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**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 Kolkata Port Trust's
Fairlie Warehouse
6, Fairley Place, Kolkata- 700 001.

REASONED ORDER NO. 09 DT 03-09-2021
PROCEEDINGS NO. 1863 OF 2021

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

-Vs-

Howrah Mills Co. Ltd (O.P.)

F O R M - "B"

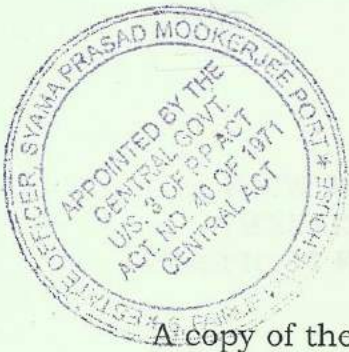
**ORDER UNDER SUB-SECTION (1) OF SECTION 5 OF THE PUBLIC
PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1971**

11767
WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that **Howrah Mills Co. Ltd, 4, Clive Row, Kolkata-700001** is in unauthorized occupation of the Public Premises specified in the Schedule below :

REASONS

1. That this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrear dues/damages etc. as prayed for on behalf of SMP, Kolkata.
2. That the provisions of Public Premises(Eviction of Unauthorised Occupants) Act,1971 are very much applicable in the instant Proceeding.
3. That O.P. has violated the condition of long term lease as granted by the Port Authority by way of unauthorisedly occupying such premises after expiry of such lease by efflux of time.
4. The O.P or any other person/occupant have failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation".
5. That O.P's plea of "Holding Over" has got no merit in the facts and circumstances of the case.
6. That the O.P has parted with Possession of the subject premises to a number of unauthorised occupants in violation of the condition of such lease.
7. That O.P.'s contention regarding applicability of the provisions of West Bengal Premises Tenancy Act, 1997 has also got no merit in the present facts and circumstances of the case.
8. That after expiry of the lease period O.P.'s occupation and that of any other occupant of the premises has become unauthorised in view of Sec.2 (g) of the P.P. Act.
9. That O.P. is liable to pay damages for wrongful use and occupation of the public premises up to the date of handing over the clear, vacant and unencumbered possession to the port authority.

PLEASE SEE ON REVERSE



(2)

A copy of the reasoned order No. 09 dated 3-9-2021 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 **Howrah Mills Co. Ltd, 4, Clive Row, 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 **Howrah Mills Co. Ltd, 4, Clive Row, 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. HL-284 & SF-150/10

The said piece and parcel of land measuring about 10,791.89 sq.mts. or thereabouts situated at Ramkristopur, Howrah, P.S. Howrah, District and Registration District Howrah. It is bounded by on the North by Trustees' open land then Trustees' land occupied by Soorajmull Baijnath, on the South by southern spur, on the East by river Hooghly and on the West by Trustees' land occupied by Howrah Mills Co. Ltd.

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

Date- 03-09-2021


Signature & Seal of the
Estate Officer.

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



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**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 Kolkata Port Trust's
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6, Fairlie Place, Kolkata- 700 001.

PROCEEDINGS NO. 1863/D OF 2021
ORDER NO. 09 DATED : 03.09.2021

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
**Howrah Mills Co. Ltd.,
4, Clive Row,
Kolkata-700001,**

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 21.04.2021 you are called upon to show cause on/or before 30.04.2021 why an order requiring you to pay damages of Rs. 4,96,15,854.42 (Rupees Four Crores Ninety Six Lakhs Fifteen Thousand Eight hundred Fifty Four and paise Forty two only) for Plate No.HL-284 and Rs. 51,82,172.00(Rupees Fifty One Lakhs Eighty Two Thousand One hundred Seventy two only) for the Plate No.SF-150/10 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. 4,96,15,854.42 (Rupees Four Crores Ninety Six Lakhs Fifteen Thousand Eight hundred Fifty Four and paise Forty two only) for Plate No.HL-284 for the period from 06.03.1988 to 29.02.2020 (both days inclusive) and Rs. 51,82,172.00(Rupees Fifty One Lakhs Eighty Two Thousand One hundred Seventy two only) for the Plate No.SF-150/10 for the period from 06.03.1988 to 30.06.2017 (both days inclusive) assessed by me as damages on account of your unauthorised occupation of the said premises for the above mentioned respective periods to SMP, Kolkata by 20.09.2021.

PLEASE SEE ON REVERSE

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: 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 @ 6.20 % 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. HL-284 & SF-150/10

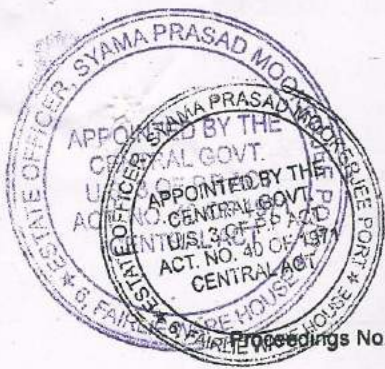
The said piece and parcel of land measuring about 10,791.89 sq.mts. or thereabouts situated at Ramkristopur, Howrah, P.S. Howrah, District and Registration District Howrah. It is bounded by on the North by Trustees' open land then Trustees' land occupied by Soorajmull Baijnath, on the South by southern spur, on the East by river Hooghly and on the West by Trustees' land occupied by Howrah Mills Co. Ltd.

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

Date 03.09.2021

Signature & Seal of the
Estate Officer.

COPY FORWARDED TO THE ESTATE MANAGER, SMP, KOLKATA 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. 1863 of 2021 Order Sheet No. 11

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
Howrah Mills Co. Ltd (O.P.)

FINAL ORDER

The matter is taken up today for final disposal. The factual aspect involved in this matter is required to be put forward in a nutshell in order to link-up the chain of events leading to this proceeding. It is the case of Syama Prasad Mookerjee Port, Kolkata (erstwhile Kolkata Port Trust), hereinafter referred to as SMP, Kolkata, Applicant herein, that a public premises being land msg. about 10791.89 sq.m. situated at Ramkristopur, Howrah, comprised under Plate Nos. HL-284 and SF-150/10 was allotted to **Howrah Mills Co. Ltd (O.P.)**, on long term lease basis w.e.f 06.03.1978 for a period of 10 years without any option of renewal for the purpose of construction of building and factory. It was submitted by SMP, Kolkata that the Lease of the subject premises in question was about to expire on 05.03.1988. However, on the ground of non payment of outstanding dues/charges of SMP, Kolkata, unauthorised parting with possession of said premises to the outsiders and for making unauthorised construction, the said lease was determined by SMP, Kolkata vide their ejection Notice dated 28.05.1984 before its expiry but O.P continued their possession over the subject premises in question after determination of such lease. In the mean time challenging the said Quit Notice dated 28.05.1984 a Writ Petition (being WPA 13174 of 1984) was preferred by O.P. before the Hon'ble High Court at Calcutta and the execution of the said Quit Notice was subsequently stayed by the Hon'ble High Court vide its interim order dated 25.09.1984 thereafter very recently the said interim order was vacated by Hon'ble High Court vide its order dated 12.03.2021 and the impugned notice was quashed however, by this time, the period for which the lease was originally granted was also expired and the Forum was directed to decide all the points in proceeding instituted by SMP, Kolkata. Now it is argued on behalf of SMP, Kolkata that O.P. has no authority under law to occupy the Public Premises after expiry of such lease and O.P is liable to pay damages for unauthorised use and enjoyment of the Port property in question.

This Forum formed its opinion to proceed against O.P under the relevant provisions of the Act and issued Show Cause Notice U/S 4 of the Act (for adjudication of the

09
03/09/2021

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
03.09.2021
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



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. 1863 Of 2021 Order Sheet No. 12

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

Howrah Mills Co. Ltd (O.P.)

09
03-09-2021

prayer for order of eviction etc.) and Show Cause Notice U/S-7 (for adjudication of the prayer for recovery of arrear damages etc.) both dated 21.04.2021 (vide Order No. 01 dated 21.04.2021) as per rule made under the Act.

The record depicts that such Notice/s had been sent to O.P both by hand and Speed Post as per address available on record. However, the Postal Services to the recorded address of O.P returned undelivered to the Forum but it reveals from the report of the Process Server dated 26.04.2021 that the Show Cause Notice/s u/s 4 & 7 were served on O.P. personally and one Sri S. Sinha has received the same on behalf of O.P and affixation was also made on the subject premises on the very same day at about 12:20 P.M. as per the mandate of the P.P Act.

On the Scheduled date of appearance and filing reply to the Show Cause i.e on 30.04.2021, it is seen that in spite of due service of the Show Cause Notice/s, no one appeared on behalf of O.P to contest the matter therefore, following the principles of natural justice the Forum gave a further opportunity to O.P to file their reply to the Show Cause on the next date of hearing by giving further direction to serve the order dated 30.04.2021 upon O.P. Thereafter, due to imposition of state wise restrictions by Govt of W.B for covid-19 pandemic, the matter was further taken up on 17.06.2021 and then it came to the notice of the Forum that one Utpal Majumdar Advocates LLP, expressing the O.P. as their client had already filed an application on 12.05.2021 for supplying them copy of the application filed by SMP, Kolkata along with a prayer for adjournment till the mid week of June. On the same hearing, one Teesham Das, expressing himself as a Ld' Advocate of O.P., filed another application dated 16.06.2021 and forwarded his vakalatnama to contest the matter and made the same prayer before the Forum for supplying them copies of SMP, Kolkata's application for filing their reply to the Show Cause. However, considering his submitted documents and the prayer, Forum gave a direction to the Department to give him a copy of the said application by 25.06.2021. Thereafter, O.P contested the matter through its Ld' advocate and filed on 08.07.2021 its reply/written objection to the Show Cause Notice/s duly signed by Sanjay Mall,

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06.09.2021
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT TRUST

Handwritten signature/initials



Estate Officer, Kolkata Port Trust

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(Eviction of Unauthorised Occupants) Act 1971

Proceedings No. 1863 of 2021 Order Sheet No. 13

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Howrah Mills Co. Ltd (O.P.)
VS

09

03/09/2021

authorised representative of O.P under cover of its letter dated 07.07.2021, followed by Letter/Petition dated 16.07.2021, 27.07.2021 and 05.08.2021. Thereafter on 02.08.2021, SMP, Kolkata also filed their rejoinder to said reply to the Show Cause as filed by O.P. Both the parties were heard extensively and finally on 17.08.2021 upon submission of Written Notes of Arguments by O.P and on the basis of arguments and counter-arguments of both the parties, the matter was reserved for final order.

Now, while passing the Final Order, I have carefully considered the documents on record and the submissions of the parties. After due consideration of those submissions/arguments, I find the following issues for my adjudication/decision:

- I) Whether the instant proceeding is maintainable or not;
- II) Whether the plea taken by O.P. that the Provisions of Public Premises(Eviction of Unauthorised Occupants)Act-1971 are not applicable in the facts and circumstances of the case has got any merit in the eye of law or not;
- III) Whether the claim of SMP, Kolkata for continuous use and occupation of O.P. in the public premises is required to be adjudicated under the provisions of the West Bengal Premises Tenancy Act, 1997 or not;
- IV) Whether the plea of O.P. on the ground of "Tenant Holding Over" has got any merit or not;
- V) Whether the O.P. has made unauthorised construction on the subject premises or not;
- VI) Whether the O.P has parted with possession of said public premises to third parties or not;
- VII) Whether O.P. is in default of making payment of dues/charges to SMP, Kolkata or not;
- VIII) Whether the contention of O.P. that Land Manager(I/C), SMP, Kolkata has no authority to issue Quit Notice has got any merit or not;

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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

14

Proceedings No. 1863 Of 2021 Order Sheet No. _____

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Howrah Mills Co. Ltd (O.P.) ^{VS}

09
03-09-2021

IX) Whether O.P's occupation has become unauthorised in terms of Sec.2(g) of the P.P. Act and whether O.P. is liable to pay damages for wrongful occupation and enjoyment of the Port Property to SMP, Kolkata or not;

As regards 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. SMP, Kolkata has come up with an application for declaration of representatives of O.P's status as unauthorized occupant in to the public premises with the prayer for order of eviction, recovery of compensation etc. 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. Moreover, the interested party/sitting occupant although admitted that they are in occupation and enjoyment of the subject premises for a considerable period, however, they cannot claim any legal right after determination of such long term lease. Moreover, such interested Party/ sitting occupant has no locus standi to raise those contentions as because the original long term lease has already been expired on March, 1988 by efflux of time. The Issue is thus decided accordingly in favour of SMP, Kolkata.

As regards issue No II, i.e on the question of applicability of P.P Act in the instant proceedings, efforts has also been made on the part of O.P to challenge the

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06.09.2021
Head Assistant
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SYAMA PRASAD MOOKERJEE PORT



Estate Officer, Kolkata Port Trust
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Proceedings No. 1863 of 2021 Order Sheet No. 15

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

vs
Howrah Mills Co. Ltd (O.P.)

09
03/09/2021

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S.S.M.
06.09.2021
Head Assistant
OFFICE OF THE I.D. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

jurisdiction of this Forum to deal with the instant proceedings citing the decision of Hon'ble Supreme Court in the case of Suhas H. Pophale vs. Oriental Insurance Co. Ltd. However, I must say that I am not at all inspired by such submission. The public premises in question, belongs to SMP, Kolkata, a Statutory authority of the Central Government, the land owned by whom always satisfied the definition of "Public Premises", be it prior to 1958 or not. There is nothing in the P.P Act or in the said judgement of the Hon'ble Supreme Court which debars the Estate Officer from adjudicating over lease/license entered into prior to 16.09.1958, in respect of such categories of public premises. In my view, the case in hand is clearly distinguishable from the one forming the subject matter before the Hon'ble Supreme Court in Suhas H. Pophale vs. Oriental Insurance Co. Ltd and such distinction has also been recognised by Hon'ble Justice Dipankar Datta of Hon'ble High Court, Calcutta in Judgement dated 16.09.2014 in WP no.15067 (W) of 2014, M/s B.C Shaw & Sons Vs. The Union of India & Ors. Thus I find no scope to accede to the submission of O.P.

As regards the issue No.III, I must say that O.P's claim in their reply that the said Act of 1971 is not applicable in the instant case is not at all tenable in the eye of law because the erstwhile Commissioners for the Port of Kolkata (now known as Kolkata Port Trust by virtue of Major Port Trusts' Act-1963) is the owner of landed property beside River Hooghly in an around Kolkata. The landed property of the Port Authority is exempted from the purview of The West Bengal Premises Tenancy Act being a Local Authority as defined under the General Clauses Act -1897 and The West Bengal General Clauses Act -1899. When statute by its own wisdom exempted the Port Properties from the purview of the Premises Tenancy Act-1997, it is futile to assert tenancy right without any grant in respect of the property in favour of O.P or other interested Party.

As regards the issue No. IV i.e on the claim of holding over, I must say that O.P's plea is not acceptable because for the sake of argument, if it is accepted (not admitted) that there is "Holding Over", the conduct of O.P. is of

2



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.

1863

Of

2021

Order Sheet No.

16

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
Howrah Mills Co. Ltd (O.P.)

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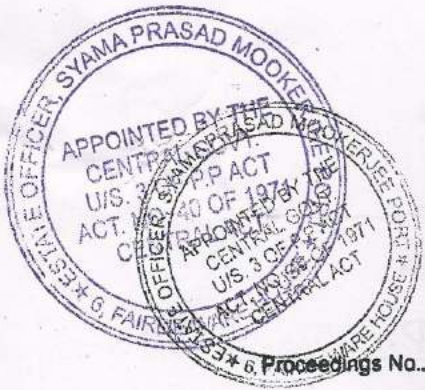
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Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

paramount importance. It is not the case of O.P. that they have all along paid the rental dues per month to SMP, Kolkata as per their demand or at the rates specified in the SMP, Kolkata's Schedule of Rent Charges in accordance with SMP, Kolkata's Lease Form (which was sent to O.P. for execution etc. from SMP, Kolkata's end) in question. Though the Lease Deed specifically provides a liability upon a lessee to pay the rental dues, whether demanded or not, to the lessor, there is no material to show that O.P. has tendered such amount of rental dues at least, to the Port Authority. "Holding Over" means continuance of occupation with the same terms and conditions as it was granted to O.P. at the time of handing over of possession to O.P. by SMP, Kolkata. Evaluation of factual aspect and the papers/documents brought before me in course of hearing leaves no room for doubt that the SMP, Kolkata never consented in O.P.'s occupation into the public premises after expiry of the period of lease. The essential element of "consent" for constituting the matter of holding over is absent and the O.P. has failed to adduce any evidence or bear any witness in support of its contention regarding "holding over". To take this view I have borrowed my support from the Apex Court judgment reported in Judgment Today 2006 (4) SC Page- 277 wherein it was observed by the Hon'ble Supreme Court as follows:

"A somewhat similar situation arose in the case of Santi Prasad Devi and Anr. -vs- Shankar Mahato & Ors. That was a case where the landlord accepted rent even on expiry of the period of lease. A submission was argued on behalf of the tenant in that case that Section 116 of the Transfer of Property Act was attracted and there was a deemed renewal of the lease. Negating the contention, the Court observed that mere acceptance of rent for subsequent months in which the lessee continued to occupy the premises even after the expiry of the period of lease, cannot be said to be a conduct signifying his assent to the continuing of the lease even after expiry of the lease period. Their Lordship noticed the conditions incorporated in the Agreement itself, which provided for renewal of the lease and held those conditions having not been fulfilled, the mere acceptance

2



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Proceedings No. 1863 of 2021 Order Sheet No. 17

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
Howrah Mills Co. Ltd (O.P.)

09

03/09/2021

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06.09.2021
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of rent after expiry of the period of lease did not signify assent to the continuance of the lease.”

In the instance case there was no consent on the part of the Port Authority either by way of accepting rent from O.P. or by any other mode expressing the assent for continuance in such occupation after expiry of the period of such lease. In view of the ratio of judgment of the Hon'ble Supreme Court of India, I do not find any scope to consider the matter of "Holding Over" as advocated by O.P. in the facts and circumstances of the case.

No evidence has been laid on behalf of O.P. by way of producing any Receipt for acceptance of any payment wherefrom it could at least be inferred that the Port Authority has any intention to the continuance in occupation by accepting any amount as rent for such occupation. The Port Authority has a definite legitimate claim to get its revenue involved into this matter as per SMP, Kolkata's Schedule of Rent Charges for the relevant period.

The judgment of the Hon'ble Apex Court reported in JT 2006 (4) SC 277 (Sarup Singh -Vs- S. Jagdish Singh & Ors.) is very much instrumental in dealing with such issues and can be accepted as a guiding principle for deciding such matter. The relevant portion of the judgement reads as follows:

“.....

In our view, mere acceptance of rent did not by itself constitute an act of the nature envisaged by sec.113 Transfer of Property Act showing an intention to treat the lease as subsisting. The fact remains that **even after accepting the rent tendered, the landlord did file a suit for eviction and even while prosecuting the suit accepted rent which was being paid to him by the tenant, it cannot, therefore, be said that by accepting rent, he intended to waive the notice to quit and to treat the lease as subsisting**

.....

It cannot, therefore, be said that mere acceptance of rent amounts to waiver of notice to quit unless there be any other evidence to prove or establish that the landlord so

(Handwritten mark)

Estate Officer, Kolkata Port Trust

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Proceedings No. 1863 Of 2021 Order Sheet No. 18

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Howrah Mills Co. Ltd (O.P.)

09
03-09-2021

intended. In the instant case, we find no other fact or circumstances to support the plea of waiver. On the contrary, the filing of a prosecution of the eviction proceedings by the landlord suggests otherwise." In the case in hand, there is no case of accepting of rent from O.Ps by SMP, Kolkata rather the Port Authority prefers to institute instant proceedings against O.Ps for order of eviction against O.Ps under the P. P. Act which is the only remedy available to SMP, Kolkata in respect of the property, being the public premises in question as defined under the P.P. Act. This clearly indicates the intention of the Port Authority to proceed against O.Ps for recovery of possession on the basis of expiry of lease demanding possession and SMP, Kolkata's act cannot be considered as waiver of notice to quit as served against O.P. Hence the issue is decided against O.P.

Issue no V and VI are taken up together, as the issues are related with each other. It is made clear that I have not gone into the merit of SMP, Kolkata's allegations against O.P. regarding carrying out of unauthorized construction as in my view, expiry of the period of lease in question is sufficient for considering O.P's occupation as "unauthorized occupation" in the context of Sec. 2(g) of the P.P. Act. However, as regards the issue of unauthorised parting with possession, it is seen from the rejoinder/comment of SMP, Kolkata dated 02.08.2021 that an inspection of the subject public premises was held on 13.12.2019 and from such inspection it was found that the entire plots under Plate Nos.H.L-284 and SF-150/10 had been occupied by number of entities along with the O.P. such as M/s Cotton Casual Pvt. Ltd(Cotton Knitting Unit), Premier Digital Solution Pvt. Ltd(office purpose), Turtle Ltd(Garment storage),T.C Motors(Automobile Workshop) & Vertex Customer Solution Pvt. Ltd and also inside the O.P., Company, the hoarding of different companies and Wedding hall were also found with names. Therefore, in my view, existence of such numerous Companies in the subject occupation of O.P. is nothing but an unauthorised parting and such parting with possession was made by O.P. without the permission of Port Authority. Thus mere claim on behalf of O.P that they have never allotted exclusive possession

By Order of:
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06.09.2021
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



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. 1863 Of 2021 Order Sheet No. 19

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
Hawrah Mills Co. Ltd (O.P.)

09
03/09/2021

of any area under the said premises in favour of any third party etc., is in my view not sufficient to defend this type of serious allegations. The O.P could have very well produced documents related to their trade or business from that premises but O.P chose to produce nothing. Even O.P did not produce any single photographic evidence to counter the allegation of SMP, Kolkata or invite Port Authority for instant Joint Inspection for verification of such claim. As such it is very difficult to accept the mere claim of the O.P which is bereft of any cogent reason. Moreover, induction of a third party without the approval of SMP, Kolkata is also against the spirit of tenancy.

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As regards the issue No.VII, SMP, Kolkata's allegation of non-payment of dues /charges by the O.P. does appear to have merit. The paper/documents produced on behalf of O.P., are not sufficient to contradict/dispute the claim of SMP, Kolkata. In course of hearing, SMP, Kolkata not only confirmed their claim on account of damages but also asserted their right to claim interest for delayed payment. The O.P. on the other hand merely disputed the claim of the Port Authority without coming out with any material particulars. The O.P. did not bother to pay the said amounts as well. In my view, the conduct of the O.P. does not inspire any confidence and I am not at all inclined to protect the occupation of the O.P. even for the sake of natural justice. In my considered view, the Port Authority has a definite legitimate claim to get its revenue involved into the Port Property in question as per the SMP, Kolkata'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.

The charges claimed on account of damages is on the basis of the SMP, Kolkata'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. Recently the Act of 1963 has been replaced by the Major Port Authorities Act, 2021 as it received the assent of the President of India on 17.02.2021. As per the earlier Act of 1963, the Tariff

9

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Proceedings No. _____ Of _____ Order Sheet No. _____

1863

2021

20

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
Howrah Mills Co. Ltd (O.P.)

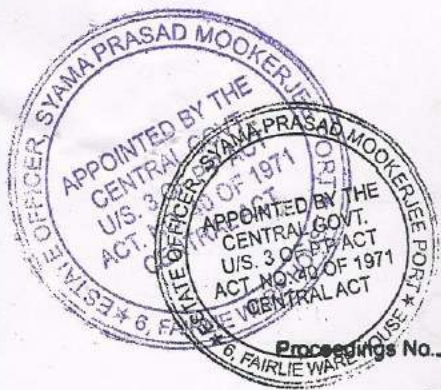
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03-09-2021

Authority for Major Ports (TAMP) fixes the scale of rates for assets and services available at ports. Under the new law, the Board or committees appointed by the Board will determine these scale of rates for the usage of the port assets etc. As per Section 54 of the Act of 2021 the Central Government shall, by notification, constitute, with effect from such date as may be specified therein, a Board to be known as the Adjudicatory Board to exercise the jurisdiction, powers and authority conferred on such Adjudicatory Board by or under this Act, provided that until the constitution of the Adjudicatory Board, the Tariff Authority for Major Ports constituted under section 47A of the Major Port Trusts Act, 1963 shall discharge the functions of the Adjudicatory Board under this Act and shall cease to exist immediately after the constitution of the Adjudicatory Board under this Act: Provided further that on and from the date of constitution of the Adjudicatory Board— (a) all the assets and liabilities of the Tariff Authority for Major Ports shall stand transferred to, and vested in, the Adjudicatory Board. In view of the above, I have no hesitation in mind that the Schedule of Rent Charges of the Tariff Authority for Major Ports (TAMP) has statutory force of law at present.

The SMP, Kolkata's claim on account of interest involves mixed question of fact and law as well. It is the case of SMP, Kolkata that claim of interest for delayed payment is in accordance with the Schedule of Rent Charges which has been published in the Official Gazette as per provision of the Major Port Trusts Act 1963, after obtaining sanction of the Central Govt. as per provision of the said Act. The notification published under Authority of Law has statutory force of law and O.P. cannot deny the claim of SMP, Kolkata on the strength of such notification. It is contended that continuing in occupation of the public premises must necessarily mean that O.P. is under legal obligation to pay SMP, Kolkata's demand as per the Schedule of Rent Charges. It is my considered view that payment of interest is a natural fall out and one must have to pay interest in case of default in making payment of the principal amount due to be payable. For occupation and enjoyment of Port property, the charges leviable upon the

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Proceedings No. 1863 of 2021 Order Sheet No. 21

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
Howrah Mills Co. Ltd (O.P.)

09
03/09/2021

tenants/occupiers are based on the Schedule of Rent Charges as applicable for a tenant/occupier in respect of respective zone as indicated in such Schedule of Rent Charges. Every tenant/occupier of the Port property is under obligation to pay such charges for occupation and it has been specifically mentioned in the different Schedules of Rent Charges as were notified from time to time. I am firm in holding that such notifications have a statutory force of law and tenants/occupiers cannot deny the charges on account of interest as per notification in the Official Gazette until such rate of interest is modified/enhanced by further notification/s. Therefore, this issue is also decided in favour of SMP, Kolkata.

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06.09.2021
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As regards the issue No.VIII i.e. on the authority of the Land Manager (I/C) in issuing Quit Notice, I must say that the Land Manager(I/C) of Kolkata Port Trust is very much competent to serve ejection notice, acting on behalf of the Board of Trustees' of the Port of Kolkata, particularly when specific approval of the Chairman, SMP, Kolkata is obtained before serving such notice. The Land Manager, SMP, Kolkata is merely communicating the decision of the Chairman, SMP, Kolkata and such ministerial act on the part of the Land Manager cannot be said to be out of jurisdiction. I am also of the view that the Land Manager(I/C), SMP, Kolkata has acted as an agent of Board of Trustees' of the Port of Kolkata and such act cannot be questioned by O.P. on the plea of "incompetency". To take this view, I have borrowed my support from the decision of the Division Bench of Calcutta High Court delivered on 28.01.2013 by their Lordship Hon'ble Mr. Justice Girish Chandra Gupta and Hon'ble Mr. Justice Tarun Kumar Dutta in A.P.O. No. 108 of 2010 (Kolkata Port Trust -Vs- M/s Universal Autocrafts Pvt. Ltd. &Anr.).It may be re-called that service of notice, determining a tenancy under lease by the Land Manager, SMP, Kolkata was the subject matter of challenge before the Hon'ble High Court, Calcutta and the Division Bench of Calcutta High Court confirmed that Land Manager is very much competent in serving ejection notice on behalf of Board of Trustees of the Port of Kolkata. The matter regarding competency in serving of ejection notice on behalf of Board of Trustees of the Port of Kolkata went upto the Apex Court of India and the

2



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.

1863

Of

2021

Order Sheet No.

22

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Howrah Mills ^{VS} Co. Ltd (O.P.)

09
03-09-2021

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Hon'ble Apex Court by its judgment and order dated 16.04.2014 (In SLP (Civil) No.18347/2013-Sidhartha Sarawgi -Versus- Board of Trustees for the Port of Kolkata and Others With SLP (Civil) Nos.19458-19459/2013-Universal Autocrafts Private Limited and Another -versus- Board of Trustees for the Port of Kolkata and others) etc. upheld the authority of the Land Manager/Officer of Kolkata Port Trust in serving ejectment notice by confirming the judgment of the Division Bench of Calcutta High Court in APO No. 108 of 2010 (Kolkata Port Trust - Vs- M/s Universal Autocrafts Pvt. Ltd. &Anr.). It has been decided by the Hon'ble Apex Court of India that lease/license can be terminated by the same authority who executed the lease/license deed and issuance of notice is a ministerial act for implementation. The Chairman, SMP, Kolkata having duly authorized the Land Manager with regard to service of notice, it cannot be said that ejectment notice issued by the Land Manager, SMP, Kolkata is without jurisdiction.

As regards the issue No.IX, it appears that the Notice of ejectment dated 28.05.1984 has been challenged before the Hon'ble High Court at Calcutta vide WPA No. 13174 of 1984 (IA CAN 3 of 2019) (Old CAN 12646 of 2019), when the Hon'ble Court was pleased to pass an order dated 12.03.2021 disposing of the writ petition being WPA No. 13174 of 1984 with certain directions and observations. It appears that the contention of the Ld. Advocate of SMP, Kolkata was, inter-alia, that the lease which had been granted to O.P. had expired by efflux of time and the O.P. has become unauthorised occupant. It has been the further contention of the Ld. Advocate of SMP, Kolkata that he cannot proceed on the basis of allegations contained in the impugned notice to quit dated 28.05.1984 in view of the above fact and a fresh notice is required to be issued in accordance with law under the Public Premises Act. Considering the submission advanced by the Ld. Advocate of SMP, Kolkata the Hon'ble Court was pleased to observe that the impugned notice dated 28.05.1984 has lost its force in view of the subsequent development in the matter. The Hon'ble Court was of the view that there is no purpose in keeping the writ petition alive and accordingly the impugned notice dated 28.05.1984 was set aside and/or quashed.



Estate Officer, Kolkata Port Trust

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

1863

Of

2021

Order Sheet No.

23

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

^{VS}
Howrah Mills Co. Ltd (O.P.)

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03/09/2021

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Liberty was given to SMP, Kolkata to take all steps in accordance with law. Direction was also passed upon this Forum to decide all the issues involved in the proceeding in the present case as stated by SMP, Kolkata. In view of the above I am firm in holding that the Hon'ble Calcutta High Court after considering the subsequent development in the matter post issuance of the Notice to Quit dated 28.05.1984 has specifically directed this Forum, to consider all aspects, issues involved in the proceeding in view of the provisions of the Public Premises Act. The notice to quit dated 28.05.1984 was also set aside/ quashed. Hence, no reliance could be placed by SMP, Kolkata on the notice to quit dated 28.05.1984 in the present proceeding and the issue of validity/ legality of the said notice to quit has been kept out of the zone of consideration by this Forum. However, as per settled proposition of law, I must say that a lessee like O.P. cannot claim any legal right to hold the property after expiry of the period of lease. O.P has failed to satisfy this Forum about any consent on the part of SMP, Kolkata in occupying the public premises. I am consciously of the view that SMP, Kolkata never recognized O.P. as a lawful user/tenant in respect of the property in question after expiry of the period of such long term lease. As per Section 2 (g) of the P. P. Act the "unauthorized occupation", in relation to any Public Premises, means the occupation by any person of the public premises without authority for such occupation and includes the continuance in occupation by any person 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. Further, as per the Transfer of Property Act, a lease of immovable property determines either by efflux of time limited thereby or by implied surrender or on expiration of notice to determine the lease or to quit or of intention to quit, the property leased, duly given by one party to another. It is also a settled question of law that O.P, occupier cannot claim any legal right to hold the property after expiry of the lease, without any valid grant or allotment from SMP, Kolkata's side. Moreover, as per the Transfer of Property Act, 1882, a lessee is under legal obligation to hand over possession of the property to its landlord/lessor in its

9



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. 1863 Of 2021 Order Sheet No. 24

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Howrah Mills vs
co. Ltd (O.P.)

09
03/09/2021

original condition after expiration of tenancy under lease. The tenancy of the O.P. automatically stands terminated upon expiry of the lease-hold period and no additional Notice is required in the eye of law on the part of the landlord to ask the O.P. to vacate the premises. In other words, in case of a long term lease having a specific date of expiration, there is no legal compulsion on the landlord to issue any Notice to Quit. The landlord is, however, free to issue such a Notice as a reminder or as an act of gratuity. In the instant case, the landlord i.e. SMP, Kolkata adopted such a course and claims to have issued a Notice to O.P. dated 28.05.1984 asking for vacation of the premises said premises with effect from 01.08.1984. Whether such Notice has been received by O.P. or not is quite immaterial inasmuch as O.P. was duty bound to hand over possession to SMP, Kolkata after expiry of such lease which it had failed to do. Therefore, O.P.'s occupation is unauthorise and O.P is liable to pay compensation.

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In view of the discussions above, the issues are decided firmly in favour of SMP, Kolkata. I find that this is a fit case for passing order of eviction against O.P or other interested Party whoever in occupation, and hence, being satisfied as above I hereby, pass Order of eviction under Section 5 of the Act on following grounds:

1. That this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrear dues/damages etc. as prayed for on behalf of SMP, Kolkata.
2. That the provisions of Public Premises(Eviction of Unauthorised Occupants) Act,1971 are very much applicable in the instant Proceeding.
3. That O.P. has violated the condition of long term lease as granted by the Port Authority by way of unauthorisedly occupying such premises after expiry of such lease by efflux of time.
4. The O.P or any other person/occupant have failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation".

2

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.

1863.1863/D Of 2021

Order Sheet No.

25

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
Howrah Mills Co. Ltd (O.P.)

09

03/09/2021

5. That O.P.'s plea of "Holding Over" has got no merit in the facts and circumstances of the case.
6. That the O.P has parted with Possession of the subject premises to a number of unauthorised occupants in violation of the condition of such lease.
7. That O.P.'s contention regarding applicability of the provisions of West Bengal Premises Tenancy Act, 1997 has also got no merit in the present facts and circumstances of the case.
8. That after expiry of the lease period O.P.'s occupation and that of any other occupant of the premises has become unauthorised in view of Sec.2 (g) of the P.P. Act.
9. That O.P. is liable to pay damages for wrongful use and occupation of the public premises up to the date of handing over the clear, vacant and unencumbered possession to the port authority.

ACCORDINGLY, I sign the formal order of eviction u/s 5 of the Act as per Rule made there under, giving 15 days time to O.P. and any person/s whoever may be in occupation to vacate the premises. I make it clear that all person/s whoever may be in occupation are liable to be evicted by this order and the Port Authority is entitled to claim damages for unauthorized use and enjoyment of the property against O.P. in accordance with Law up to the date of recovery of possession of the same. SMP, Kolkata 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.4,96,15,854.42 (Four Crore Ninety Six lakhs Fifteen thousand eight hundred Fifty Four and paisa forty two)) for the period 06.03.1988 to 29.02.2020(both days inclusive) for the **Plate No.H.L-284** and Rs.51,82,172.00(Fifty One lakhs Eighty two thousand One hundred Seventy two) for the period 06.03.1988 to 30.06.2017 (both day inclusive) for the **Plate No.SF-150/10** are respectively due and

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Proceedings No. 1863.1863/D of 2021 Order Sheet No. 26

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Howrah Mills Co. Ltd Co.P. ^{VS}


09
03-09-2021

recoverable from O.P. by the Port authority on account of damages/compensation for unauthorized occupation and O.P. must have to pay such dues to SMP, Kolkata on or before ~~20-09-2021~~ 20-09-2021. It is clarified that such dues will attract compound interest @ 6.20 % 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 incurrance 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 SMP, Kolkata's books of accounts. I sign the formal order u/s 7 of the Act.

I make it clear that SMP, Kolkata 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 29.02.2020 & 30.06.2017 as well, till such time the possession of the premises continues to be under the unauthorised occupation with the O.P. SMP, Kolkata is directed to submit a statement comprising details of its calculation of damages after 29.02.2020 & 30.06.2017, indicating therein, 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


(Satyabrata Sinha)
ESTATE OFFICER

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

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