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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. 22 DT 09.08.2012
PROCEEDINGS NO. 1275 OF 2012

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

-Vs-

M/S Patit Paban Banerjee & Sons (O.P.)

F O R M - "B"

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

WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that **M/S Patit Paban Banerjee & Sons, Watgunge Railway Siding KPD, 4, Garden Reach Road, Kidderpore, Kolkata-700023** is in unauthorized occupation of the Public Premises specified in the Schedule below :

REASONS

- 1) That O.P. has failed to liquidate rental dues of the Port Authority, within the prescribed period, despite being requested for immediate liquidation.
- 2) That O.P. has clearly parted with possession of the public premises in favour of rank outsiders, without any authority of law, in the facts and circumstances of the case.
- 3) That O.P. as well as sitting occupant has failed to make out any case in support of its occupation as "authorised occupation" in spite of sufficient chances being given.
- 4) That O.P. as well as sitting occupant has failed to show any cause against the allegations of erecting unauthorised construction and unauthorized encroachment.
- 5) That O.P. as well as sitting occupant asserting any right has failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation", inspite of sufficient chances being provided.
- 6) That the notice to quit dated 26.05.2011 as served upon O.P. by the Port Authority is valid, lawful and binding upon the parties and O.P's occupation, and that of any other occupant of the premises, has become unauthorised in view of Section 2(g) of the P.P Act.
- 7) That O.P. is liable to pay damages for wrongful use and occupation of the Public Premises up to the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

PLEASE SEE ON REVERSE

A copy of the reasoned order No. 22 dated 09.08.2021 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 **M/S Patit Paban Banerjee & Sons, Watgunge Railway Siding KPD, 4, Garden Reach Road, Kidderpore, Kolkata-700023** 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 Patit Paban Banerjee & Sons, Watgunge Railway Siding KPD, 4, Garden Reach Road, Kidderpore, Kolkata-700023** and all other persons concerned are liable to be evicted from the said premises, if need be, by the use of such force as may be necessary.

SCHEDULE

Plate No. D-20

The said piece or parcel of land msg.100.335 Sq.m or thereabouts is situated at Watgunge, Thana:South Port Police Station, District:24 Parganas, Registration District:Alipore. It is bounded on the North by the said Trustees' land occupied by P.P. Banerjee & Sons, On the South by the said Trustees' leased out land, On the East by the Trustees' open space and on the West by the Trustees' leased out land.

Plate No. D-22

The said piece or parcel of land Msg. 48.681 Sq.m or thereabouts is situated at Watgunge, Thana : South Port Police Station. District:24 Parganas, Registration District: Alipore. It is bounded on the North by Trustees' Road inside Watgunge area, On the South by Trustees' land occupied by P.P. Banerjee & Sons, On the East by the Trustees' open space and on the West by the Trustees' leased out land.

Plate No. D-23

The said piece or parcel of land msg. 299.239 Sq.m or thereabouts is situated at Watgunge, Thana: South Port Police Station, District : 24 Parganas, Registration District: Alipore. It is bounded on the North by Trustees' Road inside Watgunge area, On the South by Trustees' land occupied by P.P. Banerjee & Sons, On the East by the Trustees' leased out land and on the West by the Trustees' land occupied by P.P. Banerjee & Sons.

Plate No. D-27

The said piece or parcel of land msg. 69.120 Sq.m or thereabouts is situated at Watgunge, Thana: South Port Police Station, District : 24 Parganas, Registration District: Alipore. It is bounded on the North by Trustees' passage inside Watgunge area, On the South by Trustees' road Watgunge area On the East by the Trustees' leased out land and On the West by the Trustees' leased out land.

Plate No. D-27/1

The said piece or parcel of land msg. 130.808 Sq.m or thereabouts is situated at Watgunge, Thana: South Port Police Station, District : 24 Parganas, Registration District: Alipore. It is bounded on the North partly by Trustees' road inside Watgunge area and partly by Trustees' land occupied by P.P. Banerjee & Sons, On the South by Trustees' open space, On the East by the Trustees' land occupied by P.P. Banerjee & Sons and On the West by the Trustees' open space.

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

Date-09.08.2021



Signature & Seal of the
Estate Officer

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



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

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

(Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-Central Act)
Public Premises (Eviction of Unauthorized Occupant) Act 1971
OFFICE OF THE ESTATE OFFICER
6, Fairley Place (1st Floor)
KOLKATA - 700 001

Court Room At the 1st Floor
6, Fairlie Place Warehouse
Kolkata-700001.

Form " E "

PROCEEDINGS NO.1275/R OF 2012
ORDER NO. 22 DATED: 09.08.2021

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

To
M/s. Patit Paban Banerjee & Sons.,
Watgunge Railway Siding KPD,
4, Garden Reach Road, Kidderpore,
Kolkata-700 023.

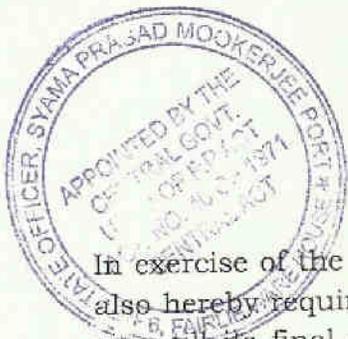
WHEREAS you are in occupation of the public premises described in the Schedule below. (Please see on reverse).

AND WHEREAS, by written notice dated 03.09.2019 you are called upon to show cause on or before 13.09.2019 why an order requiring you to pay a sum of Rs.1209/- (Rupees One thousand two hundred nine only)(for plate No. D-22) being arrears of rent from 01.06.1982 to 30.06.2011 (both day inclusive), Rs. 3,96,777.36 (Rupees Three lakhs ninety six thousand seven hundred seventy seven only), (for plate No. D-23) being arrears of rent from 01.01.1988 to 30.06.2011(both day inclusive), Rs.2,26,221.72 (Rupces Two lakhs Twenty six thousand two hundred twenty one and paise seventy two only), (for plate No. D-27) being arrears of rent from 01.06.1982 to 30.06.2011 (both day inclusive) and Rs.2,18,231/- (Rupees Two lakhs eighteen thousand two hundred thirty one only) (for plate No. D27/1) being arrears of rent from 01.01.1988 to 30.06.2011 (both day inclusive) being the rent payable together with compound interest in respect of the said premises should not be made;

AND WHEREAS you have not made any objections or produced any evidence before the said date; however I have considered the objections and/or evidence produced by the sitting occupant;

NOW, THEREFORE, in exercise of the powers conferred by sub-section (1) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971, I hereby require you to pay the sum of Rs.1209/- (Rupees One thousand two hundred nine only)(for plate No. D-22) being arrears of rent from 01.06.1982 to 30.06.2011 (both day inclusive), Rs. 3,96,777.36 (Rupees Three lakhs ninety six thousand seven hundred seventy seven only), (for plate No.D-23) being arrears of rent from 01.01.1988 to 30.06.2011(both day inclusive), Rs.2,26,221.72 (Rupees Two lakhs Twenty six thousand two hundred twenty one and paise seventy two only), (for plate No. D-27) being arrears of rent from 01.06.1982 to 30.06.2011 (both day inclusive) and Rs.2,18,231/- (Rupees Two lakhs eighteen thousand two hundred thirty one only) (for plate No. D27/1) being arrears of rent from 01.01.1988 to 30.06.2011 (both day inclusive) to SMP, Kolkata by 27.08.2021

PLEASE SEE ON REVERSE



: 2 :

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

SCHEDULE

Plate No. D-20

The said piece or parcel of land msg. 100.335 Sq.m or thereabouts is situated at Watgunge, Thana: South Port Police Station, District: 24 Parganas, Registration District: Alipore. It is bounded on the North by the said Trustees' land occupied by P.P. Banerjee & Sons, On the South by the said Trustees' leased out land, On the East by the Trustees' open space and on the West by the Trustees' leased out land.

Plate No. D-22

The said piece or parcel of land Msg. 48.681 Sq.m or thereabouts is situated at Watgunge, Thana : South Port Police Station. District: 24 Parganas, Registration District: Alipore. It is bounded on the North by Trustees' Road inside Watgunge area, On the South by Trustees' land occupied by P.P. Banerjee & Sons, On the East by the Trustees' open space and on the West by the Trustees' leased out land.

Plate No. D-23

The said piece or parcel of land msg. 299.239 Sq.m or thereabouts is situated at Watgunge, Thana: South Port Police Station, District : 24 Parganas, Registration District: Alipore. It is bounded on the North by Trustees' Road inside Watgunge area, On the South by Trustees' land occupied by P.P. Banerjee & Sons, On the East by the Trustees' leased out land and on the West by the Trustees' land occupied by P.P. Banerjee & Sons.

Plate No. D-27

The said piece or parcel of land msg. 69.120 Sq.m or thereabouts is situated at Watgunge, Thana: South Port Police Station, District : 24 Parganas, Registration District: Alipore. It is bounded on the North by Trustees' passage inside Watgunge area, On the South by Trustees' road Watgunge area On the East by the Trustees' leased out land and On the West by the Trustees' leased out land.

Plate No. D-27/1

The said piece or parcel of land msg. 130.808 Sq.m or thereabouts is situated at Watgunge, Thana: South Port Police Station, District : 24 Parganas, Registration District: Alipore. It is bounded on the North partly by Trustees' road inside Watgunge area and partly by Trustees' land occupied by P.P. Banerjee & Sons, On the South by Trustees' open space, On the East by the Trustees' land occupied by P.P. Banerjee & Sons and On the West by the Trustees' open space.

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

Dated: 09.08.2021

Signature and seal of the
Estate Officer

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



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

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

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

Court Room At the 1st Floor
of Kolkata Port Trust's
Fairlie Warehouse
6, Fairlie Place, Kolkata- 700 001.

PROCEEDINGS NO. 1275/D OF 2012
ORDER NO. 22 DATED : 09.08.2021

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

M/s. Patit Paban Banerjee & Sons.,
Watgunge Railway Siding KPD,
4, Garden Reach Road, Kidderpore,
Kolkata-700 023

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 03.09.2019 you are called upon to show cause on/or before 13.09.2019 why an order requiring you to pay damages of Rs. **3,50,375.02** (Rupees Three lakhs fifty thousand three hundred seventy five and paise two *only*.) (for Plate No.D-20), Rs. **2,20,598/-** (Rupees Two laksh twenty thousand five hundred ninety eight only) (Plate No. D-22), Rs. **13,38,704/-** (Rupees Thirteen lakhs thirty eight thousand seven hundred four only) (Plate No. D-23), Rs. **3,02,265/-** (Rupees three lakhs two thousand two hundred sixty five only) (Plate No. D-27) and Rs. **5,87,779/-** (Rupees Five lakhs eighty seven thousand seven hundred seventy nine only) (plate No. D-27/1) together with [compound interest] for unauthorised use and occupation of the said premises, should not be made;

AND WHEREAS you have not made any objections or produced any evidence before the said date; however I have considered the objections and/or evidence produced by the sitting occupant;

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. **3,50,375.02** (Rupees Three lakhs fifty thousand three hundred seventy five and paise two *only*.) (for Plate No.D-20) for the period from 01.07.2011 to 30.06.2019 (both days inclusive), Rs. **2,20,598/-** (Rupees Two laksh twenty thousand five hundred ninety eight only) (Plate No. D-22) for the period from 01.07.2011 to 30.06.2019 (both days inclusive), Rs. **13,38,704/-** (Rupees Thirteen lakhs thirty eight thousand seven hundred four only) (Plate No. D-23) for the period from 01.07.2011 to 31.05.2019 (both days inclusive), Rs. **3,02,265/-** (Rupees three lakhs two thousand two hundred sixty five only) (Plate No. D-27) for the period from 01.07.2011 to 31.03.2019 (both days inclusive) and Rs. **5,87,779/-** (Rupees Five lakhs eighty seven thousand seven hundred seventy nine only) (plate No. D-27/1) for the period from 01.07.2011 to 30.06.2019 (both days inclusive) assessed by me as damages on account of your unauthorised occupation of the premises for the above mention respective periods to SMP, Kolkata by 27.08.2021

PLEASE SEE ON REVERSE

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. D-20

The said piece or parcel of land msg.100.335 Sq.m or thereabouts is situated at Watgunge, Thana:South Port Police Station, District:24 Parganas, Registration District:Alipore. It is bounded on the North by the said Trustees' land occupied by P.P. Banerjee & Sons, On the South by the said Trustees' leased out land, On the East by the Trustees' open space and on the West by the Trustees' leased out land.

Plate No. D-22

The said piece or parcel of land Msg. 48.681 Sq.m or thereabouts is situated at Watgunge, Thana : South Port Police Station. District:24 Parganas, Registration District: Alipore. It is bounded on the North by Trustees' Road inside Watgunge area, On the South by Trustees' land occupied by P.P. Banerjee & Sons, On the East by the Trustees' open space and on the West by the Trustees' leased out land.

Plate No. D-23

The said piece or parcel of land msg. 299.239 Sq.m or thereabouts is situated at Watgunge, Thana: South Port Police Station, District : 24 Parganas, Registration District: Alipore. It is bounded on the North by Trustees' Road inside Watgunge area, On the South by Trustees' land occupied by P.P. Banerjee & Sons, On the East by the Trustees' leased out land and on the West by the Trustees' land occupied by P.P. Banerjee & Sons.

Plate No. D-27

The said piece or parcel of land msg. 69.120 Sq.m or thereabouts is situated at Watgunge, Thana: South Port Police Station, District : 24 Parganas, Registration District: Alipore. It is bounded on the North by Trustees' passage inside Watgunge area, On the South by Trustees' road Watgunge area On the East by the Trustees' leased out land and On the West by the Trustees' leased out land.

Plate No. D-27/1

The said piece or parcel of land msg. 130.808 Sq.m or thereabouts is situated at Watgunge, Thana: South Port Police Station, District : 24 Parganas, Registration District: Alipore. It is bounded on the North partly by Trustees' road inside Watgunge area and partly by Trustees' land occupied by P.P. Banerjee & Sons, On the South by Trustees' open space, On the East by the Trustees' land occupied by P.P. Banerjee & Sons and On the West by the Trustees' open space.

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

Date 09.08.2021



Signature & Seal of the
Estate Officer.



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 1275, 1275/R, 1275/D of 2012 Order Sheet No. 18

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/s Patit Paban Banerjee & Sons

22
09.08.2012

FINAL ORDER

The matter is taken up today for final disposal. It is the case of Syama Prasad Mookerjee Port, Kolkata (Erstwhile Kolkata Port Trust), hereinafter referred to as KoPT, applicant herein, that M/s Patit Paban Banerjee & Sons (O.P. herein) came into occupation of the Port property measuring about i) 100.335 sq.m., ii) 48.681 sq.m., iii) 299.239 sq.m., iv) 69.120 sq.m. and v) 130.808 sq.m. at the Watgunge Railway Siding under plates no. D-20, D-22, D-23, D-27 and D-27/1 respectively in the presidency town of Kolkata more fully described in the Schedule 'A' as mentioned in the application Lnd.3406/A/4/IV/11/ 4417 dated 18.10.2011 as a monthly lessee and had defaulted in making payment of the arrear dues and taxes, parted with possession of the premises to rank outsiders, erected unauthorised construction and also encroached 229.846 sq.m of land without prior approval of the Port authority, in clear violation of the terms and conditions of the lease in question.

It is submitted that O.P. has no authority under law to occupy the public premises after issuance of notice to quit dated 26.05.2011 and was required to hand over the peaceful vacant possession of the property in question to KoPT in terms of the said notice to quit. My attention is drawn with a strong argument that the cause of action arises upon failure on the part of the O.P. to hand over possession in terms of the said notice dated 26.05.2011 as served upon O.P. and thereafter.

In terms of Order no. 7 dated 03.09.2019, on 03.09.2019 this Forum issued Show Cause Notice under section 4 of Public Premises (Eviction of Unauthorised Occupants) Act 1971 for adjudication of the prayer of passing of Order of Eviction etc. On the same date two Show Cause Notices u/s 7 of the Act were also issued upon O.P. for adjudication of the prayer for recovery of rental dues, damages etc.

On receipt of Show Cause Notices on 13.09.2019 one Sri Kamallesh Rai appeared before this Forum and expressed himself as the representative of O.P. However, no paper/

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

Head Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

[Handwritten signature]



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 1275, 1275/R, 1275/D Of 2012 Order Sheet No. 19

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/s Patit Paban Banerjee & Sons ^{VS.}

22
09.08.2021

document establishing the relationship with O.P. has been produced by him inspite of opportunity being given to him vide Order no 08 dated 13.09.2019.

Thereafter, on 27.09.2019 one Sri Jitendra Kumar Gupta expressing himself as the partner of one M/s Sunita Freight Carriers appeared through his Ld Advocate by filing Vakalatnama. It has been the contention of M/s Sunita Freight Carriers that they are operating their business from the subject premises and opportunity be provided to them to file the reply to the show cause notice issued by this Forum.

Considering the above and following the principles of Natural Justice, M/s Sunita Freight Carriers was allowed to represent their case by filing reply to the said show cause notice. It requires mention here that by affixation of a copy of the Order of this Forum upon the subject premises, all person/s who might be interested in the proceeding were given notice and provided with the opportunity to represent their case before this Forum.

On the day of subsequent hearing i.e. on 01.11.2019 the Ld. Advocate for M/s Sunita Freight Carriers filed their reply to the Notice to show cause, copy of which was handed over to KoPT. Thereafter, KoPT has filed their rejoinder to the reply filed by M/s Sunita Freight Carriers vide application no. LND.3406/A/4/IV/19/2739 dated 15.11.2019. On 22.11.2019 the Ld Advocate for M/s Sunita Freight Carriers filed another application and submitted that the area under the present dispute i.e. the schedule area of the land mentioned in the lease deed furnished by KoPT is not matching with the area mentioned in KoPT's original application. The Ld Advocate for M/s Sunita Freight Carriers further prayed for a copy of the original application filed by KoPT along with some documents. The copy of the original application dated 18.10.2011 along with statements of accounts have been handed over to the representative of M/s Sunita Freight Carriers under acknowledgement. On the next date of hearing (i.e. on 13.12.2019), it is seen that KoPT has filed their parawise comments against the reply to the show cause vide application no Lnd.3406/A/4/IV/19/3036 dated 06.12.2019.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
KOLKATA
11-08-2021
Head Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 1275, 1275/R, 1275/D of 2012 Order Sheet No. 20

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/s Patit Paban Bamerjee^{VS} & Sons

22

09.08.2021

On 27.12.2019 Ld Advocate for M/s Sunita Freight Carriers filed their reply against the parawise comments filed by KoPT dated 06.12.2019 and 15.11.2019. In reference to the earlier orders of this Forum KoPT filed an application no. LND.3406/A/4/IV/20/194 dated 31.01.2020. On the next date of hearing on 14.02.2020 in compliance of the earlier order dated 31.01.2020 representative of KoPT filed the copy of the original lease deed along with a sketch plan. It also transpires from the record that KoPT had filed the said copy of the lease deed vide an application no. LND.3406/A/4/IV/20/194 dated 31.01.2020.

The Ld Advocate for M/s Sunita Freight Carriers filed their supplementary reply on 21.02.2020. On the day fixed for final hearing on 13.03.2020, the Ld. Advocate for M/s Sunita Freight Carriers filed written notes of argument. KoPT was instructed to send the sketch map to M/s Sunita Freight Carriers by 16.03.2020 and upon receiving the same M/s Sunita Freight Carriers shall submit their additional written notes of argument by 18.03.2020.

Considering the situation that the pleadings of the appearing parties have been completed and exchanged by and between them, this Forum finds no reason to fix up another date of hearing and the Final Order was reserved for passing.

It appears from records that O.P. was all along provided with the opportunity to appear and represent their case by sending several communications to O.P. The Notices issued u/s 4 & 7 of the Act have also been affixed upon the premises of O.P. Additionally, several attempts were made to inform the O.P. about the next date of hearing. However, in spite of receipt of such Notices/ Orders, none appeared on behalf of O.P. It requires mention here that the said Sri Kamallesh Rai, though initially expressed himself as the representative of O.P., but it came out at the later part of the proceeding that Sri Kamallesh Rai is the representative of M/s Sunita Freight Carriers instead of being the representative of O.P.

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

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 1275,1275/R,1275/D of 2012 Order Sheet No. 21

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/s Patit Paban Banerjee & Sons

22

09.08.2021

However the said M/s Sunita Freight Carriers, continued to appear through their Ld Advocate and contested the case.

I have carefully perused the applications/ papers/ documents filed by M/s Sunita Freight Carriers and the main points taken by them are enumerated as follows:

- 1) That Notice to quit dated 26.05.2011 has never been served upon M/s. Sunita Freight Carriers.
- 2) That although M/s. Sunita Freight Carriers is not interested with regard to the entire portion of the subject premises, but they have paid the rent to KoPT for the entire occupation from their account in the name of M/s. Patit Paban Banerjee & Sons
- 3) That the schedule of property as mentioned in the lease deed is not tallying with the schedule of the property mentioned by KoPT in the original application dated 11.10.2011.
- 4) Reference has been drawn to the case law of Subhas H. Pophale v. Oriental Insurance Co. Ltd., [(2014) 4 SCC 657] and arguments has been advanced with regard to the guidelines issued Central Government dated 30.05.2002 in the case of prevention of arbitrary use of power to evict genuine tenants from public premises under the control of public sector undertakings/financial institutions. Further, reliance has been placed upon the decision taken by Hon'ble Delhi High Court in the case of Damayanti Verma Vs L.I.C.
- 5) That the amount due as 'rent' cannot be recovered beyond the period of three years being barred by Limitation laws as laid down by the Hon'ble Calcutta High Court in the case of M/s. Bhatpara Papers Pvt Limited Vs BTPK [C.O. No. 1876 of 2014 and C.O. No. 1877 of 2014] and thereafter by Hon'ble Apex Court.

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



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 1275, 1275/R, 1275/D of 2012 Order Sheet No. 22

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6) That there was an implied contract between them and KoPT as KoPT accepted Rent through Managers Cheque from them and they have entered into the Plot Nos D-23 and D-27/1 on 1st January, 2008 and Plot Nos. D-20 and D-22 on 1st March, 2010.

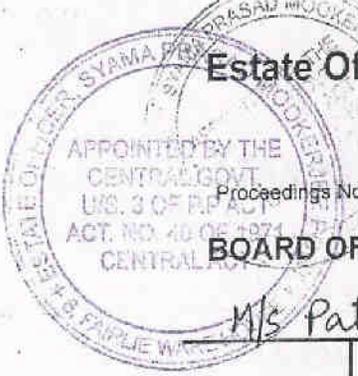
7) That M/s. Sunita Freight Carriers has already acquired the status of a subtenant and they should be recognised as 'direct tenant' under KoPT, following the law of tenants enumerated in the Transfer of Property Act.

8) That the original application of KoPT dated 18.10.2011 did not disclose the date of the cause of action and as such it should be dismissed by this Forum.

Now, while passing the Final Order I have given due consideration of all the papers/documents as brought before me in course of hearing and after careful consideration of the submissions/arguments made on behalf of the parties, I came up with the following conclusions:

On the question of 1st contention of non-receipt of ejection notice dated 26.05.2011, I have considered the matter seriously. There is no dispute or objection from O.P's side regarding status of O.P's tenancy under monthly lease. Now the question arises how far the question of non-receipt of notice to quit to M/s. Sunita Freight Carriers deserves merit in the facts and circumstances of the case. It is claimed by KoPT that the said notice was served upon the O.P. at the recorded address of O.P. at that point of time. In fact, on the body of the said quit notice dated 26.05.2011 it is endorsed that the notice was received by one Sri Hrishikesh Banerjee for M/s. Patit Paban Banerjee & Sons on 09.06.2011. In my view, a notice served in official course of business cannot be contradicted by a mere statement denying service of such notice. This takes me to the question whether a lessee like O.P. can continue in occupation when the lease has been terminated vide a

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Notice to Quit. As per Transfer of Property Act, 1882, a lessee is under legal obligation to hand over the possession of the property to its landlord/lessor in its original condition after expiration of the period mentioned in the Notice to Quit. The tenancy of the O.P. automatically stands terminated upon expiry of period mentioned in the notice to Quit. During the course of entire proceedings, O.P. failed to justify how they are entitled to enjoy the public premises after expiry of the period mentioned in the notice to quit dated 26.05.2011. No attempt has been made on behalf of O.P./ M/s Sunita Freight Carriers to satisfy this Forum of Law about any consent granted on the part of KoPT in occupying the public premises after expiry of the said Notice period. As such, in my view, the plea of non-receipt of the Notice dated 26.05.2011 is quite insignificant in the eyes of law and I am not at all impressed by the submission of the M/s. Sunita Freight Carriers. I take conscious note of the fact that KoPT never recognized O.P./M/s Sunita Freight Carriers as a lawful user/tenant in respect of the property in question after expiry of the period mentioned in the notice to quit and in fact, initiation of the instant proceedings, vide application dated 18.10.2011 of KoPT was a logical culmination of KoPT's intent to obtain vacant possession of the public premises in question. It is a settled question of law that O.P. cannot claim any legal right to hold the property after expiry of the period mentioned in the Notice to Quit, without any valid grant or allotment from KoPT's side. The instant proceedings continued for a fairly long period of time and no intention was found on the part of KoPT to regularize the occupation of the O.P. Further, it is a settled question of law that a lessee like O.P. cannot claim any legal right to hold the property after expiry of the period as mentioned in the notice of ejection, unless O.P. succeeds in making a case of "Tenant Holding Over". The O.P. has made no attempt to satisfy this Forum of Law about any consent on the part of KoPT in occupying the public premises, unconditionally in order to fulfil the essential ingredient of holding over. Further 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

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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.

It is KoPT's allegation and ironically, the admitted position of the sitting occupants too, that the sitting occupants, who are but rank outsiders, having no valid and enforceable lease/tenancy agreements with KoPT, have been enjoying the subject premises for a pretty long period of time. As per the statement of the sitting occupants, vide their applications filed before this Forum on 01.11.2019, 22.11.2019 etc, and as have emerged during the course of the hearings, the sitting occupants have been enjoying the possession of the subject premises for the last 10-15 years, practically since the days of their predecessor-in-interest. The sitting occupants have also admitted that they have been carrying on business at the subject premises vide their said applications and that they have no relationship with the O.P. Ample opportunities were provided to O.P. to appear before this forum for making submissions, but O.P. failed to avail of such opportunities. It further appears from the submission made by the sitting occupants that the O.P. is not at all in possession of the premises. Still for the ends of justice, the Orders of this Forum were affixed on the conspicuous part of the premises each time, as confirmed from the Report/s of the Process Server. The O.P. was neither found at the premises during service of the Notice/s nor cared to appear before this Forum at any point of time. That M/s. Sunita Freight Carriers is a partnership firm. The Deed of Patnership was reduced into writing on 1st day of April, 2018. Although vide an Agreement For Leave Licence on 1st January, 2008 M/s. Sunita Freight Carriers first came in possession of a portion measuring 202.900 Sq.mts in Plate No.23 and Plate No. 27/1 from M/s. Patit Paban Banerjee & Sons. And through Agreement For Leave Licence on 1st March, 2010 M/s. Sunita Freight Carriers came in possession of a portion measuring 96.155 Sq.mts in Plate No.22 and 44.222 Sq.mts in Plate No. 20 from M/s. Patit Paban Banerjee & Sons. But M/s. Patit Paban Banerjee had never communicated this induction

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to KoPT. On the contrary vide KoPT's letter to M/s. Patit Paban Banerjee on 24.10.1991 bearing No. Lnd./3406/A/4/IV it is observed that induction to outsiders happens to be a long time irregularities of O.P. Considering all these aspects, I think it is a clear case of parting of possession to a rank outsider without any authority of law. The O.P. has clearly abandoned the KoPT land in favour of strangers who are found to be enjoying the Port property for a long period.

As per law, there is a strong proposition for creation of sub-tenancy or parting with possession in case there is a delivery of "exclusive possession" in favour of a third party. To consider and/or decide any question of creation of sub-tenancy, there must be a prima facie case of transfer of an exclusive right to enjoy the property in favour of a third party. Hon'ble Supreme Court of India had the occasion to decide on a question of creation of sub-tenancy. It was observed that whether there is sub-letting or not, is always a question of fact. With reference to Hon'ble Supreme Court's decision in Shalimar Tar Products Case [AIR 1988 SC 145], it was held that to constitute a sub-letting there must be a parting of legal possession, that is possession with the right to include and also right to exclude others; and in a particular case, any instance of sub-letting, was substantially a question of fact. In the instant case, transfer of an exclusive right to enjoy the premises, that too for a substantial period, and without liquidating the legitimate rental dues of the landlord, is very much significant, in the facts and circumstances of the case. In my view, strangers like the present sitting occupants cannot enjoy the public premises for eternity, when the O.P. himself is not at all interested in the property.

The discussions against the 2nd contention of M/s. Sunita Freight Carriers are bound to dominate this issue that whether O.P./ M/s Sunita Freight Carriers is liable to pay damages to KoPT for wrongful use occupation of the Public Premises or not. 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 how a person become unauthorized occupant

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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. As per Transfer of Property Act, a lease of immoveable property determines either by efflux of time limited thereby or by implied surrender or on expiration of notice to determine the lease or to quit or of intention to quit, the property leased, duly given by one party to another. Here the tenancy under lease in favour of O.P. was continuing on month to month basis and the Port Authority by service of notice dated 26.05.2011 has intended to determine the tenancy of O.P. There is no material to prove O.P's intention to pay the dues/charges to KoPT as per KoPT's demand on the basis of Schedule of Rent Charges. As such, I have no bar to accept KoPT's contentions regarding determination of tenancy by due service of ejection notice as discussed/decided against the aforesaid paragraphs on evaluation of the facts and circumstances of the case. "Damages" are like "mesne profit" that is to say the profit arising out of wrongful use and occupation of the property in question. I have no hesitation in mind to say that after expiry of the period as mentioned in the said notice of ejection, 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 :

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Para:11-^a 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.
.....
.....
....."

Undoubtedly, the tenancy under lease is governed by the provisions of the Transfer of Property Act 1882 and there is no scope for denial of the same. In course of hearing, the representative of 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./ M/s Sunita Freight Carriers 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 question of "Holding Over" cannot arise in the instant case as the Port Authority never consented to the occupation of O.P.

In the instant case 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 as mentioned in the notice to vacate the premises. 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. To take this view, I am fortified by the Apex Court judgment report in JT 2006 (4) Sc 277 (Sarup Singh Gupta -vs- Jagdish Singh & Ors.)

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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. 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 of lease in question or after expiry of the period as mentioned in the notice to Quit in its original condition. I have no hesitation to observe that O.P.'s act in continuing occupation is unauthorized and O.P. is liable to pay damages for 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 have 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 issue is decided in favour of KoPT.

O.P has claimed that the description of the suit premises as made in the plaint is not tallying/ matching with that made in the lease agreement. It is true that description of the property under Schedule is of paramount importance for initiation of proceedings but in the instant case, I do not find anything to interfere into the matter. No material has been placed from O.P.'s side to infer incorrect or inappropriate description of the property under Schedule. Exchange of letters from O.P.'s side vide dated 04.03.1982, 22.04.1981 in connection with the property must lead to the conclusion that the property is very much identifiable and there cannot be any scope for any confusion about the detection of such property as mentioned under the Schedule of the Show Cause Notice.



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It is also very much evident from the correspondence from KoPT to M/s. Patit Paban Banerjee & Sons vide No.LM. 3406/A/4 dated 19.08.1980, bearing No. Lnd./3406/A/4/IV dated 24.10.1991 and the ejectment notice of KoPT bearing No. Lnd. 3406/A/4/IV/11/679 dated 26.05.2011 that O.P. was well aware of the occupation area being properties covered under Plates No.s D-20, D-22, D-23, D-27, D-27/1 for which the proceedings have been initiated. An appraisal of the facts involving the matter must lead to the conclusion that O.P. is very much aware of the property under Schedule which was allotted to O.P. by the Port Authority on monthly basis and there is no scope for any confusion regarding identification of the property as mentioned under the schedule of the Show Cause Notice/s U/S 4 & 7 of the Act. Accordingly, I do not find any merit to the submissions made by M/s. Sunita Freight Carriers with regard to 'wrong description' in the schedule area of land as referred in the lease deed is not matching with the schedule of the property in the original application no. Lnd.3406/A/4/IV/11/4417 dated 11.10.2011. Hence, the issue is decided against M/s. Sunita Freight Carriers.

In respect of the fourth contention as regards to the guidelines issued Central Government dated 30.05.2002 in the case of prevention of arbitrary use of power to evict genuine tenants from public premises under the control of public sector undertakings/financial institutions is not maintainable as a "genuine tenant" cannot come under the jurisdiction of this Forum of Law. KoPT has submitted that O.P. cannot be termed as a genuine tenant in order to attract (if at all possible under law) the provisions of the Guideline dated 08.06.2002 as stated. It is argued that O.P. has failed miserably to make out any case as to how they could be termed as "genuine tenant" when it is proved that O.P. is a defaulter in making payment of rental dues to KoPT. It is the case of KoPT that O.P.'s tenancy under month to month lease has duly been determined by the Port Authority by valid service of notice to quit dated 26.05.2011 and O.P./A.P.'s occupation is unauthorized right from the expiry of the period as mentioned in the said Notice of Ejectment dated 18.10.2011. Hence, the issue is decided against M/s. Sunita Freight Carriers.

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M/s Patit Paban Banerjee ^{VS} & Sons

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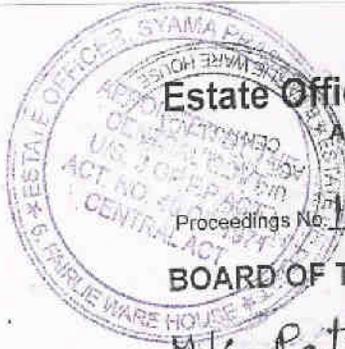
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Regarding time barred claim under the Limitation Act requires serious consideration of fact and law as well. Admittedly, M/s. Sunita Freight Carriers is in occupation and enjoyment of the Public Premises after expiry of the contractual period of lease as granted by the Port Authority to O.P. M/s Sunita Freight Carriers by their petition filed on 01.11.2019 never repudiated KoPT's claim on account of rental dues/charges but only stated *that they are ready and willing to pay the dues, if any, after due reconciliation and proper scrutiny of the record.*

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./ M/s Sunita Freight Carriers 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./ M/s Sunita Freight Carriers. 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 from their liability towards payment of dues/charges 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 of lease in question.

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

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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 dues/charges 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./ M/s Sunita Freight Carriers 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. In this connection, I am fortified by a judgment of the Hon'ble High Court, 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 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 landlord and tenant, the question of paying damages does not arise. In other words, if the tenant is asked to pay rent by the landlord,

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the element of authorized occupation could be inferred but in case of demand for damages, there is element of unauthorized use and enjoyment of the property, as held in (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 P.P. 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 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

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SYAMA PRASAD MOOKERJEE PORT

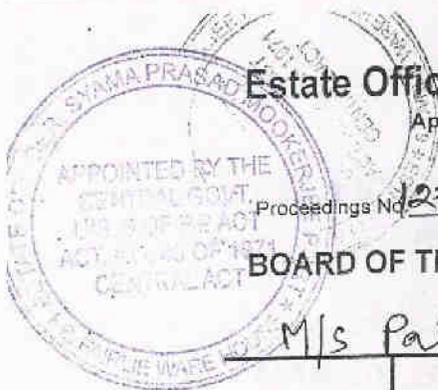
Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 1275, 1275/R, 1275/D Of 20/2 Order Sheet No. 33

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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 -vs- Principal Secretary, Irrigation Department, (2008) 7 SCC 169 has been made. The observations made by the Hon'ble Apex Court are 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

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Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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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-judge Bench in Consolidated Engineering Enterprise. In the latter case, this court has unequivocally held 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 M/s Sunita Freight Carriers 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

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Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Appointed by the Central Govt. Under Section 3 of the Public Premises
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by limitation", in the facts and circumstances of the case.
Hence, this issue is decided in favour of KoPT.

The sixth and seventh contention of M/s Sunita Freight Carriers is regarding the implied contract between M/s. Sunita Freight Carriers and KoPT as KoPT receives the rent through Bank Drafts issued from the Bank Account of M/s. Sunita Freight Carriers. It is a matter of fact that Bank Drafts/Manager's cheque from time to time incorporating the entire five plots i.e. Plates No.s D-20, D-22, D-23, D-27, D-27/1 were enclosed under the letter head along with the signature for and on behalf of Patit Paban Banerjee & sons. As regards the receiving of the Bank Drafts/Manager's cheque are concern, I find KoPT have receives the said amount on bona fide manner. As it appears that the amount are from M/s. Patit Paban Banerjee's account. But in reality after unveiling the corporate veil it appears that M/s. Sunita Freight Carriers on behalf M/s. Patit Paban Banerjee & Sons had credited such accounts. On the other hand neither KoPT had considered that they had any jural relationship with M/s. Sunita Freight Carriers nor M/s. Sunita Freight Carriers are able to established any relationship with KoPT. On this, this forum has no hesitation to say that there had been no privity of contract or otherwise between KoPT and M/s. Sunita Freight Carriers. Hence, this issue is decided against O.P./ M/s. Sunita Freight Carriers.

In course of hearing, the representative of KoPT states and submits that Port Authority never consented in continuing O.P./ M/s. Sunita Freight Carriers's occupation into the public premises and never expressed any intention to accept O.P./ M/s Sunita Freight Carriers as tenant or sub-tenant. It is contended that KoPT's intention to get back possession is evident from the conduct of the Port Authority and O.P./ M/s Sunita Freight Carriers cannot claim its occupation as "authorized". The question of "Holding Over" cannot arise in the instant case as the Port Authority never consented to the occupation of O.P./ M/s Sunita Freight Carriers. In the instant case, the lease was doubtlessly determined by notice to quit dated 26.05.2011.

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Deputy Assistant
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Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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Therefore, there can be no doubt that the O.P. was in unauthorized occupation of the premises, once the lease expired on the account of notice to quit dated 26.05.2011. In my opinion, institution of this proceedings against O.P. is sufficient to express the intention of KoPT to obtain an order of eviction and declaration that KoPT is not in a position to recognize O.P./ M/s Sunita Freight Carriers as tenant or sub-tenant respectively.

In the instant case there was no consent on the part of the Port Authority either by way of accepting rent from O.P./ M/s Sunita Freight Carriers or by any other mode, expressing the assent for continuance in such occupation after expiry of the period of lease in question. 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./ M/s Sunita Freight Carriers cannot claim continuance of its occupation without making payment of requisite charges as mentioned in the Schedule of Rent Charges. To take this view, I am fortified by the Apex Court judgment reported in JT 2006 (4) Sc 277 -, Equivalent Citation 2006 (4) SCC 205) (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 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

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Appointed by the Central Govt. Under Section 3 of the Public Premises
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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 in its original condition. As such, the issue is decided in favour of Kolkata Port Trust. I have no hesitation to observe that O.P./A.P's act in continuing in occupation is unauthorized and O.P./M/s Sunita Freight Carriers 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 Port Authority is very much within their jurisdiction to get back possession of the Public Premises from O.P./M/s Sunita Freight Carriers as Land Lord of the premises. In view of the discussions above, the issues are decided in favour of KoPT.

Regarding the last contention of M/s Sunita Freight Carriers that the application bearing number Lnd.3406/A/4/IV/11/ 4417 dated 18.10.2011 for eviction by KoPT did not disclose any date of cause of action. This forum of law made it very clear that the lease expired on the account of notice to quit dated 26.05.2011 whereby it was stated that O.P. or as the case may be, shall arrange to quit, vacate and deliver up peaceful possession of the public premises in question on 30.06.2011 unless on and from 01.07.2011 the O.P. shall be liable to pay compensation charges/mense profit/other charges etc for such wrongful use and occupation. Thus the cause of action is very much evident from the application bearing number Lnd.3406/A/4/IV/11/4417 dated 18.10.2011.

It is made clear that I have not gone into the merit of KoPT's allegations against O.P. regarding carrying out of unauthorized construction and encroachment of area measuring about 229.846 Sq.mts 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.

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Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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Moreover, it is seen from the records that unauthorized construction and encroachment of area measuring about 229.846 Sq.mts affirms vide KoPT's application no. LND.3406/A/4/IV/20/194 dated 31.01.2020 and application no. Lnd.3406/A/4/IV/19/1160 dated 11.07.2019 along with the sketch map bearing no.8115-1-D-1 dated 13.03.2008 and 27.05.2010.

Discussions against the foregoing reveal that the Notice to Quit dated 26.05.2011 had been validly issued and served on the O.P. and the same is binding on the parties and very much enforceable, in the facts and circumstances of the case. Thus, being satisfied as above, I am left with no other alternative but to issue the Order of Eviction against O.P., as prayed for on behalf of KoPT, on the following grounds/reasons:-

- 1) That O.P. has failed to liquidate rental dues of the Port Authority, within the prescribed period, despite being requested for immediate liquidation.
- 2) That O.P. has clearly parted with possession of the public premises in favour of rank outsiders, without any authority of law, in the facts and circumstances of the case.
- 3) That O.P. as well as sitting occupant has failed to make out any case in support of its occupation as "authorised occupation" inspite of sufficient chances being given.
- 4) That O.P. as well as sitting occupant has failed to show any cause against the allegations of erecting unauthorised construction and unauthorised encroachment.
- 5) That O.P. as well as sitting occupant asserting any right has failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation", inspite of sufficient chances being provided.

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Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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6) That the notice to quit dated 26.05.2011 as served upon O.P. by the Port Authority is valid, lawful and binding upon the parties and O.P.'s occupation, and that of any other occupant of the premises, has become unauthorised in view of Section 2(g) of the P.P Act.

7) That O.P. is liable to pay damages for wrongful use and occupation of the Public Premises 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. and any person/s whoever may be in occupation 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.

KoPT is directed to submit a report regarding its claim on account of damages against O.P. and any person/s whoever may be in occupation, indicating there-in the details of the computation of such damages with the rate of charges so claimed for the respective period (details of computation with rates applicable for the relevant period) for my consideration in order to assess the damages as per the Act and the Rules made there under.

Regarding payment of rental dues to KoPT, I must say that a sum of **Rs. 1209/-** (Rupees one thousand two hundred and nine only) (for plate No D-22) being arrears of rent from 01.06.1982 to 30.06.2011 (both day inclusive) , **Rs. 3,96,777.36/-** (Rupees Three Lakhs ninety six thousand seven hundred seventy seven and

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paisa thirty six only), (For Plate No. D-23) being arrears of rent from 01.01.1988 to 30.06.2011 (both day inclusive), **Rs. 2,26,221.72/-** (Rupees Two Lakhs Twenty six thousand two hundred twenty one and paisa seventy two only), (for plate No. D-27) being arrears of rent from 01.06.1982 to 30.06.2011 (both day inclusive) and **Rs. 2,18,231/-** (Rupees Two Lakhs eighteen thousand two hundred thirty one only) (for plate No D-27/1) being arrears of rent from 01.01.1988 to 30.06.2011 (both days inclusive) in respect of the said premises is due and payable by O.P. and any person/s whoever may be in occupation, as claimed by the Port Authority in relation to the Plate in question, is correctly payable by O.P. for the aforementioned period and it is hereby ordered that O.P. and any person/s whoever may be in occupation, shall make payment of the aforesaid sum to KoPT by 27.08.2021 .Such dues shall 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 incurrence of liability, till the liquidation of the same, as per the adjustment of payments, if any made so far by O.P. and any person/s whoever may be in occupation, in terms of KoPT's books of accounts.

NOWHEREFORE, I think it is a fit case for issuance order for recovery of damages u/s 7 of the Act as prayed for on behalf of KoPT. It is my considered view that KoPT has made out an arguable claim against O.P. and any person/s whoever may be in occupation, founded with sound reasoning, regarding the damages/compensation to be paid for unauthorised occupation. I sign the order as per rule made under the Act, giving time upto 27.08.2021 for payment of damages of **Rs. 3,50,375.02/-** (Rupees Three lakhs fifty thousand three hundred seventy five and paisa two only) for Plate no D-20 for the period 01.07.2011 to 30.06.2019, **Rs. 2,20,598/-** (Rupees Two lakhs twenty thousand five hundred ninety eight only) for Plate No D-22 for the period 01.07.2011 to 30.06.2019, **Rs. 13,38,704/-** (Rupees Thirteen lakhs thirty eight thousand seven hundred four only) for Plate No D-23 for the period 01.07.2011 to 31.05.2019, **Rs. 3,02,265/-** (Rupees three lakhs two thousand two hundred sixty five only)

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for Plate No D-27 for the period 01.07.2011 to 31.03.2019 and **Rs. 5,87,779/-** (Rupees five lakhs eighty seven thousand seven hundred seventy nine only) for Plate No D-27/1 for the period 01.07.2011 to 30.06.2019 to KoPT by O.P. and any person/s whoever may be in occupation for the aforementioned period. The said damages shall 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. and any person/s whoever may be in occupation, in terms of KoPT's books of accounts.

I make it clear that KoPT is entitled to claim damages against O.P. and any person/s whoever may be in occupation for the unauthorised 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. and any person/s whoever may be in occupation to pay damages extends beyond 30.06.2019 (Plate No D-20, D-22 and D-27/1), 31.05.2019 (Plate D-23), 31.03.2019 (Plate No. D-27) respectively as well, till such time the possession of the premises continues to be under the unauthorised occupation with the O.P. and any person/s whoever may be in occupation. KoPT is directed to submit a statement comprising details of its calculation of damages after 30.06.2019 (Plate No D-20, D-22 and D-27/1), 31.05.2019 (Plate D-23), 31.03.2019 (Plate No. D-27) respectively, indicating there-in, the details of the rate of such charges, and the period of damages (i.e. till the date of taking over of possession) together with the basis on which such charges are claimed against O.P. and any person/s whoever may be in occupation, for my consideration for the purpose of assessment of such damages as per Rule made under the Act.

I also 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

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O.P. and any person/s whoever may be in occupation in accordance with Law up to the date of recovery of possession of the same.

Department is directed to draw up formal order as per Rule u/s 7 of the Act. I make it clear that in the event of failure on the part of O.P. and any person/s whoever may be in occupation to pay the dues/charges as aforesaid, KoPT is at liberty to recover the compensation/Damages etc. in accordance with law.

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 recovery of possession in accordance with law.

All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL

(P.MUKHOPADHYAY)
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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11-08-2021
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