of KoPT issued under authority of Law as per adjustment of payments made so far by O.P. as per KoPT's Books of Accounts.

I make it clear that in the event of failure on the part of O.P. to pay the amounts to KoPT as aforesaid, Port Authority is entitled to proceed further in accordance with Law.

I sign the formal order u/s 7 (1) & (2-A) of the Act. I make it clear that in the event of failure on the part of O.P. to pay the amount to KoPT as aforesaid, Port Authority is entitled to proceed further for recovery of its claim in accordance with law.

In my opinion KoPT's claim for damages upto 31.03.2019 for Rs. 4,18,38,455/- (excluding interest for delayed payment) for wrongful occupation may be payable by O.P. as it is gathered in course of hearing that the charges so claimed by KoPT is on the basis of the Schedule of Rent Charges published under the Authority of Law as per provisions of the Major Port Trusts Act 1963. In course of hearing, I find that KoPT has made out an arguable claim against O.P., founded with sound reasoning. I make it clear that Kolkata Port Trust is entitled to claim damages against O.P. for

[Signature]

ORDER
ESTATE OFFICER
KOLKATA PORT TRUST
06.11.2019
HEAD ASSISTANT
OFFICE OF THE ESTATE OFFICER
KOLKATA PORT TRUST



Estate Officer, Kolkata Port Trust

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



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unauthorized use and occupation of the public premises upto the date of recovery of clear, vacant and unencumbered possession of the same in accordance with Law and KoPT is entitled to claim interest upon dues/charges right from the date of incurrence of liability by O.P. as per KoPT's Rule. KoPT is accordingly directed to submit a statement comprising details of its calculation of damages indicating there in the details of the rate of such charges together with the basis on which such charges are claimed against O.P. for my consideration for the purpose of assessment of damages as per Rule made under the Act.

I must reiterate that KoPT's total claim against O.P. on account of rental dues and charges for compensation for wrongful use and enjoyment of the property for Rs.5,71,90,724.02 upto March,2019 which includes interest for delayed payment of Rs. 1,53,52,269.02 has received my due attention and I am satisfied that Port Authority has made out an arguable claim based on sound reasoning for such claim against O.P.

I make it clear that in the event of failure on the part of O.P. to pay the amounts to KoPT as aforesaid, Port Authority is entitled to proceed further for recovery of its claim in accordance with law.

All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL

(Kausik Kumar Manna)
ESTATE OFFICER

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

SE OFFICE OF THE ESTATE OFFICER, KOLKATA PORT TRUST
06.11.2019
ESTATE OFFICER, KOLKATA PORT TRUST

Estate Officer, Kolkata Port Trust
Appointed by the Central Govt. Under Section 3 of the Public Premises
(Eviction of Unauthorised Occupants) Act 1971

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA
VS
